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Mayor of London response to Ministry of Housing, Communities & Local Government and Department for Digital, Culture, Media & Sport consultation: Proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage

4 November 2019

Summary

Fast, reliable digital connectivity is essential in today's world. It supports every aspect of how people work and take part in modern society, helps smart innovation and facilitates regeneration. As a global city and world-leading tech hub, London needs future-facing digital connectivity.

The Mayor's draft London Plan is underpinned by the principles of Good Growth to realise the Mayor's vision of creating a city for all Londoners where no one is left behind. Planning for a smarter, well-connected city is a fundamental component of Good Growth and access to world-class digital connectivity is essential for the future success of the capital. This is why the Mayor has introduced a new policy in the London Plan¹ that addresses mobile and digital connectivity, and supports the Mayor's ambition for London as a world-leading tech hub with world-class digital connectivity. In addition to the requirements in his draft London Plan, there are a number of other ways in which the Mayor is seeking to improve digital connectivity. Mission 3 of Smarter London Together – the Mayor's roadmap to make London the smartest city in the world – is to deliver world-class connectivity and smarter streets. As part of this, the Mayor's [Connected London Programme](#)² will, amongst other activities, coordinate London's readiness for 5G by working with London's local authorities and establishing template wayleaves and agreements to deliver a new 5G standard.

In this context, the Mayor supports initiatives that will improve digital connectivity across the country. However, it is important that these initiatives achieve the desired outcome in a sustainable and considered manner, and that proposals reflect the differences between rural and urban locations. Any national approach to improving connectivity infrastructure in cities should clearly articulate the different roles and responsibilities for this and increase industry incentives for site-sharing, good design and the reduction of clutter.

Responses to the consultation questions are provided below. Further opportunity to comment on more detailed proposals following consideration of the responses to this consultation would be welcome.

Response to consultation questions

Question 1.1: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what impact would they have on meeting the Government's ambitions in relation to mobile coverage including addressing 'total not-spots' and 'partial not-spots'?

There are different challenges to the roll out of 5G in different parts of the country. The consultation document and proposed options seem to be focused on the particular challenges of mobile connectivity in rural areas which are more severely affected by poor mobile coverage. The impacts of the in-principle proposals are likely to vary geographically and be different in cities. Consideration should therefore be given to the appropriateness and need for the range of measures outlined in the consultation document to be implemented nationally, given that what is an appropriate measure in rural areas may create harm in an urban environment.

¹ Policy S16: Digital connectivity infrastructure

² Paragraph 75.13

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There is currently no clear picture of mobile connectivity available to government due to the limited amount of data from providers shared with and by Ofcom, on commercial confidentiality grounds. While basic information about coverage is provided, it is not possible to understand equipment locations and capacity critical for 'not spots', or whether these proposals would achieve the desired outcome. The government should address this data and regulatory shortfall with urgency.

The consultation suggests that the Government is asking industry for evidence of the impact these changes to the planning regulations would have on meeting the Government's ambitions for 5G and mobile coverage. It is important that the views and evidence of other stakeholders, including local and regional government, are also sought on this matter. In addition, the Government should undertake its own assessment of the potential positive impacts of the proposals and balance these with the potential for harm, rather than relying on industry advice alone.

Paragraph 4 of the consultation document highlights the significant recent government reforms that have taken place to support increased mobile connectivity, including the extension of Permitted Development Rights (PDR) and support in the 2018 NPPF for the expansion of the electronic communications network. Given how recent these reforms are, it would be useful to understand if there has been any evaluation of their effectiveness. Within this context, it is not clear what specific problem the proposals are trying to fix and what the proposed further reforms are in response to. For example, has there been a wider assessment of implementation challenges in relation to the roll out of 5G and what evidence has there been from industry that current planning regulations are a barrier to this? There are other ways in which mobile connectivity can be proactively addressed through the planning process. Draft London Plan policy SI6, requires development proposals to meet expected demand for mobile connectivity and take appropriate measures to avoid reducing mobile connectivity in the surrounding area (or to mitigate any potential reduction). Developers are encouraged to engage early with network operators and to foster collaborative relationships including to identify appropriate sites for connectivity infrastructure. Measures such as these that incentivise partnerships, sharing and compromise are a way to develop long term approaches to enabling digital infrastructure. It would therefore be helpful to look at other measures to support 5G through the planning process rather than focusing solely on PDR.

The proposal to incentivise the utilisation of existing sites for connectivity infrastructure is supported in principle, however, it is important that any expansion of PDR is carefully assessed against the potential to cause harm. There are concerns that the current proposals may not strike the right balance for the reasons set out in the responses to subsequent questions, with a measured approach recommended for any increases in height, width or size allowed for under PDR.

Question 1.2: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what impact would they have on planned deployment of 5G technology?

See response to question 1.1.

Question 1.3: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to reduce visual impacts of new electronic communications infrastructure and how would these be delivered?

The planning application/prior approval process is the primary way in which visual impacts can be assessed and provides the best mechanism for securing mitigation measures. It is not clear how better design standards and reduced visual impacts can be achieved where proposals are taken outside of this process.

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Question 1.4: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to ensure that equipment at redundant sites is removed and the land is restored, and how would these be delivered?

The new Electronic Communications Code, introduced in December 2017, already determines the rights and responsibilities of code operators and site providers regarding redundant sites. The complexities of the code mean that much of it is being tested through tribunal. Any further measures should work with and improve on the operation of the code rather than creating new or parallel systems that would further complicate it.

It is unclear what measures local authorities can employ to require providers to remove historical infrastructure or the resource implications this would have. The removal of redundant installations could be a condition of any new works, if required, but there needs to be a clearer national strategy setting out the roles and responsibilities for the removal of existing infrastructure including the role of providers within the context of the code.

Question 1.5: If these in principle proposals (set out in Questions 2 to 5) were taken forward, what further measures could industry offer to ensure that the use of existing sites and infrastructure were maximised before new sites are identified, for example through increased sharing?

It is essential that any measures taken to expand PDR to allow for the proliferation of new infrastructure are implemented alongside stronger requirements for network providers to maximise and share existing infrastructure. It is difficult to see how the current voluntary code of practice provides sufficient incentives to share existing infrastructure prior to exploring the development of new sites. It is also unclear what powers planning authorities have to require sharing in light of regulatory requirements.

The planning application process can be an effective way to secure shared access to infrastructure, particularly on large development sites and where this can be written into a legal agreement.

Further thought should be given to mechanisms that government can employ to encourage or require network providers to share existing or new infrastructure, alongside any proposed amendments to PDR. This could, for example, include a requirement to submit an independent assessment of the potential for site sharing with any application or notice for an installation proposed at a new site.

Question 2.1: Do you agree with the principle of amending permitted development rights for equipment housing to remove the requirement for prior approval for development within Article 2(3) protected land and on unprotected land which exceeds 2.5 cubic metres, to support deployment of 5G?

No. It is not clear if there is a specific issue with delays associated with the 56 days that Local Planning Authorities have to consider a planning application. The government, in previous consultations on PDR, made clear its view that the requirements for prior approval through the PDR process are much less prescriptive than those for planning applications, and it is a deliberately light touch process where the principle of development has already been established. Given this context, the lack of evidence that there is an issue with current arrangements, and the potential impacts outlined in response to question 2.2 (below) it is not considered that there is a strong case for amending permitted development rights. The consultation document suggests that this is to bring requirements in line with those for fixed-line

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equipment however this, in itself, does not provide justification, particularly without analysis of the extent to which the built form of such equipment is similar or not. Equipment housing can include a 'purpose-built cabin serving several operators' which has the potential to have a significant impact depending on its size, location and context, both in terms of visual impact and in terms of impacts on pedestrians, cyclists, bus operations and other traffic where the installation is on or adjacent to public highway.

Question 2.2: What impact could this proposal have on the surrounding area and how could this be addressed?

The proposal provides a description of 'equipment housing', which is of a structure ranging in size from a small cabinet to a purpose-built cabin that could be placed within a building, underground, on the ground or on a rooftop. Introducing a new contemporary element the size of a cabin or similar into or in the vicinity of a conservation area, area of outstanding natural beauty, national park or World Heritage Site (i.e. article 2(3) land as proposed), could have significant negative physical and visual impact/s on heritage assets and on the historic environment, in general, if not carefully managed and considered on a case-by-case basis. A similar concern applies to the potential impact of equipment housing greater than 2.5m² on highway safety and convenience and on highway and public transport operations. The prior approval process currently in place is important and justified, and allows these issues to be appropriately considered.

Question 3.1: Do you agree with the principle of amending permitted development rights to allow an increase in the width of existing ground-based masts by more than one third, to support 5G deployment and encourage greater utilisation of existing sites?

No. The consultation document suggests that to accommodate additional 5G equipment and enable more Code Operators to share sites, existing ground-based masts would need to be strengthened, and some of these would need to be strengthened by more than a third. It is not apparent what evidence this is based on, the extent to which this would be required, or if there are any particular issues with the expediency of the current process, which requires Code Operators to submit a full planning application for any increase in width of more than one third. As highlighted above prior approval is already a light-touch process but it can allow for local impacts to be considered which is important as increasing existing masts by more than one third could have potentially significant impacts on their appearance and their visual impact locally, and for sites on or adjacent to public highway, impacts upon the safety and comfort of highway users and the efficiency of highway and public transport operations.

Question 3.2: If yes to question 3.1, what increase in width should be granted through permitted development rights, without prior approval, to ensure that the visual impact on the surrounding area is minimised?

See response to question 3.1.

Question 3.3: To further incentivise operators to maximise the use of existing sites, should permitted development rights be amended to increase the height of existing masts to the relevant permitted height without prior approval?

The proposals to incentivise the intensification and sharing of existing infrastructure are supported in principle but any increase in height should be carefully assessed for its potential to harm the

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surrounding landscape. It is not apparent if there are any particular issues with the expediency of the current process and there are concerns about how impacts of changes in height could effectively be considered under this proposal.

Question 3.4: Are there any other amendments to permitted development rights that would further incentivise operators to maximise the use of existing sites?

It is suggested in the consultation document that the Government is looking to encourage operators to share infrastructure to stop the proliferation of masts but it is difficult to see how this can be achieved, particularly if there is no formal way through the planning process to promote or enforce this. Any expansion of PDR for mobile infrastructure must be accompanied by strengthened requirements on operators to share existing or new infrastructure. It is also recommended that stronger/more practical mechanisms of requiring sharing are introduced.

Question 4.1: Do you agree in principle with creating a permitted development right to grant permission for masts to be located within 20 metres of a highway on buildings less than 15 metres in height, in all areas?

No. The visual impacts of such installations should be considered through the prior approval process. In addition, where access to the site is required from the public highway for installation and/or its subsequent maintenance, this should be considered through the prior approval process with input from the relevant public highway authority as to effects on the safety and convenience of highway users and the efficiency of highway and road-based transport operations.

Question 4.2: If yes to question 4.1, what restrictions (if any) could be put in place to control the deployment of infrastructure within 20 metres of a highway on a building less than 15 metres in height, taking into consideration potential impacts on safety to accommodate vehicle lines of sight, and visual impact on local amenity?

See response to question 4.1. It is difficult to see how other regulations could be drawn up to control adverse impacts on the public highway (or on amenity). The prior approval process would enable consideration on a case-by-case basis.

Question 4.3: If yes to question 4.1, do you agree that this permitted development right should be subject to the prior approval process by the local planning authority?

See responses to questions 4.1 and 4.2.

Question 5.1: Do you agree in principle with amending permitted development rights to increase the height of new masts, subject to prior approval?

It is not clear how increased flexibility with regard to new masts will work alongside the objective of making the most of existing infrastructure. Efforts to improve mobile coverage should prioritise maximising existing infrastructure and encourage operators to share infrastructure. It has not been evidenced if there are particular issues with the expediency of the current planning process for new masts and, if there are, what other measures have been explored to improve this. Given

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the focus on utilising existing infrastructure as far as possible, it is not clear what the demand will be for new sites to warrant a change in approach.

It will be important that the impacts of new masts can be satisfactorily assessed. The current process offers a way to do this. If there are amendments proposed to this and they are justified, any future prior approval process should also have sufficient provisions to adequately take into account the impacts of new masts and there should continue to be provisions on those locations that can be particularly impacted (e.g. Article 2(3) land).

Question 5.2: If yes to question 5.1, what permitted height should masts be increased to and why?

See response to question 5.1.

Question 5.3: If yes to question 5.1, should a lower height limit be permitted for masts located in Article 2(3) land or on land on a highway and why?

See response to question 5.1.

Question 5.4: If yes to question 5.1, what restrictions (if any) should be put in place to control development of permitted higher masts?

See response to question 5.1.

Question 6: Do you have any views on the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

An assessment of the potential impacts on people with protected characteristics should be undertaken and made available for comment. The prior approval process is important to ensure impacts on highway users are kept to a minimum including for disabled people, older people and children who have the potential to be affected by poorly sited installations on or adjacent to the highway.