APPENDICES

Appendix 1: Planning Policy Guidance Note 8 (August 2001)

Planning Policy Guidance Note 8 was issued in August 2001 and provides the government's guidance on planning for telecommunications development. It includes guidance relating to current 'permitted development'. Presently, antennae below 4 metres in height attached to a building and equipment boxes with a volume below 2.5 cubic metres are considered permitted development not requiring prior approval. There are means of control available to the local planning authority. If a permitted development is considered detrimental to the amenity of a site then the local planning authority can remove the right through serving a direction under Article 4 of GPDO 24. Article 4 directions require the prior approval of the Secretary of State and are considered appropriate only where the impact on amenity is likely to be significant. GPDO 24 attaches the condition that a permitted development should 'so far as is practicable, be sited so as to minimise its effect on the external appearance of the building'. This provides local planning authorities with the opportunity to serve a breach of condition notice and thereby exercise control over the details of an installation.

Mast sharing and the use of existing buildings and structures is considered of particular importance in reducing the environmental impact of telecommunications developments. The guidance states that local planning authorities can reasonably expect applications for new masts to demonstrate that the operator has considered the possibility of mast sharing or the use of an existing building or structure. Local planning authorities can refuse to grant prior approval or planning permission if, having considered any technical limitations relating to network development, they consider that the evidence presented is unsatisfactory. Mast sharing can be promoted by local authorities through ensuring that new installations include additional capacity for use by other operators.

The siting and design of a mast are the relevant planning considerations when assessing an application for such a development. The guidance draws attention to the technical limitations faced by operators in relation to siting. Local planning authorities must therefore consider these factors before refusing an application on the basis of siting or appearance. PPG8 considers that the use of equipment that is sympathetic to its environment should be pursued, as should the development of new designs that minimise environmental impact. The guidance also promotes protection of visual amenity in areas of environmental importance. Operators must demonstrate an absence of a suitable alternative site when making an application for a development in National Parks, Areas of Outstanding Natural Beauty and within Green Belt land.

The guidance considers public concern in relation to the possible health impact of the electromagnetic waves that are emitted by mobile phones and base stations. The Independent Expert Group on Mobile Phones (IEGMP) was set up to consider these concerns through consultation and the assessment of existing research. The Group published the Stewart Report (named after chairman Sir William Stewart) on 11 May 2000. The report concluded that 'the balance of evidence indicates that there is no general risk to the health of people living near to base stations on the basis that exposures are expected to be small fractions of the guidelines'. The report advises a precautionary approach on the basis that the research to date has not been exhaustive. The response of the government includes recommendations that:

- Emissions from base stations meet ICNIRP guidelines;
- A national database be established providing details of all base stations and their emissions;
- Emissions from base stations should be independently audited ensure that they do not exceed approved guidelines;

- A large scale programme of research into the effects of mobile phones and base stations on health should be undertaken;

The guidance states that 'it is the Government's firm view that the planning system is not the place for determining health safeguards'. However, all applications should be accompanied with self-certification that emissions from a proposed base station will not exceed ICNIRP guidelines.

Appendix 2: Code of Best Practice (November 2002)

The Code of Best Practice, issued by the Office of the Deputy Prime Minister and produced jointly by representatives of central and local government and the mobile phone industry is non-statutory and its stated aims are to:

- 'Encourage better communication and consultation at all stages of network development between operators, local authorities and local people;
- Standardise procedures and forms as far as possible in order to help achieve consistency and to aid operators, local authorities and local people;
- Explain the technical features of mobile systems; and
- Provide good practice guidance on the siting and design of telecommunications development'.

The Best Practice procedures promote annual rollout discussions between operators and local planning authorities. It also encourages pre-application discussions and consultation and provides guidance on the submission of applications. The Code emphasises that the design of telecommunications installations must be sensitive to their environment. In this respect it promotes mast sharing and draws attention to the innovative designs that have increasingly enabled operators to successfully conceal antennae or make them significantly less intrusive.

The ten commitments to best siting practice for new development were introduced with the aim to 'improve dialogue and consultation with local communities in developing mobile phone networks'. They are detailed as follows:

1. develop, with other stakeholders, clear standards and procedures to deliver significantly improved consultation with local communities;
2. participate in obligatory pre-rollout and pre application consultation with local planning authorities;
3. publish clear, transparent and accountable criteria and cross industry agreement on site sharing, against which progress will be published regularly;
4. establish professional development workshops on technological developments within telecommunications for local authority officers and elected members;
5. deliver, with the government, a database of information available to the public on radio base stations;
6. assess all radio base stations for international (ICNIRP) compliance for public exposure, and produce a program for ICNIRP compliance for all radio base stations as recommended by the Independent Expert Group on Mobile Phones;
7. provide, as part of planning applications for radio base stations, a certificate of compliance with ICNIRP public exposure guidelines;
8. provide specific staff resources to respond to complaints and enquiries about base stations, within ten working days;
9. begin financially supporting the Government's independent scientific research programme on mobile communications health issues;
10. develop standard supporting documentation for all planning submissions whether full planning or prior approval.

Appendix 3: All Party Parliamentary Mobile Group Report (July 2004)

The All Party Parliamentary Group on Mobile Phones (apMobile) decided in November 2003 to hold a parliamentary inquiry to examine current planning legislation relating to the development of mobile telecommunications infrastructure in the UK. Widespread public concern regarding this infrastructure and its expansion is currently impacting upon local planning authorities, the Planning Inspectorate, operators and the public. The apMobile Group sought to establish whether changes to existing legislation would result in a less hostile public and a more efficient industry.

General Permitted Development Order (GPDO) Part 24 (2001) has been considered instrumental in facilitating the successful development of the mobile telecommunications infrastructure, and consequently the mobile phone industry in the UK. The Mobile Operators Association (MOA) was of the view that there should be no change to the GPDO. The Local Government Association (LGA) considered that permitted development rights should be removed on the basis that:

- Whilst permitted development rights may have been appropriate when the industry was developing, they may no longer be appropriate in the context of a mature industry;
- 15 metres is considered high for permitted development;
- The 56 day period for considering proposals for telecommunications installations, after which the operator gains a deemed consent, is considered an “arbitrary deadline” which is not in the best interests of communities.

The apMobile Group collected evidence from a range of sources suggesting a view that the process of prior approval gives local authorities insufficient time for the proper consideration of applications. It was also felt that the process lacks transparency and gives greater freedom to mobile phone operators in developing their infrastructure than is the case for other types of development. The Group considered that the 56 day period ‘does not allow for proper and full consultation with affected parties, nor does it allow for the consideration of alternative sites’. The Group’s recommendation was that permitted development rights should be removed for all base station installations as there would be ‘a higher level of engagement and subsequent ownership of the process by local communities and concerned individuals, resulting in less objections, less likelihood of rejection of the proposals, and less confrontation between operators and objectors’.

Whilst permitted development rights formed the main issue of the enquiry, the report included a series of further recommendations:

- GPDO 24 should be reviewed and revised to address the fact that it is considered to lack clarity and is therefore open to misinterpretation;
- There should be a review of practices in Scotland and Northern Ireland with a view to developing a standard practice across the UK where this is considered beneficial;
- The guidance within PPG8 should be reviewed to promote the publication of operators’ rollout plans following annual discussions between the operators and local planning authorities;
- Local planning authorities should be allowed to charge for pre-application discussions and increase the scale of the consultation process;
- Local authority development plans should include a ‘Telecommunications Plan’. This would include guidance on siting, design and appearance;
- Research by mobile phone operators into less intrusive designs for telecommunications installations should continue and the ODPM should undertake research in this respect;
- A common digital mapping system should be utilised with a view to producing a national map of telecommunications installations on an ordnance survey base;
- Further research should be conducted in respect of mast and site sharing;

- Community consultation should be improved to allay fears relating to health concerns;
- The provision of technical advice should be improved to address circumstances where technical expertise is lacking, as can particularly be the case with rural planning authorities;
- Planning fees should be increased to reflect the time and resources that local planning authorities must commit in respect of telecommunications applications;
- Best practices employed by other European countries should be adopted where these are considered beneficial.

The report concludes with a recommendation that a 'formal joint body be established between the Government and the industry, with representatives from local authorities and the regulator and that this body will:

- aim to build confidence between all parties and the community;
- sign a concordat regarding working practices;
- lay down and monitor informal processes for consultation;
- monitor the implementation of the 10 commitments;
- monitor annual rollout plans;
- co-ordinate the production, through common digital mapping techniques, of an annual map of an ordnance survey base showing all mobile phone masts and base stations in the UK;
- sponsor joint research;
- produce an annual report.'

Appendix 4: Appeal Decisions

Since 01/11/00 35 applications have been dismissed at appeal and 32 have been allowed.

Appendix 5: Court Decisions

The following is a synopsis of some recent High Court/Court of Appeal Decisions:

R (Flora Davies) v. Carmarthenshire County Council (Nov. 2004)

Airwave MM02 had submitted a "prior approval" type application (under the Town and Country Planning General Permitted Development Order) which required the local planning authority to notify them in writing (within 56 days) as to whether approval had been given or refused. This was not forthcoming and so it was able to commence the development. This was challenged by a local resident who lived some 260m away from the site on the grounds that the Council should consider revoking the deemed permission (under s. 97 of the Town & Country Planning Act 1990) or taking discontinuance action (under s. 102); it was also claimed that the GPDO did not grant permission as contended by the mobile phone network operator. In the event, the Council decided to issue an Article 4 Direction (because construction of the mast had not begun) on amenity (not health) grounds. The judge was satisfied that the Council by taking action to issue an Article 4 Direction (and being aware of its powers to revoke or discontinue) that there was no need for any mandatory relief. The judge also came to the conclusion that the objector's main concern about the mast was her own health and he made it plain that public concern about the health implications had to be treated with considerable caution in the light of previous Court of Appeal judgments.

T Mobile UK (Ltd)/Hutchinson 3G UK Ltd and Orange PCS Ltd v. Secretary of State/Harrogate Borough Council (June 2004)

Several mobile phone network operators wished to install masts and antennae but planning permission was refused by Harrogate Council on grounds of residential amenity. The subsequent appeal was dismissed, not on amenity grounds, but on grounds related to the perception of health risks. The Inspector concluded that the proposal provided insufficient reassurance that there could be no material harm to the living conditions (in terms of health concerns) of children at nearby schools. The mobile phone companies contended that the relevant guidelines set by the International Commission on Non-Ionising Radiation Protection (ICNIRP) were complied with, so that was effectively "the end of the matter". The High Court agreed. An application was then made to the Court of Appeal (November 2004) which reviewed the decision. Much of the debate was centred on the wording of PPG8 which states that once ICNIRP guidelines are met and certified it should not be necessary for the planning authority "to consider further the health aspects and concerns about them". The Court of Appeal conceded that such text left open the possibility (as is conventional in administrative law) that there may be a case in which the planning authority would be justified in looking further and to that extent departing from the policy; but that would have to be an exceptional course which would have to be specifically justified. The appeal was dismissed.

Jodie Phillips v First Secretary of State/Havant Borough Council/Hutchinson 3G (October 2003)

The claimant, Mrs Phillips, objected to a 56 day 'prior approval' type application for a mast on visual amenity and health risks grounds. Hutchinson appealed against the Council's refusal but put in further evidence about alternative sites of which the objector was unaware. She claimed she was denied an opportunity to make representations on the changed basis. The judge found in the claimant's favour saying that, as a matter of principle, if there were two alternative sites each of which were otherwise acceptable in environmental terms, it would be open to the decision maker to refuse approval of one of the sites if there was greater public concern. The judge then took the view that procedural fairness did require that the claimant be given an opportunity to make representations in relation to the increase in the stated search area.

R (Heather Richards) v South Bucks District Council (June 2004)

O2(UK) Limited had applied for a mast under the 56 day "prior approval" regime and whilst the Council had refused approval, the decision (or actually non-decision) was out of time. The mast had then been erected. The claimant effectively sought to get the "non-decision" quashed, asked for a declaratory order that the mast did not benefit from planning permission and a mandatory order requiring the Council to consider "discontinuance". The case was dismissed on the basis that the failure of procedures did not go to the validity or otherwise of the deemed planning permission but to the rights of the person disappointed by the process. Her remedy was elsewhere.

Leger-Davey & Anor v First Secretary of State & Ors (March 2004)

Winchester City Council had refused planning permission (to Orange PCS Limited) for a mast and equipment cabin on the grounds that local residents were concerned about the perceived risk to their health, visual intrusion and the failure of the applicants to demonstrate that alternative sites had been fully explored. The applicants appealed and after a nine day local inquiry the appeal was allowed. This was the subject of a judicial review confirmed to the manner in which the Inspector dealt with the availability of alternative sites. A second case was also pursued and this concerned a request to quash a decision taken by an Inspector to allow an appeal and grant planning permission for a fake cedar tree in Otterton, Devon. In both cases

the applications for a judicial review were dismissed. One of the issues was whether the Inspector correctly referred to compulsory purchase powers available to mobile phone network operators in his decision letter. The claimant's effectively argued that there were better sites elsewhere (owned by the Police and Network Rail) but the owners had declined to make them available for operational reasons. They were arguably excluded from consideration as alternative sites despite the powers available to a code system operator. The judge took the view that the mere fact that a statutory power is available does not mean that it has to be used in every case. It was also argued that, whilst the Inspector acknowledged that public concern over health hazards could be a material consideration, he considered only matters which went to whether the concern was objectively justified. The judge disagreed with this interpretation and considered that the Inspector should not be criticised for dealing with the appeal in the way he did.

Nunn, R v First Secretary of State (Court of Appeal) February 2005

This case concerned a "prior approval" application by T-Mobile but the refusal notice purportedly issued by Leeds City Council was outside the requisite 56 day period. In the circumstances T-Mobile took the view that they were free to erect the mast which they duly did. The Council served enforcement notices on T-Mobile against which they appealed; the appeals were allowed on the basis that there had been no breach of planning control. Dr Christine Nunn, the complainant was aggrieved that there had been no proper consideration of the merits of the scheme because of the error by the Council; she considered that her Article 6 civil rights had been denied; Article 6 provides as follows:-

> "In the determinations of his civil rights…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly…".

The claimant argued that the remedy should restore her entitlement to the effect that the mast should not be sited where it is. T-Mobile considered that the remedy lay against the Local Planning Authority above, either in damages under Section 8 of the Human Rights Act or a case of maladministration presented to the Ombudsman. The claimants case was lost and the planning permission (as well as the mast) remained in place.