

## **PROGRESS with Questions between campaigners and Graham Stuart MP.**

Questions/issues were sent to Graham in advance of the trip to Parliament on the 8<sup>th</sup> November in our briefing document “Unintended Consequences of Permitted Development”. We also presented our Poles Booklet and a copy of the list of grievances against MS3.

The first written responses in blue were emailed to campaigners as they travelled down by train. Whilst initially disappointed by Graham's written answers, the meeting in Parliament was productive. On 9<sup>th</sup> November we emailed the supplementary questions.

### **Re: Telegraph Poles in Hedon**

Thank you for your pack of questions and statements in advance of our meeting. I'm very grateful for the work that went into this. I have copied it to the Department for Science, Innovation and Technology and to Building Digital UK for their comments.

It's clear that you and the campaigners have done a stellar job in bringing this important issue to prominence and I'm grateful for you for that. One thing is clear: these poles are ugly and many are unnecessary. I have done a considerable amount of work with all sides to try to find a resolution acceptable to all.

As you no doubt know from your own research: the legislation was designed to connect rural communities to fast broadband, enabling them to prosper. As you also know, we live in an area with a monopolistic provider: KCOM. KCOM's relatively small size means it is not regulated in the same way as Openreach, which is compelled to provide its Physical Infrastructure Access (PIA) service to all competitors.

My responses to your questions are as follows. For those which require further input, I will be sure to get responses to you in as timely a fashion as possible.

**Q1. As a matter of urgency, we think the Government should produce guidelines for LPAs in how to manage network operators** when they roll in to an area and clarify the powers still available to them under permitted development. This includes the right to issue Stop Work Notices and rescind permits in cases where regulations are clearly being breached.

**Graham written responses in blue:** In April 2023 the Minister for Digital Infrastructure, Julia Lopez MP, wrote to LPAs to advise them that they should

refer operators to Ofcom if they are in breach of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 ("The Code"). I'm pleased that East Riding recently issued a Stop Work Notice based on concerns about MS3's contractors' working practices; and I hope to see ERYC make further use of its powers to protect residents going forward.

**Holding network operations to account, setting conditions for operators and reporting evidence.** Whilst realising that Julia Lopez sent a letter to Local Planning Authorities on 13th April 2023, we do think that an updated briefing note, as a matter of urgency, should be circulated from the Minister of State that clarifies and confirms the powers available to LPAs to hold network operators to account and to report evidence of non-compliance by operators to Ofcom. The whole premise of "poor operator performance" undermining the broadband rollout is something we need to avoid, but poor operator performance is precisely our experience in Hedon. Julia Lopez's remarks about "sharing apparatus", "to use underground rather than overground lines" and "minimising the visual impact" are all welcome in her letter. LPAs should have easier access to sources of information about how to manage operators engaging in permitted development activities. Just quoting the legislation is not specific enough, the briefing note should be explicit in telling LPAs exactly what they CAN DO and SHOULD DO when managing operators.

### **Awaiting response:**

**Q2. In the KCOM area,** where the operators have historically chosen not to work with KCOM as the main provider and share infrastructure, and have chosen not to raise complaints about KCOM's monopoly with Ofcom, then the option to do so should be the focus of a compulsory external facilitated effort. We would assume this is a role for Ofcom?

I agree that MS3 should have raised this matter with Ofcom earlier, and I have encouraged them to do so now. The problem is the fact that an Ofcom investigation into KCOM could take a number of years. I have raised the matter with Ofcom myself and will continue to press for a fair broadband market in Hull and the East Riding.

I firmly believe that all infrastructure should be shared – we went through enough pain when KCOM tore up our roads to install their ducts.

To get companies to work together, we should have them do so on a voluntary basis. I believe that we are close to achieving this with MS3 and Connexin and I hope that in future, KCOM can be compelled to open up their own infrastructure on a basis that is comparable to Openreach everywhere else in the country.

**KCOM sharing agreement.** Needs resolution. We welcome Graham's suggestion of fixing fees for access to KCOM's infrastructure (this arose during the actual meeting). Whilst we believe MS3 Networks doesn't want to share the network it is building with others, we note that encouraging infrastructure sharing is one of the desirable outcomes of the broadband rollout, especially in areas where gigabit-capable infrastructure already exists.

**Awaiting response:**

**Q3. Will the provisions of the PSTI Act lead to reduced instances of pole proliferation?** And if so, what can be done in areas where operators are already competing over different poles that have been installed?

I very much hope so and I am particularly pleased to see the provision of an Alternative Dispute Resolution Scheme ("ADRS") in the act.

Given that this will not take effect until April 2024, I fear that MS3 will be able to cover Hull and its environs with poles in advance of that date – and nothing can be done to prevent this aside from good will.

That's why I consider it to be of the utmost importance to work with MS3 to encourage them to make every effort to use shared infrastructure.

**Pole Proliferation** because of competing alternative networks i.e. the possibility that poles from four different altnets could be placed down one street. We think this is an unintended consequence. And unless we receive word from the Government to the contrary, we need to ask what measures can be taken now (sooner or later) to reduce pole proliferation.

**Awaiting response:**

**Q4. The lack of community consultation** is clearly not satisfactory. We would suggest as a minimum, that before 28 day notices are served, the onus should be put on the operator to visit a target area at least a month before and organise a public meeting with a question and answer element to assess any local concerns. Whilst the onus should be on the operator to resource and organise consultation meetings, they might choose to partner with a local county, district, town or parish council to help organise the meeting. Where the mood is one of overwhelming opposition to telegraph poles, then the operator may seek an option to enter into the traditional

planning process.

I wholeheartedly agree that this is something that communities like in Hedon feel like they have had no say in this. That's why I've been encouraging greater engagement in the future. I also believe that the Council should take a stronger role in advising MS3 about locations of poles, as it is entitled to do under The Code.

I have been encouraging MS3 to improve their community outreach in future, and will be pressing it on this whenever it goes into new markets.

**Community engagement.** Would time spent by operators engaging communities have prevented the forcing through of pole deployment in Hedon and Preston? We believe so. The benefits of consumer connectivity (which already exists in Hedon and Preston) need to be considered alongside the impacts of installations on communities.

**Awaiting response:**

**Q5. In addition to, or as part of, the required 28-day notice,** the operator should be required to place a site notice to inform nearby residents of the intention to install a pole, and its proposed location with a map, and clearly state on the site notice, the avenues open to object.

I will put this to MS3 and other network operators.

**28-day notices with maps of pole locations containing 'how to object' information.** A simple measure but would give local authority and residents precise locations of the intended poles and avoid situations of 'stupid' deployment (refer to our Poles Booklet), plus would help to highlight those proposed in conservation areas, on narrow paths, etc.

**Awaiting response:**

**Q6. Code of Practice** relating to Electronic Communications Code and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and Part 16 of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) should be mandatory and not a voluntary option.

I believe that there should be a role for councils in this. It's important to note that, due to KCOM's unique position, this would be unlikely to be a priority for Government.

That's why it's so important to get engagement with ERYC on this issue, and I have written to them to remind them of this duty.

**Mandatory Code of Practice.** How long will it take to change the Code of Practice from voluntary to mandatory? Can LPAs opt to set a condition that operators follow the code?

**Awaiting response:**

Q7. We notice the provisions in the PSTI Act regarding making operators subject to joining an **ADRS (Alternative Dispute Resolution Scheme)**. We see this as a real step forward opening up opportunities to take disputes outside of the operator's organisation. How does the scheme operate? Is it the same as for broadband providers?

[I will write to the Department for Science, Innovation and Technology to get clarification on this matter.](#)

Note also from Q3 above: [Given that this will not take effect until April 2024, I fear that MS3 will be able to cover Hull and its environs with poles in advance of that date – and nothing can be done to prevent this aside from good will.](#)

[That's why I consider it to be of the utmost importance to work with MS3 to encourage them to make every effort to use shared infrastructure.](#)

**ADRS** - The right to take complaints outside of the operator's organisation via Ombudsman style organisations would seem to be a basic citizen right. Why is this not being implemented until April 2024?

**Awaiting response:**

Q8. **We suggest that research nationally takes place** to discover the experiences of other resident communities that have had permitted development 'done' to them, but also to discover those where the experience has been positive, and learn the lessons from these case studies.

[I will write to Building Digital UK to request this.](#)

**Other areas - research into their experiences.** Does the Government know what is happening on the ground? Campaigners are gathering evidence. Is the Government commissioning someone to gather case studies and examples of bad and better practices? Also promoting models of good practice and perhaps encouraging operators to sign up for Quality Assurance schemes. This is definitely on the Later list but would be a significant piece of work that should be started Now.

**Awaiting response:**

Q9. **Our Petition.** Exclude telegraph poles from permitted development legislation

No response from Graham about this.

Q9. Finally. **The petition** "Exclude telegraph poles from permitted development...." at [tinyurl.com/647970](https://www.tinyurl.com/647970) proposes an overall solution to these issues.

**Awaiting response:**