

TOWN PLANNING SUPPORTING STATEMENT

SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AS AMENDED

SUBMISSION OF APPLICATION FOR CERTIFICATE OF LAWFULNESS OF PROPOSED DEVELOPMENT (CLOPUD)

EMLEY MOOR TRANSMITTING STATION, JAGGER LANE, EMLEY MOOR, HUDDERSFIELD, WEST YORKSHIRE, HT8 9DQ

Emley Moor

1. Arqiva owns and operates the UK's terrestrial television network and much of the UK radio broadcasting network.
2. Our television network is built around approximately 1,154 sites which provide television coverage to about 99% of the UK population. The bulk (around 80%) of the UK television coverage is provided from 50 Main Transmitter Stations (MTS), with the rest of the UK served by high and lower powered relay stations. The MTS sites are very important, as they not only broadcast to the largest geographical and populated areas, but they also provide the programme feeds to the high and low power relay stations to allow these more local stations to operate.
3. Emley Moor is a MTS of sub-regional significance, which serves directly and indirectly 1.7 million households. The key feature of the existing site is a 330.4 metres high concrete broadcast mast that supports a number of communication antennas, including at the very top those used to broadcast terrestrial television. The mast is Grade II listed. The main broadcasting facility is spread over almost 2 hectares that includes a mix of operational functions, including regional television and radio broadcasting, network monitoring and a UK service centre. The site is also Arqiva's national Network Operations Centre (NOC) and major Service Management Centre (SMC). This is responsible for remotely monitoring Arqiva's entire UK broadcast transmitter network and coordinating field staff to resolve incidents to get services back on air as quickly as possible. The site currently employs approximately 178 full time staff.

Digital Television Switchover

4. In 2008, planning permission and listed building consent was sought and granted to carry out various changes to the existing broadcasting mast, including the installation of new radio antennas, as part of the UK Government's Digital Switchover Project (DSO). This major national infrastructure project allowed the UK to switchover to fully digital television, region by region, between 2008 and 2012. Emley Moor was switched from analogue to digital television in September 2012.

5. During that period, guidance letters were sent out to all UK planning authorities, the one in England sent on 31 July 2006 from the Communities and Local Government, Culture, Media and Sport and Trade and Industry Departments. This letter advised about DSO and went on to provide specific planning policy guidance.
6. Of particular relevance to this current lawful development application was the Government's appreciation that the digital switchover would require major works to existing television masts and may necessitate temporary structures during those changes to allow continuation of existing services. The letter explained that these temporary masts could fall within permitted development rights of Part 4 of the Town and Country Planning (General Permitted Development) Order 1995, as amended:

"The replacement or extension of any large mast will be a complex engineering project that could take around two years to complete. It is essential for the network operators to maintain continuous coverage to allow viewing for the duration of any works carried out at a site. In these cases a temporary mast close to the existing mast will be required. Such accommodation works may in many cases fall under Part 4 of the GPDO but, wherever possible, existing infrastructure and equipment buildings will be utilised".

7. The same rights are now provided within Class A of Part 4 of Schedule 2 of the more recent Town and Country Planning (General Permitted Development) Order 2015 ("GPDO 2015"). An extract of Part 4 is shown at **Appendix 1**.
8. Very obviously because this was a general letter, the Government could not be definitive as Part 4 Rights are dependent on individual circumstances. The purpose of this statement is to set out the individual circumstances at Emley Moor to demonstrate that the Part 4 rights do apply in this case.

700MHz spectrum clearance project

9. Arqiva has been requested by the Government, through OFCOM, to implement a project known as the national 700MHz spectrum clearance project ("700MHz Project"). The 700MHz Project will clear the terrestrial television broadcast network from the 700MHz spectrum to allow that radio spectrum to support other electronic communication services, very likely 4G mobile phone and related data services. It is a significant project likely to take several years to implement.
10. At Emley Moor (and other sites across the UK), this clearance work will require permanent works to existing antennas or replacement antennas onto the existing broadcast mast that currently broadcasts terrestrial television, so that the 700MHz spectrum can be used for other purposes. As Arqiva is an electronic communications code system operator, these antenna works will be undertaken either as permitted development pursuant to Part 16 of Schedule 2 to the GPDO 2015 or following an application for planning permission. The works will be confined to the replacement of antennas and therefore permitted development rights will apply as this will not result in the limitation set out at paragraph A.1 (3) being exceeded.

11. We are aware that the existing mast is listed but this in itself does not remove the permitted development rights for works to the mast as the limitation in paragraph A.1 (3) does not exclude listed buildings. This is in contrast to the express limitation found in paragraphs A.1(2)(c) & (d) which excludes the installation etc. of antennas on buildings or other structures, but not masts. In view of this, a general planning permission already exists for these replacement antenna works.
12. The character and appearance of the mast is a large structure designed and built specifically to support antennas at the top. The replacement of these antennas will not therefore change the character and appearance of the mast, which will remain in use for its original purpose as a main television broadcast installation. You will recall that when the antennas needed to be replaced for the DSO project in 2012, Listed Building Consent was not required and consistent with that, the same applies with this current project. That said, we will seek to agree this with you once the details of the antenna swap are finalised.
13. It is a necessary requirement of the 700MHz Project that existing terrestrial television services are not interrupted by the proposed works to existing antennas or installation of new antennas. Arqiva must maintain broadcast services on a 24 hour basis, 365 days a year and the works must be implemented in a way that does not interfere with these public broadcast services. In order to minimise interruption it will be necessary to erect a temporary mast near to the existing site which will be used to broadcast terrestrial television services whilst the antenna works are on-going on the main permanent mast.
14. Although such a temporary mast was not required at Emley Moor for DSO, it will be required for 700MHz clearance as there are now materially different circumstances. For DSO the existing analogue antennas on the existing mast could be 'powered down' to allow other work on the main mast at Emley Moor. This allowed the continuation of television services from an existing reserve antenna on the mast, while the main upper antenna on the mast was replaced. Powering down meant that the quality of the analogue TV signal being broadcast into homes was reduced, but those receiving the TV signal simply had a deterioration of picture quality such as ghosting or flaky picture, but capable of being viewed. There was no loss of service.
15. However for 700 MHz clearance this is now complicated by the existing mast transmitting digital television signals which are significantly different from analogue signals. The main difference is that the television or set top box in peoples' homes or premises decodes the digital signal to create the picture for viewing and these are sensitive to the quality of the signal they receive. As such, for 700MHz clearance, existing digital antennas on the existing mast cannot be simply powered down as the receiving equipment in people's homes will not be able to decode a weaker signal and the TV picture will simply not be available. Accordingly, at Emley Moor a temporary mast is now needed of a similar height to the existing permanent mast, in order to maintain the broadcast signal over the same geographical area and retain the existing signal quality.

Proposed Development

16. The planned location for the temporary mast is shown in the attached plans and is located close to the existing broadcasting mast in order to share existing broadcast transmitting equipment, within existing transmitter buildings, at the existing site. Additionally, the temporary mast has to be located close to the existing mast, as

viewers television aerials will be pointed in this direction, so the mast cannot be positioned further afield without major disruption to viewers enjoyment. Accordingly, the proposal is to use adjoining farmland for the temporary mast which will ensure minimal disruption to viewers. This will entail a temporary stayed radio mast of 329.5m in height (to top of the upper antenna). Access will be taken from an existing road within the Emley Moor site which leads from and onto Jagger Lane.

Planning Framework

17. In March 2015, Arqiva engaged in writing with planning officials at your Authority about 700MHz clearance and specific requirement for the temporary mast. Within that communications we explained that modifications to apparatus on the existing mast would likely either amount to permitted development pursuant to rights within Part 24 of the Town and Country Planning (General Permitted Development) Order 1995, which is now replaced by Part 16 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'), or require planning permission. Either way, we explained that a temporary mast could be erected on adjoining land as permitted development under Class A of Part 4 of the GPDO (temporary buildings and structures), to allow the continuation of existing television services, for the duration of those works on the existing mast.
18. Matters were discussed at a meeting with your officers on 9 April 2015. Following the meeting an email was received from Julia Steadman, Team Leader, Development Management dated 6 May 2015 which stated:

“Having discussed the proposals with the Head of Development Management, I am emailing to confirm that we would request that a planning application be submitted for the proposed installation of the new mast adjacent to Emley Moor Mast. Our initial view is that the proposals would not benefit from permitted development rights.

As discussed in our previous meeting, once you have firmed up the proposals, we would be more than happy to meet with you again prior to the submission of any formal planning application.”
19. We maintain our position that a temporary mast of the scale and location proposed will amount to permitted development under Class A of Part 4 of the GPDO and we set this out below in relation to Government guidance and planning case law to support this proposed lawful use. In support of this view, we also refer you to the Legal Opinion of Pinsent Masons reflected within this statement and, based on the same key facts, the recent granting of a Certificate of Lawfulness by Durham County Council for a 170m temporary mast also required at our Main Station at Pontop Pike as part of the 700 Mhz clearance project.

Class A of Part 4 of the GPDO 2015

20. Temporary buildings and structures are permitted by Class A of Part 4 of the GPDO 2015 which states that the development permitted is as follows:

“The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of

operations being or to be carried out on, in, under or over that land or on land adjoining that land”.

21. The wording of Class A, Part 4 of Schedule 2 of the GPDO 2015 has not changed from that contained in the recently repealed Town and Country Planning (General Permitted Development) Order 1995. The wording of Class A does not place any limitations on the size or scale of the building or structure that may be erected, on the basis that they are only temporary.
22. The key requirements and considerations in relation to the lawful use of Part 4 rights are set out below and we address them separately:
 - a) the development must be a building, moveable structure, works, plant or machinery;
 - b) it must be required temporarily; and
 - c) the need for it must be in connection with operations being or to be carried out on, in, under or over the land on which it is situated or on land adjoining that land.
23. We address those points below under individual headings.
 - (a) Temporary mast is a building**
24. The GPDO 2015 defines a building as including "any structure or erection". On this basis a Temporary Mast clearly qualifies as a "building" for the purposes of the GPDO 2015. The Temporary Mast is also a demountable structure and so a moveable structure. For rating purposes radio masts are also classified as Plant and Machinery. Requirement (a) is therefore unquestionably and fully met.
 - (b) Temporary mast required temporarily**
25. We refer to the High Court case of *R (Wilsdon) v First Secretary of State* [2006] where it was held by Mr Justice Sullivan that in this context ""required" means "reasonably required", and whether or not a building is reasonably required for a particular purpose is very much a question of fact and degree".
26. In this case we have clearly explained that we must maintain continuous broadcasting while antenna works to the main permanent mast are undertaken. The test of reasonableness is more than satisfied by the Government requirement that the terrestrial television broadcast network must be maintained throughout these works, as broadcast services operate on a 24 hour basis, 365 days a year and the works must be implemented in a way that does not interfere with these broadcast services. Indeed in view of the costs involved, we have had to justify their specific requirement to OFCOM and that they are reasonably required for this national broadcasting project. We do not wish to erect a permanent structure as it would be very costly to install and maintain a structure that was not required on an on-going basis. As such the temporary mast will not be built as a permanent structure, we are not intending to obtain planning permission for such and the land required will only be licensed for a short period. Accordingly, the temporary mast is required, is planned as such and its reasonableness is fully demonstrated.

27. In the above Court case, the Courts held that it was also correct for the Inspector in that case to consider whether the appellant realistically intended to remove the building in question. In this case, the temporary mast will be removed as soon as is practicable as part of the national programme for the 700 MHz Project, reflecting local circumstances and the weather that can affect works. Our intention in this regard is therefore highly relevant to the justification that the temporary mast is required only for a temporary period and meets one of the main considerations for utilising permitted development rights within Part 4 of the GPDO.
28. We further reiterate the point made earlier that the availability of these permitted development rights was confirmed in the letter from DCLG, DCMS and DTI to Chief Planning Officers in England dated 21 July 2006 in relation to the Digital Switchover Project – **Appendix 2**. Clearly the 700MHz Project is very similar to the Digital Switchover Project and as such the local planning authority should take into consideration the Government advice provided in relation to the Digital Switchover Project.
29. So this is clear that requirement (b) is fully met.

(c) Need in connection with operations being carried out on adjoining land

30. We have already explained that the temporary mast will be needed in connection with antenna works to the main mast (on adjoining land) which will either require planning permission themselves or deemed to be granted under Part 16 of the GPDO. On this basis we assert that requirement (c) is fully met.
31. It is evident from above that the proposal for a temporary mast meets all the required tests for the use of permitted development rights within Class A of Part 4 of the GPDO. In further support of this lawful use, we direct you also to the further supporting evidence by Pinsent Masons, which is provided as a separate document and also pinned to this statement at **Appendix 3**. We can also confirm that as part of the 700 Mhz clearance project Durham County Council has on 9 December 2015 granted a Certificate of Lawfulness for the same works at the existing broadcast installation at Pontop Pike. The Local Planning authority Decision Notice is included at **Appendix 4**.

Conclusion

32. In accordance with Government Planning Policy Guidance on Lawful Development Certificates, we consider that the information provided is of sufficient clarity and precision to enable the local planning authority to understand exactly what is involved. For the reasons given consistent with previous Government advice, consistent with a legal opinion and consistent with the grant of a Certificate of Lawfulness by Durham County Council based on the same key facts, the proposed temporary mast will qualify as permitted development pursuant to Class A of Part 4 of Schedule 2 to the GPDO 2015, and should be treated and Certified as such.

ARQIVA LTD

Appendix 1

Class A of Part 4 of Schedule 2 to the GPDO 2015

PART 4

Temporary buildings and uses

Class A – temporary buildings and structures

Permitted development

A. *The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*

Development not permitted

A.1 Development is not permitted by Class A if—

- (a) the operations referred to are mining operations, or
- (b) planning permission is required for those operations but is not granted or deemed to be granted.

Conditions

A.2 Development is permitted by Class A subject to the conditions that, when the operations have been carried out—

- (a) any building, structure, works, plant or machinery permitted by Class A is removed, and
- (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, reinstated to its condition before that development was carried out.

Appendix 2

Letter from DCLG, DCMS & DTI to Chief Planning Officers dated 31 July 2006

Department for Communities and Local Government
Director, Planning
Department for Culture, Media and Sport
Director General, Culture, Creativity and Economy
Department of Trade and Industry
Director, Business Relations

Eland House
Bressenden Place
London
SW1E 5DU

Generic letter to all Chief Planning Officers in England

Department for
**Communities and
Local Government**



Dear Chief Planning Officer

31 July 2006

DIGITAL SWITCHOVER – INFORMATION FOR PLANNING SERVICES

The purpose of this letter is to draw your attention to the switchover from analogue to digital television, which will be taking place from 2008 to 2012, and to explain how it will affect your work.

The attached briefing note provides detailed information, and focuses particularly on considering any planning applications for changes to transmitter masts required to enable switchover. We hope this information is of help to you.

A copy of this letter is being sent to the Scottish Executive, Welsh Assembly Government, and the Northern Ireland Office.

Yours faithfully

Colin Byrne
Director, DCLG

Andrew Ramsay
Director General, DCMS

David Hendon
Director, DTI

DIGITAL SWITCHOVER – INFORMATION FOR PLANNING SERVICES

Digital switchover is a major transformation project that will see the UK switchover to fully digital TV region by region between 2008 and 2012. The policy framework for switchover, including the overall timetable, has been set by the Government; implementation is being led by Digital UK, the independent not-for profit organisation set up specifically to coordinate switchover. As part of switchover, over the next few years the two transmission companies (Arqiva and National Grid Wireless) will need to carry out work on TV transmitters.

This briefing note explains more about digital switchover and its potential implications for the planning services. Planning officers should continue to take into account existing guidance set out in Planning Policy Guidance 8 – Telecommunications (available at <http://www.communities.gov.uk/index.asp?id=1143964>), when considering related planning applications.

What is Digital Switchover?

The current analogue TV broadcasting network has developed since the 1950s and now extends to 1,154 different sites across the UK. Since 1998, a partial digital network has been developed that broadcasts alongside the national analogue network at 80 of the 1,154 sites. The Government wants everyone who currently receives analogue television services to be able to get digital services. But owing to limited spectrum this is not possible until the analogue transmissions are switched off. In September 2005, the Government confirmed that the analogue transmissions would stop switchover to digital on a region by region basis between 2008 and 2012. The full programme is set out below, with regions affecting England highlighted.

Starting in 2008	Border
Starting in 2009	West Country, Wales, Granada
Starting in 2010	West, Grampian, Scottish
Starting in 2011	Central, Yorkshire, Anglia
Starting in 2012	Meridian, London, Tyne Tees, Ulster

What are the Public Benefits?

Switchover makes it fairer. Today over 72% of UK homes have digital TV. However, one in four cannot get it via their aerial, and many still cannot receive Five. Only by switching off the existing analogue broadcasting system is it possible to boost the digital TV signal and provide people with a greater choice of affordable digital options. By adapting the existing transmitter sites the vast majority of householders should not have to reorientate their aerials towards new sites.

Digital TV is also more efficient. It frees up radio spectrum that could be used for innovative services such as mobile TV or high definition TV.

A world leader in broadcasting. Moving to the best available technology will ensure the UK continues as a world leader in broadcasting.

How the network is managed

The former BBC and Independent Broadcasting Authority transmission networks were originally established in the 1950s and are now owned respectively by National Grid Wireless (NGW) and Arqiva. Both companies are electronic communications code operators and provide network transmission services to the public service broadcasters, who produce the content, under the communications regulatory framework that requires access and co-operation in this regard.

What works need to be completed

The existing broadcast network is diverse, ranging from main transmitter masts up to 385 metres in height to relay installations using small poles similar in size and appearance to telegraph poles, with many lattice masts typically 45 metres in height in between. Familiar examples include the 200 metre high transmission mast at Crystal Palace and the 385 metre high mast at Belmont, Lincolnshire.

The physical works associated with switchover will also be diverse – from major alterations and even replacement of a small proportion of the large broadcast masts, to some works which may be considered *de minimis* or be permitted development under Part 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (the GPDO).

The works are being funded by the public service broadcasters (BBC, ITV, Channel 4, Five, S4C, Teletext) and carried out on their behalf by NGW and Arqiva.

What this can involve

The replacement or extension of any large mast will be a complex engineering project that could take around two years to complete. It is essential for the network operators to maintain continuous coverage to allow viewing for the duration of any works carried out at a site. In these cases a temporary mast close to the existing mast will be required. Such accommodation works may in many cases fall under Part 4 of the GPDO but, wherever possible, existing infrastructure and equipment buildings will be utilised.

In most cases, including the existing medium and small scale installations, switchover will be achieved through the installation of additional or replacement antennas and new radio equipment typically housed in the existing site accommodation.

In a few areas, some new installations will be required to provide limited coverage to complete localised gaps in the network. These will be location specific and have to fit within the wider existing network in terms of siting and channel usage.

The Planning Process

NGW and Arqiva will be responsible for transforming their network installations and will follow the normal planning processes that apply. They are encouraged to make early contact with local planning authorities to forewarn them of the broad implications for their areas and where practicable to do so on a joint basis. Thereafter local planning authorities can expect to be approached on a site by site basis, commensurate with the extent of works involved.

PPG8 applies to all forms of electronic communications, including broadcasting, but when drafted did not contemplate the switchover project. However, much of the guidance is relevant and applicable, in particular:

- The main policy to facilitate the growth of new systems whilst keeping the environmental impact to a minimum applies (para 1). In view of the national significance of this project and the tight timescales, local planning authorities are encouraged to treat any applications as a matter of priority and to use delegated powers where possible.
- Material considerations include the significance of the development as part of a national network to provide a continuation of terrestrial television services (para 5)
- Local planning authorities may reasonably expect evidence that the use of existing masts, buildings or other structures has been explored, where any new masts are proposed (para 21). It would not normally be appropriate to seek such evidence when an existing site is being modified.
- With the closure of the analogue network the reuse of existing sites is very desirable and is encouraged to minimise the need for new sites (para 23 as applicable). This has the added and important effect of minimising cost and disruption to the viewing public who might otherwise have to reorientate their aerials to point to a new transmitter.
- The analogue television broadcast network is already compliant with ICNIRP (International Commission on Non-Ionizing Radiation Protection) guidelines. Digital transmissions will generally be at a lower level and very few sites will experience an increase in radio frequency emissions as a result of digital switchover, but those that do should still be well within the ICNIRP guidelines. However, applications should still be accompanied by a certificate of ICNIRP compliance (para 30 as applicable)
- When considering whether works are *de minimis*, the test is whether or not they may have a material effect on the external appearance of the structure or building as a whole (para 43 of Supporting Guidance).

As the broadcasters are implementing a Government requirement, no weight should be attached to any objections on the basis that analogue transmissions should be maintained.

Likewise, as government policy, in line with European regulatory requirements, is to encourage competition between services, little weight should be attached to any objections on the basis that television services are available through other mediums such as cable, satellite or broadband services.

Planning authorities are further reminded of the national importance of broadcasting, which is underlined by this transformation project of major public interest. They are further reminded that the construction of new buildings or other structures, such as wind turbines, can interfere with broadcast services, and the possibility of such interference can be a material planning consideration (para 33 and Annex 2 of PPG 8). Local planning authorities are therefore encouraged to make sure that developers of high buildings or other structures consult with NGW and Arqiva, prior to submitting their applications to prevent the loss of vital broadcast services.

Useful Links

Further information on digital switchover can be found at:

www.digitaltelevision.gov.uk

www.digitaluk.co.uk

Appendix 3

Legal Opinion of Pinsent Masons

1. **BACKGROUND**

- 1.1 Arqiva have been requested by the Government, through OFCOM, to implement a project known as the national 700MHz spectrum clearance project ("**700MHz Project**").
- 1.2 In summary, the 700MHz Project will clear the terrestrial television broadcast network from the 700MHz spectrum and will include works to antennae that currently broadcast terrestrial television ("**Antennae Works**") so that the 700MHz spectrum can be used for other purposes. It is a necessary requirement of the 700MHz Project that the terrestrial television broadcast network is not interrupted by the Antennae Works. In order to achieve non-interruption it will be necessary to erect temporary masts ("**Temporary Masts**") which will be used to broadcast the terrestrial television network whilst the Antennae Works are on-going on the permanent masts. We understand that by their very nature the Temporary Masts will need to be of a similar height to the permanent masts in order to maintain the broadcast signal.
- 1.3 Arqiva intend to construct the Temporary Masts pursuant to the permitted development rights conferred by Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ("**GPDO 2015**"), and have asked us to provide this legal opinion in relation to that approach.
- 1.4 This advice applies to the law in England.

2. **EXECUTIVE SUMMARY**

- 2.1 The Temporary Masts will qualify as permitted development for the purposes of Class A of Part 4 of Schedule 2 to the GPDO because they are structures (which fall within the definition of "buildings" for the purposes of the GPDO 2015), which are required temporarily in connection with operations to be carried out on adjoining land.
- 2.2 Arqiva has provided a clear explanation as to why the Temporary Masts are required and that they are only required temporarily and will thereafter be removed.
- 2.3 The applicability of Class A of Part 4 of the GPDO 2015 in these circumstances is supported by the two High Court cases of *R (Wilsdon) v First Secretary of State [2006]* and *North Cornwall DC v Secretary of State for Transport, Local Government and the Regions [2002]*.
- 2.4 It should be noted that the availability of these rights was confirmed through a letter sent by DCLG, DCMS and DTI to Chief Planning Officers in England dated 21 July 2006 in relation to the Digital Switchover Project:

"The replacement or extension of any large mast will be a complex engineering project that could take around two years to complete. It is essential for the network operators to maintain continuous coverage to allow viewing for the duration of any works carried out at a site. In these cases a temporary mast close to the existing mast will be required. Such accommodation works may in many cases fall under Part 4 of the GPDO but, wherever possible, existing infrastructure and equipment buildings will be utilised."

- 2.5 We have noted that a number of authorities have accepted the availability and use of Class A of Part 4 of the GPDO 2015 in relation to such Temporary Masts on this basis.
- 2.6 Of course, the Temporary Masts will only benefit from temporary planning permission under Class A of Part 4 of the GPDO 2015 for as long as the Antennae Works are undertaken and the Temporary Masts will then be required to be removed.
3. **CLASS A OF PART 4 OF SCHEDULE 2 TO THE GPDO 2015**
- 3.1 Temporary buildings and structures are permitted by Class A of Part 4 of the GPDO 2015 which states that the development permitted is as follows:
- The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*
- 3.2 The wording of Class A, Part 4 of Schedule 2 of the GPDO 2015 has not changed from that contained in the recently repealed Town and Country Planning (General Permitted Development) Order 1995.
- 3.3 Subject to the exclusions below, Class A rights do not place any limitations on the size of the building or structure that may be erected, on the basis that they are only temporary. The only exclusions to the Class A rights are mining operations (which are clearly not relevant here); or if planning permission is required for the operations being or to be carried out on, in, under or over that land or on land adjoining that land and such planning permission is not granted or deemed to be granted. In this respect, Arqiva has informed us that the Antennae Works will either be undertaken pursuant to Part 16 of Schedule 2 to the GPDO 2015 (in which case Class A rights will apply to the Temporary Masts), or if those Part 16 rights are not applicable full planning permission will be sought (in which case Class A rights for the Temporary Masts would be available following the grant of planning permission for the Antennae Works).
- 3.4 The requirements of the Class A, Part 4 rights can be broken down as follows:
- 3.4.1 the development must a building, moveable structure, works, plant or machinery;
- 3.4.2 it must be required temporarily; and
- 3.4.3 the need for it must be in connection with operations being or to be carried out on, in, under or over the land on which it is situated or on land adjoining that land.
- 3.5 We set out below an explanation for why the Temporary Masts will meet each of the above criteria.
4. **IS A TEMPORARY MAST A BUILDING?**
- 4.1 The GPDO 2015 defines a building as including "any structure or erection".

4.2 On this basis a Temporary Mast clearly qualifies as a "building" for the purposes of the GPDO 2015.

5. **ARE THE TEMPORARY MASTS REQUIRED TEMPORARILY?**

5.1 In the High Court case of *R (Wilsdon) v First Secretary of State [2006]* it was held by Mr Justice Sullivan that in this context "required" means "reasonably required", and whether or not a building is reasonably required for a particular purpose is very much a question of fact and degree".

5.2 The Temporary Masts are clearly "reasonably required" by Arqiva, and this is evident by the justification that they are only required so as to maintain terrestrial television broadcasting whilst the associated permanent mast is shut down so that the Antennae Works can be undertaken. The test of reasonableness is more than satisfied by the Government requirement that the terrestrial television broadcast network must be maintained throughout the Antennae Works. Arqiva must maintain broadcast services on a 24 hour basis, 365 days a year and the works must be implemented in a way that does not interfere with broadcast services.

5.3 In *Wilsdon* Sullivan J also stated that it was correct for the inspector in that case to consider whether the appellant's professed intention to remove the building was a realistic one. In the case of the Temporary Masts Arqiva has made it clear that the Temporary Masts will be removed as soon as possible following completion of the Antennae Works, not least because of the operational costs involved. Arqiva's intention in this regard is therefore highly relevant to the justification that the Temporary Masts are required only for a temporary period.

5.4 It should also be noted that the availability of these rights was confirmed through a letter sent by DCLG, DCMS and DTI to Chief Planning Officers in England dated 21 July 2006 in relation to the Digital Switchover Project:

"The replacement or extension of any large mast will be a complex engineering project that could take around two years to complete. It is essential for the network operators to maintain continuous coverage to allow viewing for the duration of any works carried out at a site. In these cases a temporary mast close to the existing mast will be required. Such accommodation works may in many cases fall under Part 4 of the GPDO but, wherever possible, existing infrastructure and equipment buildings will be utilised."

6. **CONNECTION TO OPERATIONS BEING OR TO BE CARRIED OUT ON IN UNDER OR OVER THE LAND OR ADJOINING LAND ON WHICH THE TEMPORARY MAST IS LOCATED**

6.1 As previously stated each Temporary Mast is required in order to maintain the terrestrial television broadcast network whilst the Antennae Works are undertaken on the nearby permanent mast. As such this final criterion of the Class A permitted development rights is clearly satisfied.

6.2 The judgment of the High Court in the case of *North Cornwall DC v Secretary of State for Transport, Local Government and the Regions [2002]* is an example of a case where Class A rights were available for continued operations when works were being carried out to the existing adjacent development, in that case continued trading of a

store from an adjacent temporary building whilst works were undertaken to the existing store.

7. OTHER RELEVANT CONSIDERATIONS

7.1 When considering the development of the Temporary Masts local planning authorities should be mindful of the Government's support for high quality communications infrastructure, as set out in paragraphs 42 to 46 of the National Planning Policy Framework.

7.2 Also of relevance is the DCLG letter of 31 July 2006 to all Chief Planning Officers referred to above, a copy of which is appended to this note. Clearly the 700MHz Project is very similar to the Digital Switchover Project and as such local planning authorities should take into consideration the Government advice provided in relation to the Digital Switchover Project.

8. CONCLUSION

8.1 For the reasons given above it is clear the Temporary Masts will qualify as permitted development pursuant to Class A of Part 4 of Schedule 2 to the GPDO 2015, and should be treated as such.

8.2 We understand that this advice may be disclosed to local planning authorities in whose area a Temporary Mast(s) is proposed.

Pinsent Masons LLP
20 August 2015

APPENDIX

DCLG LETTER OF 31 JULY 2006

Appendix 4

Certificate of Lawfulness granted by Durham County Council on 8 December 2015 for a Temporary mast as part of the 700 Mhz Clearance Project

Contact: Graham Blakey
Direct Tel: 03000 264 865
email: dmnorth@durham.gov.uk
Your ref:
Our ref: DM/15/03161/COL



Arqiva Ltd
Black Hill Transmitting Station
Salsburgh, Shotts
North Lanarkshire
ML7 4NZ

9th December 2015

Dear Sir/Madam

Town and Country Planning Act 1990

Proposed Application for Certificate of Lawfulness of Proposed Development for a temporary 170 metre high broadcast mast and associated development
At Land Adjoining Telecommunications Mast Pontop Pike Lane Dipton DH9 9AT
For Arqiva Ltd

The above application for a Certificate of Lawfulness received on 13 October 2015 was considered by the Council and it has been agreed to issue a certificate, a copy of which is enclosed.

This certificate applies only to the use or operations described in the certificate and to the land identified on the attached plan. Any use or operation which materially is different from the described, or which relates to other land may render the owner or occupier liable to enforcement action.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S Timmiss', is written over a horizontal line.

S Timmiss
Head of Planning and Assets

Regeneration and Economic Development
Durham County Council, Planning Development (North)
Room G73-82, County Hall, Durham DH1 5UL Main Telephone: 03000 264891

www.durham.gov.uk

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Telephone: 03000 264891



9 December 2015

Dear Sir/Madam

Providing your Views

Durham County Council wants to provide an effective and responsive Planning Development Management Service and we can only do this with the help of our customers.

You recently made a planning application to the Council and we would like to know what you thought about the quality of the service provided.

We would be grateful therefore if you could take a little time to complete our survey. There is a link to this below and it should take no more than a few minutes to do. The survey is anonymous and will only be used to monitor and review the service we provide.

https://www.surveymonkey.com/s/DCC_Planning_Service

If you have any problems accessing the survey link or would like a copy in paper format, please contact us direct on: **03000 262830** or via email: ***dmnorth@durham.gov.uk***

If you are a regular user of the service and have recently completed the survey it is also appreciated that you may not wish to repeat the process.

Thank you for your help and co-operation.

Yours faithfully

A handwritten signature in black ink that reads 'Stephen Reed'.

Stephen Reed
Head of Development Management

Regeneration and Economic Development
Durham County Council
Planning Development (North)
Room G73-82, County Hall, Durham DH1 5UL Main
Telephone: 03000 264891



CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

GENERAL DEVELOPMENT PROCEDURE ORDER 2010, SCHEDULE 8
TOWN AND COUNTRY PLANNING ACT 1990: SECTIONS 191 AND 192 (as amended)

DEVELOPMENT MANAGEMENT PROCEDURE ORDER 2010

Application Number: **DM/15/03161/COL**

Applicant **Arqiva Ltd** Agent

Black Hill Transmitting Station
Salsburgh, Shotts
North Lanarkshire
ML7 4NZ

PARTICULARS OF THE APPLICATION

Proposed: Application for Certificate of Lawfulness of Proposed
Development for a temporary 170 metre high broadcast mast
and associated development

At: Land Adjoining Telecommunications Mast, Pontop Pike Lane
Dipton, DH9 9AT

Date of Application: 13 October 2015

PARTICULARS OF DECISION

Durham County Council hereby certify that on 13 October 2015 the proposed operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and red edged on the plan attached to this certificate, is lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

1. It is considered by virtue of the Class A, Part 4 of Schedule 2 (Temporary Buildings and Uses) of the Town and Country Planning (General Permitted Development) Order 2015 that the erection of the temporary television and telecommunications mast, and ancillary buildings, constitute permitted development subject to their removal as soon as reasonably practicable.

SIGNATURE

Signed:

Date: 8 December 2015



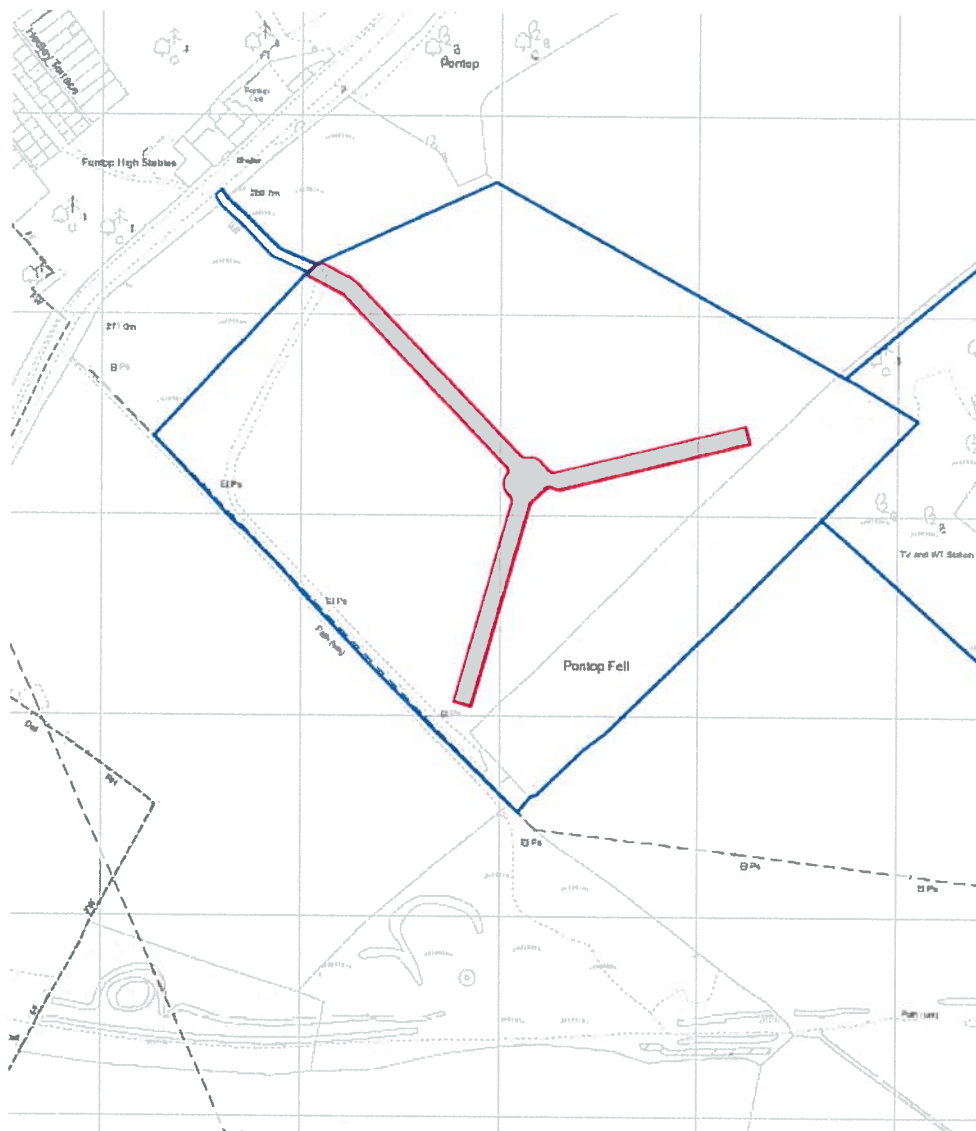
S Timmiss
Head of Planning and Assets
On behalf of Durham County Council

FIRST SCHEDULE

Description of use: Application for Certificate of Lawfulness of Proposed Development for a temporary 170 metre high broadcast mast and associated development

SECOND SCHEDULE

Location of the site: Land Adjoining Telecommunications Mast Pontop Pike Lane Dipton DH9 9AT



NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operations specified in the First Schedule taking place on the land described in the Second Schedule is lawful, on the specified date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from those described or which relate to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.