

**REPORT ON THE HANDLING OF THE PRIOR APPROVAL APPLICATION FOR
5G MAST AT CHICHESTER ROAD, ROMILEY**

Joint report of the Corporate Director (Place) & Deputy Chief Executive and the
Strategic Head of Service (Legal & Democratic Governance and Monitoring Officer)

1.0 MATTER FOR CONSIDERATION

- 1.1 Committee is requested to note the contents of this report which was requested by members to explain the process in connection with the application for prior approval for the installation of telecommunications equipment on Chichester Road, Romiley.

2.0 LEGAL POSITION

- 2.1 In relation to the installation of mobile phone masts on private land, an operator wouldn't normally be able to install equipment without an agreement in place with the landowner, or, if the landowner didn't consent, without a court order.
- 2.2 However, in relation to highways, mobile phone companies are granted a licence by central government under the Telecommunications Act 1984 which allows companies to install their equipment, including masts and cabinets, in the public highway subject to approvals by the Council as highway authority and planning authority as follows:-
- 2.3 Highway authority – the Council must be satisfied that the equipment does not cause a safety hazard (e.g., obscure visibility at junctions or obstruct pedestrians)
- 2.4 Planning authority - Planning legislation requires mobile phone companies to follow a 56-day prior approval procedure before erecting masts. This requires the company to erect a notice on site and write to the Council. During this period the Council can require details of the siting and appearance of the equipment and can approve or refuse permission for the mast.
- 2.5 Once erected, the care and maintenance of equipment is the responsibility of the company who owns or controls the equipment.
- 2.6 The Electronic Communications Code 2017 grants an operator the right (for the purpose of providing its network or an infrastructure system) to install and keep apparatus in, on, under, over, along or across a street, and to inspect, maintain, and upgrade it and to enter any street to inspect, maintain, repair and upgrade such apparatus. This includes the right to break open the street.
- 2.7 Under the New Roads and Street Works Act 1991 the Council may issue a permit to enable statutory undertakers to carry out works for the installation of

equipment to facilitate public services such as the provision of energy, water, or digital services.

- 2.8 In the case of the current application, due to an unfortunate coding error in the system used to calculate the 56 day period, the Council's decision to refuse the prior approval application was issued one day out of time, allowing the company to assume approval and carry out the development.
- 2.9 The Council had no highway grounds to refuse the installation, being satisfied that the equipment does not obstruct pedestrians or cause a safety hazard, and no grounds to refuse the permits granted to enable the work to take place, although it will be monitoring the work to ensure it complies with the permits and any conditions attached to them. Internal processes have been improved to ensure communication between the planning team and the highways permits team to ensure dialogue in cases of this nature in the future so that the permits team can allow for any necessary correspondence and negotiations between the applicant and the planning team prior to permits being issued.

3.0 INFORMATION IN RELATION TO THIS APPLICATION

- 3.1 An application for prior approval for the installation of a mast and associated equipment was received by the Council on 17 March 2021. The statutory deadline for the Council's decision on such an application is 56 days. The deadline is calculated electronically by the information technology application used by the Council and was calculated as 12 May 2021.
- 3.2 Statute requires that notification of the application is published in a local newspaper and on site. The former was published in the Stockport Express on 31 March 2021 (with the deadline for any responses to the newspaper notice being 21 April 2021 and the site notice 22 April 2021. Statutory consultees and neighbours were consulted on 24 March 2021 with the deadline for any responses to the former being 14 April 2021 and to the latter being 17 April 2021.
- 3.3 The Council refused the application on the grounds that the proposal would have have a significant adverse impact on the character and appearance of the area and issued its decision to the applicant's agent on 12 May 2021. Unfortunately, due to an error in the computer programme calculation the decision was issued one day late although the applicant acknowledged this on 17 May 2021. Although there was communication between officers of the Council and the applicant, members of the Council were unfortunately unaware of this until about two weeks after the issue of the decision.
- 3.4 The Council Streetworks team granted a series of 3 separate GMRAPs permit applications from T Mobile Ltd for works to install telecoms apparatus on Chichester Road, Romiley to work between 26th to 30th July, 10th to 12th August and 30th August to 1st September 2021 respectively for the works on the first element (installing the equipment base and cabinets) to commence from 26th July.

- 3.5 On 30 July 2021 the legal team was consulted for advice in relation to potential action which could be taken to prevent the installation and the previously granted permits for 10th to 12th August and 30th August to 1st September were revoked by the Streetworks Team on 30th July whilst the matter was investigated. The legal position is set out in paragraph 2 of this report.
- 3.6 The permit applications to continue the works were subsequently resubmitted by T Mobile Ltd for 9th to 13th September were then granted on 27th August for work to continue from 9th September.

4.0 ACTION TAKEN BY THE COUNCIL TO ELIMINATE SIMILAR ISSUES IN THE FUTURE

- 4.1 The coding error in the system which led to the incorrect calculation of the statutory period has now been corrected to prevent this error recurring.
- 4.2 A process has been set up to ensure that the team which issues permits for street works is alerted to applications for prior notifications so that communications can be improved between the teams and that the issue of permits can be co-ordinated with the issue of any decisions.
- 4.3 Officers acknowledge that when the applicant contacted the Council to point out that the decision had been issued one day late, members should have been notified as soon as practically possible. Steps have been put in place to ensure that in the future, members are alerted in the event of any issue arising in relation to an application in that ward.
- 4.4 Officers have been incredibly busy both during and since the pandemic; planning applications are currently 50% increased since the previous year to the pandemic. Staff need to take leave which has been delayed whilst they have attempted to cope with the increased challenges the pandemic brought. The Council is recruiting to both the planning and legal teams in an attempt to deal with the pressures of the increased workload and the constant deadlines and demands to all areas of work in all parts of the Borough.

5.0 SUMMARY

- 6.1 The decision in relation to the application for prior approval for the telecommunications equipment was issued a day out of time to the applicant, meaning that the applicant was entitled to assume that the application was granted.
- 6.3 The error had been made due to a miscalculation of deadline for the issue of the Council's decision, due to a coding error in the computer application, which has now been rectified.
- 6.2 It is regrettable that the applicant refused to engage with the Council when the error was discovered and the Council tried to negotiate an alternative site for the mast.

7.0 CONCLUSION

- 7.1 This report sets out the legal position in relation to applications for prior approval under the planning legislation to install telecommunications equipment on the highway, and details the timetable in relation to this particular application.

8.0 RECOMMENDATIONS

- 8.1 That the Committee notes this report.