

TAYSIDE JOINT POLICE BOARD

12 November, 2001

Report by the Chief Constable No. PB 49/2001

SUBJECT: RADIO MAST – KINROSS POLICE STATION

Abstract: This report advises members of the decision by Perth and Kinross Council to serve an Enforcement Notice on the Board requiring it to remove the radio communications mast at Kinross Police Council. The report recommends the Board appeal against the Notice to protect its interests but at the same time continue efforts to seek a satisfactory solution which does not compromise operational efficiency.

1. RECOMMENDATION

1.1 It is recommended that the Board:-

- (a) note the contents of this report
- (b) agree to appeal against the Enforcement Notice, and;
- (c) delegate authority to a working group of officials to progress negotiations with interested parties with a view to seeking a satisfactory solution which does not compromise operational efficiency

2. BACKGROUND

- 2.1 In 1997 Tayside Police were approached by a communications company with a view to securing a site sharing agreement on our mast alongside Kinross Police Office. The company had been refused planning permission by Perth and Kinross Council to erect a new mast in the Kinross area and had been advised by the Council to seek a sharing agreement on an existing structure instead.
- 2.2 At that time the mast sited alongside Kinross Police Office was a 25 metre lattice structure serving not only Tayside Police, but also Tayside Fire Brigade, Tayside Contracts and the North of Scotland Water Authority. It had been in place since 1986 when it was erected to improve radio communications in the Kinross area.
- 2.3 The existing structure was not able to take the additional equipment required by the communications company and they agreed to replace it with a new mast of the same height albeit of a different design. The company were responsible for all matters relating to planning permission and building control with the local authority. This was carried out, and following confirmation that the replacement fell within the definition of permitted development and as such did not require planning permission, the new mast was erected.

- 2.4 When the new mast was erected it turned out to be of a considerably larger overall appearance than had originally been appreciated by the Force. Further it found disfavour with the local community.
- 2.5 Since then members of the Force have been involved in a series of public meetings and discussions with various parties including the Community Council, Local Councillors and MSP, the Local Authority and representatives of the company to seek a resolution. It is important to stress however that any solution must take into account the operational needs of the Force as well as the needs of the other interested parties.
- 2.6 Some suggestions have been put forward including an interim solution which would have met operational needs up to the point where the Force's radio requirements would be catered for by the BT Airwave Service which is due to be commissioned by 2005. Unfortunately this and other proposals have not found favour with the Local Authority.
- 2.7 In the interim period the Local Authority commissioned a review into the original granting of permitted development for the replacement mast.

3. CURRENT POSITION

- 3.1 Perth and Kinross Council have now received a report which considers the current mast should not have been classed as permitted development having regard to the terms of Class 67 of the Town and County Planning (General Permitted Development) (Scotland) Order 1992. The principal reason for the finding being the substantial degree of difference between the original mast and replacement mast.
- 3.2 This matter was discussed at the Perth and Kinross Council meeting of 24 October 2001 at which a motion was passed to issue an Enforcement Notice on the Board to remove the mast.
- 3.3 Since the date of the Council meeting the Board has been served with a Planning Contravention Notice. It is understood the communications company have also received a notice. This requires both parties to reply to questions about ownership of the ground and mast and any leasing agreements with third parties. The Board has 21 days to respond to this initial notice.
- 3.4 Following return of the Planning Contravention Notices the Board and the communications company will be served with Enforcement Notices requiring that they remove the mast and all communications equipment within a certain timescale. The Notice does not take effect for a period of 28 days which allows both parties to lodge an appeal. If an appeal is lodged the whole process is suspended pending either a full Public Enquiry or a determination facilitated by the Scottish Executive Inquiry Reporters Unit.

4. LEGAL IMPLICATIONS

- 4.1 The Force has been advised by the communications company that they have put this matter in the hands of their legal representatives who have indicated they will lodge an appeal against the Notice.
- 4.2 The Board has an existing contract with the company which is valid for 10 years and does not expire until 2008. There are potential legal implications if the Board were to break this contract.

5. FINANCIAL IMPLICATIONS

- 5.1 To comply with the terms of the forthcoming Enforcement Notice and remove the mast altogether would result in significant expense for the Board. Any breach of contract may also have financial implications.
- 5.2 The position regarding liability for any costs incurred directly by the Board or through third party claims also requires to be investigated, including the possibility of the recovery of costs from the Planning Authority.
- 5.3 It is not possible at this stage to estimate the total costs likely to be incurred either directly by the Board or through third party claims. The value of any claims is however likely to be significant and to these can be added the legal costs involved in recovering any costs incurred. A successful outcome to any action would of course mean the costs to the Board would be minimised.

6. CONSULTATION

- 6.1 The Treasurer and Clerk to the Board have been consulted in the preparation of this report.

7. CONCLUSION

- 7.1 Although the exact conditions of the Enforcement Notice are not yet known the ability of the Board to comply with it within a rigid timescale is a threat to the operational efficiency of the Force. A radio mast has been situated at Kinross Police Station since 1986 and it is a key link in the overall radio infrastructure across the south of Perth and Kinross. It not only provides radio coverage for police officers in that area but also for other parties including Tayside Fire Brigade, Tayside Contracts and NOSWA.
- 7.2 The Force and the communications company are still keen to work with representatives of Perth and Kinross Council to achieve a mutually satisfactory solution but this may be hampered by the legal process now undertaken.

- 7.3 The costs to the Board of complying with the Enforcement Notice and defending their position in terms of liability for any costs incurred by the communications company are likely to be significant.
- 7.4 It is recommended therefore that the Board lodge an appeal against the Enforcement Notice in order to protect the legal position of the Board and also to explore further the position of liability for any costs incurred.
- 7.5 It is further recommended that the Board delegate authority to a working group of officials to progress negotiations with interested parties with a view to seeking a satisfactory solution which does not compromise the operational efficiency of the Force.

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NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.