

**ANGUS COUNCIL**

**INFRASTRUCTURE SERVICES COMMITTEE 25 AUGUST 2009**

**SUBJECT: LEASE OF GROUND, WARDMILL ROAD, ARBROATH**

**REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES**

**Abstract: This report and attached [plan](#) seeks approval to lease ground at Wardmill Road, Arbroath in accordance with the terms of this report and to recover back-dated rent associated with an erroneously located telecommunications installation.**

**1 RECOMMENDATION**

1.1 The Committee is asked to:

- a) approve the lease of land at Wardmill Road, Arbroath, to T Mobile (UK) Ltd for use as a telecommunications base station; and
- b) authorise the Head of Economic Development and Environmental and Consumer Protection in consultation with the Head of Property and Head of Law and Administration to recover backdated rent of £15,490.

**2 INTRODUCTION**

- 2.1 T-Mobile (UK) Ltd received planning permission (application ref. 02/00684/TEL) to establish a telecommunications base station on Wardmill Road, Arbroath in August 2002.
- 2.2 The original intention was for the station to be located on the public footpath. However, it has since been discovered that the apparatus was installed erroneously on the adjacent grass verge – which is held on the Economic Development account.
- 2.3 When the mistake was identified outline terms for a lease of the site, as detailed below, were agreed with T-Mobile's agents, with a date of entry (and thus rent) to be backdated to 1 September 2003.

**3 POLICY POSITION**

- 3.1 As per Article 19 of the minute of the meeting of the Development Control Committee of 30 September 1999, the current policy of the Council is to forbid telecommunications installations on land or property it owns or controls (except in relation to installations which are for the use of the emergency services or the operational needs of Angus Council).
- 3.2 The lease herein recommended would therefore be contrary to this policy.
- 3.3 The Committee is requested to note, however, that the Resources and Central Services Committee of 16 June 2005 agreed to renew a lease to Orange PCS Ltd for part of the Keptie Water Tower in Arbroath for the siting of a commercial telecommunications mast (the original lease having been agreed by Angus District Council in 1995). Article 9 of the minute of the meeting of the Resources and Central Services Committee of 16 June 2005 refers.
- 3.4 In the event that the Committee does not approve the proposed lease, subject to the normal consultations with the Roads Division, T-Mobile, in its capacity as a statutory undertaker,

would be entitled to move the installation eastwards onto the adopted public footpath under the provisions of Part 20, Class 67(2)(c) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 without a further planning approval. In those circumstances the Council would receive no remuneration in future, though may have a claim against the occupier for the unauthorised occupation. In any case, T-Mobile, as with any code system operator, has a legal obligation to maintain a service once it is established. Should the Committee therefore decide that the installation cannot remain in its present location, T-Mobile would have a permitted development right to erect a temporary mast for six months while another location (be it on the public footpath or elsewhere) is identified. Again, in these circumstances the Council would receive no remuneration.

- 3.5 On the other hand, in agreeing to this lease and allowing T-Mobile to leave the apparatus in situ, the Council can expect to receive at least £57,350 in rental income over the entire course of the 20 year lease (ie, five years from 1/9/03 to 31/8/08 @ £2,500 per annum; 15 years @ *at least* £2,990 per annum).
- 3.6 In light of the fact that requiring T-Mobile to remove the installation would result in considerable upheaval, and given the potential financial gain for the Council by allowing it to remain in situ, it is deemed that, on this occasion, the most practical way forward is to enter into a lease with T-Mobile, as per the undernoted terms.

#### 4 OUTLINE TERMS

##### 4.1

<b>Property</b>	Ground at Wardmill Road, Arbroath (site plan appended)
<b>Tenant</b>	T-Mobile (UK) Ltd & H3G Ltd
<b>Date of entry</b>	1 September 2003
<b>Length of lease</b>	20 years
<b>Rent reviews</b>	Every five years to the higher of retail price index or open market value
<b>Rent from 1 September 2003 to 31 August 2008 (ie, to first notional rent review)</b>	£2,500 per annum
<b>Rent from 1 September 2008 to 31 August 2013 (ie, next rent review)</b>	£2,990 per annum
<b>Fees</b>	The tenant will be responsible for meeting the Council's reasonable legal fees associated with preparing the lease.

#### 5 FINANCIAL IMPLICATIONS

- 5.1 All rental income, including the back-dated rent of £15,490 (ie, five years @ £2,500; one year @ reviewed rent of £2,990), will accrue to the Economic Development revenue budget.

**6 HUMAN RIGHTS IMPLICATIONS**

6.1 There are no Human Rights implications arising from this report.

**7 EQUALITIES IMPLICATIONS**

7.1 The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An [equalities impact assessment](#) is not required.

**8 SINGLE OUTCOME AGREEMENT**

8.1 This report contributes to the following local outcome contained within the Single Outcome Agreement for Angus:

- Resources are used effectively.

**9 CONSULTATION**

9.1 The Chief Executive, Director of Corporate Services, Head of Law & Administration, Head of Property and Head of Finance have been consulted in the preparation of this report.

**10 CONCLUSION**

10.1 Should the committee approve the recommendations of this report a significant rental stream will be achieved.

ERIC S LOWSON  
DIRECTOR OF INFRASTRUCTURE SERVICES

**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.

ECDEV/DV/DB/FM  
25 August 2009