

Taunton Deane Borough Council

Planning Committee - 27 February 2008

Report of the Chief Solicitor

Appeal Decision relating to the enforcement notice requiring the removal of the O2 mast at Shoreditch Road, Taunton

At the meeting of this Committee on the 23 January 2008 Members received a copy of the Inspector's decision letter in relation to the appeal against the enforcement notice served on O2 requiring the removal of the mast erected at Shoreditch Road, Taunton.

Members will recall that the Inspector dismissed the appeal and required the existing mast to be removed within four months of the date of his decision letter, which is the 27 March 2008. A costs application was also refused.

It is common ground, and indeed confirmed in the Inspector's decision letter, that there is an existing deemed permission for an alternative mast at the site which the Inspector considered would be both less bulky and have less impact than the mast as erected. O2 have written indicating their intention to remove the existing mast and replace it with one for which they have deemed permission.

The Council's position has always been that it would facilitate the erection of a mast at an alternative location and, to that end, a planning permission was obtained for a mast on land in the Council's ownership adjacent to the motorway. In his decision letter the Inspector accepts that a mast at that site would achieve almost as wide coverage as at the existing site, but with some interference prior to the full implementation of the G3 network. The Council has also in the past offered to assist O2 in the cost of relocation. O2 has always refused to discuss such relocation.

Following the outcome of the appeal a further letter was sent to O2 referring to the terms of the Inspector's decision letter and asking O2 to enter into negotiations for the relocation of the mast to the alternative site for which the Council has obtained planning permission. O2 has refused to do so and a copy of their response is attached.

The only option remaining open to the Council is to revoke the existing deemed consent before it is implemented.

Such an Order, if opposed, would be subject to confirmation by the Secretary of State and a further Public Inquiry would probably need to be held. If unsuccessful, the Council would run the risk of a costs award against it. If successful, there would be an obligation to pay compensation to O2 for loss of anticipated future business profits.

Whilst it is not possible, without detailed information from O2, to assess the likely level of such compensation, the Council has received independent advice that an average telecommunication mast generates an income of around £35-£40,000 per annum. The amount of compensation that would be payable to O2 is therefore likely to be significant, especially if O2 chose not to replace the mast elsewhere in the vicinity.

Such a course of action would therefore open the Council to significant potential financial liabilities which cannot be accurately quantified at this time and for which no provision has been made.

If O2 agreed to relocate the mast, the level of compensation would be less, reflecting the difference between the income generated from the present mast and any relocated mast. However, O2 has made it clear that relocation is not an option.

There is therefore the possibility that if revocation took place, O2 would not have coverage in this part of Taunton. Their views on this are being sought and will be reported to the Committee.

Recommendation

Members are recommended to note the current situation.

Chief Solicitor

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