

Town and Country Planning Act 1990 (as amended)

Section 78 Appeal by EE Limited and Hutchison 3G UK Limited against the decision of the London Borough of Hillingdon Council to refuse prior approval for the installation of electronic communications apparatus to upgrade the Cherry Lane Cemetery Communications Installation, Shepiston Lane, West Drayton, London UB7 9DL

The Appellants' Full Statement of Case

London Borough of Hillingdon Council Reference: 35298/APP/2021/3325

Cellnex UK Limited Reference: UK-LO-004678

Darren Fradgley BA(Hons) DipTP MRTPI
Town Planning Manager
Operations Group
Cellnex UK

February 2022

Summary of the Appellants' Statement of Case

The appellants' Full Statement of Case is set out in the following sections of this statement. In summary, it is the appellants' opinion that the appeal should be allowed and prior approval granted on the following grounds:

1. The development proposed will enable EE Limited (EE) and Hutchison 3G UK Limited (H3G), who are two of the UK's four Mobile Network Operators, to upgrade their shared electronic communications infrastructure at Cherry Lane Cemetery to provide fifth-generation (5G) connectivity, as well as improved third-generation (3G) and fourth-generation (4G) services, in accordance with their Ofcom licence obligations. The siting of the development proposed, therefore, accords with the objectives for the provision of modern communications networks set out in section 10 of the National Planning Policy Framework (NPPF), Policy SI 6 Digital Connectivity of the London Plan 2021, and Policy DMHB 21: Telecommunications of the Hillingdon Local Plan Part 2 – Development Management Policies (2020).
2. The London Borough of Hillingdon (the LPA) has failed to give weight to the extent to which the development accords with long-standing strands of town planning policy for electronic communications development, and related objectives in the Electronic Communications Code Regulations, which encourage the shared use of existing electronic communications masts and sites. Similarly, it has failed to give any weight to the Government's intention to introduce more generous permitted rights to support 5G deployments, as set out in its technical consultation document published in April 2021. This included consultation on measures that would enable existing ground-based masts to be increased in height to 25 metres above ground level without the need for prior approval outside of Article 2(3) land and land on or within Sites of Special Scientific Interest.
3. The LPA has demonstrated an erroneous understanding of a point of law in determining that the appeal proposal constitutes inappropriate development within the Green Belt. This has led it to make the incorrect assessment that Very Special Circumstances needed to be demonstrated under national, regional, and local Green Belt planning policies before prior approval could be granted. Neither of these considerations apply to the determination of the application, as the works proposed benefit from the planning permission granted by Article 3 for the permitted development rights contained in Part 16 Communications of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015, as amended

(the GPDO). This position has been confirmed in numerous planning appeal decisions for electronic communications development in Green Belt areas. This statement makes reference to three examples of these appeal decisions, including one within this LPA's administrative area. Whilst the Green Belt policies contained in the NPFF and the Development Plan are material planning considerations, this is only to the extent that they relate to matters of siting and appearance applicable to prior approval applications.

4. All reasonable steps have been taken to minimise the impact of the siting and appearance of the development having regard to the technical constraints that apply to the provision of EE and H3G's 5G coverage in this part of London. This will be achieved by:
 - Upgrading the operators' existing 3G and 4G base station infrastructure at Cherry Lane Cemetery to host 5G services, which accords with long-standing national, regional, and local planning policy for the shared use of electronic communications sites. It also accords with similar objectives in the Electronic Communications Code
 - Keeping the extended mast to the minimum required to provide 5G coverage to the local area.
5. Contrary to the reason for refusal, the changes required to deliver the public benefits of 5G are relatively minor. The changes will appear as proportionate additions to the base station that will have limited impact visually and in relation to the openness of Green Belt. In the appellants' view, any minor impact associated with increasing the height of the mast and adding antennas and other apparatus to provide 5G coverage is outweighed by the now well-known public benefits of mobile connectivity. This position is reinforced by Government guidance and measures put in place to deal with the Covid-19 (Coronavirus) pandemic that rely upon mobile connectivity of all types.
6. In the light of the above, and contrary to the LPA's reason for refusal, the proposed siting and appearance of the development are acceptable in the planning balance and accord with all relevant material town planning considerations, including national, regional, and local planning policy.

1. Preliminary Matters

- 1.1 The delivery of electronic communications infrastructure has now become more complicated than before and so it may be helpful for the Inspector to understand the various parties involved in the appeal proposal and the different roles of each. These parties are: Cellnex who own the base station and is a neutral host Wireless Infrastructure Provider with thousands of sites across the UK and Europe; EE and H3G who share the appeal site to provide connectivity services to the public as part of their communications networks in west London; and Mobile Broadband Network Limited (MBNL), which is the network sharing joint-venture company created by EE and H3G in 2007. Cellnex, EE, and H3G all benefit from the application of the Electronic Communications Code, which is set out as Schedule 3A to the Communications Act 2003, as amended, and so are Electronic Communications Code Operators for the purposes of Part 16 of Schedule 2 to the GPDO.
- 1.2 The prior approval application was submitted via the Planning Portal, which automatically populates the LPA's standard form for such applications, although though there is no requirement to use LPA prescribed forms under the provisions of Part 16 of Schedule 2 to the GPDO. The applicant named in this form and the Decision Notice is an employee of Cellnex, although the other application documentation clearly explains that the works relate to the use of EE and H3G's permitted development rights. We have, therefore, submitted this appeal in the name of EE and H3G, but thought it best to clarify this position to avoid any confusion.
- 1.3 As is explained elsewhere in this statement, colour is used on the drawings submitted with the prior approval application to differentiate between the existing and proposed apparatus, as well as the apparatus that will be removed as part of the development. With the benefit of hindsight, we consider that the brown coloured removals layer included on the elevation proposed drawing (reference number 1490106-06-153-MD024, Rev 24), which overlaps with other colours, paints a slightly confusing picture. We have, therefore, included in Annexe A the same drawing with the brown removals layer omitted for clarity to assist the Inspector with the assessment of the proposed works. We confirm that all other aspects remain unchanged from the drawings submitted with the application.
- 1.4 Policy SI 6 Digital Connectivity of the London Plan 2021 is relevant to the determination of the appeal, although this is not referred to in the decision notice. The relevant extracts are provided in Annexe B.

2. The Appeal Site and its Planning History

- 2.1 The appeal relates to a shared electronic communications base station located in a wooded area near the northern boundary of Cherry Lane Cemetery in the West Drayton area of London. It occupies land designated in the Hillingdon Local Plan as part of the Metropolitan Green Belt, as shown by the annotated extract from the Local Plan Policies Map provided in figure 1 overleaf.
- 2.2 The base station consists of a 22.5m high lattice mast hosting antennas and transmission dishes on two separate headframes, along with cabins and cabinets at ground level, all set within a fenced compound. Vehicular access to the site is provided from the roads and tracks within the cemetery. It is currently shared by three of the UK's Mobile Network Operators (MNOs): EE, H3G who operate the brand 3, and Telefónica UK Limited who operate the brand O2. The base station is owned by Cellnex and has been built on land leased from the London Borough of Hillingdon.
- 2.3 This base station was first developed in the early 1990s by Mercury Communications and the LPA has granted several prior approval and planning permissions since then to create the shared infrastructure that currently exists. These approvals include the 1997 planning permission granted for the replacement of the original 15m high mast with the current 22.5m high mast (LPA reference 35298/D/97/1680) when the LPA must have been satisfied that the development had an acceptable visual impact and accorded with Green Belt planning policies. Further upgrades have also taken place using the unfettered permitted development rights granted by Part 16 (and its forerunner, Part 24) of the GPDO following the submission of Notifications required under the Telecommunications Act and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended.
- 2.4 To the south of the base station, beyond the woodland belt, are the landscaped grounds of the cemetery that contain burial plots, internal access roads, and seating areas. Set within the grounds of the cemetery, a short distance from the entrance at Shepiston Lane, is the Cherry Lane Cemetery Lane War Memorial, which is included as Grade II in the National Heritage List for England. This heritage asset is approximately 350m from the appeal site. To the north of the site are the Bourne Farm Allotments and Bourne Farm Recreation Ground, both of which are within the Green Belt, with the Prologis Stockley Park Business Park and houses and flats at Bourne Avenue beyond.

2.5 To the east are houses at Pinkwell Drive and Skipton Drive. A lockable gate provides pedestrian and vehicular access to the cemetery from Pinkwell Drive, although this is usually restricted to pedestrian access only. To the south east of the cemetery are Goals Heathrow floodlit all-weather sports pitches and Tardis Environmental Ltd.'s Hayes depot (both within the Green Belt). To the west is open land falling within the Green Belt that extends to the A408 Stockley Road and is crossed by a tunnel carrying the London Paddington to Heathrow Airport

railway line. This will also be the route of the Elizabeth Line (Crossrail) when it opens later in 2022. At the time of writing this statement, part of this land was being used as a temporary construction compound for Highways England's M4 Smart Motorway project currently taking place between junctions 3, 4B, and 4 Heathrow Interchange of the M4.

- 2.6 To south of the cemetery at Shepiston Lane are the Premier Inn London Heathrow Hotel and the Heathrow Service Station that includes a petrol filling station, a drive through Starbucks, and other retail premises, all of which are located within the Green Belt. Further to the south are the M4 Motorway and Heathrow Airport, with the villages of Sipson and Harlington, commercial premises, playing fields, and Green Belt areas located between the motorway and the airport.
- 2.7 The setting of the appeal site is fairly typical of many inner Green Belt areas around London and contains significant commercial and other built development, as well as major transport routes. All of these developments have affected the openness of the Green Belt in the vicinity of the appeal site to a significant degree.

3. The Development Proposed

- 3.1 The development proposed involves an upgrade of Cellnex's base station to enable EE and H3G to provide 5G coverage to the local community from this site for the first time while also improving existing 3G and 4G services. The development forms part of the operators' joint network sharing initiative called MBNL.
- 3.2 Whilst all the works involved benefit from the permitted development rights granted by Part 16 of Schedule 2 to the GPDO, the mast extension element is subject to the prior approval application process whereby the LPA may consider siting and appearance issues only. The required prior approval determination application was submitted by Cellnex, on behalf of EE and H3G, on 1 September 2021 with all the information required by Part 16 of the GPDO. In addition to the statutory information required by the GPDO, the LPA was also provided with a suite of information, including scaled existing and proposed site plan and elevation drawings, a Town Planning Statement, an ICNIRP Certificate, and a suite of 5G support documents to assist with its determination. The latter included a statement from EE, prepared on behalf of both operators following pre-application engagement with Heathrow Airport, confirming that the 5G frequencies to be deployed would not affect aerodrome instrumentation.

3.3 The works required to upgrade the base station are explained and shown in detail on the drawings and other information provided with the application. This involves the installation, replacement, and relocation of the following electronic communications apparatus and associated works:

- The removal of the 1.5m high headframe attached to the top of the mast that currently hosts EE and H3G's 3G and 4G antennas, a GPS module, and two 0.3m diameter transmission dishes, along with six Remote Radio Units (RRUs) and three Break out Box units (BOBs) that support the operation of the antennas and dishes
- The removal of the three 2m long lightning protection finials attached to the top of the headframe
- A 2.5m extension to the mast with a replacement headframe that will host the following apparatus:
 - Six additional antennas and six replacement antennas
 - The relocation of the two existing EE and H3G 0.3m diameter transmission dishes onto the extended mast
 - Small ancillary apparatus consisting of 12 Mast Head Amplifier (MHA) units, 24 RRUs, and 12 BOB units installed behind the antennas and dishes whose operation they support. These are essentially the same size as the RRUs and BOB units that will be replaced as part of the works
 - A replacement GPS module attached the top of the mast. This is not labelled on the drawing, but is visible as the small node extending above the antennas that takes the overall height of the development to 25m above ground level
 - The relocation of Telefónica's 0.3m diameter transmission dish onto the extended mast. This is currently bracketed to the mast at a height of 21m above ground level and is referred to as 'other customer 0.3m dish' on the drawings
- The installation of six RRUs on an existing gantry pole within the compound at ground level.

3.4 For the avoidance of doubt, the development proposed and related works will not be coloured blue or green, as shown in the submitted elevation and site layout drawings, but have been illustrated this way for ease of reference to differentiate them from the existing electronic communications apparatus at the site. Green is used to highlight the 'operational' apparatus

such as the proposed antennas, relocated transmission dishes, RRUs, etc., and blue to illustrate 'passive' support structures such as the mast extension, headframe, and antenna support poles. In addition, brown colouring is used to illustrate the existing headframe and other apparatus to be removed. To provide greater clarity we have included a copy of the elevation proposed drawing without the brown removals layer in Annexe A.

3.5 The respective materials and finishes for the new and replacement apparatus are as follows:

- The mast extension and headframe is the same lattice design and ungalvanised steel construction as the existing mast and will weather to the same dull grey colour
- The antennas are constructed of aluminium and supplied in light grey, which is the same finish as the existing EE, H3G, and Telefónica antennas attached to the mast
- The RRUs, MHA, and BOB units are made of aluminium and plastic and supplied by the manufacturer in light grey. This is the same as the existing RRUs and BOB units.

3.6 The key technical and operational constraints affecting the electronic communication apparatus required to upgrade the base station are explained in section 6 Design Considerations of the Town Planning Statement and the other 5G supporting documentation supplied with the prior approval application. We do not intend to repeat that information here, but wish to confirm that structural constraints rule out the option of attaching the 5G and other apparatus to the mast and headframe in their current form.

3.7 Had that opportunity existed, it would have been readily implemented due to the antennas and other apparatus constituting unfettered permitted development, i.e. free of the prior approval application procedure, under Part 16 of the GPDO. In those circumstances, the development could have proceeded following the submission of a Notification to the LPA under Regulation 5 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended. Commonly known as the Code Notification procedure, this separate statutory process requires Operators to give LPAs a minimum of 28 days advance notice of the installation of specified apparatus that is not subject to either an application for a prior approval determination or planning permission.

3.8 Indeed, the initial design stage for EE and H3G's planned upgrade at the appeal site envisaged that the 5G and other apparatus could be attached to the mast and existing headframe without any increase in height. The required Code Notification was submitted to the LPA on

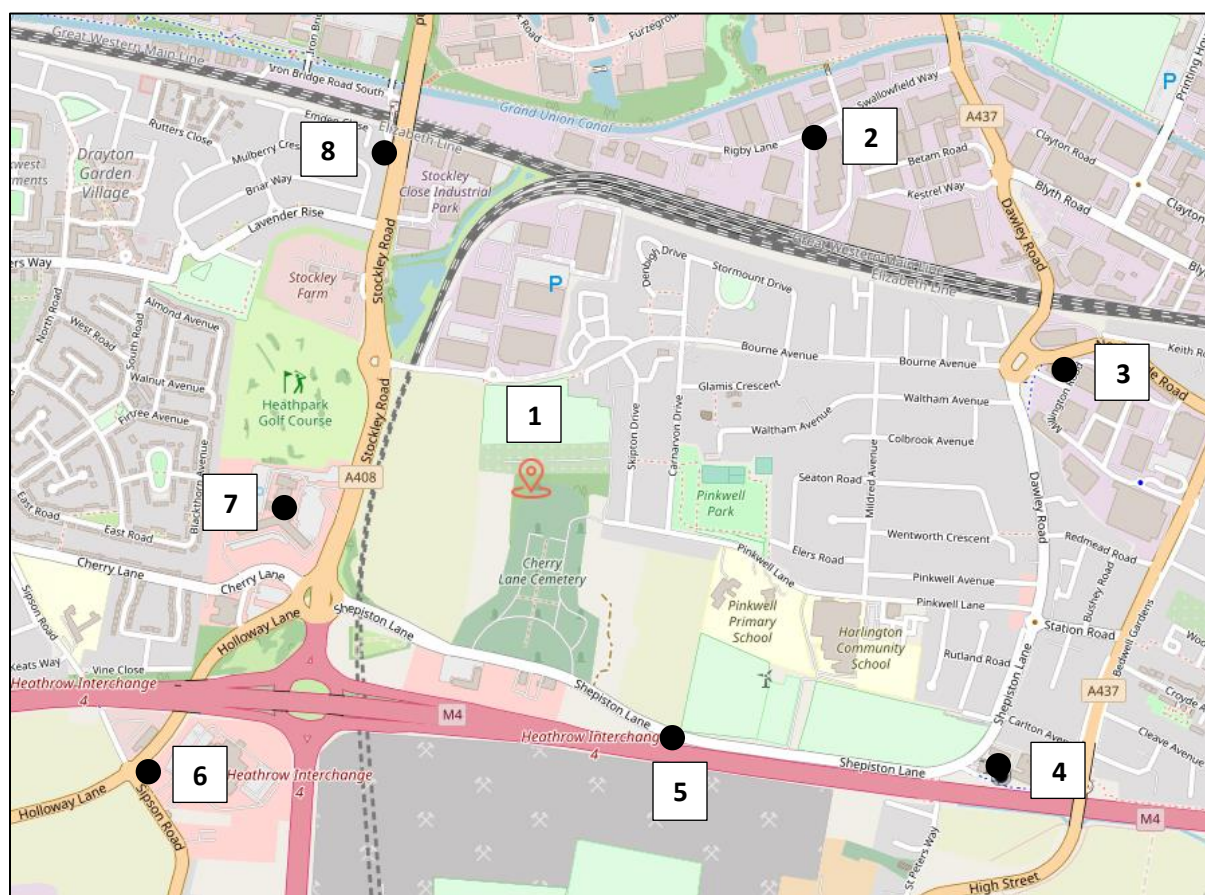
15 June 2020 and a copy of this notification is provided in Annexe C. The LPA did not provide any comments in response to this notification, which indicates that it had no concerns about the amount of antennas and other apparatus required to provide 5G coverage at that stage. In making this point, we highlight that there is no difference between the number of antennas and the RRUs described in the Code Notification and those required in the appeal proposal.

- 3.9 Subsequent detailed design work identified load bearing and other structural constraints that required the mast to be increased in height and the headframe replaced, thereby resulting in the prior approval application submission to the LPA. The proposed mast extension is, therefore, an unavoidable requirement that will enable EE and H3G to provide 5G connectivity from this long-standing shared electronic communications site. The proposed mast extension is also the minimum height required to meet this objective.

4. The Role of the Appeal Site in EE and H3G's Networks

- 4.1 EE and H3G hold Spectrum Licences issued by Ofcom to provide voice, data, high-speed, and ultra-high speed mobile services (2G, 3G, 4G, and 5G technologies respectively) to the public under the provisions of the Communications Act 2003, as amended. They are Electronic Communications Code Operators for the purposes of Part 16 of the GPDO, as is Cellnex, reflecting the UK Government's recognition that they are providing electronic communications networks in the public interest. Importantly, the Spectrum Licences granted to EE and H3G place obligations on them to provide public telecommunications services within the UK in line with specified geographical coverage requirements and with sufficient capacity to handle the demands placed upon them.
- 4.2 The appeal site is one of a number of cells that have been developed over the years by EE and H3G to provide 2G, 3G, and 4G coverage and connectivity services to the residential and business communities in the West Drayton and Hayes areas of south Hillingdon. Figure 2 overleaf shows the relationship between the appeal site, which is indicated by a red symbol, and the adjoining cells in the operators' networks (black symbols).
- 4.3 The prior approval application did not include radio simulation plots showing the operators' network coverage in Hayes and West Drayton, reflecting the policy advice in paragraph 118 of the NPPF that LPAs should not '*question the need for an electronic communications system*'. In line with this advice, the LPA has not sought to challenge the need for the development in the reason for refusal.

Figure 2 The appeal site and the adjoining cells in EE and H3G's networks



Key

- | | | |
|-----------------------------|------------------------------------|------------------------------|
| 1. Appeal site (EE and H3G) | 4. Hayes Fire Station (EE and H3G) | 7. Crowne Plaza (EE and H3G) |
| 2. Rigby Lane (H3G) | 5. Shepiston Lane (H3G) | 8. Stockley Road (EE) |
| 3. Hayes 3 (EE and H3G) | 6. Holloway Lane (H3G) | |

4.4 The status of the adjoining cells in the operators' networks is as follows:

- To the west of the appeal site, EE and H3G share a base station installed on the roof of the Crowne Plaza Hotel at Stockley Road that is located within the Green Belt. On the 31 August 2021, the LPA granted prior approval to upgrade this shared base station to provide 5G coverage under case reference 359/APP/2021/3303. The works involve the replacement of six antennas with six new antenna apertures containing two antennas each, an additional transmission dish, and seven equipment cabinets
- To the north east, EE and H3G share a base station located on the roof of Hayes 3 Hyde Park, an office building at Millington Road in Hayes. In December 2019, the LPA

granted planning permission - reference 67702/APP/2019/3665 - for changes that will provide 5G coverage from this site for the first time, along with improved 3G and 4G services. The works involve the removal of the two 5m high monopole masts at roof level and their replacement with two 10m high rooftop lattice masts, along with additional cabinets and other electronic communications apparatus

- To the south east, where EE and H3G have apparatus installed on the drill tower at Hayes Fire Station at Shepiston Lane that currently provides 2G, 3G, and 4G services. EE has very recently installed replacement antennas here to provide 5G services but, at the time of writing this was not operational, and H3G has yet to undertake its own 5G upgrade at the site
- To the north of the appeal site at Rigby Lane in Hayes where the LPA granted prior approval on 20 June 2020 under case reference 70718/APP/2020/1901 for H3G to install a 20m high mast hosting three 5G antennas, along with equipment cabinets. Figure 3 overleaf is an extract of the coverage plot provided with the application where green shading is used to illustrate planned coverage and each cell is identified by a symbol and its H3G reference number, e.g. HGN 12186 for the Rigby Road base station and HGN045 for the appeal site. This base station will fill the gap in coverage between the appeal site and the cell at Stockley Park Business Park (HGN019)
- To the north west of the appeal site where EE provides 3G and 4G coverage to Drayton Garden Village and the Great Western Railway and Transport for London railway lines from a 20m monopole mast located at Stockley Road (prior approval reference 74283/APP/2018/3821 granted in October 2018)
- On the southern side of Shepiston Lane to the south east of Cherry Lane Cemetery where the LPA granted prior approval in July 2021 (reference 61913/APP/2021/2637) for H3G to install a 20m high mast hosting three 5G antennas and associated cabinets at a Green Belt location approximately 50m from a Telefónica base station. Figure 4 overleaf is taken from the coverage plot submitted with the application and shows that this base station will fill the gaps in planned 5G coverage between the appeal site, the M4 Motorway, Hayes Fire Station, and the areas further to the south
- To the south west at Holloway Lane in West Drayton where H3G's appeal against the refusal of prior approval for the installation of a 15m high mast and cabinets at a

Green Belt location was allowed on 4 October 2021 (Planning Inspectorate reference APP/R5510/W/21/3278477). This base station will also provide 5G coverage once built. This site is identified in figure 4 below by the cream symbol to the south west of Junction 4 Heathrow Interchange of the M4.

Figure 3: Coverage plot for the H3G 5G base station to be built at Rigby Lane



Figure 4: Coverage plot for the H3G 5G base station to be built at Shepiston Lane



- 4.5 Although the need for the development is undisputed by the LPA, the information provided on the status of these sites, along with the coverage plots extracts above, clearly demonstrate that the planned upgrade of the shared base station at Cherry Lane Cemetery will provide

contiguous coverage with the other cells in H3G's network. Essentially the same position also applies to EE's network.

- 4.6 Furthermore, the majority of the adjoining cells in the operators' networks have either already been upgraded to provide 5G coverage or have the necessary prior approvals and planning permissions in place to do so. The status of adjoining cells demonstrates there is little, if any, wriggle room for either EE or H3G to adopt an alternative to upgrading their shared infrastructure at Cherry Lane Cemetery unless this involves developing new 5G specific base station sites with additional masts within the Green Belt at a location nearby or, more likely, alongside the appeal site. Such an approach would clearly have greater impacts on the Green Belt than the changes required by the appeal proposal to provide 5G coverage to the local area.
- 4.7 The appeal proposal will, therefore, demonstrably deliver the public benefits of providing 5G coverage, as well as improved 4G and 3G services, for the people living, working, or just travelling through West Drayton and Hayes.

5. The Reason for Refusal

(i) The LPA's justification for refusing prior approval

- 5.1 The Decision Notice issued contains a single reason for refusal stating that the extension to the mast and the associated apparatus would, by virtue of their siting, size, scale, bulk, and height, create a visually dominant development that would harm the open character of the Green Belt and wider area. The Decision Notice further states that this is considered to be contrary to paragraph 115 and Section 13 of the National Planning Policy Framework, Policy G2 of the London Plan 2021, Policy EM2 of the Hillingdon Local Plan: Part One - Strategic Policies (2012), and Policies DMHB 21 and DMEI 4 of the Hillingdon Local Plan: Part 2 - Development Management Policies (2020).
- 5.2 The justification for the refusal is set out in the LPA's report provided in Annexe D. In section 1 Summary of the report, the following statement is found:

"...Accordingly the development is considered 'Inappropriate Development' of which the applicant has failed to demonstrate 'Very Special Circumstances' and that the harm caused to the Green Belt is clearly outweighed by other considerations. Therefore, due to the significant

harm to the character and appearance, in respect to the openness of the Greenbelt, the prior approval of the Local Planning Authority is required and is refused.”

- 5.3 A more detailed justification for this conclusion is provided in section 7.2 of the report in the following terms:

“The proposal is an alteration to an existing lattice tower, an extension by 2.5m and the installation of an extra 6 antennas to what is existing (removal of 6, installation of 12 new). The proposal lies to the northern end of the Cherry Lane Cemetery, in an area of a large open expanse of landscaped lawns for quiet contemplation. Given the siting shown on the proposed plans it is noted that the surrounding trees would act as a natural green screen from the ground level telecommunications equipment. However, there would still be a significant portion of the development viewable above the existing tree line. The lattice tower itself would increase in height by over 11 percent. However, it is the combination of the additional antennas (double the existing) and radio units (24) at the top of the tower that would harmfully increase the visual bulk of the development, adversely affecting the open character of the Green Belt and cemetery.

This is considered to be a disproportionate addition to the lattice tower, which in accordance with paragraph 149 of the NPPF, is inappropriate development.

Accordingly the applicant would need to demonstrate that 'very special circumstances' exist and that the harm caused to the Green Belt by this inappropriate development, is clearly outweighed by other considerations. However, this has not been demonstrated. Therefore, due to the significant harm to the character and appearance, in respect to the openness of the Greenbelt, the prior approval of the Local Planning Authority is required and is refused.”

(ii) Green Belt policy considerations

- 5.4 The first thing to be said about this assessment is that the LPA has misled itself on a point of planning law. This is because this was a prior approval determination application where Parliament has granted planning permission for the use of the permitted development rights in Part 16 of Schedule 2 to the GPDO. As planning permission has already been granted by the GPDO, it follows that the works involved cannot constitute inappropriate development within the Green Belt. Consequently, the associated test of Very Special Circumstances, which sets a high bar of justification and needs to be demonstrated to overcome inappropriate development within the Green Belt, cannot apply to the appeal proposal.

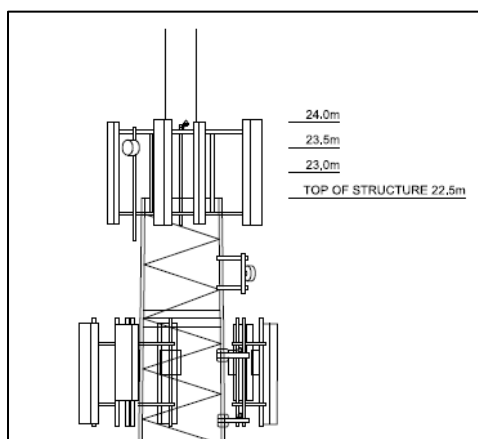
5.5 Importantly, this position has been confirmed in several appeal decisions for electronic communications development in Green Belt areas and we draw the Inspector's attention to the three examples included in Annexe E. The relevant sections of the decisions are quoted below:

- Appeal reference APP/C3430/A/12/2172974, Oaktree Stables, Hatton Road, Cannock, Staffordshire, WS11 1RN. In allowing the appeal in November 2012, Inspector Moon stated in paragraph 4 that: *"The appeal arises from a decision of the Council not to give their approval for the siting or external appearance of a development that would otherwise be permitted under Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The permission granted under the GPDO is equivalent to an outline planning permission and the Council's considerations of the matter are limited to the effects of the development arising from its siting or external appearance, not the principle of the development. Although the site is within the Green Belt, it seems to me, therefore, that there is no scope to consider whether the scheme represents inappropriate development in the Green Belt, or whether very special circumstances need to be demonstrated to justify the granting of approval for it. On that basis, the Council's first reason for refusal is outside the scope of the matters they were able to consider and should therefore be disregarded."*
- Appeal reference APP/R5510/W/16/3156200, Land at the junction of Warren Road and Swakeleys Drive, Ickenham, Hillingdon UB10 8SH. In granting prior approval on 19 December 2016, Inspector Price reached the same conclusion and stated in paragraph 8 of the decision letter that: *"...As the principle of this proposal is not in question the matter of circumstances permitting development in the Green Belt does not apply and consequently there can be no conflict with HLP1 Policy EM2 or UDP Policy OL5."* The policies referred to are the forerunners of the Green Belt policies now contained in the subsequent iterations of the Hillingdon Local Plan
- APP/K3605/W/19/3243050 Oaken Lane, Claygate, Surrey KT10 0RQ. This more recent decision granted prior approval in July 2020 for an electronic communications base station within the Green Belt in Surrey. In reaching his decision, Inspector Rennie stated at paragraph 7 that: *"The Council has also raised the issue of the mast being positioned within the Green Belt. Under Class A of Part 16 of Schedule 2 of the General Permitted Development Order (GPDO) 2015, the only issues which can be considered*

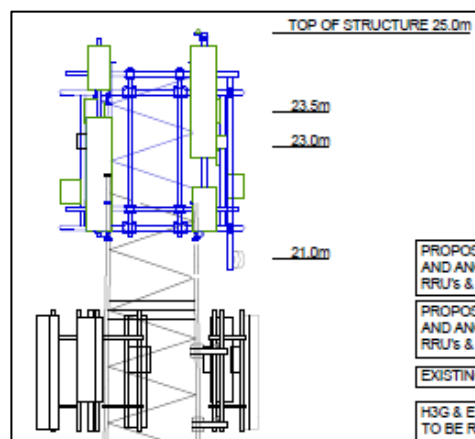
in respect of a prior approval application for telecommunications equipment are siting and appearance. Accordingly, the principle of development is not a consideration and the question of whether or not the proposal represents inappropriate development in the Green belt does not arise. Notwithstanding this, the slender mast would not result in any discernible loss of openness to the Green Belt.”

- 5.6 The appeal decision at the junction of Warren Road and Swakeleys Drive in Ickenham is within this LPA’s administrative area and so it should have acted as a reminder of the scope of its powers when determining prior approval applications for electronic communications development in Green Belt areas. And yet the LPA has determined that the appeal proposal at Cherry Lane Cemetery is inappropriate development in error with the knock-on effect that it has also incorrectly applied NPPF, London Plan, and Hillingdon Local Plan Green Belt policies to its assessment of the development. The LPA should have been aware that the Green Belt policies contained in the Framework and the Development Plan are material planning considerations, but only to the extent that they relate to the siting and appearance considerations applicable to prior approval applications. Furthermore, it should have been aware that the issues of inappropriate development and Very Special Circumstances fell outside the scope of its determination.
- 5.7 The second strand of the LPA’s reason for refusal relates the visual impact of the development on the openness of the Green Belt. In the appellants’ opinion, the LPA’s assessment is overstated. Whilst page 6 of the case officer’s report refers to the 11% increase in the height of the mast, we consider that this approach fails to take into account the overall height of the respective developments as a whole. This is illustrated by reference to the relative heights of the top of the existing and proposed developments provided in the snips below.

Existing



Proposed (minus brown coloured removals layer)



- 5.8 On the existing base station, the upper antennas are installed on a 1.5m high triangular headframe that extends above the mast to a height of 24m above ground level (agl). This is then surmounted by three 2m long lightning protection finials. In the appeal proposal, this headframe is removed and the additional and replacement antennas will be installed on a short extension to the mast with an attached headframe that extends only marginally higher than the existing mast and headframe. This brings the height of the structure to 24.5m agl with the proposed antennas and GPS module extending above this to an overall height of 25m agl. Viewed this way, the proposal results in a minor 1m or 2% increase in the overall height of the upgraded base station without the lightning protection finials included in the calculation and no increase at all if these finials are included in the calculation.
- 5.9 Furthermore, the antennas and RRUs that the LPA has determined, in combination with the mast increase, would *“...harmfully increase the visual bulk of the development, adversely affecting the open character of the Green Belt and cemetery...”* constitute unfettered permitted development under Part 16 of the GPDO. This is because Part 16 does not impose any restrictions on the numbers of antennas and ancillary apparatus such as RRUs that can be installed on existing ground based masts: hence the Code Notification submitted to the LPA in June 2020. It is only the mast extension element of the development proposed that falls within the prior approval application process, although the antennas clearly need to be attached to something. It is for this reason, that the proposed antennas and other apparatus were shown on the drawings, and included in the written description of the development, to provide the LPA with a comprehensive understanding of the scope of works required to upgrade the base station to provide 5G connectivity.
- 5.10 The proposed design approach, therefore, falls some way short of creating the disproportionate and bulky additions claimed in the LPA’s assessment. This will be apparent at the Inspector’s site visit when viewing the base station from the four publicly accessible locations where the mast is visible. These are:
- On the Shipston Lane approaches to the cemetery from the A408 Stockley Road where the mast is visible above the tree line on the boundary of the cemetery. This is a long-distance view of the mast where the 1m increase in its overall height, and the proposed apparatus attached to it, will register negligible impact both visually and on the openness of the Green Belt

- The short-distance views from within the grounds of the cemetery. As one would expect, this is where the changes to the base station will be most visible but, even then, we consider that the 2% increase in the height of the mast and the additional equipment will register minor impacts
- From Pinkwell Lane where there are intermittent views of the top of the mast extending above the roofs of houses where the viewer has fleeting views of the development as they move towards the cemetery
- At Bourne Farm Recreation Ground, off Bourne Lane, where the upper section of the mast is visible above the treeline. This is also a relatively long-distance view of the mast where the 1m increase in its overall height, together with the proposed apparatus attached to it, will register negligible impact both visually and on the openness of the Green Belt.

5.11 In the appellants' opinion, the changes to the base station will have negligible to minor visual impact in these views, and a similar impact on the openness of the Green Belt, but this will not create the overly dominant structure claimed in the LPA's assessment.

5.12 With regard to the Green Belt policies listed in the reason for refusal, we highlight the following:

- Paragraph 149(c) of the NPPF is permissive of the alteration or extension of buildings within the Green Belt provided that this does not result in disproportionate additions over and above the size of the original building. In our view, the 2% increase in the overall height of the base station meets the test of proportionality. In any event, this is preferable to the only other alternative means of meeting of EE and H3G's Ofcom licence obligations, which is for each operator to develop new 5G specific base stations with masts and compounds within the Green Belt on land nearby
- The wording of Policy G2 of the London Plan relates solely to the protection of London's Green Belt from inappropriate development. This policy cannot, therefore, apply to the changes required to upgrade the base station due to these benefiting from the planning permission granted by the Article 3 of the GPDO for the permitted development rights contained in Part 16 of the Order

- The same position applies in respect of much of the guidance in Policy EM2: Green Belt, Metropolitan Open Land and Green Chains of the Hillingdon Local Plan: Part 1 Strategic Policies. The only directly relevant part of Policy EM2 is the third sentence, which states that *“Any proposals for development in Green Belt and Metropolitan Open Land will be assessed against national and London Plan policies, including the very special circumstances test.”* For the reasons given previously, the proposal accords with these national and regional policies in so far as they are relevant to siting and appearance matters
- Policy DMEI 4: Development in the Green Belt or on Metropolitan Open Land of the Local Plan Part 2: Development Management Policies provides more detailed criteria based guidance that reflects national and regional policies. In line with the Framework, Part B of the policy is permissive of extensions within the Green Belt where this does not have a greater impact on the openness of the Green Belt than the existing development. The criteria then explain that factors such as proportionality, height, and the character and extent of the existing development will be relevant considerations in assessing development proposals. We disagree with the LPA’s assessment that the proposal constitutes in appropriate development and in relation to the extent of its impact on the openness of the Green Belt. Nevertheless, any perceived conflict between this policy and the development is very minor resulting from the changes required upgrade the base station to provide 5G coverage in line with the objectives of national, regional, and local planning policies for electronic communications development.

5.13 Whilst we disagree with its conclusions, the LPA’s assessment of the appeal proposal presents the common occurrence of a development that accords with one set of national and local planning policies, but some aspects of it may be in minor conflict with others. In these circumstances, it is for the decision taker to weigh these issues in the planning balance but, as demonstrated in the following section of this statement, there is no evidence that this exercise was properly undertaken by the LPA.

5.14 Drawing these strands together, it’s the appellants’ view that the limited impact of the siting and appearance of the development within the Green Belt is acceptable in the planning balance. It, therefore, accords with the guidance in section 13 of the NPFF and policies EM2 and DMEI 4 of the Hillingdon Local Plan Parts 1 and 2 respectively.

(iii) National, regional, and local planning policies for electronic communications development

- 5.15 The shared base station infrastructure that has been created at the appeal site has implemented the long-standing strand of town planning policy for electronic communications development, as well as Electronic Communications Code regulation, for MNOs to share sites in order to avoid the unnecessary proliferation of ground based masts. In doing so, Cellnex's shared base station has undoubtedly avoided the need for EE, H3G, and Telefónica to develop their own sites within the Green Belt nearby with the associated visual and environmental impacts that this entails.
- 5.16 In respect of the appeal site, the planning policy and regulatory framework encouraging mast and site sharing is currently provided by:
- Paragraphs 115 and 117(c) of the NPPF
 - Criterion (iii) of Policy DMHB 21: Telecommunications if the Hillingdon Local Plan Part 2 – Development Management Policies
 - Regulation 3(4) of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended, which states that *“A code operator, where practicable, shall share the use of electronic communications apparatus.”*
- 5.17 The appeal proposal is simply a continuation of the long-standing approach for electronic communications mast and site sharing. If EE and H3G cannot use the permitted development rights granted by Parliament to upgrade their existing 3G/4G base station infrastructure to provide 5G coverage, then the only alternative course of action is to develop new 5G specific base station sites elsewhere. As demonstrated earlier in this statement, that can only be achieved within the Green Belt at locations near or alongside the appeal site given the status of the adjoining cells in the operators' networks.
- 5.18 Disappointingly, the LPA's delegated report does not provide any reassurance that it gave weight to these most material town planning considerations in its assessment of the development. Whilst section 6 of the report lists the NPPF (albeit by an incorrect reference to the 2018 iteration), London Plan, and Hillingdon Local Plan policies for electronic communications development as being relevant to the determination, they are nowhere to be found in Section 7 Main Planning Issues. There is simply no evidence that the LPA's balancing exercise in section 7 considered the extent to which the development accorded with

national and local planning policies for mast sharing or the extent to which it would deliver the now well-known public benefits of improved connectivity.

- 5.19 For example, no reference is made in section 7 to the London Plan's aspirations under policy SI 6 for improved connectivity infrastructure to ensure London's global competitiveness now and in the future. This aspiration is explained further in paragraph 9.6.1 of the supporting justification to this policy where the following statement is found:

"9.6.1 The provision of digital infrastructure is as important for the proper functioning of development as energy, water and waste management services and should be treated with the same importance. London should be a world-leading tech hub with world-class digital connectivity that can anticipate growing capacity needs and serve hard to reach areas. Fast, reliable digital connectivity is essential in today's economy and especially for digital technology and creative companies. It supports every aspect of how people work and take part in modern society, helps smart innovation and facilitates regeneration."

- 5.20 Instead of examining how these policies related to the development proposed, the Main Planning Issues section of the report contains only erroneous assessments of inappropriate development and the related issue of Very Special Circumstances within the Green Belt, along with other matters such as the impact in the street scene, the relationship to residential amenity, and access considerations.
- 5.21 The LPA's assessment ignores the importance the Government places on modern communications connectivity in Section 10 of the NPPF, as well as the Mayor's aims for improved digital connectivity in London, due to their increasingly transformative and beneficial socio-economic impacts.
- 5.22 The importance of communications infrastructure, and especially mobile connectivity, is also reflected in the measures put in place by the Government and the NHS in response to the on-going Covid-19 (Coronavirus) pandemic. People have again been encouraged to work from home in response to the Omicron variant of the disease, to avoid unnecessary travel, and NHS staff, other workers, and GP registered patients are receiving regular updates by text and email in preference to attending face-to-face meetings. To minimise the risks associated with Covid-19, patients accessing NHS services are now more likely to be offered video consultations with their GPs, and this may continue to be the main route to access health care for most non-urgent (but still possibly serious) conditions in the coming months.

- 5.23 The NHS Covid-19 Contact Tracing App has also been launched. This relies upon the presence of mobile data connectivity of all types to track whether an individual has been near other app users who have tested positive for coronavirus. Amongst other features, it also lets users know the level of coronavirus risk in a postcode district and provides an alert if someone has visited a venue where they may have come into contact with the coronavirus.
- 5.24 In areas with poor or non-existent wired broadband connectivity, or for those increasing numbers of people who no longer pay for landline connections they deem unnecessary, this means relying upon 3G, 4G, and 5G connectivity to remain in touch with their work or to access public services such as the NHS.
- 5.25 The provision of 5G connectivity is also expected to deliver a step-change in societal and economic benefits, including for public safety, and examples of some of these are provided in the suite of 5G documents prepared by Cellnex to support the prior approval application. In the appellants' view, the omission of any reference to the public benefits of 5G and other connectivity in the LPA's balancing exercise is a significant flaw in its assessment.
- 5.26 The analysis undertaken by the LPA also fails to give any weight to the Government's overall direction in travel in supporting the delivery of 5G connectivity. This was most recently set out in the Government's publication in April 2021 of a technical consultation paper on changes to the permitted development rights granted by Part 16 of the GPDO to support the delivery of 5G connectivity in England. This consultation, which was sent to all LPAs in England, follows-on from an earlier consultation exercise undertaken in 2019.
- 5.27 We have provided a copy of the technical consultation paper in Annexe F. This includes a joint Ministerial Statement from Matt Warman MP, Minister for Digital Infrastructure, and The Rt Hon Christopher Pincher MP, Minister for Housing, which sets out the aspiration for the UK to be *"... a global leader in 5G, the next generation of wireless connectivity, and for communities and businesses to benefit from investments in this new technology..."*
- 5.28 One of the key intended changes outlined in Section 4 and questions 2 and 3 of the technical consultation paper are measures to further bolster the sharing of existing masts to deliver 5G connectivity and thereby limit the need for new ones. The Government intends to introduce more generous permitted development rights in Part 16 of the GPDO that would allow an existing ground based mast to be increased to 25m in height on unprotected land, including within Green Belt areas, without the need to submit a prior approval determination application to the LPA. Related measures would also permit existing masts to be widened

without prior approval so that they can handle the structural loading of 5G apparatus, and the consultation exercise seeks views on the relevant thresholds required to achieve this.

5.29 These measures flow from paragraph 31 of the consultation paper, which states that:

“31. To enable the upgrading of sites to support both 4G and 5G infrastructure and to extend network coverage, existing ground-based masts will need to be strengthened and increased in height. This is necessary to enable masts to accommodate additional equipment and enable greater sharing of infrastructure between operators.”

5.30 The introductory wording of question 3 also explains that *“The government has committed to make it easier to strengthen existing masts without the need for prior approval to be given by the local planning authority. **This is to encourage use and sharing of existing masts and so limit the need for new ones...**”* (our emphasis)

5.31 In order to address safeguarding considerations at locations such as the appeal site that are near aerodromes, question 8 of the technical consultation also seeks views on engagement measures for the installation, alteration or replacement of masts within a safeguarding area identified on a safeguarding map for an aerodrome, technical site, or defence asset. The measures outlined are mainly variation of existing arrangements for advance notification by Code Operators, along with two new requirements for the determination of prior approval applications that involve:

- The requirement that LPAs should not grant prior approval contrary to the advice of the operator of the aerodrome, technical site or defence asset, the Civil Aviation Authority, or the Secretary of State for Defence
- That prior approval will automatically be required in the case of the installation, alteration or replacement of a mast on land within a safeguarding area identified on a safeguarding map relating to a defence asset.

5.32 If the Government implements the changes outlined in the technical consultation paper, then the back-stop is that the appeal proposal will then become outright permitted development, i.e. free of the prior approval application process, as it is not located on protected land. Under those circumstances, the changes required to deliver 5G services from the appeal site could be undertaken following the required Notifications to the LPA and Heathrow Airport under

Regulations 5 and 8A respectively of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended.

- 5.33 In the case of the appeal proposal, engagement has already been undertaken with Heathrow Airport and it has confirmed that the increase in the height of the mast does not raise any aerodrome safeguarding concerns. The relevant engagement with Heathrow Airport's Airside Works and Safeguarding Manager is provided in Annexe G.
- 5.34 For these reasons, we consider that the appeal proposal accords fully with national, regional, and local planning policy objectives for modern communications infrastructure set out in section 10 of the NPPF, Policy SI 6 Digital Connectivity of the New London Plan 2021, and Policy DMHB 21: Telecommunications of the Hillingdon Local Plan Part 2 – Development Management Policies (2020).

6. Conclusion

- 6.1 As is demonstrated in this Full Statement of Case, there is an undisputed need for the development to provide 5G, as well as improved 3G and 4G, electronic communications services by EE and H3G in the public interest.
- 6.2 The development proposed represents best practice in electronic communications site-sharing, in accordance with long-standing strands of town planning policy and regulation contained in the Electronic communications Code.
- 6.3 The need to increase the height of the mast and install additional apparatus are unavoidable technical, operational, and structural requirements if EE and H3G are to make use of their existing base station infrastructure to deliver 5G services. The impacts of the development both visually, and on the openness of the Green Belt, to achieve this are minor and should be acceptable in the planning balance.
- 6.4 The LPA has erred on a point of law in determining that the appeal proposal constitutes inappropriate development in the Green Belt where Very Special Circumstances need to be demonstrated under the NPPF and the Development Plan's Green Belt policies before prior approval can be granted.
- 6.5 Contrary to the reason for refusal, the development accords with the provisions of the Development Plan and the NPPF, in so far as these are material considerations relevant to the siting and appearance matters that are the sole scope of prior approval application

determinations. For these reasons the Inspector is requested to allow the appeal and grant prior approval for the development proposed.