

# North Tyneside Council

## Report to Cabinet

### 14 July 2014

**ITEM 7(c)**  
Grass Verge at Addington Drive – Article 4 Direction to remove permitted development rights for telecommunications development

**Portfolio(s):** Housing & Environment

**Cabinet Member(s):** Councillor John Harrison

**Report from Service Area:**

Planning – Environment & Leisure

**Responsible Officer:**

Phil Scott – Head of Environment & Leisure

Tel: 0191 643 7295

**Wards affected:**

Battle Hill

## PART 1

### 1.1 Purpose:

The purpose of this report is to decide whether to bring into effect an Article 4(1) Direction (under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) which would remove certain permitted development rights for Electronic Communications Code Operators (ECCO) within a section of grass verge on Addington Drive, Wallsend. This follows a request from the Hadrian Park Residents Action Group who wish to restrict future equipment being erected at an existing mast site on Addington Drive.

### 1.2 Recommendation(s):

It is recommended that Cabinet:

- (a) authorises the Head of Environment & Leisure, in consultation with the Head of Law and Governance, to draft an Article 4(1) Direction and to carry out the required statutory consultation and notification to the Secretary of State, pursuant to Article 5 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended); and
- (b) receive a further report following appropriate consultation to consider whether a direction under Article 4(1) should be confirmed and referred to the Secretary of State.

### 1.3 Forward Plan:

The item appeared on the forward plan on 16 June 2014. It has not been practicable to give 28 days notice of this report. It is required to be considered without the 28 days notice being given because there is a strong likelihood that works to upgrade the mast site, which the Authority has previously indicated it did not support, are imminent and an Article 4 Direction cannot be applied retrospectively.

## 1.4 Council Plan and Policy Framework

This report links to 'Our North Tyneside' Council Plan, Priority 1 – Our People - Will be listened to by services that respond better and faster to their needs and Priority 2 – Our Places – Be places that people like living in and will attract others to either visit or live.

## 1.5 Information

### 1.5.1 Background to the Addington Drive Case

A prior approval notification under Part 24 of the Town and Country Planning (General Permitted Development Order) 1995 (GPDO) (ref. 11/00725/TELGDO) was submitted for a 12.5 metre high telecommunications tower and 2 associated cabinets on a grass verge at Addington Drive, Wallsend by Telefonica UK and Vodafone on 30 March 2011. The Council's Planning Committee refused to grant prior approval for the following reason:

*'Due to their siting the proposed telecommunications tower and associated cabinets are considered to have a detrimental impact on the highway safety and visual amenity of the surrounding area contrary to policies E11 and H13 of the North Tyneside Unitary Development Plan (March 2002).'* (decision noticed issued on 23 May 2011)

An appeal was lodged against the Authority's decision to refuse to grant prior approval. The Planning Inspector, following a site visit on 21 November 2011, allowed the appeal and gave approval for the proposed development on 14 December 2011. The main issues identified by the Inspector were the effect on the character and appearance of the area and highway safety. The Inspector concluded that the proposed development would not appear prominent or obtrusive and would not harmfully change the outlook for the occupiers. Therefore it would accord with Policies E11 and H13 of the Authority's Unitary Development Plan (UDP). He also concluded that there were no grounds for refusal on grounds of highway safety, noting that the highway authority had not objected. Furthermore the Inspector found no reason to depart from the Government's view as expressed in Planning Policy Guidance Note 8 (now replaced by NPPF) that the planning system should not determine health safeguards.

The mast and associated equipment were erected in May 2012.

Complaints were received regarding the Authority's decision making process in relation to its handling of the original notification and appeal. These were considered via the Authority's Corporate Complaints process and subsequently by the Local Government Ombudsman who found no maladministration. Any challenge to the Inspector's appeal decision cannot be considered by this Authority.

Residents have campaigned strongly for the removal of the mast since its erection. Council officers have sought to work with the operator and local residents to find a negotiated solution to address their concerns. This has included a search for alternative locations for the mast. No alternative location has been identified which was acceptable to all the parties involved.

The Authority, as Local Planning Authority (LPA), in accordance with the Electronic Communications Act (2005) (ECA) received notification of additional works proposed at the site in 2013. The upgrading works would entail the erection of an additional cabinet and the replacement of the six existing antenna which are located at the top of the mast behind a covering shroud with three new ones (also behind the shroud). It is understood that this additional equipment would allow a 4G service to be provided from this site. This notification was not a planning application and nor was it a notice pursuant to the GPDO and the advice given in response is not binding.

Notwithstanding this, the Authority did advise the operator in June 2013 that:

*'Whilst the proposed unit would be situated in close proximity to an existing cabinet and would not obstruct the public highway, there has been significant local opposition to the existing equipment, which residents believe have a significant impact on their visual amenity. To introduce additional equipment in a location where the existing equipment is highly conspicuous would further detract from the visual amenity of nearby residents. In this context the Council advises the operator not to install additional equipment in this location.'*

The operator considers that the upgrading works would benefit from current permitted development rights. Officers consider that this is the case as well. This means that at the present time, the works could take place without the further involvement of the Authority as LPA. Works have not yet commenced on the site although notice was served under street works legislation of an intended start.

It is in this context, that in May 2014, the Hadrian Park Residents Action Group wrote to the Authority's Chief Executive to request, among other matters, the Authority make an Article 4 Direction to prevent the erection of the additional (and any future) equipment at the site. They make this request in light of their concerns about the visual impact of additional equipment, noting the Authority's response to the ECA notification in June 2013, to ensure that future proposals are subject of a full planning application enabling full and open assessment. They seek this action urgently as there is an imminent threat of additional equipment being installed. It is important to note, an Article 4 Direction cannot be applied retrospectively to development which has already taken place or has commenced.

They have also requested the Authority pursues a Discontinuance Order (under Section 102 of the Town and Country Planning Act 1990) to secure the removal of the original mast and cabinet erected in 2012. This request is a matter which will be separately reported to the Authority's Planning Committee.

### 1.5.2 Legislative Provisions

Under the provisions of the GPDO, Local Planning Authorities (LPA's) have the power to make a Direction, the effect of which is to withdraw certain permitted development rights. The legal requirement, which must be satisfied in making a Direction, is that the LPA must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.

In this case, the purpose of a Direction would be to remove permitted development rights set out in Part 24, Class A, of the GPDO pertaining to ECCOs and their equipment. Under Part 24, some small works (such as erecting a cabinet less than 2.5 cubic meters) can be carried out with the benefit of permitted development whilst the prior approval of the LPA is required before operators can erect some equipment (such as a free standing mast up to 15m in height). In considering whether to grant prior approval, the LPA's role is more limited than when considering a full planning application, and it may only consider the siting and appearance of the equipment proposed.

Whilst the Authority has previously exercised its power to make Article 4 Directions, these have historically been in designated Conservation Areas in order to minimise inappropriate development which would otherwise undermine areas of historic and architectural value.

The purpose of an Article 4 Direction in this case would be to require an operator to submit a full planning permission for equipment within a specified location in order to protect the local amenity of the area. Any subsequent full planning permission would have to be determined in accordance with the Authority's current Development Plan unless material considerations indicate otherwise.

Advice in the National Planning Policy Framework (NPPF) is clear that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where it is clearly necessary to protect local amenity or the wellbeing of an area (para. 200). In relation to telecommunications development it states that LPA's should not impose a ban on new development in certain areas, impose blanket Article 4 directions over a wide area or insist on minimum distances between equipment and existing development. It should be noted that in 2013, the Government issued a consultation paper on improving mobile connectivity in England. This was in the context of a recognition that digital communications are an integral part of modern life and there has been significant growth in subscribers and data traffic. The Government stated its commitment to work with mobile operators, Local Authority's and other interested bodies to consider ways that the planning process could be further streamlined to support swifter deployment of mobile infrastructure particularly to support the swifter roll-out of 4G. Part of the measures included the extension of permitted development rights to ECCOs. Changes came into effect in August 2013.

### 1.5.3 Case for Making an Article 4 Direction at Addington Drive

In making a Direction, the Authority must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. In reaching this conclusion, Cabinet will need to consider whether there is a compelling need for the making of a Direction taking into account advice in the NPPF and considering how, in the absence of an Article 4, works carried out with the benefit of permitted development might cause harm to local amenities.

Telecommunications equipment can give rise to harm in terms of visual impact and impact on highway safety has also been raised by local residents as a concern. It is noted that residents also have strong concerns about the impact of the mast on their health. In light of advice in NPPF that LPA's must determine applications on planning grounds and "should not... Determine health safeguards if the proposal meets International Commission guidelines for public exposure", it would not be appropriate to base the justification for making a Direction on any health related grounds. This would be contrary to the weight of Government guidance and policy and would be likely to lead to the Secretary of State's intervention.

In terms of highway safety, a road safety assessment was commissioned by the Authority in September 2013 in response to residents concerns. This assessment considered the impact of an additional cabinet at the site. It concluded that the additional equipment would not radically change the existing situation in terms of the likelihood of driver distraction or the potential for personal injury to arise in the event of a vehicle strike and were not considered to present any problems in terms of road safety. On this basis there would be no basis on which to pursue a Direction on grounds of highway safety.

In terms of visual impact, the comments of the Inspector who considered the original appeal should be noted. He described the location as a "grass verge on a busy roadside in a predominantly residential area of mainly 2 storey houses. The proposed tower and cabinets would be situated close to the kerb ... Nearby are a post box, street lights, traffic signage and a bus stop.

Approaching the appeal site from both directions along Addington Drive I consider the proposal would be seen against a concentrated array of street furniture. This would enable the tower and cabinets to be absorbed into the setting without appearing incongruous. Although partially seen against the skyline from most approaches, it would be viewed in conjunction with the street lights and given its slim profile would have no more impact than an additional lighting column. Consequently it would blend readily into the street scene and would not be detrimental to the visual amenity of pedestrians and other road users”.

Notwithstanding his conclusions, the Authority as LPA considered in June 2013 that additional equipment erected at this site would further detract from the visual amenity of nearby residents in a location where residents believe existing equipment already has a significant impact on their visual amenity. This concern is reiterated in the correspondence from the Action Group who consider the basis for any Article 4 Direction should be made on visual impact grounds.

If an Article 4 Direction is ultimately made and confirmed, additional equipment would be subject of a full planning application and the Authority would be able to consider the visual impact of further structures. The Authority will need to consider if it is in the public interest to make the Direction on this basis.

#### 1.5.4 Statutory Procedural Requirements

The process for making a Direction is that a draft Direction must be prepared and published for consultation for a period of time (at least 21 days) in the local press, on site and by notice to the owner and occupier of every part of the land to which the Direction relates. This will also include a map identifying the area to which the Direction relates. At this time the Authority will need to indicate when the Direction would come into force (which must be at least 28 days but less than 2 years after representations can first be made).

At the time the Direction is published for consultation, a copy must also be sent to the Secretary of State for Communities and Local Government (SoS) who has powers to modify or cancel a Direction. A draft copy of the Direction will be prepared for consideration by Cabinet at its meeting. A plan indicating the area to which it is considered a Direction would appropriately be applied is attached as Appendix A to this report.

Before confirming a Direction, the Authority will need to consider representations received as a result of the consultation and a further report will be prepared for Cabinet consideration at that time. If a Direction is subsequently confirmed by the Authority, confirmation is subject to a further notification to the SoS who may modify or cancel it.

In some circumstances the Authority can be liable to compensate developers or landowners whose developments are affected by an Article 4 Direction. The circumstances where a compensation liability can arise are where an LPA subsequently:

- refused planning permission for development which would have been permitted development if it were not for an Article 4 Direction.
- granted planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 Direction being in place.

Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights (S.108 of the Town and Country Planning Act 1990 (as amended)). For an electronic communications code operator this can include loss of profit.

There are circumstances where if a period of 12 months notice is given of the Authority's intention to withdraw permitted development rights, there is no ability to claim compensation. This legislation has only limited application to the withdrawal of permitted development rights of electronic communications code operators.

Although it is considered that this potential compensation liability could be substantial, it is not possible to quantify the amount of any potential compensation claims that might arise in the future at this time. Members will be provided with more detailed advice on this matter before any Direction were to be confirmed by the Authority following consultation.

Undertaking consultation on an Article 4 Direction would provide an opportunity to invite representations from the operator as well as local residents and, it is anticipated, this would provide the Authority with a better understanding of the extent of its potential liability so that any final decision to confirm a Direction or not, can be made balancing the issue of the extent to which the expansion of the existing equipment might cause harm to local amenity or wellbeing against the wider public interest and the Authority's fiduciary duty. Members are also advised to consider whether their actions in this case might set a precedent for residents to make similar requests in other locations where telecommunications equipment is sited across the Borough.

## **1.6 Decision options:**

The following options are available for consideration by Cabinet:

### Option 1

Progress the drafting of a non-immediate Article 4(1) Direction to restrict Permitted Development rights pertaining to ECCOs within the area of land identified on the map attached as Appendix A and agree to consider a further report following public consultation prior to confirming any Direction.

### Option 2

Indicate that it is not considered to be in the public interest to make an Article 4 Direction to prevent the erection of any additional equipment on the land at Addington Drive.

Option 1 is the recommended option.

## **1.7 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

Consultation on an Article 4(1) Direction will provide an opportunity to invite representations on such a Direction, including from the Secretary of State, which will enable the Authority to make a better informed decision in deciding whether, in the future, it wishes to confirm a Direction or not.

## **1.8 Appendices:**

Appendix A: Map of Addington Drive Site

## **1.9 Contact officers:**

Jackie Palmer, Planning Manager tel. (0191) 643 3663  
Andrew Holmes, Planning Officer, tel. (0191) 643 4822  
Alison Campbell, Finance Business Manager, tel. (0191) 643 7038

## **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) Town & Country Planning Act 1990 (as amended)
- (2) Town & Country Planning (General Permitted Development) Order 1995 (as amended)
- (3) [Planning Practice Guidance](#) – paragraphs 037- 053 Reference ID: 13-[037-053} 20140306
- (4) Cancelled Circular -Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995
- (5) National Planning Policy Framework
- (6) Telecommunications Mast & Cabinets – Addington Drive, Wallsend – Road Safety Advice Note (Capita Sept 2013)
- (7) Draft Letter from Hadrian Park Residents Action Group to Patrick Melia (undated)
- (8) Further letter from Hadrian Park Residents Action Group to Patrick Melia (undated)

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

There are no immediate direct financial implications arising from the recommendation. All preparatory work and background work to prepare this report and to draft an Article 4(1) Direction has been undertaken by existing staff and the costs of consultation, including press notice, will be contained within the existing planning managed budget.

However, as is noted in the report, should, following confirmation of an Article 4(1) direction, a decision be made to refuse planning permission for development that would otherwise have been granted by Class A, Part 24 of the GPDO or approved subject to more onerous conditions, ECCOs would have a period of 12 months following that decision to make a claim to the Council for compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights (S.108 of the Town and Country Planning Act 1990 (as amended)), including loss of profit.

In addition, if an Article 4(1) Direction were to be confirmed requiring planning applications to be submitted for works at this location, no planning application fee would be required to be paid to the LPA to cover any of the costs of processing such applications.

### **2.2 Legal**

The legal implications are set out in the main body of this report.

### **2.3 Consultation/community engagement**

If a Direction is made, statutory consultation will be carried out and the outcome of such consultation reported back to the Cabinet when it considers whether to confirm a Direction or not. Consultation will involve the land owner and any occupier of the land as well as local residents who will be made aware of the Direction by way of a local press advertisement and notices posted around the site.

## 2.4 Human rights

There are no human rights implications directly arising from this report.

## 2.5 Equalities and diversity

There are no equalities and diversity implications directly arising from this report.

## 2.6 Risk management

At this stage in the process, no risk assessment has taken place. If the Direction were to be confirmed the potential financial risk to the Council would need to be added to the corporate and operational risk registers.

## 2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

### PART 3 - SIGN OFF

- Deputy Chief Executive
- Head of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Manager–  
Strategic Services