



Walsall Metropolitan Borough Council

DEVELOPMENT CONTROL COMMITTEE **13th December 2005**

REPORT OF HEAD OF PLANNING AND TRANSPORTATION

Land rear of 232 Lichfield Road , New Invention. Reference number E05/0710

1.0 PURPOSE OF REPORT

- 1.1 To inform Members regarding the installation of a mobile phone mast and equipment cabin on the land, and a claim of 'permitted development' status received from agents for T-mobile.

2.0 RECOMMENDATIONS

- 2.1 That Members note the report.

3.0 FINANCIAL IMPLICATIONS

None arising directly from this report.

4.0 POLICY IMPLICATIONS

Given the likely conclusions about the lawfulness of the development, there may be no opportunity to exercise planning control and therefore no policy implications.

5.0 LEGAL IMPLICATIONS

The mobile phone company claim the development is lawful as it has 'permitted development' status. This is shaping the situation and is therefore being checked.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

Given the likely legal status of the development, there may be no opportunity to exercise planning control and engage with the environmental impacts of the mast and cabin.

8.0 WARD(S) AFFECTED

Willenhall North

9.0 **CONSULTEES**

None

10.0 **CONTACT OFFICERS**

Philip Wears – Planning Enforcement Team
Tel; 01922 652411.

11.0 **BACKGROUND PAPERS**

Planning enforcement file -not published

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12.0 BACKGROUND AND REPORT DETAIL

Introduction

- 12.1 This land, also known as Rowbotham's Yard, was the subject of an enforcement report (lorry bodies on the site and similar work) on 11th October 2005. Enforcement action was authorised and notices were issued on 1st November, coming into effect on 6th December with a 2 month compliance period.
- 12.2 On 25th November a 15 metre lattice-framed mobile phone mast for T-mobile was erected on the land together with an equipment cabin. It is about 25 metres from the nearest garden, part of the houses in Rugeley Avenue. It is very functional in appearance and prominent in the view from the rear of houses as it is on slightly higher land. A plan showing the location of the land and mast is attached to this report.

The background leading up to the installation and 'permitted development' claim.

- 12.3 There were a number of installations on the Squires factory, nearby. Redevelopment is imminent, and the equipment must be removed. There have been a number of applications for new telecommunications installations in the general area of The Square, on Lichfield Road, which have been refused. Two of those were from T-Mobile, at different locations.
- 12.4 T-Mobile has gone to appeal on one of the refusals, but there has been no decision. They advise they have to vacate the Squires site, and are decommissioning their equipment on 4/12/05. From that date they identify a loss of continuity of service which they have to address under the terms of their license.
- 12.5 In early November they wrote asking for a discussion about their options, in this situation, and identifying the potential to erect a mast under the emergency provisions of the Regulations. In late November, before a response was formulated, they wrote again stating their intention to erect the mast.
- 12.6 They argue that the mast is authorised by Part 24 of the Regulations and it is 'permitted development.'

The legal position

- 12.7 Part 24 grants permission for a range of works, 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*

telecommunication 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.

- 12.8 I do not have the information to deny the statement from T-Mobile that decommissioning the Squires site will bring a threat to the continuity of service. On that basis the work qualifies as emergency work.
- 12.9 I am seeking more information from T-Mobile, to establish whether the current situation fits with the intentions of the legislation.
- 12.10 On the basis of the information available at the time of writing, the development is likely to be permitted development . If so, enforcement action can not be taken.

HEAD OF PLANNING AND TRANSPORTATION

land rear of 232 Lichfield Road, New Invention



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Walsall Council

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