

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by the Executive Director of Housing, Environmental and Economic Development**

**Planning Committee: 14 August 2013**

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**Subject: Telecommunications Masts on Public Roads**

#### **1. Purpose**

- 1.1** To advise the Committee of issues and options regarding payment for the siting of telecommunications equipment on public roads and to seek their views on how this matter should be progressed.

#### **2. Recommendations**

- 2.1** That the Committee note the content of the report and agree how it wishes to take this matter forward from the options specified in Section 4.7.

#### **3. Background**

- 3.1** During the consideration of a number of planning applications for telecommunications masts, the Committee has noted that a significant proportion of telecommunications masts and associated equipment are sited on public roads. Concern has been expressed by the Committee that masts and the associated equipment are being sited on public footways and that the Council is not able to charge rent for the equipment sited thereon. It has been suggested that this may encourage operators to locate masts on public roads in preference to other (potentially more suitable) sites such as open space areas or build up sites where a rent would have been payable.

On 3 April 2013 the Planning Committee requested that a report be submitted to a future meeting, setting out the statutory position regarding payments for the siting of telecommunications equipment on public footways, and specifying options for taking the matter forward.

- 3.2** In December 2011 the then Convenor of the Planning Committee, Councillor Finn, wrote to other Local Authority Planning Convenors to seek their views on this issue, and to ask whether they would support a change in the law to allow Councils to charge rent for the siting of phone masts on public roads. The majority of those Councils which responded expressing a view shared the Committee's concerns and indicated that they would welcome the introduction of a fee. A summary of the responses is contained in Appendix 1.

#### **4. Main Issues**

- 4.1** Most public roads within urban areas serve multiple roles, being used not only for transportation but also as utility routes containing sewers, electricity cables, telegraph lines, etc. The installation and maintenance of such infrastructure is usually non-contentious. Utility operators are considered to be “Statutory Undertakers” for the purposes of the relevant Roads and Planning legislation. This enables them to carry out certain work without the need to apply for the normal permissions.

##### Roads Legislation

- 4.2** The New Roads and Street Works Act 1991, Part IV (“the 1991 Act”) entitles Statutory Undertakers to place and maintain apparatus within roads, without the need to obtain permission from the Roads Authority for the principle of the work, although the details of how the work is undertaken require to be agreed. Companies which are not Statutory Undertakers are also able to place and maintain apparatus on public roads, but this is subject to obtaining permission from the local Roads Authority. The only powers to charge fees for such works are contained in Sections 74 to 78 of the 1991 Act. These are primarily charges to cover costs incurred by the Roads Authority, such as fees for inspecting works and the cost of any temporary traffic regulation during road works.

- 4.3** Historically, telecommunication code system operators would have exercised these rights primarily in relation to overhead wires or underground cables. The development of mobile phones has resulted in significant changes to the nature of the infrastructure. However, in terms of the Roads legislation, telecommunications operators have the same rights to install mobile phone masts on public roads as they do to install telegraph poles or underground cables without the requirement to pay a fee.

##### Planning Legislation

- 4.4** Planning applications for mobile phone masts are considered in terms of the development plan and other material considerations. Whether or not the Council is receiving rental income from the siting of the mast is not a material planning consideration. It would not be reasonable to refuse an application for a mast on the public footway merely to direct the mast onto a piece of land for which the Council could charge rent. However, if the siting of the mast on a public road were likely to cause a loss of safety or convenience for road users or pedestrians this would be a legitimate reason for refusal.

##### Issues with Current Legislation

- 4.5** The rationale for allowing utility operators to install equipment on public roads is that for many types of equipment the road is the only practical place that they can be located. There are obvious reasons for linear forms of infrastructure such as pipes and cables to follow public roads, but there is no particular technical requirement for mobile telephone masts to be located on or even near to public roads. Masts can be located almost anywhere that would provide suitable signal coverage, as they are not physically connected

to any other infrastructure other than the electricity supply. Whilst it is convenient for operators to site masts on or adjacent to roads in order to access the electricity grid easily, there are few sites within the built up area where access to electricity supply presents any significant difficulty.

- 4.6** When submitting planning applications for new sites, the telecommunications operators are required to submit information about site selection including other sites which were considered and the reasons why these were rejected and why the chosen site was selected. However, such statements only address the choice of general location and do not necessarily detail the reasons for the precise positioning of the mast. It is recognised that the current legislation does provide telecommunications operators with an incentive to locate masts on public roads, as a means of avoiding rental costs and the difficulties of negotiating with landowners. It is considered that this would have some influence on their choice of sites. On the other hand, operators also seek to locate masts on sites which would provide maximum signal coverage (thereby minimising the number of mast sites required), so sites such as the roofs of high buildings may sometimes be preferred to roadside locations despite the need to pay rent.

#### Options

- 4.7** There are three broad options for taking this matter forward:

- Option 1: Seek a change in the law to allow Roads Authorities to charge rent for all utility infrastructure located within the road boundary;
- Option 2: Seek a change in the law to allow Roads Authorities to charge rent specifically for telecommunications masts within the road boundary, but not for other types of utility infrastructure; or
- Option 3: No change from current arrangements.

- 4.8** **Option 1** would allow Roads Authorities to receive rent for all utility infrastructure within the road boundary, and would remove the incentive for operators to place infrastructure on the road as opposed to other, potentially more suitable, sites. However, this would fundamentally alter the long established role of public roads, which function not only as transport routes but also as utility corridors for a variety of essential public services, many of which can only realistically be located within the road. If Local Authorities were to charge rent for all utility infrastructure located within the public road, this would lead to substantial costs for utility operators which would in turn be passed on to consumers. It is not considered that this would be a desirable outcome, or that such a suggestion would be likely to be supported by the Scottish Government.

- 4.9** **Option 2** recognises that mobile telephone masts are unlike most other forms of utility infrastructure to be found in streets due to their significant size and the fact that there is no particular technical requirement for them to be located on the road. It might thus be argued that they are an exceptional case, and that rent should be payable specifically for masts and associated equipment, but not for other types of infrastructure. This would have the advantage of 'levelling the playing field', so that telecommunications operators are not

motivated to locate masts on roads for financial reasons when other more suitable sites were available. It would also generate some additional revenue for the Council. On the other hand, the costs would be passed on to mobile phone users, and may make it less economic for operators to expand their network coverage. This would conflict with the Scottish Government and the Council's own strong desire to maximise access to modern communications technology.

**4.10 Option 3** would continue to allow telecommunications masts to be sited on public roads without payment to the Council. The Council would continue to be able to prevent the siting of masts which raise particular road safety or amenity problems through the planning process and additional costs for utility operators and customers would be avoided.

**4.11** If the Committee decides to take forward either Option 1 or Option 2 and to seek the introduction of some form of charging, it would be necessary to make representations to the Scottish Government to request the amendment of the relevant primary legislation. It is likely that any such proposal would attract strong opposition from the telecommunications companies and/or wider utilities industry. Representations to the Scottish Government could be made either by officers acting on behalf of the Council, or at political level by Elected Members (potentially with the assistance of local MSPs).

#### Other Issues

**4.12** It is often necessary or desirable to relocate utility infrastructure as part of redevelopment proposals, and where the infrastructure is on a public road or third party land the relocation is normally carried out at the developer's cost. However, private utility operators also own many small pieces of land containing substations, pumphouses etc. throughout the urban area, and occasionally it is necessary or desirable to relocate these facilities to facilitate a wider redevelopment. There are several important regeneration sites within West Dunbartonshire where utility operators have impeded satisfactory land assembly in these circumstances, by seeking payment significantly beyond that which was necessary to relocate their infrastructure. It is not considered reasonable for utility operators to use such land as "ransom strips" when they benefit from such extensive rights as statutory undertakers. The Committee may wish to take this matter up with the Scottish Government as part of any request for a change in the law.

## **5. People Implications**

**5.1** There are no personnel issues.

## **6. Financial Implications**

**6.1** If the primary legislation was changed the Council would receive some form of payment if telecommunications masts and associated equipment were located on public roads.

## **7. Risk Analysis**

7.1 There are no risk issues.

**8. Equalities Impact Assessment (EIA)**

8.1 There are no equalities issues.

**9. Consultation**

9.1 No consultation has taken place.

**10. Strategic Assessment**

10.1 There are no strategic issues.

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**Date: 23 July 2013**

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**Appendices:** 1. Summary of responses to Cllr Finn's letter to other Scottish planning convenors

**Background Papers:** none

**Wards Affected:** all wards