

Report to: EXECUTIVE MEMBER FOR CORPORATE RESOURCES

Item:

Date: 14th March 2006

Report of: DIRECTOR OF CENTRAL SERVICES

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Report No.

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TITLE OF REPORT:

COUNCIL RESOLUTION 15TH FEBRUARY 2006 – CELLULAR TELEPHONE BASE STATIONS, AERIALS AND EQUIPMENT ON COUNCIL LAND

NON-CONFIDENTIAL

This report does **not** contain information which warrants its consideration in the absence of the Press or Members of the public

RECOMMENDATIONS:

The Executive Member is recommended to have regard to the matters set out in this report, when considering any individual proposal or transaction involving an existing or proposed cellular telephone installation on land in which the Council has an interest.

DECISION:

Signed:

Leader/Executive Member

Monitoring Officer

Date:

SUMMARY OF REPORT

This report advises the Executive Member as to the position of the Council in relation to cellular telephone installations on Council land, having regard to a notice of motion approved by the Council on 15 February 2006

BACKGROUND INFORMATION

On 15th February 2006 the Council approved the following notice of motion:-

That this Council agrees:-

- (i) That no new cellular telephone base stations, aerials and equipment installations be permitted on buildings or land owned by Bolton MBC other than those alterations and additions allowed under individual legal agreements.*
- (ii) That legal agreements relating to cellular telephone base stations, aerials and equipment on buildings or land owned by Bolton MBC should be terminated wherever possible and where no penalties are likely to be incurred.*
- (iii) That no new cellular telephone base stations, aerials and equipment installations be permitted on buildings or land owned by Bolton MBC until definitive advice has been received from the Government on appropriate safeguards.*
- (iv) That school governing bodies be advised of Council policy and strongly advised to follow the policy.*
- (v) That a Health and Safety circular be prepared for school governing bodies and head-teachers containing the latest Government advice in relation to the use of mobile phones by children.*
- (vi) That schools and governing bodies are advised that they are able to request that emissions from any masts on their sites are checked by the Office of Communications and that this Council urges them to make use of this facility.*
- (vii) That since Bolton MBC is unable to prevent the erection of cellular telephone base stations on highway land, where appropriate and where there is significant public use or landscape impact, it should oppose such installations.*

It was indicated to the Council, when the notice of motion was considered, that the motion was intended to relate only to the position of the Council as the owner of certain interests in and/or rights over land, and was specifically without prejudice to the position of the Council as Local Planning Authority, in relation to the consideration of any application for planning permission in relation to any such installation.

It was also indicated that, as the exercise of the powers of the Council with respect to interests in and rights over land is delegated to the Executive Member for Corporate Resources, the motion would take effect as a recommendation to the Executive Member.

The motion therefore stands as a recommendation for consideration by the Executive Member, in relation to any proposals for the location of any cellular telephone base station,

mast and/or equipment ("installation") on land in which the Council has an interest, or over which the Council owns any right.

In considering the recommendation, the Executive Member is recommended also to have regard to the following.

- Under the telecommunications legislation, in particular the Telecommunications Act 1984, licensed operators are empowered to locate installations on the highway (which, in appropriate circumstances, includes land held by the Council for highway purposes) without the consent of the Council as Highway Authority (or landowner). Operators are also able in certain circumstances to locate installations on highway land without planning permission. Generally, whether planning permission is required in addition to landowner's consent depends upon the nature and size of the installation; this report does not address the planning issues in detail. Such issues are the subject of consideration by the Planning & Highways Committee, in particular cases and generally.
- Under the legislation, and in particular the Telecommunications Code which is appended to the 1984 Act, licensed operators are required to seek the agreement of the owners and occupiers of any land (other than highway land) to locate installations on any such land, and once such agreement has been entered into, it will effectively bind future owners and occupiers, unless the agreement specifically provides to the contrary. Any agreement with respect to the variation of an existing agreement will take effect in the same way.
- The code provides for compensation to be payable by the operator to the owner of the land, equivalent to the depreciation in the value of the land resulting from the right granted to the operator. The terms of the agreement may also include provision for the payment of a periodic sum, equivalent for example to the rent payable under the lease or the acknowledgement which may be payable under a wayleave agreement.
- An operator wishing to obtain the right to locate an installation on any non-highway land may give notice to the owner and/or occupier under the telecommunications code, and if the owner and/or occupier fails to give the required agreement within 28 days, the operator may apply to the Court. The Court may order that an agreement be provided, in the terms requested by the operator, but in considering whether to grant the application of the operator, the Court will consider whether any prejudice to the owner and/or occupier arising from the proposed installation is capable of being adequately compensated for by the payment of money, and/or whether such prejudice is out-weighed by the benefit to prospective users of the telecommunications service.

The Executive Member may find it appropriate to consider the provisions of the relevant legislation and the telecommunications code, when considering any proposal for the location of an installation, or the retention of any existing installation, on any land in which the Council has an interest.

In particular, the Executive Member is recommended to have regard to the factors which would be relevant if the operator were to serve formal notice under the code, followed by an application to the Court – ie whether the Council could be adequately compensated by payment, and the extent to which users of the service are likely to benefit from the installation

The Executive Member is also advised that it would be open to any operator, or to any other person who may be affected, to challenge any refusal by the Council to agree to the location of an installation on any Council land, on the basis of the notice of motion. It is open to an operator, or to any other person affected, to argue that the notice of motion amounts to an unreasonable fetter upon the discretion of the Council properly and reasonably to consider any particular application.

In considering any application or proposal for the use of the Council's land, the Executive Member is required on behalf of the Council to consider, in addition to the notice of motion, any relevant information provided by the operator and/or applicant, and any other interested party, as to the need for the proposed installation, the effect of its absence on the operation of the telecommunications network, the likely effect of the installation upon any occupier(s) of the Council's land and/or the occupier(s) of any other land, who might be affected by the installation, and any other relevant consideration. In any case where the operator is required also to obtain planning permission for the proposed installation, it may be relevant, even though the planning process is separate from the consideration of the proposal in terms of land ownership, for the Executive Member to have regard to the matters which might also be relevant considerations for the purposes of determining the relevant planning application. Although the Council is required to separate its decision-making as landowner from the exercise of its planning powers, it is appropriate for the Council to approach issues which involve both planning and land interests on a consistent basis.

RECOMMENDATIONS

The Executive Member is recommended to have regard to the matters set out in this report, when considering any individual proposal or transaction involving an existing or proposed cellular telephone installation on land in which the Council has an interest.