



DEVELOPMENT CONTROL COMMITTEE

18th September 2007

Report of Head of Planning and Building Control - Regeneration

University of Wolverhampton, Walsall Campus,
Gorway Road, Walsall.
Sports Ground,
Ref: E07/0260

1.0 PURPOSE OF REPORT

A report concerning the erection of a telecommunications mast following a claim of 'permitted development' status owing to an emergency.

2.0 RECOMMENDATION

Note the conclusions of the report, that enforcement action can not be taken at this time.

3.0 FINANCIAL IMPLICATIONS

None arising from the report. If enforcement action is taken before the 6 months period expires there could be cost implications if an appeal is made.

4.0 POLICY IMPLICATIONS

These are referred to in the report.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

This is assessed in the report

8.0 WARD(S) AFFECTED

St Matthews

9.0 CONSULTees

None

10.0 CONTACT OFFICER

Philip Wears

Planning Enforcement Team: 01922 652527 / 01922 652411

11.0 **BACKGROUND PAPERS**

Notification letter and plans from agents for T-mobile

David Elsworthy

Head of Planning and Building Control – Regeneration.

Development Control Committee
18th September 2007.

12 BACKGROUND AND REPORT DETAIL

Background

- 12.1 The erection of the mast which is the subject of this report was completed on the 31st of July 2007. It is located between the university all-weather pitch and the Walsall Rugby Club pitch. It is a temporary mast with side legs and guy ropes anchored into concrete blocks. It is very close to the location where a permanent mast has been proposed (but that has been refused planning permission and is currently at appeal).
- 12.2 The legal position is that Part 24 of the General Permitted Development Order grants permission for a range of telecommunications developments, subject to various exclusions and conditions. The passage relevant to this case is Class A(b), which says that *'in an emergency' apparatus 'required for the replacement of unserviceable electronic communications apparatus'* can be erected. There are no physical limits, but the permission only lasts for 6 months. No definition of an emergency is provided, but government advice in PPG8 on Telecommunications refers to a definition in the 1984 Telecommunications Act as being *"helpful as a general guide in the context of development by telecommunications code system operators"*. That Act states:-

"emergency works", means works the execution of which at the time it is proposed to execute them is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause -

- (a) danger to persons or property,*
- (b) the interruption of any service provided by the operators system or, as the case may be, interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or*
- (c) substantial loss to the operator or, as the case may be, the undertaker, and such works as in all circumstances it is reasonable to execute with those works.*

- 12.3 The regulations require that the Local Planning Authority is notified as soon as possible after the emergency. In this case notification was received in advance of the installation.
- 12.4 The information provided about the nature of the emergency stated that the temporary mast would replace the existing T-mobile equipment on the tall teaching block (WT building) which the university intend to demolish. However, the information seemed lacking because no timetable for the de-commissioning of the equipment and the demolition of the building was stated. Officers therefore wrote to the agents on 23rd July to query the emergency and point out the possible lack of permitted development status. A telephone message was subsequently received from a company involved with the mast saying that the mast would be in place at least until the appeal is decided, and its erection began

a few days later without its emergency status and its lawfulness being resolved. Officers wrote again on 9th August to query the situation in more detail and advise of the possibility of a report being necessary on enforcement action. No reply has been received.

- 12.5 Officers have now been advised by the University that the only equipment remaining on the WT building is old Dolphin equipment which has been defunct for about 4 years. This will go with the building. The T-mobile equipment was removed in August. It follows that T-mobile now only have the temporary mast. That information supports their claim that this is an emergency installation.
- 12.6 In deciding how to respond to this situation the Committee will wish to consider the evidence on the lawfulness of the mast, and also assess its impacts. These are looked at in turn below.

The claim of 'permitted development' status.

- 12.7 If the mast falls properly under the emergency provisions of the regulations the mast has planning permission, though only for a period of 6 months, and a condition requires that it be removed at the end of this period, that is, in this case by 30th January 2008.
- 12.8 Whilst there was some doubt about the existence of a justifying emergency at the time the mast was erected, the subsequent removal of the equipment on the WT building, in preparation for the demolition, could be said to be an emergency, in the sense that T-mobile could no longer rely on their previous equipment and are now reliant on the temporary mast to retain full network coverage. As it has planning permission through the 'permitted development' regulations it is not possible for the Council to take enforcement action.

The impacts of the mast

- 12.9 The mast is very close to the location of the proposed combined mast and floodlight which is currently at appeal.(application ref 07/0190/FL) Officers recommended approval for that proposal , considering its location to be well away from the campus boundaries and given its context amongst the existing tall floodlight columns and goal posts. However the Committee refused the application, considering that the telecommunication equipment would introduce an additional feature which would be prominent, incongruous and dominant above the present skyline created by the floodlights. Furthermore the additional floodlight would intrude on neighbouring properties.
- 12.10 The location of the temporary mast is similar to that of the appeal mast, well removed from the campus boundaries with distances of around 200 metres from Delves Road and Broadway, and 225 metres from St Catherine's Close. It also has a broadly similar height, of around 18 metres, compared with 17 metres for the appeal mast. However its construction with side legs and guy ropes is inherently more untidy and therefore more noticeable in the open setting amongst the existing floodlight columns and goal posts. Officers consider that it is not ideal in visual terms, though this is not considered a serious amenity problem given the separation distances.

- 12.11 Unitary Development Plan policy ENV38 and national guidance in PP8 recognise that telecommunications equipment is often not inherently attractive and therefore require that its impact should be justified by the equipment being needed. The preceding discussion of 'permitted development' status identified that the existence of an emergency to justify the erection of the mast had been in some doubt, but the doubts have subsequently been clarified.

Options and Conclusions

- 12.12 It is not possible to serve an enforcement notice . Permitted development status precludes this.
- 12.13 Should the mast remain in place beyond the maximum 6 month period allowed, that is beyond 30th January 2008, it would be possible to then serve a Breach of Condition Notice to require its removal. Delegated powers exist but a further report could be justified at that time. By that stage, the result of the appeal against the refusal of planning permission should also be known.