

Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	15 July 2021
Station Name:	Capital
Licensed area and licence number:	Banbury and surrounding area AL102639
Licensee:	Banbury Broadcasting Company
Contact name:	Steve Orchard

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service:
	Proposed new Character of Service:
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements: Studio location: Locally-made programming must be produced within the approved area of Central England. Programme sharing: All programmes may be shared with the South East Staffs licence (AL100805), the Coventry licence (AL000330), the Stratford-upon-Avon licence (AL100974), the Warwick licence (AL000309, and the Rugby licence (AL000031) subject to satisfying the character of service requirements above.
	Proposed new arrangements: Studio location: Locally-made programming must be produced within the approved area of Central England. All programmes may be shared between the Birmingham licence (AL046), the Nottingham & Derby licence (AL107), and the Leicester licence (AL059), the South East Staffs licence (AL100805), the Warwick licence (AL000309), the Stratford-upon-Avon licence (AL100974), the Coventry licence (AL102639), and the Rugby licence (AL000031) subject to satisfying the character of service requirements above.
Locally-made hours and/or local news bulletins <i>Complete this section if you are requesting a change to this part of your Format</i>	Current obligations:
	Proposed new obligations:

The holder of an analogue local commercial radio licence may apply to Ofcom to have the station's Format amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for Format changes.

Under section 106(1A) of the Broadcasting Act 1990 (as amended), Ofcom may consent to a change of a Format only if it is satisfied that *at least* one of the following five statutory criteria is satisfied:

- (a) *that the departure would not substantially alter the character of the service;*
- (b) *that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;*
- (c) *that the departure would be conducive to the maintenance or promotion of fair and effective competition*
- (d) *that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*
- (e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

Only one of these five criteria need be satisfied in order for Ofcom to consent to the proposed change. However, even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found on our website.

Applicants should note that, under section 106ZA of the same Act (as amended), a proposed change that *does not* satisfy the first or last of these criteria (i.e. a change that Ofcom considers *would* or *could* substantially alter the character of the service, or does not relate to the origin of locally-made programmes) must, if it is to be considered further under any of the other three criteria, be consulted upon.

In the event that Ofcom receives a request for Format change and considers that criterion (a) or (e) is *not* satisfied, it will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in light of the necessity to make it public).

Please set out the statutory criterion, or criteria, set out in section 106(1A) of the Broadcasting Act 1990 that you believe is/are satisfied in relation to this Format change request, and the reasons for this.

(a) *that the departure would not substantially alter the character of the service;*

and

(e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom's published Format change request policy¹ and also Ofcom's Localness guidance, which includes our co-location and programme sharing policy.²

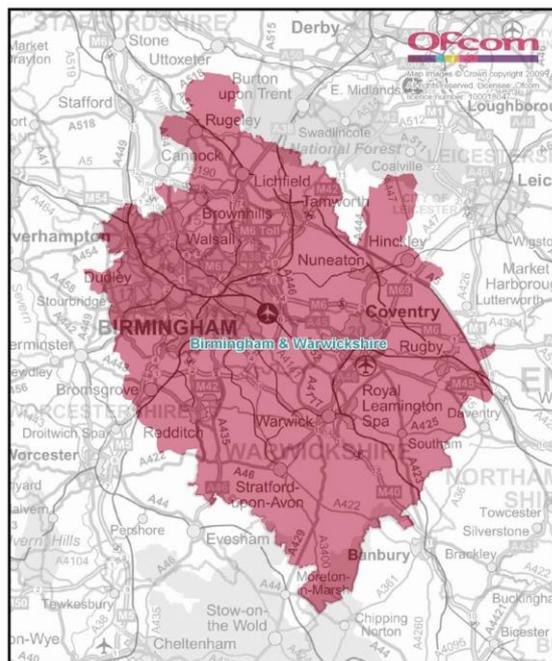
The changes being requested to the arrangements for programme sharing will not substantially alter the character of the service. These changes are consistent with Ofcom's latest published localness guidelines, which require a minimum of 3 hours per weekday of locally-produced programming for stations providing enhanced local news, and with Ofcom's general policy to permit a station to share its locally-made programmes with any other station in its approved area.

Locally-made programming will continue to be produced within the Central approved area, as per the existing long-standing arrangements. The proposed changes would simply result in locally made content being produced in Birmingham rather than Honiley.

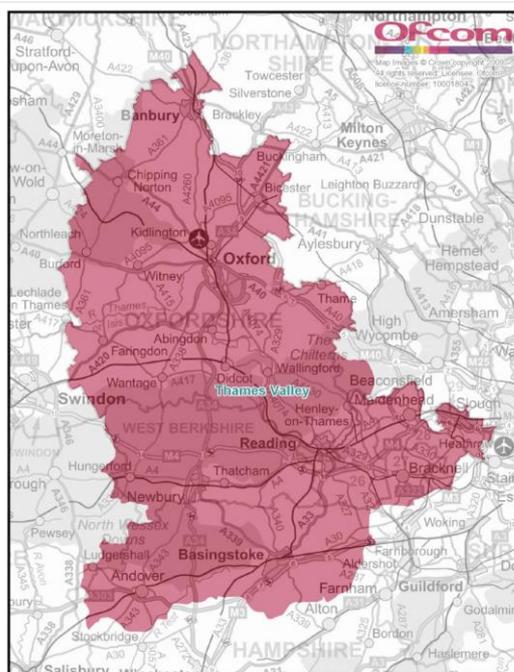
Banbury sits just within the boundary of the Ofcom South of England area, and is on the periphery of the Ofcom Central Area. The station was permitted to continue broadcasting from Honiley (Central Area) even when Ofcom updated its approved areas. There is therefore an established precedent for the inclusion of the Banbury licence within the Central approved area. The maps below show the previous approved areas from 2009, prior to the creation of the new larger areas. Banbury is right on the border between Thames Valley (South of England) and Birmingham and Warwickshire (Central).

¹ Available at https://www.ofcom.org.uk/data/assets/pdf_file/0024/87405/The-regulation-of-Format-changes.pdf

² Available at <http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/>



Birmingham & Warwickshire - proposed defined area



Thames Valley - proposed defined area

Since 2005, the licence has been networked with the Touch FM sister stations in Stratford-upon-Avon and Coventry (both located in the Central area) and most recently since 2019, Touch FM has been operating under a brand licence with Capital, programme sharing out of Honiley with a cluster of five other stations all of which are within the Central approved area.

Geographically Banbury is closer to the major Midlands towns in the Ofcom approved Central area than those of the South of England approved area. Stratford, Warwick, Leamington, Rugby and Coventry are all closer to Banbury than Oxford is to Banbury. Regular commuter connections link Banbury to both Birmingham and Coventry but not Honiley.

Distance in miles from Banbury town centre:

Ofcom Central Area		Ofcom South of England Area	
Stratford	18	Oxford	29
Warwick	18	Reading	45
Leamington Spa	18	Basingstoke	56
Rugby	21	Fareham	84
Coventry	25	Tunbridge Wells	123
Birmingham	37	Brighton	100
Leicester	41	Folkestone	126
Nottingham	62	Ramsgate	128

We are seeking permission to network programming with another existing cluster of Capital stations within the Central area, whose local programming comes from Birmingham, only 14 miles from Honiley where local programming for the licence is currently produced.

The alternative option for the Banbury licence would be to programme share with Capital South (broadcast from Brighton), as this sits in the same Ofcom South of England Area as Banbury. The geographic distance and social differences between Banbury (in the very north of the approved area, and with an affinity to the Midlands), and the South Coast, however, would make very little sense from a programming perspective.

Ofcom notes on the request

Statutory requirements

This request relates to the FM licence for Banbury held by the Banbury Broadcasting Company Limited ('Banbury Broadcasting'), currently broadcasting as 'Capital'.

Every FM local commercial radio service is required to broadcast a certain amount of locally-made programming, which is specified in its Format. Locally-made programmes are those made within a station's licensed area or, where Ofcom has approved a wider area relating to that station, that 'approved area.'

Banbury Broadcasting has requested the following changes to the Format of the Banbury licence:

- To share all local programming hours with the local commercial radio licences for Birmingham, Leicester and Nottingham & Derby, in addition to the five local licences (Coventry, Rugby, South East Staffordshire, Stratford and Warwick) it is already permitted to share local programming hours with.

These proposed changes would change the character of service as set out in the Format of the licence, and accordingly can be agreed only if Ofcom is satisfied in regard to one of the statutory criteria set out in section 106(1A) of the Broadcasting Act 1990 (as set out in the request, above).

If we are satisfied in relation to one of the statutory criteria, we are then able to decide whether or not to approve the request, taking account of our published policy criteria.

Assessment

In considering the proposed change to share all locally-made programming with the Birmingham, Leicester and Nottingham & Derby licences (in addition to the programme sharing arrangements the Banbury licence already has in place), we were satisfied in relation to section 106(1A)(a) of the Broadcasting Act 1990 – that the change would not substantially alter the character of service.

As the Banbury licence already includes permission for the service to share its locally-made programming with five other services located in the Central approved area, we did not consider that adding a further three such services would represent a substantial change to the character of the service. The fact that two of the new services with which it is proposed the Banbury service will share its locally-made programming (Birmingham and Leicester) are geographically closer to Banbury than the area served by the South East Staffordshire service with which it can already share, and which itself is adjacent to the area covered by the third new service, Nottingham/Derby, were relevant factors in us reaching this view. Moreover, we felt that the proposed additional programme sharing will not affect the core character of the Banbury licence as a rhythmic-based, music-led service for 15-29 year-olds.

As a matter of general policy, Ofcom was content to approve this request because we are satisfied that the licensee will continue to meet its licence obligations to deliver the 'Character of Service' specified in the licence, and to provide local material relevant to the listeners in its licence area.

Decision

Ofcom decided to approve this Format change request from the Banbury Broadcasting Company Limited because we were satisfied in relation to one of the relevant statutory criteria, and for the policy reason outlined above.

August 2021