

**VODAFONE LTD  
&  
CORNERSTONE TELECOMMUNICATIONS INFRASTRUCTURE LIMITED  
(CTIL)**

**PLANNING APPEAL**

**WRITTEN REPRESENTATIONS  
FULL GROUNDS OF APPEAL**

**CTIL 149883, Vf 87753, Tf 71919**

**FOOTWAY OPPOSITE 6 TILEHURST ROAD,  
CHEAM, SUTTON, GREATER LONDON, SM3 8PB**

**NGR - E 524059, N 164231**

## 1.0 INTRODUCTION

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1.1 This grounds of appeal statement has been prepared by Mono Consultants Ltd in support of an appeal by Vodafone UK Ltd (the appellant), in conjunction with Telefonica UK Ltd commonly known as O2 and Cornerstone Telecommunications Infrastructure Limited. The appeal is against the London Borough of Sutton Council's refusal of GPDO Prior Approval relating to the "installation of a 10 metre high dual user monopole together with an equipment cabinet" at the footway opposite 6 Tilehurst Road, Cheam, Sutton, Greater London, SM3 8PB, as required by Schedule 2 of Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

1.2 The GPDO Prior Approval application (LPA Ref.: A2015/73404/TOW) was refused under delegated powers on the 24th February 2016, in which the Council issued the following decision notice which states:-

*"(1) The proposed 10 metre high monopole and associated cabinet box due to its siting, the changes in land levels between Tilehurst Road and the rear gardens of Malden Road and Stoughton Avenue, and lack of street furniture along that particular part of Tilehurst Road, would result in a overbearing and dominant form of development which would harm the visual amenity and character of the area and street scene and would be contrary to policy BP 12 of the Core Planning Strategy and policies DM1 and DM3 of the Site Development Policies DPD."*

1.3 Taking into account the above reason of refusal and the points raised in the planning officer's delegated report, the appellant will first set out the background and technical justification relevant to this case. The appellant will then detail the site selection process that has led to the identification of the appeal site. Thereafter the proposal will be assessed against the policies referenced in the reason of refusal, together with all those specific to telecommunications infrastructure. Central Government's stance and the planning measures taken to facilitate telecommunication development will also be highlighted.

## **2.0 BACKGROUND & TECHNICAL JUSTIFICATION**

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- 2.1 It was announced in mid-2009 that the Vodafone Group were to form a strategic partnership with the Telefónica Group to share their telecommunication infrastructure assets across Europe. In the UK this project was called 'Cornerstone' which saw both Vodafone and Telefónica, commonly known as O2, working closely together to pool their resources and infrastructure making substantial improvements to their 2G and 3G networks. This initial agreement between the two aforementioned operators broke barriers in addressing the historical limitations encountered in conventional mast share schemes. It allowed both organisations to consolidate a number of base stations through, where appropriate, sharing each other's sites and in turn significantly reduce the environmental impact of their network infrastructure. Although Vodafone and Telefónica now share their base stations, they have always operated entirely independently as businesses with their own separate strategies and networks. Accordingly the key focus as part of Cornerstone was to build new sites where there was a requirement which had the capabilities to provide 2G and or 3G coverage for both operators through separate antennas.
- 2.2 In February 2013, Ofcom the independent regulator and competition authority for the UK communications industries announced the winners of the 4G spectrum auction. 4G is the fourth generation of mobile phone technology and follows on from 2G and 3G rollouts. 2G technology is used for making basic mobile calls and sending text messages, whilst 3G enables limited access to the internet through a device. 4G services are intended to provide mobile broadband services with speeds and data transfers nearer to those currently experienced by home wifi. Both Vodafone and Telefónica were awarded 4G licenses, hence they have entered into a new agreement in which the two companies now jointly operate and manage a single network grid across the UK. This initiative strengthened the network infrastructure partnership between the two companies, previously rolled out as part of Cornerstone and is facilitated by Cornerstone Telecommunications Infrastructure Limited (CTIL), a newly formed joint venture company owned equally by the parent operators. The deployment of 4G sites has primarily related to the upgrade of existing base stations to accommodate the new technology, however there have been some cases like this where current signal strengths are lacking and given high demands new installations are necessary to provide much needed coverage and capacity. The introduction of 4G sites across London has been ongoing for a number of years now, however there are still pockets of poor coverage and capacity that are required to be fulfilled, hence the requirement that came forward in this part of Cheam.

- 2.3 From the outset it is worth highlighting that Central Government consider access to reliable mobile connectivity as playing an important role in our daily lives as there is a growing expectation that mobile devices will work reliably wherever we are, whether at home, at work or moving around. In the latest Ofcom Infrastructure Report - Connected Nations 2015, it is said that *"High quality, widespread communications, fixed and mobile, are an engine of our economy and the pulse of our society. They are not nice-to-haves, but essential enablers of our working and social lives. As businesses and consumers drive an ever-increasing demand for communications, the infrastructure that serves them must keep pace with their demands and needs."* In UK households there is an increasing trend towards mobile phone usage only, in which voice calls via traditional landline telephone is falling. Wireless broadband within households remains to play an important role, however given the very nature of mobile devices, a robust telecommunication infrastructure needs to be in place to support their everyday needs. Indeed it is said in the 2015 Ofcom report that more consumers have switched from traditional handsets to smartphones over the past year with over 66% of the adult population now using a smartphone when compared to 39% ownership in 2012. The increasing use of 3G and 4G compatible phones and tablets has led to an increase in the amount of data used by consumers which grew by a factor of 64% over the past year.
- 2.4 Statistics from suggest that 93% of UK households and business premises are covered by all three of the established operators that provide 2G networks. With regards 3G services 88% of the UK are said to be covered by all four operators, but for 4G this drops to 46%. To tackle the issue of improved connectivity the Government have initiated various projects and legislative changes to help facilitate the delivery of telecommunications networks that suit the growing needs of mobile customers throughout the UK. Also added pressure to deliver more base stations was announced in December 2014 which set out a legally binding agreement with all the mobile operators to guarantee outdoor voice and text coverage across 90% of the UK geographic area by the end of 2017. In addition to this Telefónica have made commitments to provide indoor coverage to 98% of the UK population by the end 2017. If operators can not meet their obligations then they will face penalties likely to be in the region of tens of millions of pounds through increased license fees. In this regard every new or upgraded base station and the technologies they incorporate, all play a very important contribution to raising these coverage thresholds whenever they may be in the country. Particularly in urban areas the deployment of more base stations to support more users and higher data rates is becoming increasingly focused on small target areas where the operators have identified such issues.

- 2.5 As part of the rollout of 4G technology, it should be recognised that a sequential approach to site selection is always taken by the operators. In all instances before deciding to invest in a new base station, Vodafone and Telefónica look at the possibility of upgrading their own existing sites within their respective networks so as to try and fulfil their coverage requirements without the need for new infill sites. In this particular case it has been found that neighbouring base stations in the wider Vodafone and Telefónica networks can not compensate for the cell specific requirements in this part of Sutton. Similarly it should be noted that surrounding sites in each respective network have been optimized to their full potential, in which a hole in coverage and capacity here is very focused along a stretch of the A203 and constraint by the topography of the area. Also it must be appreciated that many existing sites out-with this area of Sutton are subject to their own upgrade requirements in order add 4G and to try and align the Vodafone and Telefónica networks into a single grid. Furthermore the ideal position within a particular target area may not be achievable, hence this may implicate the need to pursue a different site some distance away from the cell center, which may be on the periphery of the target area and not serve the target audience as well. Therefore it is of material importance to appreciate that the Vodafone and Telefónica networks are always evolving because the progress of each and every base station sites are at varying stages.
- 2.6 The ever increasing demands for mobile connectivity, together with the challenges faced in cell specific target areas where base stations are needed, means the approach taken by the operators to secure sites is always changing. However with regards the CTIL mast sharing agreement between Vodafone and Telefonica, it must be understood that each installation can have a direct impact upon the individual operator's neighbouring sites in their wider networks. Whilst the siting of a mast share proposal may work for one particular operator, it may prove unsuitable for the other due to the makeup of their surrounding networks. Various influential factors such as the technical proximity of adjoining base stations, obtaining the appropriate planning consent and securing a legal agreement with the relevant landlord can affect the approach taken meaning a particular site has to be discounted. Each site must be available and suitable for both operators and acceptable from various disciplines perspectives, hence there are lots of things to cater before a particular base station can be built and made operational. It should be noted that historically each operator's networks have grown organically and are now mature, in which capacity to serve the people that need stronger signals to support data usage is becoming more prevalent and focused to small target areas.

2.6 Another challenge to overcome is the mind-set of some that an area has a perceived perfect signal and so in their eyes a new base station is not necessary. However the more customers that use their mobile devices to stay connected, the more base stations are needed to cope with the increasing number of phone calls, text messages, internet usage and data download. As can be appreciated mobile reception can fluctuate even by those on the same network, in which connectivity is influenced by the topography, built and natural clutter, antenna height, capabilities of the base station itself coupled with numerous other factors and circumstances. Indeed customer experiences of signal strength can vary depending on the number of people that want to use the service at that given time. For example in places where there is a high concentration of users, like in Greater London, customers may find it difficult to connect to the internet as there is congestion in the network and too much demand placed on an individual base station. Similarly on occasions such as New Year, people will be unable to make a call at midnight or will receive a text message hours later as there is not enough capacity from their nearest base station at the said time to make the connection. Signal strength will differ throughout the day and be subject to whether the user is within a building or outdoors on the move. The fabric of buildings especially older properties with thick walls, houses made with energy efficient materials and those with basements can implicate on the propagation of the signal, hence why people move towards windows to get a better reception. Likewise when outside trees in leaf and when close up to the antennas can block the signal and result in patchy reception. In this regard tackling these issues and providing network capacity is very important in meeting the operators technical requirements and sites are not just needed solely for coverage representation. NPPF, the London Plan and various national government papers for example the Prosperity Plan, adds significant support to improved connectivity irrespective of whereabouts. The social and economic benefits to businesses, residents and tourists should be attributed and are every bit a material consideration as the visual element.

2.7 Taking into account the above, it is of material note to highlight that the operator have been looking for a possible site in this area since May 2014. When this requirement first arose, the operators explored a number of possibilities for a new base station in the search area as shown in the attached plan. However a major constraint in finding a technically suitable location was the whereabouts of neighbouring base stations in the wider network, coupled with the terrain of the search area which slopes down the A2043. Initial efforts concentrated more to the south-east so as to make best up of the ground height, however this part of the search area is dominated by Cheam Village Conservation Area. This locality was also close to the

neighbouring active cells to the south-east and so technical interference could arise if a new base station was positioned here. Therefore these investigations proved fruitless and so after searching the target area for potential options for well over a year, the operators had no other option but to explore potential streetworks style opportunities. It should be noted at this juncture that streetworks style base stations are the last resort for the operators in trying to fulfil a cell specific coverage requirement. These type of installations come about as all the established operators are statutory undertakers on highways controlled land and they can apply for infrastructure development in much the same way as utility companies. It should be noted that streetworks style solutions are now common place within a variety of street scenes throughout the country and to some given their simple form go unnoticed. Indeed it should be recognised that there are now tens of thousands of streetworks style base stations deployed by all the established operators in which pole heights, designs, dimensions and the ancillary development alongside are all matters that are generally accepted.

- 2.8 In exploring potential locations for a streetworks style installation it was noted early on that Malden Road dissects the entire search area. It contains a variety of items of street furniture, however no viable stretches of pavement could be identified as much of the A203 on both sides is made up of residential properties with car parking accessed directly off. In this regard and when taking into account the topography of the target area the appeal site on Tilehurst Road off Malden Road was identified. This was because from a technical perspective it was near the cell center and the ground height could be best used to help minimise and control the required antenna height. Furthermore the north-west side of Tilehurst Road presented a wide enough pavement to locate a streetworks style base station and the back-to-back rear gardens of Malden Road and Stoughton Avenue created a natural break in the built up area. A design visit was carried out in November 2015 in which from the outset the operators dropped their 2G requirement in order to reduce the extent of proposed development. In this regard the appeal proposal was drawn up which shows a 3G and 4G capable base station that can serve both Vodafone and Telefonica from a single pole with three compact antennas and one equipment cabinet. Draft drawings were produced and the operators carried out their own pre-application consultation including with the LPA. No comments were received and a GPDO Prior Approval planning application was submitted in December 2015. During the course of the case, the appellant's agents made efforts to contact the assigned planning officer to gain feedback and updates. However despite trying to explain the challenges faced the application was refused under delegated powers on the 24th February 2016 for the reasons set out.

### **3.0 SITE SEARCH & SELECTION**

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3.1 In accordance with operator's licence obligations, advice in NPPF as well as the Code of Best Practice, it has been widely established that telecommunications operators should take a sequential approach to site selection. Therefore the following options are commonly regarded in order of preference when seeking to address a technical requirement for improved connectivity: -

- Upgrading an operator's own existing base station(s);
- Using existing telecommunications masts and structures belonging to another operator, i.e. mast sharing;
- Co-location or site sharing alongside existing telecommunications development;
- Installing a base station on an existing tall building or structure; and finally
- Erecting a new ground based mast site.

3.2 As previously discussed, before advancing this streetworks style base station to serve this specific part of Cheam, the operators have explored a number of possible options which in itself justifies the progress of the chosen site and should also be given material weight in the determination of this case. Firstly when taking into account both the existing and planned sites in the wider Vodafone and Telefónica networks, it was found that there were no existing installations operated by either company that could be upgraded to meet the coverage requirements here. The next appropriate step as part of sequential approach to site selection was to utilise any existing base stations belonging to another operator, however there is no existing telecommunications provision within the target area. The only tall building as such is St Dunstan's Church, which is a Grade II\* listed building, however to its end it could not be progressed as it is not technically viable. Also it was found that there was no privately owned land that could be advanced, hence Vodafone and Telefonica had no other choice but to advance a streetworks style site and proposal. As previously discussed this form of development is a last resort but is always available to operators given their need to provide coverage everywhere in the UK. In this regard the operators make use of their statutory undertaker rights in much the same way as utility companies, whereby following a sequential approach where a ground based installation is the only option, then a streetworks style proposal can be advanced on adopted highways controlled land. Therefore the appeal site and proposal on Tilehurst Road has been earmarked and pursued through the planning process.



3.3 Within the case officer's delegated report, alternative locations are not discussed and so the LPA have given no material weight to such matters nor the extent and constraints of the search area when determining the application. Nevertheless as part of exhaustive investigations that has led the operators to pursue this streetworks style base station to appeal, the appellant have reassessed all potential sites as previously detailed in the planning submission. In this respect an up-to-date list of discounted options are provided below and for illustrative purposes can be seen on the attached map entitled 'Search Area, Cheam Conservation Area and Considered Sites': -

1) HSS Hire, 53 Malden Road, Cheam, Sutton, Greater London, SM3 8QW

The site provider has been approached on numerous occasions and they are unwilling to accommodate any form of telecommunications installation. Since the refusal on Tilehurst Road HSS Hire have been re-approached and they have re-confirmed their position not to progress matters. This is based on the fact that they have limited room in the yard and any ground based installation is likely to block access and restrict vehicle maneuverability. Also attaching anything to the roof would not be achievable as it is light weight and a pitched roof structure. Therefore, this site has to be discounted as the operators do not have the owner's permission.

2) Cheam Library and surrounding land, Church Road, Cheam, Sutton, Greater London, SM3 8QH

Found on the edge of the search area and within Cheam Village Conservation Area, the appellant explored the feasibility of a new base station at the library site. However the superior landlord for the library and surrounding land is the Council who are unwilling to accommodate a ground based installation. Therefore, this site has to be discounted as the fact is the operators do not have the owner's permission to use it.

3) Cheam Baptist Church, New Park Road, Cheam, Sutton, Greater London, SM3 8QB

Again found on the extremities of search area and within Cheam Village Conservation Area, this church was viewed as to its potential to host a rooftop scheme. However the building was deemed unsuitable to host a sensitively design base station given its roof shape and low height. Indeed a rooftop proposal of significant height and bulk would be required in which it is considered that should a proposal of this type come forward it would be highly visible and out of keeping with the host building and surrounding uses. Also given its whereabouts in relation to the target area, neighbouring base stations and the general terrain, even if a feasible design could be identified it would not provide meaningful coverage. Therefore given its geographical position this site also has to be discounted as it does not meet operator's technical requirements.

#### 4) St Dunstan's Church, Church Lane, Cheam, Sutton, Greater London, SM3 8QH

St Dunstan's Church is a tall building and so it has been considered for its merits as to whether it could accommodate telecommunications development. It was noted from the outset that St Dunstan's Church is a Grade II\* listed building (Historic England list entry: 1065676) found within Cheam Village Conservation Area and so any scheme would have to be sensitively designed if it came forward. Also it was recognised from a technical perspective that it was found on the edge of the search area and taking into account the wider topography, the church is found on higher ground and is close to neighbouring base stations which are operational to the south. In this regard and in principle, antennas could be housed within the louver openings of the church, but for given the aforementioned technical constraints, any scheme would have to be restricted to only two antenna sectors. These would be limited in their orientation potential when taking into account the fabric of the church and the available apertures, when seeking out to point in the direction of the suburban area down the hill towards the cell center. Also given the church's high position and the terrain of the target area, it was found that any antennas would need to be tilted downwards in order to control the signal and so prevent technical interference and cell dominance within the network of neighbouring base station sites. To its end this site has not been progressed as it has limited technical suitability when coupled with the challenges faced in securing a sensitively designed scheme on a Grade II\* listed building within a Conservation Area. In this regard and when taking into account all factors, it is considered the option on Tilehurst road achieves a better balance between the operator's requirement and the need to minimise environmental impact.

#### 5) Cheam Recreation Ground, off Tudor Close, Cheam, Sutton, Greater London, SM3 8QT

This is the site referred to in the planning submission as West Sutton Little League FC. However it is of note that it is Council owned in which they are unwilling to accommodate a ground based installation here. Therefore, this site has to be discounted as the operator does not have the owner's permission to use their land.

#### 6) Cheam Fields School, Stoughton Avenue, Cheam, Sutton, Greater London, SM3 8PQ

It should be recognised that telecommunication base stations are accommodated on school sites throughout the country and so the site provider was approached. However they have indicated that they are not interest in hosting either a rooftop or ground based installation. Also since the Tilehurst Road refusal the option has been reassessed in which an installation in this location would be found on the edge of the search area and given its geographical position coupled with the terrain of the target area, a new

base station here would not provide meaningful coverage and capacity to the area as a whole. Therefore, this site also has to be discounted as it does not meet operator's technical requirements.

7) Highway verge of St Dunstan's Hill (A217), Cheam, Sutton, Greater London, SM1 2LP

There is an existing streetworks style installation on the A217 however this location is too far removed from the search area to provide the required level of coverage and would impact upon the neighbouring base station sites in the network. The existing base station is not a shareable structure and in any event a co-located scheme could not be progressed as this site has to be discounted as it does not meet the operator's technical requirements.

8) Prince of Wales PH, 28 Malden Road, Cheam, Sutton, Greater London, SM3 8QF

Found within Cheam Village Conservation Area, the pub site was viewed as to its potential to host some form of telecommunication installation. However the building does not lend itself to a sensitively design base station, given its roof shape, low height and relationship to neighbouring properties. Also the pub's associated land is extremely restricted to accommodate a ground based mast. Therefore an option here could not be progressed as a feasible solution could not be identified.

9) Tesco Express / Esso, 50 Malden Road, Cheam, Sutton, Greater London, SM3 8QF

Given the nature of the site's use with underground fuel tanks and services, various access points, regular vehicle movements, as well as existing loading and parking arrangements, no room could be found for a ground based installation that would not implicated on the aforementioned. Also a streetworks style base station outside on Malden Road was discounted as the pavement is too narrow and any installation would have detrimental impact upon the visibility splays of those vehicles emerging onto the main road from the garage site itself.

10) Pavement outside 29 - 37 Malden Road, Cheam, Sutton, Greater London, SM3 8QW

This locality needs to be discounted as there is insufficient pavement space available to site a streetworks style base station. Any proposal here would implicate on restricting pedestrian and vehicle movements along this stretch of narrow pavement and service road.

11) Pavement of Lumley Road, opposite the gable of 52 Malden Road, Cheam, Sutton, Greater London, SM3 8QF

It was considered that in principle a streetworks style installation could be sited up against the tree lined boundary to the garage. Albeit a taller structure height to the Tilehurst Road option would be needed to clear the tree line, it was found on closer inspection of this stretch of Lumley Road that there is insufficient space available to implement a streetworks style base station. This is due to the dimensions of the operator's equipment cabinet and the implications its siting would have on restricting pedestrian movements.

12) Pavement of Chatsworth Road, between the gables of 202 and 204 Malden Road, Cheam, Sutton, Greater London, SM3 8EJ

The principle of a streetworks style base station was considered here albeit due to the topography and its relationship with the wider target area meant it was found on low ground and a taller mast than that proposed on Tilehurst Road would be required to fire back up the hill. Irrespective of this it was found that this stretch of pavement on Chatsworth Road is not wide enough to accommodate for the footprint of development. Therefore this site had to be discounted because the size of the operator's equipment cabinet would restrict pedestrian movements.

13) Land off Tudor Close, Cheam, Sutton, Greater London, SM3 8QS

It is of note that the superior landlord for the car park and other adjacent land uses is the Council who are unwilling to accommodate a ground based installation. Since the refusal at Tilehurst Road the operator's agent have had discussion with their agents, Shared Access, and they have confirmed this land is not available.

14) Pavement of Formondes Road, stretch between the rear gardens of 66 and 68 Malden Road, Cheam, Sutton, Greater London, SM3 8QZ

Again in a similar fashion to other similar locations as above on Lumley Road and Chatsworth Road, it was considered that in principle a streetworks style installation could be sited on a stretch of road where the immediate gardens and houses lie parallel. However on closer investigation it was found that this stretch of Formondes Road did not present sufficient pavement width to implement a streetworks style base station. This is because the dimensions of the operator's equipment cabinet and the implications its siting would have on restricting pedestrian movements on a narrow pavement.

3.4 Furthermore it is highlighted that the following parameters have a direct influence over the location of a possible streetworks style installation, in which if any one parameter is compromised then the location is unsuitable:

- Land ownership – It is necessary to have the agreement of the landowner to install equipment on their land. Most land immediately adjacent to a highway will be adopted highway as is available in principle to the operators given their status as statutory undertakers much like utility companies. However, this is not always the case and therefore it would be necessary to seek the consent of the landowner if the land was not adopted highways controlled land. In this case on the pavement of Tilehurst Road has been confirmed as being adopted highways controlled land;
- Underground services – The presence of underground services such as water and gas pipelines or electricity and other cables restrict the ability to install a streetworks style pole due to the depth of the root foundation required to avoid these services. In addition it is necessary for the utility companies to maintain access to these services, hence adequate clearances is also sometimes needed. In this case a trial hole was dug in which there was no underground services in the earmarked position;
- Proximity to overhead services and existing lighting columns – Sites for streetworks style monopoles can be restricted due to the presence of overhead cables such as telephone and electricity cables as well as the proximity of existing lighting columns. Sufficient vertical and horizontal separation is required to allow the proposed antenna to comply with operational ICNIRP requirements when working at height. The proposed pole height to top and position has been positioned away from any such features.
- The width of footpath that will be remaining once the equipment is installed – Once any cabinets are installed sufficient space must remain to allow pedestrians to pass safely and without having to step into the adjacent road. Typically, local highways authorities will require 1.8 metres of footpath to allow pedestrians, push chairs and wheel chairs to pass safely. In this case and unlike an existing cabinet found nearby found at the kerb line, the development has been sited at the back edge of a wide pavement up against a panel fence. In this regard it is noted from the delegated report that the highways department raised no objection;
- Access requirements – Equipment must not obstruct access to driveways, cycle lanes and pedestrian crossings. This is an issue more prevalent to Malden Road in which although the pavement its adopted throughout its length, there are driveways that abut the highway;

- Visibility Splays – Equipment must be sited in order that it does not have a detrimental impact upon the visibility splays of traffic emerging from road junctions and other access routes. Again this type of problem is more apparent if a streetworks style base station were advanced on Malden Road, however with regards the appeal site its position on Tilehurst Road is found on a straight section.
- Parking for maintenance vehicles – Sufficient space must exist adjacent to a site to allow a hydraulic platform vehicle, often referred to as a 'cherry picker', to park safely. This vehicle is required very infrequently if at all once built, to allow the antennas at the top of the pole to be accessed and maintained. Temporary parking immediate to the appeal site could be made available, in which an application for traffic management will be submitted to the Council for approval if the scheme was allowed at appeal. In due course visits to site would be on foot to access the equipment housed at ground level and this can be likened to those works associated with utility companies.

3.5 When taking into account the constraints of the target area from technical and environmental perspectives, it is evident that the appellant has exhausted a number of alternative sites before progressing the chosen sites and specific proposals. In summary it must be emphasised that the target area in which a base station is needed is constrained by its topography. Also parts of it are Conservation Areas containing listed buildings but as a whole it is dominated by its predominantly residential character and road layout. However this locality is the very target audience where coverage and capacity is needed to be fulfilled, hence siting in such an area is unavoidable. In conclusion, it is considered that the site selection process should be given material weight at appeal as ultimately on balance there are no other viable alternatives. The approach taken is in accordance with the relevant telecommunications planning policies and guidance, thus justifying the appeal scheme's siting yet further. Similarly it is considered that the appellant have proved that compelling reasons exist to justify the appeal proposal's siting and design which outweigh any undue harm to the visual amenity as suggested by the LPA in their reason of refusal.

## **4.0 PLANNING POLICY REFERENCED BY THE COUNCIL**

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4.1 From the outset it is emphasised that paragraph 35 (1) (b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 affirms that when a LPA issues a decision, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies which were relevant in making their decision. As can be read from the decision notice there are no local or national policies stated which are specific to telecommunications infrastructure. Nevertheless it is evident that as highlighted in the main body of appellant's application submission that the Council do in fact have a policy, DM32 - Telecommunication, which can be found in their Site Development Policies document adopted in March 2012. This choice not to reference telecommunications specific policies in their decision notice is echoed by the fact that the planning officer quotes from Section 5 of the NPPF only and places an unnecessary focus on Part 16 which is the legislative tool which is used to establish a telecommunication scheme's planning submission type. Nevertheless the delegated report is of material content and clearly shows the planning officer's trail of thought in putting forward a recommendation for refusal. However that said and when taking into account the policies referenced in the decision notice, it is obvious that the LPA's assessment is focused on general and nonspecific policies and shows of a conscious unwillingness to appreciate this form of development and the case as a whole.

4.2 Irrespective of the above and with regards the policy content stated in the Council's decision notice, it is noted that they consider the proposal to be contrary to Development Plan Document's Policy BP12 Good urban Design and Heritage from their Core Planning Strategy and policies DM1 Character and Design and DM3 Enhancing Street Scene and Public Realm taken from their Site Development Policies section. These specified policies are referenced below in which their relevance to this telecommunication case will be discussed in more detail after each policy section.

### **4.3 Core Policy BP12 – Good Urban Design and Heritage**

*"The Council will seek to ensure that development:*

- *Respects the local context and distinctive local character;*
- *Creates safe and attractive building layouts;*
- *Creates vibrant, attractive and accessible public spaces;*
- *Creates easier movement;*

- *Creates a sense of welcome by promoting legible places through the development of landmark buildings, public realm features, landscape and public art; and*
- *Creates buildings that are adaptable and promote the best in sustainable design and construction.*

*The Council will designate and seek to preserve or enhance heritage areas in the Borough, designated as Conservation Areas or Areas of Special Local Character (as shown on the Proposals Map), and the statutory and local list of buildings. The Council will protect the Borough's archaeological heritage."*

- 4.4 It is considered that limited weight should be attached to policy BP12 as much of its content can not truly be applied to a 10 metre pole and equipment cabinet. Nevertheless when taking into the factors that influence the proposal's physical form, it is considered that the telecommunication installation has been sympathetically sited and designed to respect the local context and character. Its layout takes a simple footprint at the back of the pavement alongside an existing red drop box and up against a panel fence, hence does not restrict movements. The proposed pole with its antennas at the top and the ancillary equipment cabinet has sustainable design qualities in that it is a mast share development that will provide 3G and 4G services for both Vodafone and Telefonica. Also the siting of the scheme had been sited away from heritage assets found elsewhere in parts of the search area, most notably the Cheam Village Conservation Area and listed buildings contained therein.

#### 4.5 **Policy DM1 - Character and Design**

*"Planning permission will only be granted for development that maintains and enhances the local character and appearance of the surrounding area. Accordingly, new development, including extensions, will be expected to:*

- *Respect and retain, where possible, existing landforms and the natural features of the site, including trees of amenity value, hedges and other landscape features, and make suitable provision for high quality additional landscaping;*
- *Be of a scale, massing and height that is appropriate to the setting of the site and/or townscape function. The areas considered as having potential for taller buildings are shown on the Proposals Map and are set out in Appendix 1;*
- *Take the opportunity for improvement within an area of poor character, by creating development of distinctive quality on suitable sites;*



- *Complement or improve the character of the area through the use of high quality architectural design and layouts, ensuring integration with the surrounding land and buildings, together with the use of high quality materials;*
- *Protect any important local views and create new ones wherever possible;*
- *Create attractive, functional and clearly defined private and public space and ensure the design provides for natural surveillance of the latter;*
- *Create convenient, safe and visually attractive areas for car and cycle parking without dominating the development or its surroundings;*
- *Meet the highest standards of accessibility and inclusion and, wherever possible, ensure the development is linked to existing pedestrian, cycle and public transport networks;*
- *Ensure that the design and layout of the development incorporates design principles that deter crime and reduce the fear of crime;*
- *Provide high quality hard and soft landscape treatment of the space around buildings, designed as an integral part of the development scheme; Optimise the use of natural and technological measures to increase sustainable living."*

4.6 It is recognised that as like many Development Plans throughout the country, the Council have a general design policy relevant to all forms of development. With regards matters that are bulleted in the aforementioned policy, it is highlighted that the proposed site and 10 metre pole makes best use of the landform, which as previously discussed does in itself have technical implications as to an option's viability. In this case there are trees within the immediate street scene however it is considered that additional landscaping is inappropriate. The proposed telecommunication structure takes a simple form in which it is of a scale, massing and height that is appropriate to the site in question when on balance taking into account the technical factors that influence its appearance. In this regard it is considered that the proposal is of a high quality design within the scope and remit relevant to telecommunication infrastructure development.

#### 4.7 **Policy DM3 - Enhancing the Street Scene and Public Realm**

*"(a) The Council will expect all new development to contribute positively to the street scene in terms of the design and appearance of any buildings and the public realm and may require the provision of public art, as set out in the Council's 'Planning Obligations' SPD (2007) (see paragraphs 7.6-7.12 'Environmental Improvements to the Public Realm' and 9.35-9.39 'Public Art')."*

*(b) In shopping centres, the Council will grant planning permission for a new or alterations to an existing shop front provided it:*

- *Respects the character and appearance of the building in which it is located and surrounding shopping premises;*
- *Is of a high standard of design appropriate to its location; and*
- *Complies with other relevant guidance in the Council's 'Urban Design Guide' SPD (2008).*

*(c) Within main industrial areas, new development should contribute to the enhancement of the appearance of the public realm in the vicinity of the site and, where appropriate, contribute to any wider proposal of benefit to the industrial area. New development will not be allowed unless it is of a high standard of design and suitably landscaped. Open storage will not be permitted if it would be visually intrusive or would result in the loss of operational space.*

*(d) In residential areas the Council will, wherever possible, not allow the following type of development where it would detract from the character of the area:*

- *The unacceptable reducing or closing of the gap between properties thereby creating a terrace or a terracing effect;*
- *The loss of important front walls, railings, hedges or trees fronting the street;*
- *Developments that seek to pave front gardens for hardstanding, unless they accord with the criteria set out in the GLG 'Guidance on the permeable surfacing of front gardens' (2008).*

*(e) The Council will not grant planning permission for advertisements that are detrimental to the visual quality of the Borough or do not meet public safety requirements. In particular, advertisements must respect the design of the building on which they are erected and the character and amenity of the surrounding area, as well as complying with other relevant guidance set out in the Council's 'Urban Design Guide' SPD."*

4.8 Relevant to this appeal case, it is considered that taking into account the content of each of the above sections that (d) relevant to residential areas, should be given some weight. However it must be appreciated that the appellant cannot avoid locating their development in such an area as any sites out-with that might be characterised otherwise are not possible. Indeed locating a new base station in this area is largely restricted because the target area is focused on a predominantly housing area where the terrain implicates on the technical viability of any site pursued. With regards the matters referenced the proposal relates to a linear structure whereby it would not create an unacceptable reduction or closing of the gap between properties of Malden Road and Stoughton Avenue. Similarly albeit found about a panel fence it is evident that it not a boundary treatment that is of noteworthy important nor would the siting and appearance of the scheme undermine it.

## 5.0 APPLICABLE TELECOMMUNICATIONS PLANNING POLICY & GUIDANCE

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5.1 It is highlighted from the outset that the Council have not referenced their locally adopted planning policy DM32 which is specific to telecommunication infrastructure. Furthermore albeit the planning officer mentions NPPF section 5 in the delegated report, it is evident that there has been a clear lack of neglect to consider the policies and guidance relevant to telecommunication development. As previously discussed this has been done in favour of cherry-picking general policies to justify their reason of refusal which is not balanced when taking into account all the material planning factors. Nevertheless pertinent to this telecommunications development the following is relevant and should be taken on board when determining this appeal: -

### 5.2 **Policy DM32 - Telecommunications, March 2012**

*"All telecommunications development should be sited and designed in such a way that it does not adversely affect the appearance of the surrounding area. The Council will only grant planning permission of telecommunications equipment where:*

- *The siting is not intrusive in the street scene;*
- *The design is of a height, scale and appearance which does not unduly detract from the character of the area or unacceptably harm the amenities of occupiers of neighbouring sites;*
- *The equipment has been designed to keep the size of the installation to the technical minimum and sited, so far as practicable, to minimise the impact on the environment;*
- *Screening of equipment housing and other visually intrusive development associated with the proposal is provided;*
- *All alternative sites which fulfil the functional requirements of the equipment have been assessed;*
- *It can be demonstrated that the use of existing facilities or sharing equipment with other operators has been considered;*
- *No existing facilities are available and consideration has been given to the need to cater for future growing demand for network development, including that of other operators;*
- *The applicant has demonstrated that the development will operate within the International Commission on Non-Ionizing Radiation Protection Guidelines for public exposure."*

5.3 For the avoidance of repetition, it is of note that the appellant's application submission statement provides a full-bodied planning assessment of the case in relation to policy DM32. However with relevance to the reason of refusal the key points to stress are noted as follows. With regards the appearance of the structure, it takes a camouflaged form in that it seeks to replicate a telegraph pole. It is clad with brown Glass Reinforced Plastic textured wood effect and could be likened in some way to existing and conventional telegraph poles found along this stretch of road, most notably found directly opposite on the corner with Kingsdown Road. Also it is noted in paragraph 5.10 of the case officer's delegated report he says that this treatment would to some extent "*soften its appearance.*" In this regard it is felt that the mast share's design will not be intrusive within the street scene, to residential properties found closest nor will it unduly detract from the character of the area. With regards siting given the presence of linear features along this section of road, most notably a telegraph pole, lighting columns and tree trunks, which are all seen in the foreground when observing the appeal site across the road, then it is considered that the proposal would not appear overbearing nor dominant. Coupled with its simple and uncluttered form, then it is felt that the proposal will not unacceptably harm the amenities of occupiers of houses found closest, most notably numbers 4 and 6 Tilehurst Road. That said it is acknowledged that the main focus of the LPA's case relates to the changes in land levels between Tilehurst Road and the rear back-to-back gardens of Malden Road and Stoughton Avenue, rather than the residential amenity of those found opposite. In address of such matters it is considered that albeit the land slopes off, when taking into account the pole's 10 metre height and camouflaged design, it would not unduly exaggerate its presence as to cast the automatic assertion that the monopole will be overbearing nor dominant as the LPA would suggest. It is acknowledged that due to its very presence there will be some harm when observed from within the gardens themselves, but taking into account the scheme's siting and appearance within the overarching street scene of Tilehurst Road and the established gardens that contains mature foliage, it is felt that this harm would be less than substantial. Furthermore when taking into account all the material planning considerations and influential factors that have resulted in this option coming forward, then these such matters clearly outweigh the minimal harm created.

5.4 The proposed equipment has been designed to keep the size of the installation to the technical minimum and sited, so far as practicable, to minimise the impact on the environment. As discussed in the appellant's application statement the height of the pole at 10 metres to top is at its technical minimum and footprint of development kept to a single pole and cabinet. Indeed it is noted that the case officer raises no issue to

the proposed equipment cabinet in paragraph 5.11 of his report and considers this to be acceptable. This statement is contrary to the reason of refusal which takes issue with the "associated cabinet box". To justify the proposed equipment cabinet it should be noted that it is less than 2.5m<sup>3</sup> and will be located alongside the new monopole and existing mail drop off box. It should be recognised that seen on its own merits as single development it does not require a formal determination of the Council as it is permitted development, however has been illustrated in this scheme as it goes hand in hand with the proposed mast. Nevertheless the proposed equipment cabinet has an appearance similar to the existing cabinet found in the street scene of Tilehurst Road. The proposed ground based development supports multiple technologies for both operators and also has provision for a power source and underground transmission link. In this regard the number of proposed equipment cabinets has been kept to an absolute minimum when balanced against the technical requirements of this site-specific base station. The size of the cabinets is justified as it needs to be large enough inside to ensure a satisfactory airflow around the kit. This also allows adequate cooling and in turn minimises the noise generated. Furthermore given its outdoor location, the cabinet has been designed to be weather proof from rain, snow or freezing temperatures. The proposed ground based development will be painted green like the existing nearby cabinet, hence helping it to blend into its environment and reducing its prominence within its immediate environment. In this respect it is considered that the design of the ancillary development will not have a detrimental impact upon the visual amenity of the area.

- 5.5 With relevance to Policy DM32, as previously discussed all alternative sites which may fulfil the functional requirements of the equipment have been assessed. In this regard it has been demonstrated that the use of existing facilities or sharing equipment with other operators has been considered. Also consideration has been given to the need to cater for future growing demand for network development, including that of other operators in a sense that the proposal is a mast share installation catering for Vodafone and Telefonica as well as accommodating 3G and 4G technology for both. Furthermore in accordance with Policy DM32, the applicant has demonstrated that the development will operate within the International Commission on Non-Ionizing Radiation Protection Guidelines for public exposure as a relevant certificate was provided with the application submission. In this regard it is evident that the appeal proposal and the case as a whole is fully in compliance with the Council adopted Policy DM32 relating to telecommunications development.

## 5.6 **London Plan, March 2015**

Other material policies which have not been given any weight by the LPA are those contained in the London Plan. The London Plan sets out the Mayor's planning strategy for Greater London and contains strategic policies and guidance for the metropolitan boroughs such as Sutton. As detailed in the appellant's GPDO planning application statement the London Plan discusses the importance of ensuring there is the necessary infrastructure in place to support the capital's growth. Also the London Plan encourages a connected economy and so acknowledges the role telecommunications has in its delivery. Furthermore it is of note that the metropolitan boroughs form part of the London Council's initiative where they recognise the importance of mobile and internet connectivity in London. In this regard the London Future plan states that priority and investment needs to be made to improve greater digital connectivity in the London boroughs in which they see the solutions to be superfast internet, better internet connections, better phone signal and the ability to connect to the internet whilst out and about. These such matters are applicable to the appeal case and should be given material weight as they are aspects of social and economic prosperity which have been overlooked by the Council in their decision making.

## 5.7 **National Planning Policy Framework, Section 5. - Supporting high quality communications infrastructure, March 2012**

*"42. Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.*

*43. In preparing Local Plans, local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband. They should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures should be used, unless the need for a new site has been justified. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate.*

*44. Local planning authorities should not impose a ban on new telecommunications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of telecommunications development or insist on minimum distances*

*between new telecommunications development and existing development. They should ensure that:*

- they have evidence to demonstrate that telecommunications infrastructure will not cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and*
- they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and telecommunications services.*

*45. Applications for telecommunications development (including for prior approval under Part 24 of the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:*

- the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college or within a statutory safeguarding zone surrounding an aerodrome or technical site; and*
- for an addition to an existing mast or base station, a statement that selfcertifies that the cumulative exposure, when operational, will not exceed International Commission on non-ionising radiation protection guidelines; or*
- for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self certifies that, when operational, International Commission guidelines will be met.*

*46. Local planning authorities must determine applications on planning grounds. They should not seek to prevent competition between different operators, question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission guidelines for public exposure.”*

5.8 It is abundantly evident that the appeal proposal is fully compliant with NPPF section 5. NPPF advocates mast sharing and exploring a range of alternative sites in a sequential manner. Also it is advocated when new sites are required that equipment should be sympathetically designed and camouflaged where appropriate. Indeed the appeal proposal seeks to resemble a telegraph pole which is considered the most appropriate design for the site, when read in the context of the street scene. With regards paragraph 45 and 46 of NPPF, the application was accompanied with an ICNIRP certificate and so as no objective evidences has been provided to support local fears it is considered that health concerns should not warrant refusal on these grounds.



## 5.9 **Code of Best Practice on Mobile Phone Network Development in England, July 2013**

Relevant to telecommunication development in England is the second version of the Code of Best Practice on Mobile Phone Network Development, 2013. This replaces the original guidance that was first published in 2002. Since the previous version well over a decade ago, there have been significant changes in planning policy with NPPF replacing PPG8, infrastructure rollout consolidation agreements like formed by Vodafone and Telefonica, advances in mobile devices itself and in the way people use them. It should be recognised that the Code of Best Practice was developed by a working group that includes the Planning Officers Society and Department of Communities and Local Government and so its scope should be given material consideration and weight. Indeed given many Councils have now moved away from telecommunication specific policies it provides guidance to them when dealing with related cases. The planning process and tools in the new Code of Best Practice remain much the same as previous, in which the following sections are considered relevant to this particular appeal case.

- 5.10 The opening paragraphs of section 2 regarding planning policy note that material weight should be given to NPPF, in particular Section 5 - Supporting high quality communications infrastructure. It recognises that sustainable development can be achieved as highlighted in paragraphs 6 to 10 of NPPF which notes three dimensions - economic, social and environmental. These are all qualities that run through the appeal case presented in which as highlighted in paragraph 8 of NPPF should not be seen "*in isolation, because they are mutually dependant.*" That said it is apparent from the delegated report that no material weight have been given to the economic and social aspects of the case and even the environmental matters have been ill applied.
- 5.11 It is noted in section 3 that special operational and technical considerations should be taken into account. It is stated that due to increased demands of mobile device users there will be "*the requirement to upgrade and improve networks through changes to existing sites and the development of new sites is constant*". In this instance it is Vodafone's and Telefonica's primary objective is to provide 3G and 4G coverage and capacity to this area of Cheam and they can only do this by deploying a new base station. This process has been ongoing since May 2014 in which a number of potential options have been explored and discounted. In this regard the only way forward for this cell is to progress a streetworks style option, hence the application on Tilehurst Road was advanced.

5.12 How mobile networks function is discussed in section 6 of the Code of Best Practice. In paragraph 6.4 it is said that *"The public and media often refer to all mobile telecommunications base stations as 'masts'. However, mobile networks are made up of a mix of different types of infrastructure: roadside masts, rooftop equipment and small cell technologies – many being largely unnoticed by passers-by."* It is continued in paragraph 6.6 that *"In urban areas, increased call and data transfer volumes put high demand on the networks, potentially leading to the need for more infrastructure."* Paragraph 6.9 also acknowledges that *"coverage in some areas is also limited because of geographic and terrain issues."* The above statements are clearly the situation and challenges faced by the Vodafone and Telefonica here in this particular case.

5.13 Appendix B discusses the general principles for the siting and appearance of telecommunications development. It is considered that the proposed scheme is fully in compliance with this guidance in which it is emphasised that *"The Government's general policy on telecommunications development is to facilitate the growth of efficient and effective telecommunication systems whilst keeping the environmental impact of such development to a minimum. The siting and design of telecommunications equipment, if undertaken with care and sensitivity, will be vital in achieving this policy aim. Good siting and design should not only be respected in environmentally sensitive areas but should also be applied to all telecommunications development. In all circumstances, the sensitivity to context of the proposed development should be considered."*

*In particular, the following general design principles should be regarded as important considerations in respect of telecommunications development:*

- *Proper assessment of the character of the area concerned*
- *Design should be holistic and three dimensional showing an appreciation of context;*
- *Analysis of the near and far views of the proposal and to what extent these will be experienced by the public and any residents;*
- *Proposals should respect views in relation to existing landmarks and distant vistas;*
- *Proposals should seek to consider the skyline and any roofscapes visible from streets and spaces;*
- *Choice of suitable designs, materials, finishes and colours to produce a harmonious development and to minimise contrast between equipment and its surroundings.*

*The options for the design used by an operator will be affected by site conditions, technical constraints, landscape features and coverage and capacity requirements. The main options would include:*

- *Mast and/or site sharing;*
- *Installation on existing buildings and structures;*
- *Camouflaging or disguising equipment where appropriate;*
- *Using small scale equipment;*
- *Erecting new ground based masts."*

5.14 Appendix B sets out the encouragement of mast sharing, a sustainable quality the appellant always seeks to advance wherever viable. Indeed mast sharing is a longstanding Government policy objective which should be given material weight. In this respect it is stated in Appendix B that *"If operators are able to share sites, and install more equipment on each site, this reduces the overall visual impact of network infrastructure, because even though shared sites will tend to be slightly bigger, it means that fewer sites are needed to improve coverage and capacity, infrastructure becomes more feasible, and is more cost-effective to deploy. In fact, sharing of sites is now the norm, and network operators now share much of their network infrastructure via joint venture commercial arrangements."*

5.15 Applicable to this case is the section entitled erecting new ground based masts within Appendix B of the Code of Best Practice. In essence where there is no viable alternative, then the operators must pursue a free standing ground based mast. In this instance the operators have had no other choice but to do this in the form of a streetworks style installation. As discussed previously, good principles of effective siting and design have been advanced in this site-specific proposal on Tilehurst Road, in which a simple and unfussy design as well as the use of appropriate colouring has been applied. It is also to be read in the context of other noteworthy features along this stretch of Tilehurst Road, in which although not immediate to other items of linear street furniture it is considered that the 10 metre pole would not appear unduly prominent nor overbearing.

5.16 The supplementary guidance to the Code of Best Practice is a document titled Mobile Networks: What they are and how they work. This guidance seeks to explain the technical challenges faced by operators when seeking to deploy telecommunication infrastructure. Indeed it is said in the concluding paragraph that *"it will rarely be the case that there is a 'perfect' location for the base station; rather that there will be some potentially viable options, both from a technical perspective, given the local topography and built environment, and taking into account relevant planning policy and guidance. Ultimately, however, without the infrastructure on which networks rely, there will be no service."*

5.17 The Code of Best Practice on Mobile Phone Network Development is specific guidance relevant to telecommunication development, in which it is considered that the case presented is fully in accordance. Most notably the appellant has taken a sequential approach and explored numerous other sites before pursuing this option to appeal. These exhaustive efforts where the topography of the area is an major influential factor impacting on any site's technical viability means that on balance the appeal site and proposal is the most appropriate to serve the target area. In this regard it is felt that material weight should be given to the Code of Best Practice and the Mobile Networks: What they are and how they work documents when determining this appeal.

## 6.0 CENTRAL GOVERNMENT'S STANCE ON TELECOMMUNICATIONS

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6.1 The Government is committed to securing world-class communication networks and recognise the importance of telecommunication infrastructure development in supporting people's connectivity needs. They recognise this should be facilitated through the planning system in which various papers and initiatives that have followed NPPF try to keep up to speed with the growing demand for better connectivity. In recent times papers such as the Productivity Plan and the Government's reviews of legislative mechanism in practice have intended to quash historic stereotypes associated with telecommunication development and aid the much needed deployment of base station in areas where there is a justified requirement.

### **Fixing the foundations: Creating a more prosperous nation, July 2015**

6.2 A relevant Government paper titled 'Fixing the foundations: Creating a more prosperous nation', otherwise known as Productivity Plan was published in July 2015. In this paper Chapter 7 – 'World class digital infrastructure in every part of the UK' is relevant to telecommunication development and is stated as follows.

*"7.1 Reliable and high quality fixed and mobile broadband connections support growth in productivity, efficiency and labour force participation across the whole economy. They enable new and more efficient business processes, access to new markets and support flexible working and working from home. Investment in high speed broadband will support long-term economic growth, with GVA increasing by £6.3 billion, causing a net increase of 20,000 jobs in the UK by 2024. Geographic coverage and take-up of superfast broadband in the UK is already the highest of the 5 largest EU economies. The government's superfast broadband programme is passing an additional 40,000 premises every week – superfast speeds of at least 24Mbps will be available to 95% of UK households by 2017.*

*7.2 By reducing regulatory red tape and barriers to investment, the government will support the market to deliver the internationally competitive fixed and mobile digital communications infrastructure the UK's businesses need to thrive and grow, and which will enable the UK to remain at the forefront of the digital economy. The government is working with business so that the market can play the lead role in delivering against the ambitions set out in the Digital Communications Infrastructure Strategy, published in March, of near-universal 4G and ultrafast broadband coverage.*

7.3 *The government will take decisive action to make it easier for the market to roll out the fixed and mobile infrastructure that the UK needs:*

- *the government proposes to extend permitted development rights to taller mobile masts in both protected and non-protected areas in England. A call for evidence on these proposals has been published today*
- *the government intends to introduce legislation in the first session of this Parliament to reform the Electronic Communications Code, which regulates the relationship between electronic communications network operators and site providers*
- *the government will be consulting later this year on implementation of the EU Directive on measures to reduce the cost of deploying high-speed communications networks*
- *the government is also considering making the 2013 planning relaxations supporting fixed high speed broadband infrastructure rollout permanent*

7.4 *These measures will make it cheaper and easier for providers to build the infrastructure UK businesses need.*

7.5 *Electromagnetic spectrum is a valuable and scarce resource. By securing more efficient use of public sector spectrum (while safeguarding departments' ability to deliver critical operational public services), the government will be able to share or release more of its spectrum, realising wider economic benefits both in terms of generating capital receipts and by supporting digital communications innovation and the development of new technologies. To deliver this, the government has implemented a new model for the centralised management of public sector spectrum."*

### **Review of How the Planning System in England Can Support the Delivery of Mobile Connectivity - Call for Evidence, July 2015**

- 6.3 *As stated in the entitled document "When purchasing mobile devices consumers assume that, whatever their choice and whoever their service provider, they will have connectivity and be able to access a wide range of services. This expectation – of universal coverage and connectivity – will become more widespread as technology develops, and future technologies such as the Internet of Things and 5G become commonplace. However, consumers rarely question how connectivity is delivered, what infrastructure is required, and how service providers ensure there is sufficient capacity to meet demand in an area at any given time. To support increasing demand for mobile services, the Government is working to create an environment where the*

*consumer can expect mobile connectivity wherever they are in the UK that is reliable, resilient, secure, affordable and fast."*

- 6.4 An outcome of the Productivity Plan, was consultation conducted by the Department of Culture, Media & Sport which sought comments on how the amendments to extend permitted development rights were working in practice. Historically defining a scheme's planning submission type was established by Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as referenced in NPPF. However it is of note that over the years Part 24 was subtly amended on a number of occasions as a result of various statutory instrument changes to this section of the Order. In more recent times, the Government sought to offer operators more flexibility in their efforts to rollout 4G technology across the nation through extending permitted development rights. Coming into force at the end of August 2013, new sections were added to Part 24 in which a notable insertion allowed an existing mast to be altered and replaced with a taller structure up to 20 metres as a GPDO Prior Approval application which should be determined within 56 days. Previously such a structure would have required Full Planning permission and albeit a planning assessment was still required, it allowed the operators some comfort that a determination would not be delayed. There were also legislative relaxations of some forms of development requiring consent in designated areas and clarity on permitted development which in the main helped the delivery of upgrade developments. In April 2015 the Town and Country Planning (General Permitted Development) Order for England was consolidated and sought to align all the amendments that had occurred throughout the entire document. As a direct result of this reordering process Part 24 became Part 16, however because permitted development rights had only recently changed in 2013, all matters were carried forward.

### **Boosting Mobile Connectivity, March 2016**

- 6.5 In March 2016 in a pre-budget debate to the House of Commons, the Prime Minister spoke about mobile phone masts and improving greater connectivity for all. In response to questioning on poor coverage the Prime Minister emphasised the point that *"I think this is something for members right across the House. Ten years ago we were all rather guilty of leading campaigns against masts and all the rest of it"*. He continued to say *"Our constituents now want coverage for the internet, they want coverage for mobile phones and we need to make sure we change the law in all the ways necessary to make sure, the wayleaves are granted, the masts are built, we increase coverage and we ensure everyone is connected to the information superhighway."*

- 6.6 Brandon Lewis, Minister of State for Housing and Planning announced on the day after the budget a statement as appended on behalf of the Government entitled 'Boosting Mobile Connectivity'. After highlighting the Productivity Plan and acknowledging the consultation for a call for evidence into how the planning system in England can support the delivery of mobile connectivity, the minister stated that *"The Government is firmly committed to ensuring there is sufficient capacity to meet the growing demand for mobile connectivity. The majority of respondents recognised that digital connectivity is an essential service that communities and business want and need. There was support for the Government's ambition to maximise coverage and for commercial investment."* Moving forward and to combat the issues faced, it was said that the Government would bring forward changes to the Electronic Communications Code and Part 16 of the Order to provide greater flexibilities for telecommunications infrastructure that requires no formal planning application (i.e. GPDO Prior Approval or Full Planning Permission) and instead might be re-categorised as permitted development (i.e. commonly known within the industry as Regulation 5 license notification). In this regard the Department for Culture Media & Sport carried out consultation on the matter which ended on 28th April 2016.
- 6.7 With regards this consultation and applicable to this appeal case, it has been implied that the Government will extend permitted development rights to allow taller ground based masts to be built, whereby the threshold for new ground based masts will increase from 15 metres to 25 metres and treated as a GPDO Prior Approval determination. Also in non-protected areas, the Government have suggest that they will lift restrictions to upgrade existing base stations in non-designated areas so meaning a height increase of up to 20 metres may be possible as a Regulation 5 license notification of permitted development. Albeit the proposal in this case is for a 10 metre pole and it was refused, the changes to legislation that are being discussed shows a clear acknowledgment that telecommunication infrastructure and heights far in excess of that proposed are becoming an accepted and justified form of development irrespective of land use designation. Also given the severity of the connectivity issue and the need for operators to provide coverage to 90% of the geographic area of the UK by the end of 2017, in due course it has been said that the Government will seek to adopted these changes as soon as the summer of 2016.



## **7.0 CONCLUSIONS**

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- 7.1 In returning to the reason of refusal which should be the focus of this appeal assessment, then it should be acknowledged that as like any form of development that is visible within the public realm then there will always be some degree of harm due to a new introduced presence. However in this case, it has been clearly demonstrated that any harm has been kept to an absolute minimum and within reasonable bounds. The height at 10 metres to top would not be overbearing nor dominant within its context and its camouflaged design would not undermine the immediate street scene. Also it is felt that the simple and uncluttered appearance of the pole, particularly as the antennas are shrouded and consistent with the rest of the structure means any visual impact created is subdued. Indeed this is a matter of common ground as the planning officer acknowledges in the delegated report that its replica telegraph pole design would help soften its impact.
- 7.2 Nevertheless as discussed the Council's reason of refusal and the body of their delegated report is focused on the scheme's siting in relation to the ground levels of the adjacent back-to-back gardens which slope away down towards Chatsworth Road to the north-west. In this regards it is acknowledged that the pole will be found on elevated land when viewed from the lower rear gardens of Malden Road and Stoughton Avenue. However views would be in perspective and seen within the overarching context of trees and foliage along Tilehurst Road as well as those within the established gardens themselves. In this regard when taking into account its 10 metre height and unimposing design within this landscape, it is felt that from many vantage points this curtails that any visual impact will be minimal. In this respect it will not tower above nor pose a dominant or overbearing development due to changes in levels as the Council would suggest. Clearly the LPA have given no real thought and overlooked the key merits of the scheme, including its sustainable qualities as a mast share proposal. Also its design gives the illusion of a lone operator base station even to the trained eye. A shared base station that accommodates different technologies will prevent the need for separate operator infrastructure and or technology entities. This longstanding approach to mast sharing complies with NPPF and should be given significant weight. In summary of the proposal siting and appearance, it is considered that the appellant has made every effort to progress a site and scheme that is fitting to this specific target area.

- 7.3 There is a technical need to serve this particular area of Cheam which is not disputed by the Council. However it is evident that they have given no real weight to the target area's character and topography which has clearly influenced the operator's investigations and progression of a new base station to fulfil this need. Also the lack of alternative options in a defined target area which is dominated by sways of purely residential areas and in parts is a Conservation Area, presents no possibilities for the siting telecommunication development elsewhere. This is of material note and also outweighs the identified harm. Furthermore in the context of connectivity deficiencies and the capacity of physical infrastructure in this urban area which are both material planning considerations, it is evident that there are significant social and economic benefits associated with the appeal proposal which should be have been given weight.
- 7.4 This telecommunication case is undoubtedly in compliance with planning policy and guidance, most notably NPPF and the Code of Best Practice. Likewise it is in accordance with the Council's own policy on telecommunication development, which has been completely overlooked in the LPA's assessment of the case in favour of generalised policies. The support for this type of infrastructure as outlined in various strategic level plans, should be given weight as clearly the Government are actively trying to promote improved connectivity across the country in both urban and rural environments. Indeed the potential changes to relax permitted development rights as introduced by the Government in their budget release is a factual indication that the planning system is changing. This will aid the facilitation of telecommunication infrastructure deployment that will be able to cope with the demands society places on mobile networks as their main channel to the internet, media and communications. This stance is based on the increasing need for robust telecommunications infrastructure that can support people's needs irrespective of their whereabouts. Again it is emphasised that there is a raft of material special circumstances that have not been taken on-board by the LPA which outweighs the limited harm caused as a result of the proposed 10 metre pole. As the target area is predominantly residential in character and the topography of the area will always be an influential factor that impact on a bases station's siting and appearance, it is clear that the LPA have failed to consider the fall-back scenario of their actions to refuse the development. Indeed it should be borne in mind as to whether on balance there are any other realistic alternative which might exist and have a lesser harm than the option presented. The need for coverage and capacity should be seen no different than anywhere else as it is founded on the fact that mobile connectivity is crucial and very important to everyone that uses and is affected by it. The knock-on benefits that this form of development brings should be given weight at appeal as the Council have not when assessing this case.

7.5 After considering all the influential factors that have led to the siting and appearance of this proposal, it is acknowledged that there will be some degree of harm to the visual amenity, character of the area and street scene. However any harm will be less than substantial in which the material planning considerations applicable to this case create the special circumstances required to outweigh the harm caused. This written statement and supporting evidence has provided a rounded assessment of the appeal case when it is seen against all the relevant national and local planning policy guidance and papers. In conclusion, it is evident that the appellant has justified the proposal's siting, appearance, in which the case presented strikes a good balance between environmental impacts and operational considerations.

## **8.0 THIRD PARTY REPRESENTATIONS & SUGGESTED CONDITIONS**

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- 8.1 It is acknowledged that following the outcome of the Technical Review of Planning Appeal Procedures, the Planning Inspectorate have published revised procedural guides which seek to streamline the appeals process. In this regard it is said that the appellant may wish to respond to any representations the LPA received from interested people during the application stage.
- 8.2 In section 3 entitled publicity of the delegated report, the planning officer summaries the level of representations received and summarises the comments raised with are material and non-material. With regards the content of these third party representations, it is considered that such points have been adequately addressed in this appeal statement, supporting evidence and application submission.
- 8.3 In light of the latest appeal procedures and without prejudice of the appointed Inspector's consideration of this case for GPDO Prior Approval, should the appeal be allowed then the embedded conditions as automatically applied in Town and Country Planning (General Permitted Development) (England) Order 2015, most notably Schedule 2, Part 16, Class A - electronic communications code operators, Conditions A.2. (2)(b) and A.3.(10) legislation are put forward. For the avoidance of doubt the following conditions are: -
- 1) The development shall begin no later than five years from the date of the appeal decision;
  - 2) As soon as reasonably practicable after it is no longer required for electronic communications purposes the land shall be restored to its condition before any form of telecommunications development took place.