

Appellant reference: MBNL/96733/APPEAL  
LPA application reference: 2019/1219

**Section 78 of the Town and Country Planning Act 1990 (as amended)**

**Appeal Statement**

**On behalf of MBNL (EE Ltd and Hutchison 3G UK Ltd)**

A planning appeal by written representation against the decision of the Elmbridge Borough Council to refuse Prior Approval for the installation of a 15m high monopole incorporating shrouded antenna and supporting 2no. external dishes and development ancillary thereto on land at Bridge Road (Southwest of junction with Arnison Road), East Molesey, KT8 9HY.

Prepared By: Waldon Telecom Ltd of Phoenix House, Pyrford Road, West Byfleet,  
Surrey, KT14 6RA

## Table of Contents

<b>Section</b>	<b>Title</b>
1	Introduction
2	Procedural Matters
3	The Appeal Site And Proposal
3.1	The Need For development
4	Assessment of the Reasoning and Planning Policy Basis for Refusal
5	Summary of Key Issues
<b>Appendices</b>	
1	Relevant appeal decisions: <ul style="list-style-type: none"> <li>• APP/G5180/W/19/3231491 – EE and H3G vs London Borough of Bromley</li> <li>• APP/L1765/W/18/31975 - CTIL and Vodafone Vs Winchester City Council</li> <li>• APP/M5450/W/17/3180345 - CTIL &amp; Telefónica Vs the London Borough of Harrow</li> <li>• APP/D5120/W/15/3033745 – Vodafone Vs the London Borough of Bexley</li> <li>• APP/R5510/W/16/3143922 - CTIL &amp; Telefónica Vs the London Borough of Hillingdon</li> <li>• APP/D1780/A/04/1162049 - H3G Vs Southampton City Council</li> </ul>
2	Ofcom Communications Market Report 2018
3	Councils & Connectivity: How local government can help to build mobile Britain
4	Fixing the foundations: Creating a more prosperous nation (July 2015).

## Section 1: Introduction

1. This statement has been prepared by Waldon Telecom Limited (hereinafter referred to as “the Agent”), acting for MBNL, a network sharing venture owned equally by mobile operators EE Ltd and Hutchison 3G UK. MBNL, EE Ltd and Hutchison 3G UK will hereinafter be referred to collectively as “the Appellants”. The mobile operators will be referred to individually, where necessitated, as “EE” and as “H3G”. The appeal is brought by the Appellants against the refusal of Prior Approval by Elmbridge Borough Council (hereinafter referred to as “the Local Authority”) for the proposed installation of a ground based mobile telecommunications radio base station on land at Bridge Road (Southwest of junction with Arnison Road), East Molesey, KT8 9HY (“the Appeal site”).
2. On 30th of April 2019, the Appellants, via an agent, submitted an application to the Local Authority for Prior Approval consent to a 15m high monopole incorporating shrouded antenna and supporting 2no. external dishes and development ancillary thereto. The application detailed that the proposed monopole would be accompanied by equipment housing permitted by Class A of Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“The GPDO”).
3. Written notice that the proposal required Prior Approval, as required by paragraph A.3(8) of the GPDO was not provided to the Appellants or to the Agent, however, by notice dated the 25th of June 2019 the Local Authority confirmed that Prior Approval had been refused for the following reasons:-

*“The proposed 15 metre high monopole and associated equipment cabinets by reason of their siting and appearance, would result in an unacceptably visually intrusive and incongruous form of development, out of keeping with the streetscene and the character of the area and further contributing to the existing street clutter within the vicinity. The proposal would also be harmful to views into and out of both the East Molesey Bridge Road and East Molesey Kent Town Conservation Areas. This reason overrides any weight given in favour towards such a proposal afforded by the revised National Planning Policy Framework (NPPF), as it would unacceptably impinge on the general level of visual amenity in the area, contrary to Policy CS17 of the Elmbridge Core Strategy 2011, Policies DM12 and DM16 of the Elmbridge Development Management Plan (2015) and the revised NPPF”.*
4. The Appellants submit that the Local Authority’s decision to refuse Prior Approval based on the above reasoning and alleged policy conflict is not defensible. The Prior Approval application provided a thorough justification for the appeal proposal, assed the proposal against planning policy and demonstrated that the impact of the development would be both acceptable and outweighed by the public benefits that would be brought. On this basis, it is concluded that the decision to refuse Prior Approval is not defensible and should not be upheld.

## Section 2: Procedural Matters

5. As noted in the preceding section, the Local Authority failed to determine the application fully in accordance with the requirements of Part A.3.(8) of the GPDO in that no written notice of the determination that Prior Approval was required was ever provided to the Appellant or their agent.
6. Paragraph A.3(8)(c) stipulates that development can be commenced following:

*“the expiry of a period of 56 days beginning with the date on which the local authority received the application in accordance with sub-paragraph (5) without the local planning authority notifying the applicant, in writing, of their determination as to whether such Prior Approval is required”.*
7. Whilst written notice of the refusal of Prior Approval was provided to the Appellant, via the Agent, within the statutory determination period, despite the Local Authority registering the application as valid the day after receipt (day 2 of that 56 day period), the two-step process set out within Part 16 was not followed by the Local Authority. Thus, the Appellants contend there are grounds to argue that the refusal is not valid.
8. The remaining case put forward within this statement is made without prejudice to the above.
9. The Local Authority included within its assessment of impact and reasons for refusal elements that were not included within the Prior Approval application, by reason that they are a form of permitted development. This fact that was made explicitly clear with the application, but was disregarded by the Local Authority. Refusal of the appeal proposal based in any part on the impact of elements for which Prior Approval was not sought is indefensible.

## Section 3: The Appeal Site And Proposal

10. The appeal proposal comprises the installation of a 15m high street furniture style monopole with a shrouded antenna section and supporting 2no. small externally located dishes on the grass verge at the rear of the pavement on Bridge Road in East Molesey, approximately 22.5 metres southwest of the road junction with Arnison Road at the nearest point (15m from the edge of the verge). The monopole would be accompanied by 4no. equipment cabinets, for which Prior Approval was not sought as they represent Class A permitted development under Part 16 of schedule 2 of the GPDO. Details were provided with the application for transparency.
11. The proposal is detailed on the following plans and photomontages, submitted to the Local Authority within the Prior Approval application:-
  - 002 Rev A – Site Location Plan;
  - 100 Rev A - Existing Site Plan;
  - 200 Rev A – Proposed Site Plan;
  - 150 Rev A - Existing Site Elevation;
  - 250 Rev A – Proposed Site Elevations;
  - 96733-PM-01 Rev A - Photomontage Sheet 1 Of 3;
  - 96733-PM-02 Rev A - Photomontage Sheet 2 Of 3; &
  - 96733-PM-03 Rev A - Photomontage Sheet 3 Of 3.
12. The case in favour of the appeal proposal was made within the “Supplementary Information” document submitted to the Local Authority. This provided background information about the Appellants’ networks and their requirements for the proposed development at the appeal site. Additional justification for the proposal was provided in the form of network coverage plots.

13. This statement will provide an assessment of the planning policy stated as the justification for the refusal of Prior Approval. The Appellants contend that sufficient detail was provided to the Local Authority within the application to demonstrate policy compliance and that a review of the submission provides a full justification for the appeal proposal. It is further submitted that the Local Authority failed to give due weight to the salient issues of this case and have exaggerated the level of potential impact from the development of a single, slim-line monopole structure with shrouded antenna section set against a backdrop of trees and in an undesignated area.

### **3.1 Need for Development**

14. The application submitted to the Local Authority detailed that the development is required to ensure continuity of coverage on the EE and H3G ('Three') mobile networks following the impending loss of existing base station 98405 at Wardray Premise on Summer Road from the network for reasons beyond their control. The operators have been advised of plans by the landowner to redevelop the land and as such must vacate the site and secure a replacement location for a base station in order in order to prevent any disruption to or loss of network services within this cell area.
15. The network information provided with the application provided evidence, by way of visual representation produced by network specialists, of the significant to total losses of indoor services across all the technologies (3G and 4G for Three and 2G, 3G and 4G for EE) in the local area and significant degradation of outdoor services that would occur if site 98405 were to be removed without a replacement site being integrated into the network. The explanatory text provided within the Supplementary Information confirmed that this would impact voice calls, messaging services and data services in the area. Those losses are, however, preventable through the introduction of the appeal proposal.
16. Whilst the Local Authority has not questioned the need for the development and is guided not to do so by the National Planning Policy Framework, the need is not immaterial. In October 2019 the decision of the London Borough of Bromley to refuse Prior Approval for the installation of a 15m high shared EE and H3G monopole and associated equipment housing, required to prevent coverage outages following the loss of another site elsewhere in the network, was overturned by the Planning Inspectorate (appeal referenced APP/G5180/W/19/3231491, attached at Appendix 1). Within the decision the Inspector noted that:

*“Although the Framework states that need for a mast should not be questioned, it can be a material consideration as in this case...The Framework is of over-riding importance identifying that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being.”*
17. As was discussed within the Prior Approval application, in sections 4 and 5 of the Supplementary Information document, the importance of digital connectivity in general has been recognised numerous times by Planning Inspectorate and that the basis for doing so is found within the National Planning Policy Framework (“NPPF”). Copies of the appeal decisions referenced in support of this are also attached at Appendix 1.
18. The Appellants submit that the Local Authority did not give sufficient weight to the need for the appeal proposal when balancing the limited impact of the development on the area against the public benefits brought, which is inconsistent with aims of the NPPF.

#### **Section 4: Assessment of the Reasoning and Planning Policy Basis for Refusal**

19. The Local Authority contends that the combined siting and appearance of the monopole and the equipment cabinets would result in an unacceptably visually intrusive and incongruous form of development that would contribute towards clutter in the street scene and be harmful to views into the East Molesey Bridge Conservation Area and East Molesey Kent Town Conservation Area.
20. As has already been highlighted, Prior Approval was not sought by the Appellants for equipment housing, which constitutes permitted development. The inclusion of these elements by the Local Authority in the reasons for refusal is not justified.
21. It is respectfully requested that this section of the Appellants statement be read in conjunction with the Supplementary Information document provided to the Local Authority at application submission stage. That statement and the associated photomontages of the proposal provide a detailed justification for the siting and design put forward, assessment of the appeal site, the wider area and the potential impact of the development now subject of this appeal.
22. The information and assessment provided to the Local Authority were sufficiently detailed and reasoned so as to demonstrate that the proposal would form an acceptable addition to the street scene. It is clear, however, that the Local Authority has failed to differentiate between visibility and harm and, in doing so, formed an exaggerated view of the impact of development.
23. Section 70 of the Town and Country Planning Act 1990 requires planning applications and appeals to be determined having regard to the provisions of the Development Plan and other material considerations, and section 38 of the Planning and Compulsory Purchase Act 2004 requires applications and appeals to be determined in accordance with the Development Plan unless material considerations indicate otherwise. Within Elmbridge, the Local Development Framework includes the Core Strategy 2011, the Elmbridge Development Management Plan (2015) and Supplementary Planning documents.
24. With regards to planning policy, the Local Authority justifies the refusal of Prior Approval through assertion of conflict between the Appeal proposal and Policy CS17 of the Core Strategy, Policies DM12 and DM16 of the Development Management Plan and the NPPF.

#### Core Strategy 2011

25. Policy CS17 of the Elmbridge Core Strategy 2011 is entitled "*Local Character, Density and Design*". The policy is clearly geared towards larger scale development than that proposed within application 2019/1219 and reference to both the policy wording and the supportive text indicates that the intended purpose is for the control of residential schemes. Some aspects of the policy simply cannot be applied at all to the assessment of the need for Prior Approval for a single mobile telecommunications monopole, such as those relating to housing density targets and the "*Inclusive Development*" section which is explicit in its reference to proposals for the creation of new buildings.
26. Where the policy might be applied the Appellants are satisfied that its general precepts are met by the appeal proposal. Reliable, quality communications and connectivity contributes, for example, to the sustainability agenda and can minimise the carbon footprint of an individual or an area. Homeworking opportunities arise, as do those for home based training and education. Dependence on physical shop and other establishments are reduced, and along with them the need to travel. It is widely accepted that social inclusion is benefitted by good communications services. They can also contribute to safety and security, both actual and perceived. It is submitted that the Local Authority has had little or no regard to the contributions the appeal

proposal would bring to the community during the assessment of the application, within which it was evidenced that they could be brought without any unacceptable impact on the local environment.

#### Development Management Plan (2015)

27. Policy DM12 of the Elmbridge Development Management Plan (2015) deals with heritage and seeks the protection of the Boroughs Historic Environment. In referencing policy DM12 within the decision notice, the Local Authority specifically refers to the impact of development on the East Molesey Bridge Road and East Molesey Kent Town Conservation Areas, thus it is logical that Part B of the policy be reviewed and addressed. Part B contains 4no. criteria with which development proposals are expected to comply. The first of these (i), requires that proposals have a sensitive and appropriate response to context and attention to detail. The criteria references "*alterations and extensions to buildings, their re-use and the incorporation of energy efficiency and renewable energy technologies*" and is clearly geared towards larger scale development than that proposed within Prior Approval application 2019/1219. In so far as it can be applied to the subject proposal, the Appellant is satisfied that that the criteria is met. The proposed slimline, shrouded monopole pole structure, a feature now commonplace in urban and suburban environments, would be a wholly appropriate addition to the street scene. Impact has been mitigated as far as practicable through the use of appropriate design and colour and through the use of existing adjacent natural features to provide screening.
28. Criteria ii is, again, clearly geared towards development that would create new buildings or spaces and not to the deployment of small scale telecommunications infrastructure. Nonetheless, compliance is achieved. Attention is respectfully directed to section 5 of the Supplementary Information document submitted to the Local Authority, where the character and appearance of the two nearby Conservation Areas is discussed and visual impact addressed. The case was convincingly made that the special attributes of the two nearby Conservation Areas would not be impacted upon to any unacceptable degree. This was evidenced by the accompanying photomontages.
29. The third criteria of DM12, iii., relates to the retention of open spaces, trees and landscape features. None would be lost or impacted by the appeal proposal, thus there is no conflict.
30. The final criteria of the policy relates to the demolition of buildings and/or structures within Conservation Areas. No demolition is proposed by the Appellants. The policy cannot be applied, thus there is no argument that conflict exists.
31. Policy DM16 of the Elmbridge Development Management Plan (2015) deals specifically with telecommunications development. Compliance with this policy was discussed and demonstrated within the Prior Approval submission made to the Local Authority.
32. The Appellants confirm that, as required by the policy, the proposal has been sited to achieve operational efficiency. Details of the technical requirement, site selection process and technical constraints in seeking a replacement for site 98405 were provided within the application. Details of the numerous potential alternative siting opportunities were also provided to the Local Authority, along with a justification for their discount from the search process and benefits of the appeal site in comparison. Sections three and five of the submitted Supplementary Information document provided a justification for the selected design and the measures taken to mitigate visual impact, in terms of the structure choice, use of GRP shrouding, appropriate placement and colouring. The extent of the search area, as dictated by technical constraints, was illustrated to the Local Authority and it was confirmed that, within this area, the appeal site presented the best opportunity to avoid impact or harm to heritage assets within the Borough. The case was also made that any impact that might occur would be outweighed by the public benefits brought.

33. The application proposal complies wholly with the requirements of policy DM16. Furthermore, the Local Authority was presented with sufficient detailed information within the Prior Approval application for this to be apparent had sufficient assessment of those details and the matters material to the case been undertaken.

#### NPPF

34. The Local Authority asserts that the proposal conflicts with the NPPF. Reference is not made within the decision notice to any specific paragraph or section within this 73 page policy document, suggestive in fact of conflict with the framework in its entirety, but without qualification or expansion, which is not reasonable. The fact that the proposal is supportive of the aims expressed within and supported by the NPPF was addressed at length within the Prior approval application. As set out in that submission, there is no question that the appeal proposal is anything other than wholly compliant with Chapter 10 of the NPPF, "*Supporting high quality communications*" and the Appellant notes that the Local Authority has not put forward any argument to the contrary.
35. Despite the lack of clarification, the Appellants are of the view that the alleged conflict likely stems from the assessed level of impact on the nearby Conservation Areas. Information within the Prior Approval application provided evidence of the benefits of high quality communications infrastructure in terms of boosting economic growth, promoting social inclusion and enhancing the provision of local community facilities and services has been provided. It further provided evidence of the negative impact of failing to secure a replacement site for base station 98405. It is contended that the Local Authority did not give sufficient weight to this need when balancing the limited impact of the appeal proposal on the street scene and local heritage assets against the increasing importance of providing reliable digital connectivity, in the wider public interest. This is despite the fact that sections 4 and 5 of the Supplementary Information document provided to the Local Authority drew attention to the fact that, when applying the balancing exercise encouraged at paragraph 196 of the NPPF, the Planning Inspectorate has repeatedly determined that the provision, or prevention of loss to existing services can outweigh less than substantial harm to heritage assets. Copies of relevant appeal cases referenced within that application are provided within Appendix 1. It is submitted that the Local Authority has failed to afford the matter sufficient weight despite the guidance contained within the NPPF and findings of the Planning Inspectorate.

#### **Section 5: Summary of Key Issues**

36. The Local Authority failed in its duty to determine the Prior Approval application in accordance with the strict requirements of paragraph A.3(8) of Part 16, Schedule 2 of the Town and Country Planning (General Permitted Development ) (England) Order 2015 (as amended). Thus the validity of the refusal notice issued is questionable.
37. Notwithstanding the above, the Local Authority included within its assessment and reasoning for the refusal of Prior Approval equipment housing already permitted by Class A of the Order. This was not within their remit.
38. The Appellants provided the Local Authority with sufficient evidence for it to establish that the appeal proposal, by reason of its appropriate siting and design, would not result in any unacceptable impact on the character and appearance of the street scene or on the East Molesey Bridge Road or East Molesey Kent Town Conservation Areas. It is submitted that the Local Authority failed to give due regard to the information provided to them and that this has led to an exaggerated and incorrect assessment of impact.
39. The Appellants provided the Local Authority with evidence of the need for the appeal proposal, which would retain quality, reliable communications and connectivity services within this area



following the impending loss of an existing site within the Appellants' networks. The Appellants additionally provided the Local Authority with evidence of the benefits of high quality communications infrastructure in terms of boosting economic growth, promoting social inclusion and enhancing the provision of local community facilities and services has been provided. It is contended that the Local Authority did not give sufficient weight to this need when balancing the limited impact of the proposal on the street scene and nearby heritage assets against the increasing importance of providing reliable digital connectivity, in the wider public interest.

40. It has been demonstrated both within the Prior Approval application and within this statement that there is no conflict between the appeal proposal and planning policy and that the Local Authority, therefore, refused the Prior Approval application in a manner that is not consistent with their Local Development Framework or with national planning guidance.
41. For these reasons, the Inspector is respectfully requested to allow the appeal and grant Prior Approval for the proposed development.