





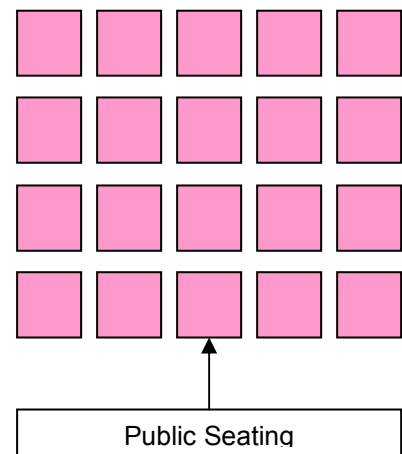
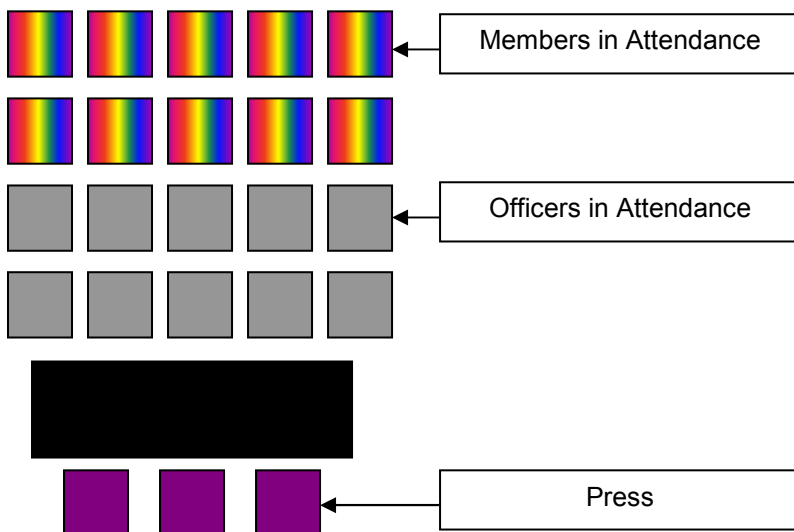
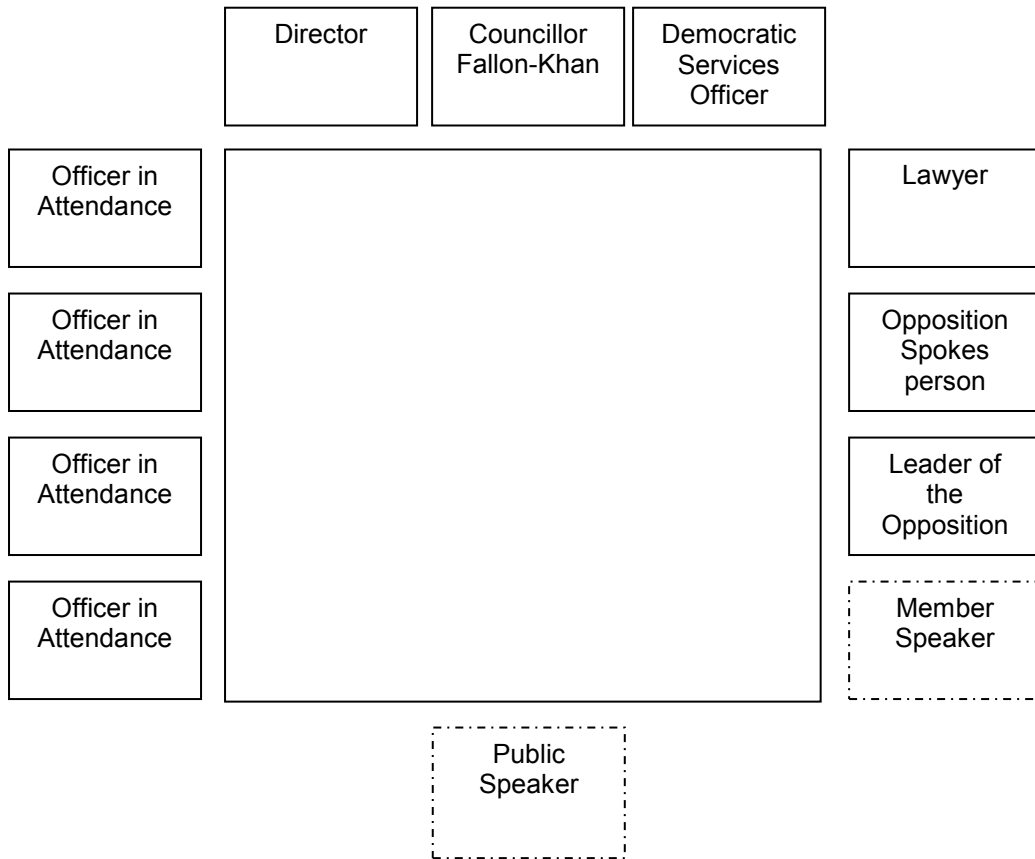
Brighton & Hove
City Council

Cabinet Member Meeting

Title:	Central Services Cabinet Member Meeting
Date:	23 February 2009
Time:	4.30pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillor: Fallon-Khan (Cabinet Member)
Contact:	Nara Miranda Democratic Services Officer 01273 291004 (voicemail only) nara.miranda@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

43. PROCEDURAL BUSINESS

- (a) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (b) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

44. MINUTES OF THE PREVIOUS MEETING

1 - 4

Minutes of the Meeting held on 13 October 2008 (copy attached).

45. CABINET MEMBER'S COMMUNICATIONS

46. ITEMS RESERVED FOR DISCUSSION

- (a) Items reserved by the Cabinet Member
- (b) Items reserved by the Opposition Spokesperson
- (c) Items reserved by Members, with the agreement of the Cabinet Member.

NOTE: Petitions, Public Questions, Deputations, Letters from Councillors, Written Questions from Councillors and Notices of Motion will be reserved automatically.

47. PETITIONS

No petitions received by date of publication.

CENTRAL SERVICES CABINET MEMBER MEETING

48. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 16 February 2009)

No public questions received by date of publication.

49. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 16 February 2009)

No deputations received by date of publication.

50. LETTERS FROM COUNCILLORS

No letters have been received.

51. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions have been received.

52. NOTICES OF MOTIONS

No Notices of Motion have been referred.

53. CELLULAR PHONE MAST NEAR 3 BRANGWYN WAY, PATCHAM 5 - 12

Report of the Director of Finance & Resources (copy attached).

Contact Officer: Richard Butler Tel: 29-1440
Ward Affected: Patcham

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Nara Miranda, (01273 291004 (voicemail only), email nara.miranda@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

CENTRAL SERVICES CABINET MEMBER MEETING

Date of Publication - Friday, 13 February 2009

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 44

Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

CENTRAL SERVICES CABINET MEMBER MEETING

4.30pm, 13 OCTOBER 2008

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillor Fallon-Khan (Cabinet Member)

Also in attendance: Councillor Hamilton (Opposition Spokesperson)

Other Members present: Councillors Harmer-Strange and Young

PART ONE

29. PROCEDURAL BUSINESS

29a Declarations of Interest

29.1 There were none.

29b Exclusion of Press and Public

29.2 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Cabinet Member for Central Services considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

29.3 **RESOLVED-** That the press and public be not excluded from the meeting.

30. MINUTES OF THE PREVIOUS MEETING

30.1 **RESOLVED** – That the minutes of the meeting held on the 21 July 2008 be approved and signed by the Cabinet Member.

31. CABINET MEMBER'S COMMUNICATIONS

31.1 The Cabinet Member reiterated that, as he had announced at the first meeting of the Cabinet Member meeting for Central Services back in June 2008, he had promised to take his Cabinet Member meetings in an open and transparent way, as well as keeping the opposition updated with what was taking place. He confirmed that this remained the approach he would like to continue to take.

32. ITEMS RESERVED FOR DISCUSSION

32.1 There were none.

33. PUBLIC QUESTIONS

33.1 There were none.

34. WRITTEN QUESTIONS FROM COUNCILLORS

34.1 There were none.

35. PETITIONS

35.1 There were none.

36. DEPUTATIONS

36.1 There were none.

37. LETTERS FROM COUNCILLORS

37.1 There were none.

38. NOTICES OF MOTIONS REFERRED FROM COUNCIL

38.1 There were none.

39. MATTERS REFERRED FOR RECONSIDERATION

39.1 There were none.

40. REPORTS FROM OVERVIEW & SCRUTINY COMMITTEES

40.1 There were none.

41. POTENTIAL 'TELL US ONCE' PILOT

41.1 The Cabinet Member considered a report of the Director of Finance and Resources concerning the Potential 'Tell Us Once' Pilot, which, were it to be approved, would benefit the citizens of Brighton & Hove and would sit within the Council's Access Vision

(agreed by Policy and resources Committee in November 2008) and Council's priorities, including better use of public money (for copy, see minute book).

- 41.2 The Assistant Director, Customer Services, explained that there were three strands to this pilot scheme, which were the pilots on births, bereavement and change of address. She reported that, prior to the Cabinet Member meeting, it had been announced that Brighton & Hove City Council had not been chosen as a pilot, though officers had hoped it would be chosen for the bereavement pilot.
- 41.3 The Assistant Director explained that though the city was performing well where bereavement was concerned, the pilot would bring the required legal framework which would facilitate the standardisation of services for a uniform sharing of information between all services. She also explained that even though officers were disappointed with the outcome, the lessons learnt from becoming involved in the process of pilot such as this one had been positive.
- 41.4 The Assistant Director further explained that the third strand of the pilot, 'change of address', was still open and available for allocation. Officers were hopeful that Brighton & Hove still had a chance of getting this one pilot. She agreed to bring an update to the next Cabinet Member Meeting.
- 41.5 The Cabinet Member thanked officers for their work and involvement with this matter. He agreed that it was disappointing that the city had not been chosen to lead on this process. He pointed out, however, that it was good and positive that the council still wished to pursue more in future. He also recognised that the process had allowed the Assistant Director and her team to bring forward all that the services were already doing positively.
- 41.6 **RESOLVED** - That having considered the information and the reasons set out in the report, and to accommodate any future expression of interest with regards to the discussed change of address pilot scheme, the Cabinet Member accepted the following recommendations:
- (1) That the aims of the potential pilot project be noted.
 - (2) That any involvement the Council is able to secure in the Tell us Once programme be supported and agreed, subject to there being no additional unfunded financial or resource implications.

42. POTENTIAL IN AND OUT OF WORK PILOT

- 42.1 The Cabinet Member considered a report of the Director of Finance & Resources concerning the potential 'In and Out of Work' Pilot, which aimed to improve access to in and out of work benefits and services to customers who moved frequently in and out of work (for copy, see minute book).
- 42.2 The Assistant Director, Customer Services, explained that, prior to today's meeting, it had been announced that Brighton & Hove had not been chosen to lead on this pilot. The next step of the scheme would involve different groups of cities going nationally at a

time and Brighton & Hove could be one of the first cities going national with the roll-out of the scheme.

- 42.3 The Assistant Director considered that though the process had been unsuccessful, it had proven to be a positive learning process, which had also resulted in officers obtaining good and useful contacts along the way for future enterprises.
- 42.4 The Cabinet Member congratulated the Assistant Director and her team for seizing the opportunity and for applying for the pilot scheme. He was pleased that Brighton & Hove was recognised by the DWP and might become one of the first cities in the roll-out process. He thanked the team of officers involved with this process and thanked the Chief Executive for supporting this.
- 42.5 The Assistant Director, Customer Services, advised that she would like to keep the recommendations as per the report to accommodate the possibility of Brighton & Hove being chosen as a replacement in the event of a cancellation occurring from one of the initially chosen cities. The Cabinet Member concurred with this proposal.
- 42.6 **RESOLVED** - That having considered the information and the reasons set out in the report, the Cabinet Member accepted the following recommendations:
- (1) That the In and Out of Work Project be noted.
 - (2) That it be agreed in principle to Brighton & Hove becoming a pilot, if selected by DWP to take part, subject to satisfactory financial and resource arrangements.

The meeting concluded at 5.00pm.

Signed

Chairman

Dated this

day of

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 53
Brighton & Hove City Council

Subject:	Cellular phone Mast near 3 Brangwyn Way, Patcham		
Date of Meeting:	23 February 2009		
Report of:	Director of Finance & Resources		
Contact Officer:	Name:	Richard Butler	Tel: 291440
	E-mail:	richard.butler@brighton-hove.gov.uk	
Key Decision:	No	Forward Plan No.	
Wards Affected:	Patcham		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To advise the Cabinet Member Meeting about the history and issues surrounding the cellular mast near 3 Brangwyn Way that has been the subject of questions and complaints from local residents and ward councillors since 2004. There has been renewed local interest in the mast over the past three months due to its upgrading and this report addresses the questions raised in Council (4th December 2008) and the other concerns and complaints received from local residents and ward councillors.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member Meeting notes the position as set out in the report and supports the recommendation that the council seeks to re-open dialogue with T – Mobile and that local residents be advised of the limitations faced by the council under the Telecommunications legislation.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The mast was erected by T – Mobile in 2001 on an understanding that the grassed area between London Road and Brangwyn Way formed part of the adopted highway. This is significant because where a proposal involves the highway the council cannot object as landowner and the case falls to be considered in Planning terms and any possible impact on the highway.
- 3.2 Under Part 24 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2001, telecommunications operators have “permitted rights” to install telecommunications equipment. Nevertheless they do have to submit a “prior approval” application to give the council, and the public, an opportunity to object to the installation. In this case, following the “prior approval” application, the Planning file indicates that a site notice was displayed although no responses were received from the public at the time. The current council practice is to directly consult

neighbouring properties when a “prior approval” application is received. The mast has been upgraded in recent months but once a mast is in situ the operators are under no obligation to consult the council or the local public with regard to the addition of further equipment, provided that the alterations are in accordance with the regulations.

- 3.3 The recent upgrading and mast sharing arrangement initiated by T – Mobile served to re-activate previous public concerns about this mast and engendered many questions from local residents. The Planning team have re-examined the case and concluded that the mast and associated installations remain within those parameters provided by the General Permitted Development Order and there is no planning or enforcement action that the council could take. The original mast was 11.7m high with a single equipment cabinet and the replacement mast is less than the 15m high limit set by the General Permitted Development Order and there are two cabinets, one for T– Mobile and one for Network 3 who are understood to share the mast.
- 3.4 In March 2004 queries first arose about the mast’s location and the possible impact of restrictive covenants believed, by others, to cover the land. For the next two and a half years, sustained efforts were made by the council (as property owners) with T – Mobile to get the mast removed. Initially it appeared the company might comply with the arguments that the site was not authorised by the council as landowner and undertake removal, but they resisted. Subsequently the council was obliged to commence the process dictated by the Telecommunications Act and served notice for the mast to be removed. T- Mobile served a counter notice making clear that the council could not require the removal of the mast without an order of the Court in accordance the Electronic Communications Code.

Expert Advice

- 3.5 A Judge, faced with such an application from the council, would defer the application whilst the operator served a notice under the Code seeking an Order to retain the mast. The Court would support retention of the mast, if satisfied that any prejudice (to the site owner) caused by retention is capable of being adequately compensated by money or, the prejudice is outweighed by the benefit to the public of keeping the network intact. In determining the extent of the prejudice and the weight of the benefit the Court shall have regard to all of the circumstances and the principle that no person should unreasonably be denied access to an electronic communications network – a concept enshrined within the Telecommunications legislation.
- 3.6 Taylor Wessing, a legal firm commissioned by the council for expert advice on this matter, made it clear that the legislation heavily favours the operator and whilst opponents might seek to mount a case on health or visual amenity grounds the potential to prove either case is virtually non existent and that the council are unlikely to succeed in a legal action. The costs will be high particularly in regard to a health challenge where the cost of preparing, presenting and defending a case could be in the region of £150,000 and double that if the council lost and had to pay both sides

costs. To succeed on health grounds there must be some existing real prospect of harm i.e. the risk needs to be more than a vague potential or theoretical possibility. Despite many authoritative studies the health risk remains unsubstantiated. Taylor Wessing speculated about the possibility of a challenge on visual amenity grounds but explained that the council must be able to demonstrate a problem to succeed. As the land is not in a conservation area there are already three lamp-posts and a telephone pole nearby further consideration suggests that a visual amenity challenge is not supportable. Recent advice indicates that those cost estimates from 2006 now look rather conservative. For confirmation of the planning advice on visual amenity please see paragraph 3.3.

Restrictive Covenants

- 3.7 Local residents have presented an argument that the grass verge is affected by restrictive covenants. This was not supported by any of the council's documents in 2004. The council's lawyers have looked a copy of the 1937 document referred to by others but do not consider that it adds anything to the council's view that the land is not subject to restrictive covenants which would prevent the erection of the mast. Another document has also been made available but the advice is that other restrictive covenants, referred to in that document, do not affect the council's land.

4. CONSULTATION

- 4.1 Consultation has taken place with the council's planning enforcement team and the legal team on; highway, restrictive covenant, ownership and telecommunications issues. In addition the council commissioned a legal telecommunications expert, from the legal firm, Taylor Wessing, to advise on all aspects with but with particular reference to the Telecommunications law. Taylor Wessing provided written advice and met council officers to address specific questions. A meeting took place between one resident and a member of the Estates team in December 2008 and there was a further meeting in January 2009 involving two local residents, the ward Councillor, the Cabinet Member for Central Services, and officers from the council's legal and property teams.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The current legal advice is that it would cost the council in the region of £150,000 to undertake a challenge based on health grounds which would include gathering health data, assembling a case and presenting and defending that case. In the event that the council loses the case it would also be faced with paying the costs of the other side, taking the costs to in excess of £300,000. This does not represent value for money given the chances of success. No funds have been identified to support a challenge and any costs as a result of this case would have to be met from existing revenue budgets. The council currently does not receive any rental income from T-Mobile for this site.

Finance Officer Consulted: Rob Allen, Strategic Finance *Date:* 19/01/2009

Legal Implications:

- 5.2 The legal position is set out as above. Expert advice has been sought and reviewed by legal services. The conclusion reached is that there are not currently any substantive grounds which would lead to any realistic prospect of having the mast removed.

Visual amenity does not apply and the matter of health risk from masts has been subject to parliamentary investigation (still ongoing) and they were not able to conclude that there is a health risk.

Further, in any event the mast could simply be relocated close to its current site on Highways land and the above criteria would apply. It is unlikely that this could be prevented and so no further benefit would accrue to local residents.

Telecommunications providers also have compulsory purchase powers or can seek a Court Order to install or retain a mast.

The conclusion is that the probable cost implications and doubtful prospect of success rule out even a speculative application to the Court as detailed above.

Lawyer Consulted: Simon Court

Date: 15/01/2009

Equalities Implications:

- 5.3 Whilst local residents might argue that there are equalities implications from their point of view the Telecommunications Legislation governs the situation and seeks to protect the rights of telecommunications subscribers to be connected to a mobile phone network. Such is the importance that the Government gives to the Telecommunications legislation that it takes precedence over other areas of property law.

Sustainability Implications:

- 5.4 There are no sustainability implications to this report.

Crime & Disorder Implications:

- 5.5 There are no crime & disorder implications to this report.

Risk and Opportunity Management Implications:

- 5.6 The main risk and opportunity management aspect of this report relates to any decision to pursue litigation against T – Mobile and the potential costs inherent in such a course of action that would not represent value for money.

Corporate / Citywide Implications:

- 5.7 Although this is a local issue the council could be faced with similarly intractable problems should it seek the removal of other telecommunications equipment from land or premises if the telecommunications operator resists.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The options are as follows:

- Do nothing.
- Accept the status quo and seek to grant a lease to T- Mobile to retain the mast.

- Open a dialogue with T- Mobile with a view to getting the mast removed or relocated.
 - Re-open litigation with a view to seeking a Court Order for the removal of the mast and seek to pursue a case for removal on health or visual amenity grounds. This route does not represent value for money to the council as according to expert advice the prospect of success is doubtful.
- 6.2 Whilst it is acknowledged local opinion is strong it is clear from legal advice that there is little scope to force the removal of the mast (see paragraphs 3.5 and 3.6). It is vital to inform residents of the situation the council faces.
- 6.3 If it is accepted that nothing can be done to remove the mast, the council could seek to complete an agreement with T – Mobile for the retention of the mast in exchange for a rental. However, given T – Mobile’s continuing stance regarding the land’s status as “highway” the company will resist any attempt to weaken its position and to be obliged to pay rent for a site which is has occupied freely for 7 years. In addition, any proposal to grant a lease for the site would first need to be directed to the Leadership of the four Groups in accordance with the council’s Landlord’s Policy on Telecommunication Masts and protocol established in September 2004. On the basis of previous experience, the matter will be considered contentious and in accordance with the protocol a report to Cabinet will be needed which (as with all previous cases reported to Policy & Resources Committee) is highly likely to be rejected given the strength of public opinion.
- 6.4 Attempts are continuing to re – open dialogue with T - Mobile although there has been no response to the latest emails, nor to a letter from Councillors dating from 3rd December 2008. A further letter has been sent to T-Mobile on the 21st January 2009 from 4 Councillors and the 2 relevant officers requesting a meeting. To date no response has been received. Whilst such efforts can continue, in the final analysis any solution will be down to the degree that T – Mobile are prepared to co-operate. Now that they are sharing the mast with other operators there will be a desire to retain a mast in this vicinity to preserve the existing network links. The operators will seek an alternative site nearby and apart from the grass verge upon which the mast is located and which extends for about 500 m along the eastern frontage of the Brangwyn Estate no other obvious council sites are available. The rest of this verge would give rise to the same objections as the current mast. Other locations are likely to be just as close to houses on either side of the London Road. Alternatively the operator could seek to move the installation just a few metres onto the pavement which is part of the adopted highway. There is little scope for the council to object on Planning or Highway grounds respectively, providing the apparatus remains within the Permitted Development Guidelines and does not create a safety hazard by markedly narrowing the pavement or obstructing sight lines.
- 6.5 Extensive advice has already been taken in regard to a legal challenge to the mast and for the reasons set out in the report (in paragraphs 3.5 and 3.6), not least the very high possibility of failure and the level of cost which would be incurred, this is not considered to be feasible or value for money. On the remote chance that the council won the case the operator would still have scope to seek to relocate the mast on the adopted highway within close proximity of the present mast.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The options are very limited with the choice reduced to continuing efforts to re-open dialogue with T – Mobile to assess the scope to adjust the position of the mast to try to meet local concerns. At the same time officers and Councillors can make clear to local residents the reasons why the council is unable to force the relocation of the mast and the ability of the operator to seek another location within the immediate vicinity.
- 7.2 If efforts are not made to impress upon local residents the reality of the situation they are likely to continue to approach Councillors and officers in a situation where the council has little, if any, control and likelihood of success.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan of site showing location of mast.

Documents In Members' Rooms

1. None

Background Documents

1. None

