

Name of meeting: **PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

Date: **1 SEPTEMBER 2016**

Title of report: **A report for information purposes relating to the granting of a Lawful Development Certificate under Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for the erection of a temporary mast at Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor.**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	No
Date signed off by <u>Director</u> & name	Paul Kemp, Assistant Director of Place - 30 August 2016.
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	Yes Julie Muscroft - 30 August 2016
Cabinet member portfolio	Economy, Skills, Transportation and Planning (Councillor McBride)

Electoral [wards](#) affected: **DENBY DALE**

Ward councillors consulted: **Ward Councillors G Turner, J Dodds, M Watson**

Public or private: **PUBLIC**

1. Purpose of report

- 1.1 The report is for information purposes only, to inform members that a Certificate of Lawfulness for the proposed erection of a temporary mast adjacent to Emley Moor Television Broadcasting site, Jagger Lane, Emley, has been granted.

2. Key points

2.1 Background:

- 2.1.1 A Certificate of Lawfulness for the proposed erection of a temporary mast at land adjoining Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor, was received on 18 March 2016, referenced 2016/90750. The applicant is Arqiva Ltd.
- 2.1.2 Emley Moor tower is a 330.5 metre tall concrete tower, which is a Grade II listed building.
- 2.1.3 Arqiva owns and operates the UK's terrestrial television broadcasting network and much of the radio broadcasting network. In the accompanying planning statement submitted by the applicant, it states that Arqiva operates 1154 sites covering, it is claimed, 99% of the UK population. The planning statement states that 80% of Arqiva's service is provided by 50 Main Transmitter Stations (MTS). Emley Moor Tower is an MTS, serving 1.7 million households. The Emley Moor Tower site employs approximately 178 full time staff.
- 2.1.4 Commencing in 2008, the UK Government initiated a project of installation of new radio antennae as part of the UK Government's Digital Switchover Project (DSO). The major national infrastructure project was in order to allow the UK to switch to fully digital television. The DSO occurred between 2008 and 2012. Emley Moor Tower switched in September 2012.
- 2.1.5 Arqiva has been requested by government (through OFCOM) to implement a project known as the national 700MHz spectrum clearance project ('the 700MHz Project'). The 700MHz Project will clear the terrestrial television broadcast network to allow that part of the spectrum to support other electronic communication services. The 700 MHz Project will take several years to implement.
- 2.1.6 Arqiva has stated that Durham County Council has issued a Certificate of Lawfulness for a similar temporary installation at Pontop Pike as part of the 700MHz clearance project.

2.2 The proposal:

- 2.2.1 The proposal within the Certificate of Lawfulness (CLOPUD) application is for the erection of a temporary telecommunications mast and associated development next to Emley Moor Mast. The temporary structure would be of a similar height to the existing mast (310m to the top of the structure and 324.0 to the top of the antenna) and the applicants state its erection is required to carry out essential works to the Emley Moor Mast. It would be a steel structure secured by three sets of 'guy' cables.

2.3 Essential works to the Emley Moor Mast:

- 2.3.1 At Emley Moor the 700MHz Project will require permanent works for the replacement antennae on the existing broadcast mast.
- 2.3.2 The replacement of television broadcast antennas and associated works on the existing mast have been granted planning permission under reference 2016/92162 and Listed Building Consent under reference 2016/92163, and were issued on 22 August 2016.

2.4 Relevant Legislation:

- 2.4.1 The CLOPUD application has been made upon the basis that the development for the erection of the temporary mast is lawful pursuant to Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO').
- 2.4.2 Class A of Part 4 of Schedule 2 of the GPDO states:

A. Permitted Development

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.

It continues:

A.1 Development not permitted

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.

A.2 Conditions

Development is permitted by Class A subject to 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.

2.5 Representations:

- 2.5.1 Class A of Part 4 of Schedule 2 of the GPDO does not require a Certificate to be publicised. However, due to the sensitivity of this site, it was considered appropriate by officers to publicise the Certificate via site notices in order to bring the proposal to the attention of the public. The applicant also carried out their own Press release. As a result of this publicity, there have been

two representations received. A summary of the issues raised are as follows:

- Health & Safety concerns relating to ice falling from the structure and high winds.
- An increase in noise pollution because of the wind whirling round the structure.
- Increase in traffic due to staffing, and alterations, and also from members of the public coming to view this.
- Noise from unsociable hours of operation at the existing site i.e. gritting at 2.30am in the morning.
- Devaluation of neighbouring property.

2.5.2 Denby Dale Parish Council were also made aware of the Certificate and confirmed that they have 'no objection'.

2.5.3 As previously set out, the Certificate can only be considered in relation to the criteria set out in the GPDO. The matters summarised above can therefore not be taken into account.

2.6 Conclusion:

2.6.1 In the context of the proposed temporary mast:

- a. The temporary mast would be a building or a demountable moveable structure.
- b. The temporary mast is required temporarily for the purposes of the 700MHz Project.
- c. The 700MHz Project material provided demonstrates that the temporary mast is required in order to carry out the works to complete the Project without breaching Arqiva's duty to maintain terrestrial television broadcasting service.
- d. Arqiva have made clear that the temporary mast is intended to be a temporary measure. If it were not removed from some reason it would fall outside the terms of the GPDO at the moment and planning enforcement action could be taken against it.

2.6.2 In the circumstances of this case the temporary mast proposed at land adjacent to Emley Moor Tower falls within the clear terms of the GPDO Part 4 Schedule 2 on temporary buildings and structures.

3. Implications for the Council

3.1 Not applicable

4. Consultees and their opinions

4.1 As set out above, a Certificate of Lawfulness is based on the limitations set out in the GPDO. However, due to the sensitive nature of this site, both the Council's Conservation & Design section and Historic England have been informed of this CLOPUD application.

4.2 Officers have also sought the opinion of Counsel. It has been confirmed that *“in the circumstances of this case the temporary mast proposed at land adjacent to Emley Moor Tower falls within the clear terms of the GPDO Part 4 Schedule 2 on temporary buildings and structures. The scale of the temporary mast (at some 310m) is simply not a consideration of limitation within the GPDO”*.

5. Next steps

5.1 The Certificate of Lawfulness has been issued granting the erection of a temporary mast at Emley Moor Television Broadcast site, Jagger Lane, Emley Moor, Huddersfield, HD8 9TQ.

6. Officer recommendations and reasons

6.1 As set out in section 5 above.

7. Cabinet portfolio holder recommendation

7.1 Not applicable

8. Contact officer and relevant papers

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9. Director responsible Jacqui Gedman