

Report to:	Cabinet	Date: 13 October 2021
Subject:	Request from Telecoms Operators to site Telecommunications on Council owned land (Public Open Space) at Peel Brow, Ramsbottom	
Report of	Leader and Cabinet Member for Finance and Growth	

Summary

1. In March 2020 the Council agreed to the temporary location of telecommunications equipment operated by EE Ltd and Hutchison 3G UK Ltd on an area of open space on Peel Brow, Ramsbottom. The telecommunications equipment was installed to replace existing equipment located on a chimney of industrial premises located on Kenyon Street that was scheduled for demolition.
2. At the time, WHP Telecom Ltd (WHP) acting for the operators were negotiating with Ramsbottom Cricket Club to locate a permanent telecoms installation near their ground. The Council were subsequently informed by WHP that negotiations between them and the Club had broken down and as a consequence, WHP made a request to the Council that an area of land next to the temporary mast be considered as a permanent location for the telecommunications equipment.
3. WHP have asked that the Council grant their clients a lease of the land for a term of ten years. It should be noted that the telecoms operators will have rights to renew the lease.
4. In October 2020 WHP submitted an application for Prior Approval to the Planning department for the proposed permanent installation of the mast on the land at Peel Brow and this was granted in December 2020.
5. As the proposed location of the equipment is on land that is public open space, the Council advertised its possible disposal in the Bury Times on 4 and 11 March.
6. Four objections were received to the proposed disposal and so Cabinet is now asked to consider those objections and decide whether to agree to the disposal of the land via the grant of a lease to the telecoms operators.

Recommendation(s)

That Cabinet approve the grant of a lease to the telecoms operators.

Reasons for recommendation(s)

7. The lease of the site will maintain the provision of existing mobile telecommunications for the area and provide a site that will enable the rollout of technologies such as 5G to improve digital connectivity for the area.
8. It should be noted that the agreement with EE Ltd and Hutchison 3G UK Ltd would be subject to the Electronic Communications Code. The Code was created by Schedule 2 of the Telecommunications Act 1984. Electronic communication services are now classed as essential services – this includes landlines, mobile phones and internet services. To allow these services to be provided where they are needed, the Electronic Communications Code provides a statutory basis whereby communications providers can place their apparatus on land or buildings owned by another person or organisation, which includes land owned by Councils.

Alternative options considered and rejected

9. Refuse the request from the telecoms operators for a lease of the land.

Refusing the request could threaten the provision of the mobile telecommunications service to the area if an alternative location cannot be found.

Refusal could also result in the operators exercising powers enjoyed under the Electronic Communications Code which include the ability to apply to the Upper Tribunal (Land Chamber) seeking the imposition of the agreement. Further information on the Electronic Communications Code is provided in section 5, 'Background'.

10. Ask the telecoms operators to look for an alternative area of land on which to locate the telecommunications equipment.

This was discussed with WHP however we are informed that the Council's land at Peel Brow is the preferred location for the siting of the equipment.

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Background

11. The Council was approached by WHP Telecoms Ltd (WHP), acting as agents for EE Ltd and Hutchison 3G UK Ltd, in 2020 with a request to

temporarily relocate telecoms equipment to an area of grassed land on Peel Brow.

WHP's clients required the temporary site because the landlord of the location for the equipment, at that time, on the chimney of Kenyon Street Industrial Estate had intentions to develop the whole area and this would include the demolition of the chimney. The temporary site would maintain mobile phone and Emergency Service coverage in the area.

At the time, WHP were seeking to complete an agreement with Ramsbottom Cricket Club for a new permanent location for the telecoms equipment. It was agreed that the equipment could be temporarily re-located to the Council's land on Peel Brow and an agreement for the same was completed in April 2020. The annual rental payable for the temporary installation is £250 per year.

In the following few months, WHP informed the Council that the proposed agreement with the Cricket Club had broken down and WHP asked if their clients could locate the permanent mast at Peel Brow on an area next to their temporary mast.

WHP have proposed terms for a 10 year lease of the site at an annual rent of £750 plus the payment of the Council's costs in dealing with the lease. The proposed lease will have rights of renewal.

Please note that the Telecommunications Code has greatly reduced rental levels for telecommunications equipment. Valuations are to be based on the value to the landowner and disregard any value attributable to the use of the land as a location for telecommunications equipment.

12. Planning

WHP also requested permission to submit an application for grant of Prior Approval to the Planning Authority for the proposed permanent mast and it was agreed that they could do so, however it was made clear that this did not mean that the Council, in its capacity as landowner, was agreeing to grant a lease of the land.

The proposed permanent mast gained Prior Approval and a link to the application is provided below:

<https://planning.bury.gov.uk/online-applications/applicationDetails.do?keyVal= BURY DCAPR 56886&activeTab=summary>

13. Public Open Space

The land identified by WHP on Peel Brow is Public Open Space (POS) and as such the Council, in its capacity as landowner, is required to advertise that it is considering disposing of it. Advertisements are to be placed in the local press and any objections should be considered before a decision is made on whether to dispose of the land. It is usual practice for any

proposed disposal of POS that has received objections to be considered by Cabinet.

POS advertisements were placed in the Bury Times on 4 and 11 March and four objections were received. WHP have been informed of the objections and enquiries have been made with WHP to see if their clients would consider other locations for the permanent mast. WHP have confirmed that the land at Peel Brow remains the preferred location for their clients.

The objections received were from local residents and are included within the Background Papers at the end of this Report.

The objections to the disposal raise concerns that the equipment would be located:

- Within a children's play area
- On green space and within a wildlife corridor where wildlife can regularly be seen
- Close to allotments where foul are kept and food is grown
- Within an important part of the landscape that assists in sustaining the area as a vibrant community space/meeting place where parents are happy to let their young children play in safety and women feel safe to exercise and walk alone.

To address the objections, Planning have confirmed that the proposed location of the equipment is not within a play area and although it is located within a wildlife corridor, the siting of the equipment would not have any significant effect on its current functionality.

The Council's Parks and Countryside section, that control this area of land, have also confirmed that they have no objection to the siting of the equipment in this location.

14. Electronic Telecommunications Information

The Electronic Communications Code (the Code) regulates the legal relationship between landowners and certain network operators (licensed providers of electronic communications services). EE Ltd and Hutchison 3G UK Ltd are licensed providers.

The purpose of the Code and the main powers given to operators is set out below.

Electronic communication services are now classed as essential services – this includes landlines, mobile phones and internet services. To allow these services to be provided where they are needed, the Electronic Communications Code provides a statutory basis whereby communications providers can place their apparatus on land or buildings owned by another person or organisation, which includes land owned by Councils.

The main purpose of bringing in these changes is:

- To bring clarity to the law.
- To give operators clearer rights and greater flexibility.
- To facilitate sharing of existing and future apparatus.
- To advantage operators over landowners on the basis that this would be for the greater public good.

The Code Rights allow a statutory right for the operator to:

- Install electronic communications apparatus under or over the land.
- To keep installed electronic communications apparatus which is on, under or over land and to keep them installed.
- Inspect maintain adjust alter repair upgrade or operate electronic communications apparatus which is on under over the land or elsewhere.
- Carry out any works on the land for or in connection with the installation of electronic communication apparatus on, under or over land or elsewhere.
- To carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communication apparatus which is on, under or over land or elsewhere.
- To enter the land to inspect, maintain, adjust, repair, upgrade or operate any electronic communication apparatus is on, under or over the land).
- To connect to a power supply.
- To interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land).
- To lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

If an operator cannot reach an agreement with the landowner, the Court can impose an agreement if:

- a) The prejudice caused to the landowner can be adequately compensated by money.
- b) The public benefit likely to result from the order outweighs the prejudice to the landowner.

There is some protection if the landowner intends to develop the land in question.

15. Exercise of Code Powers

The operator may serve a notice under para 20(2) of the Code on the Council setting out:

The Code right sought, all other terms the operator requires and seeking agreement to those terms

The Operator may apply to the Upper Tribunal (Lands Chamber) to impose rights

- 28 days after notice; or
- After a landowner refuses in writing to agree rights

If agreement cannot be reached the Tribunal will impose an agreement. Note that rents will be based on comparable use of the underlying land in a non-scheme world. The landowner is not permitted to profit from the increase in value caused by the public demand for data.

16. Summary of Operators Code Powers

The Electronic Communications Code provides operators with more powers than they previously enjoyed and unless the Council has grounds for not agreeing to granting rights, such as the intention to redevelop, then if the Council and the Operator cannot reach agreement, the Tribunal has powers to impose the agreement. Please note that the Tribunal is more likely to impose an agreement if a) the prejudice caused to the landowner can be adequately compensated by money and b) the public benefit likely to result from the order outweighs the prejudice to the landowner.

Links with the Corporate Priorities:

17. The siting of the telecommunications equipment at Peel Brow links to the 'Let's Do It' principles of 'Enterprise' and 'Delivering Together'.

'Enterprise' aims to offer a blend of opportunities to prosper which includes the provision of digital infrastructure.

'Delivering Together' – Digital and transport connectivity includes the aim to ensure that digital infrastructure underpins our future. This will be partly achieved by the delivery of 4/5G mobile.

Equality Impact and Considerations:

18. The outcome of the initial EIA has found that the placement of the telecommunications equipment at Peel Brow would not have an impact on any specific group with protected equality characteristics and is not relevant to the Public Sector Equality Duty.

Environmental Impact and Considerations:

19. The equipment would not impact on local carbon emissions.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
<p>The perceived risk to health from the location of telecommunications equipment.</p>	<p>The agents acting for the telecoms operators have provided a Declaration of Conformity with ICNIRP Public Exposure Guidelines.</p> <p>The declaration certifies that the proposed equipment and installation is in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation (ICNIRP), as expressed in EU Council recommendation of 12 July 1999 on the limitation of the exposure of the general public to electromagnetic fields (0Hz to 300GHz).</p>
<p>Refusing to grant a lease to the telecoms operators.</p> <p>EE Ltd and Hutchison 3G (UK) Ltd are licenced providers of electronic communications equipment and as such can exercise 'Code Powers' that are set out in the Electronic Communications Code.</p> <p>Should the Council refuse to grant the lease then the operators may apply to the Upper Tribunal (Lands Chamber) asking that they impose an agreement on the Council.</p> <p>It should be noted that the outcome of such an application is not certain however the Tribunal is more likely to impose an agreement if a) the prejudice caused to the landowner can be adequately compensated by money and b) the public benefit likely to result from the order outweighs the prejudice to the landowner.</p>	<p>Should the grant of a lease for this location be refused then the Council would work with the operators to try to find a suitable alternative site.</p> <p>It should be noted that discussions have been held with the operator's agent regarding alternative sites but the agent has confirmed that this location is the operator's preferred site.</p>

Legal Implications:

20. The Communications code was created by Schedule 2 of the Telecommunications Act 1984 as amended by schedule 3 of the Communication Act 2003. The code is set out in the body of the report.
21. Members are asked to consider the report and public objections to the grant of the lease. If Members are minded to agree to the recommendation the relevant supporting legal documentation with be entered in to.

Financial Implications:

22. The Councils legal costs of establishing the lease will be funded by WHP and there will be annual income of £750 per annum. This income stream is not significant but if the council was to refuse the lease, costs could be awarded to WHP if it was taken to tribunal.

Background papers:

Appendix 1 - Site Plan / Installation Drawings

Appendix 2 - Objections

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning