

Elmbridge Borough Council
Town & Country Planning Act 1990

Appeal by MBNL (EE LTD AND HUTCHISON 3G LTD)

**Land at Bridge Road (southwest of Junction with Arnison Road), East Molesey, KT8
9HY.**

Planning Inspectorate reference:

APP/K3605/W/19/3242927

STATEMENT

This statement is submitted by the Borough Council in response to the appeal under Section 78 against the refusal of a Prior Notification Telecom application for the installation of a 15m high monopole incorporating shrouded antenna and supporting 2 external dishes and ancillary development. It should be read in conjunction with the documents submitted with the appeal questionnaire, which together form the Council's full statement of case. The appeal questionnaire contains consultation responses and representations; and the Officer's report, which includes the following information: description of the application/appeal site and its surroundings, brief outline of any planning history and a brief description of the appeal proposal.

The statement is set out in the following sections:

- 1 Policy context
- 2 Planning considerations
- 3 Conclusions
- 4 List of appendices

1. POLICY CONTEXT

1.1 The policies/guidance outlined below are relevant to the appeal proposal.

1.2 The application was submitted under Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016

National Planning Policy Framework 2019

1.3 Paragraph 112 states that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology. Paragraph 113 states that where new sites are required... equipment should be sympathetically designed and camouflaged where appropriate. Paragraph 116 states that local planning authorities must determine applications on planning grounds only and they should not seek to prevent competition between different operators, question the need for an electronic communications system or set health safeguards different from the international commission guidelines for public exposure.

Core Strategy 2011

1.4 The Core Strategy sets out a long-term vision, spatial strategy and core policies for shaping the Borough's development up to 2026 and is key to the delivery of the Elmbridge Sustainable Community Strategy. The Council adopted the Core Strategy at the Full Council meeting on 20th July 2011.

1.5 The Policies relevant to this appeal are CS7 (East and West Molesey), CS17 (Local Character, Density and Design). Policy CS17 states "Particular attention should be given to the design of development which could have an effect on heritage assets which include conservation areas).

Development Management Plan

1.6 The Council adopted the Development Management Plan (DMP) at the Full Council meeting on 15th April 2015. The following Development Management Plan Policies are relevant to this appeal: DM1, DM2, DM12 and DM16. Policy DM1 (Presumption in favour of sustainable development) represents the overarching approach and reiterates the principle that lies at its heart of the NPPF as outlined in its Para. 11. Policy DM2 (Design and amenity) requires that all development be based on an understanding of local character including any specific local designations and take account of the natural, built and historic environment. Policy DM12 (Heritage) states that development affecting the setting of a conservation area, including views in or out, should preserve or enhance the character and appearance of the area, taking account of the streetscape. Policy DM16 (Telecommunications) states that the installation of telecommunication equipment will be permitted where it can be demonstrated that: "there is no significant adverse effect

on the...visual amenities of the area, including as a result of clutter and poorly located street furniture' and 'it is appropriately designed, coloured and landscaped to take account of its setting'.

Supplementary Planning Document

1.7 The Design and Character SPD was adopted by the Council on 18 April 2012. It aims to ensure that the design of new development in the Borough is more locally responsive, sustainable and built to a high quality. It consists of a main document providing design guidance relating to all new development in the Borough. As well as this, there are 10 companion guides including the 8 settlement character assessments (such as the local area Companion Guide), an overview of the Borough's character. The SPD supports the delivery of the Elmbridge Core Strategy, specifically Policy CS17: Local Character, Density and Design and forms part of the new Elmbridge Local Plan.

2. PLANNING CONSIDERATIONS

2.1 The appeal refers to a prior notification telecom application ref: 2019/1219 for the installation of a 15m high monopole incorporating shrouded antenna and supporting 2no. external dishes and ancillary development.

2.2 The application was determined under delegated authority and refused under one ground:

1. 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 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.

2.3 The Officer's report submitted with the appeal questionnaire sets out the material planning considerations and provides the justification for the reason for refusal. This statement will respond to specific points within the appellants Statement of Case (SoC) where necessary, to either rebut points raised or to enhance points previously made in the Officer's report to support the reasons for refusal. The response will follow the format as used by the appellant for ease of reference.

Grounds of Appeal

Procedural Matter

2.4. In paragraphs 3 and 5, the appellants contest that the Council 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. The appellant questions the validity of the refusal notice.

2.5. In accordance with Part A. (3) the Council sent a letter to the agent on the 9th of May 2019, clarifying that prior approval of the local planning authority is required for the siting and appearance of the development. A copy of this letter is attached in Appendix B. Council record systems also confirm this.

Need for development

2.6. In paragraphs 14, 15 and 16 the appellant sets out the need for the telecommunications mast in this location, which accompanied the prior approval application. In addition, the statement of case quotes an appeal decision ref: APP/G5180/W/19/3231491 where the Inspector noted that 'need for a mast should not be questioned, it can be a material consideration in this case...'. Paragraph 18 states that the Council did not give sufficient weight to the need of the appeal proposal when balancing the 'limited impact' of the development on the area against the public benefits brought, which is inconsistent with the aims of the NPPF.

2.7. The above referenced appeal decision was made on 18th of October 2019, following the determination of the prior approval application. As acknowledged in the applicants' planning statement accompanying the planning application, and in accordance with Paragraph 116 of the revised NPPF, local planning authorities should not seek to question the need for an electronic communications system. The Officer report did acknowledge the alternative site

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selection appraisal and need for the apparatus due to the loss of equipment in Hampton Court Trading Estate (para. 20). In this instance the impact of the siting and appearance of the proposal were considered in accordance with the legislation and guidance available at the time of the decision on the 25th of June 2019.

Reason for refusal – siting and appearance

2.8. Paragraphs 19 and 20 of the appellant's statement of case outline that the Council should not have taken into account the impact on the associated housing equipment cabinets in the determination of the application. However, the Council contests that it is pertinent to the determination, as it was a combination of the cabinets (be they allowed under permitted development) and the monopole, in the appeal site location that contribute to the visual harm.

2.9. In paragraph 26 The appellant states that some aspects Core Strategy Policy CS17 'simply cannot be applied at all to the assessment of the need for prior approval'. The Council does not contest this but would state that Policy CS17 gives overall policy guidelines for the quality design of development and the impact the visual amenity and character of the area, which is relevant in this decision. Paragraph 26 continues and states that the proposal would contribute to the social inclusion of the location community by providing good communication services and states could be brought without any unacceptable impact on the local environment. The Council refute the above, in that the proposal would have an unacceptable on the character of the area thus harming the local environment.

2.10. Paragraph 27 sets out how the appellant deems the appeal proposal to have complied with Policy DM12 of the Development Management Plan (2015), with regards to the impact on the East Molesey Bridge Road and East Molesey Kent Town Conservation Areas. The appellant states that '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 through the use of existing adjacent natural features to provide screening'. This is iterated in paragraph 28 which states that photomontages accompanying the application demonstrated the lack of impact on the nearby conservation areas. The Council maintain that the height, siting and location of the monopole would not be sympathetic to the adjacent conservation areas. In particular there would be harmful impact on the view northwards out of the East Molesey/Bridge Road conservation area and the view south from the East Molesey Kent Town conservation. Both views are identified as important vistas in their relevant character appraisals.

2.11. Paragraphs 29 and 30 states that parts (iii) and (iv) b of Policy DM12, cannot be applied due to their reference to retention of trees and open spaces and demolition of listed buildings and structures. The Council agrees that these points are not pertinent.

2.12. Overall, Policy DM12 remains to be relevant to the determination of the appeal proposal, given that this policy clearly outlines that new development must be appropriate and should harm views in or out of the conservation areas. The Council maintains that the erection of a 15 metre monopole in this location would have a harmful impact on the setting of the adjacent conservation areas and an alternative location should be sought.

2.13. Paragraphs 31 and 32 outline how the appeal development would be in compliance with policy DM16 of the Development Management Plan 2015 and state that the application was accompanied by a site selection process and details of mitigation on the visual impact of the development. As stated above, the Council acknowledges that an alternative location analysis has taken place. The need for the equipment and overall public benefit, which has not been contested by the Council, is not considered to outweigh the harm to the visual amenity of street scene and harm to the nearby conservation areas.

2.14. Paragraph 24 outlines how the decision notice did not specify a paragraph within the NPPF with which the appeal development would conflict with. The Council would take this opportunity to highlight the proposal would conflict with paragraph 192 of the NPPF, which states that in determining applications, local planning authorities should take account of: ... c) the desirability of new development making a positive contribution to local character and distinctiveness. As stated above, the proposal would be harmful to the character and setting of the nearby East Molesey Kent Town and Bridge Road conservation areas.

3.0 CONCLUSION

3.1 For the reason set out above, the local planning authority, Elmbridge Borough Council, respectfully request that the appeal be dismissed and the prior approval be refused. However, in the event that the Inspector is minded to allow the appeal and to grant planning permission, the Council requests that the conditions attached be included on any permission given.

4.0 LIST OF APPENDICES

Appendix A – List of suggested conditions

Appendix B – Letter confirming prior approval required