

Campaign for Planning Sanity

LOCAL COMMUNITY SUPPORT FOR ADVERSE PLANNING & DEVELOPMENT APPLICATIONS

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Mr

Planning & Development

..... Borough Council

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..... 200.....

Dear Sir

RE: TEMPOARY TELECOMMUNICATION INSTALLATION

Our Clients have requested that we make representation on the proposed temporary installation of a telecommunication mast on land at I am sure you will be well aware what is set out in Part 24 of the Town & country Planning (General Permitted Development) (Amendment) (England) Order 2001 says on the subject, however for clarity I set out below the relevant sections.

GPDO Part 24 A(b)

the use of land in an emergency for a period not exceeding six months to station and operate moveable telecommunication apparatus required for the replacement of unserviceable telecommunication structures on the land for the purposes of that use

And condition A.2(3)

Class A(b) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall at the expiry of the relevant period be removed from the land and the land restored to its condition before the development took place.

PPG8 Annex 1 Para's 24 & 25

24. The prior approval procedure does not apply in respect of emergency development carried out under Part 24. Any Part 24 development carried out in an emergency is subject, under paragraph A.3(10), to the requirement that the operator shall give written notice to the local planning authority of such development as soon as is possible after the emergency begins. It should be noted that the requirement to notify the local planning authority is separate

from the requirement under the Wildlife and Countryside Act 1981 where English Nature is notified as soon as possible after emergency development has taken place on a SSSI.

25. Although there is no statutory definition of what would constitute emergency development under Part 24, the definition of 'emergency works' given in paragraph 1(1) of Schedule 2 to the Telecommunications Act 1984 (The Telecommunication Code) may be helpful as a general guide in the context of development by telecommunications code system operators. This is reproduced at Note A to this Annex. Whether a particular development constitutes emergency development will be determined on the facts of the individual case.

Telecommunication Act 1984 schedule 2 para 1(1) 'emergency works'

In relation to the operator or a relevant undertaker for the purposes of para 23 below, 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 rising 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 operator's system or, as the case may be, interference with the exercise of any function 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 other works as in all the circumstances it is reasonable to execute with those works;

Clearly who ever considers that in the context of all the relevant sections of primary and secondary legislation (*as set out above*) that the proposed '**works**' is in fact '**emergency works**' is being very inventive with their interpretation of those provisions.

First this land does not have any telecommunication equipment that the proposed '**emergency works**' will act as a **replacement of unserviceable telecommunication structures** for. That is a requirement as a consequence of section A(b) of Part 24 to the GPDO, it follows that before any emergency works can be carried out, there first has to be a development that has become unserviceable. Albeit there are indications of what may constitute emergency works within the definition contained in the 1984 Act, nowhere within that definition does it indicate any other course than that set out within A(b) of Part 24 to the GPDO.

It is clear therefore that the proposed emergency works would, if no permission was first sought and given be unlawful development. This unlawful development would of course be susceptible to enforcement action on behalf of the local planning authority. Although at present there is an element of discretion on the part of the LPA as to whether they should or should not take enforcement action, we put the case that it brings the entire planning system into disrepute if it is seen that developers are being allowed to bypass the procedures that are in place to protect the community from inappropriate development. Indeed this is the view of the Government, as evidenced by the inclusion within the Planning and Compulsory Purchase Act 2004 of the power to issue temporary Stop Notices.

Our client wishes to stress that if these unlawful works are allowed to remain in place without permission, then consideration will be given to seeking judicial intervention, either by means of an application for judicial review or by an application for a declaration from the High Court as to the lawfulness of the so called '*emergency works*', or alternatively by a reference to the Ombudsman, and keeping in mind the consistent findings of the Ombudsman in relation to telecommunication installations, in particularly the findings at Swindon, and the resultant high cost to the LPA, then it is clearly appropriate that the LPA avoids the prospect of unnecessary cost by taking the appropriate enforcement action.

I hope the above sets out in clear terms our Clients concerns, however if you should require further information please do not hesitate in contacting us.

Yours sincerely

Chris Maile - Director