

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

### **Appeal Statement**

#### **On behalf of MBNL, EE Ltd and Three (UK) Limited**

A planning appeal by written representation against the decision of the London Borough of Camden to refuse Prior Approval for the installation of 12 antenna apertures, 4x 600mm diameter dishes, 7x equipment cabinets and supporting steelwork at roof level. Installation 1x cabinet at ground level, plus ancillary development at 3 Farjeon House, Hilgrove Road, London, NW6 4TL.

Appellants reference: 77547  
LPA application reference: 2020/1374/P

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## Section 1: Introduction and Grounds of Appeal

### Introduction

- 1.1 This statement has been prepared by Waldon Telecom Ltd (hereinafter referred to as “the Agent”), acting for MBNL on behalf of EE Ltd and Three (UK) Limited (Three) (hereinafter referred to collectively as “the Appellants”). The appeal is brought by the Appellants against the refusal of planning permission by the London Borough of Camden (hereinafter referred to as “the Planning Local Authority”) for a proposed development at Farjeon House, Hilgrove Road, London (“the appeal site”).
- 1.2 On the 31<sup>st</sup> March 2020 the Appellants, via their Agent, submitted an application to the Local Authority for planning permission for the ‘installation of 12x antenna apertures, 4x 600mm diameter dishes, 7x equipment cabinets and supporting steelwork at roof level. Installation 1x cabinet at ground-level, plus ancillary development.’
- 1.3 The proposals are to utilise an existing base station at Farjeon House (1) to replace a former base station site located at Centre Heights, Finchley Road (2). It was a well established shared telecommunications site serving the NW6 area of Camden on behalf of both EE and Three. The reason behind the replacement is that the landlord, due to redevelopment of the building, requires the Appellants to remove their equipment. The Landlord's proposal to extend the building and redevelop the site for a residential led mixed used development were approved under LPA Ref: 2015/2997/P. The Appellants are therefore required to remove the antenna and associated equipment from the building and find a replacement site. The sites can be seen in Image 1 below.
- 1.4 The loss of service provision in this part of Swiss Cottage, Hampstead is imminent without a replacement site. It is imperative that a replacement site be secured and integrated into the network prior to the decommissioning of the existing base station, in order to prevent a loss of critical services and disruption to the network.
- 1.5 In 2018 the Agent was instructed by the Appellants to find a replacement site and seek the relevant permission from the London Borough of Camden. Following an extensive site search, an existing base station site at Farjeon House was identified for a replacement site.
- 1.6 Notably, footfall in the area is very high given the Appeal site's close proximity to Finchley Rod and Swiss Cottage London Underground station (6,920,578 passengers per annum<sup>1</sup>) as well as a number of bus stops in the vicinity. The Appeal Site is also located adjacent to the junction of the A41 Finchley Road to the east and Adelaide Road to the south east. It is also the subject of a Red Route which is a specific traffic restriction which prevents vehicles from stopping with the exception of certain places and times during the day. The specific radio coverage implications of the loss of the existing site on the NW3 area of Swiss Cottage, are significant and are set out in Section 2 and 4.
- 1.7 The application was decided via delegated powers and by notice dated the 07<sup>th</sup> May 2020 the Local Authority refused the application for the following reason **(APPENDIX 1):-**

*“1. The proposal, by reason of the location, scale, height and design, would result in a proliferation of visual rooftop clutter which would cause harm to the character and appearance of the host property, wider streetscene and the setting of the adjacent listed building, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017*

With the following informative:

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<sup>1</sup> <http://content.tfl.gov.uk/station-footfall-figures-2017.pdf>

*"In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019".*

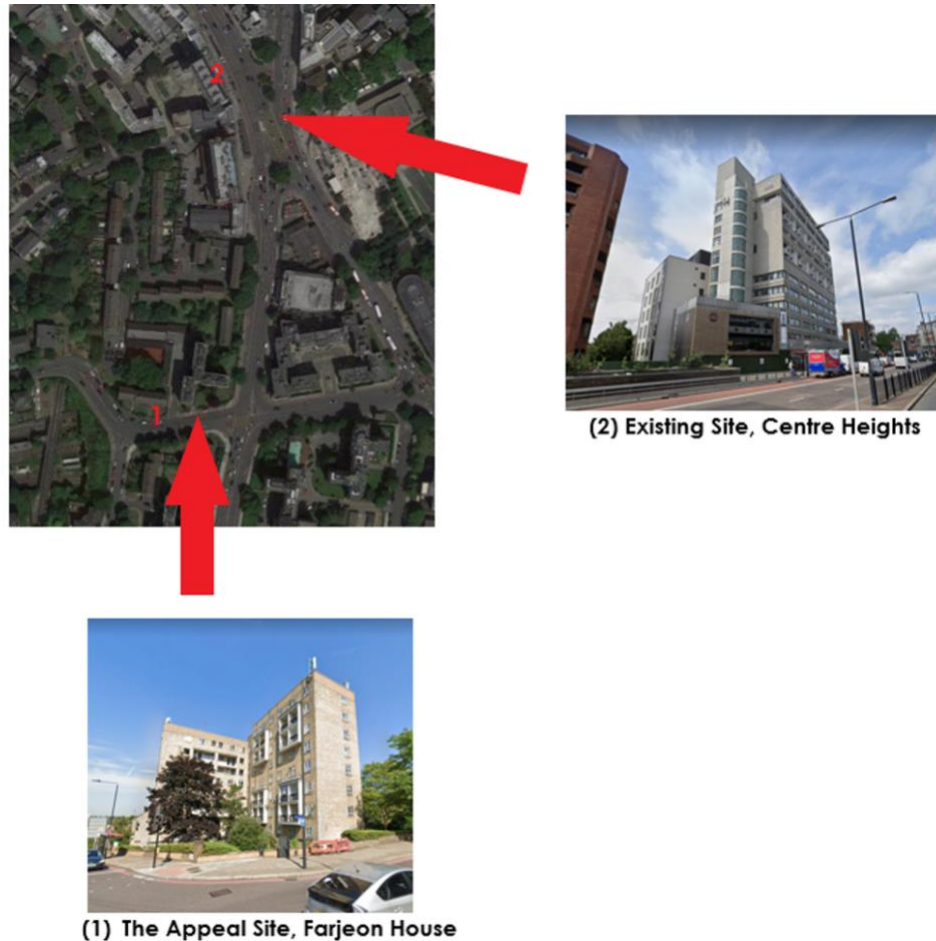


Image 1: Map illustrating location of the existing site and Appeal site

### **Grounds of Appeal**

- 1.8 The Appellants submit that the Local Authority's decision to refuse planning permission based on this alleged policy conflict is unsustainable and that the decision should not be upheld.
- 1.9 This statement of case will provide background information about the Appellants networks and their requirement for the proposed development at the appeal site. It will assess the appeal proposal against the statutory development plan based on the Local Authority's reason for refusal, and will conclude that prior approval should have been granted on the grounds that the proposed development is suitable in terms of siting and appearance and that any harm identified to the adjacent Listed Building will be less than substantial and outweighed by the very significant benefits of the maintenance and enhancement of this critical infrastructure in this busy part of London and that this had been sufficiently demonstrated within the prior approval application.
- 1.10 The case will also be made the Local Authority Planning disregarded clear guidance, within the National Planning Policy Framework (NPPF) in respect in respect of the presumption in favour of sustainable development and also Para. 113 which advocates the delivery of advanced, high quality and reliable communications infrastructure when making its decision

and failed to afford due weight to the pertinent issues of the case. It will then be concluded that the installation of a radio base station at the Appeal site is on balance wholly acceptable.

## **Section 2: The Appeal Site and Surroundings**

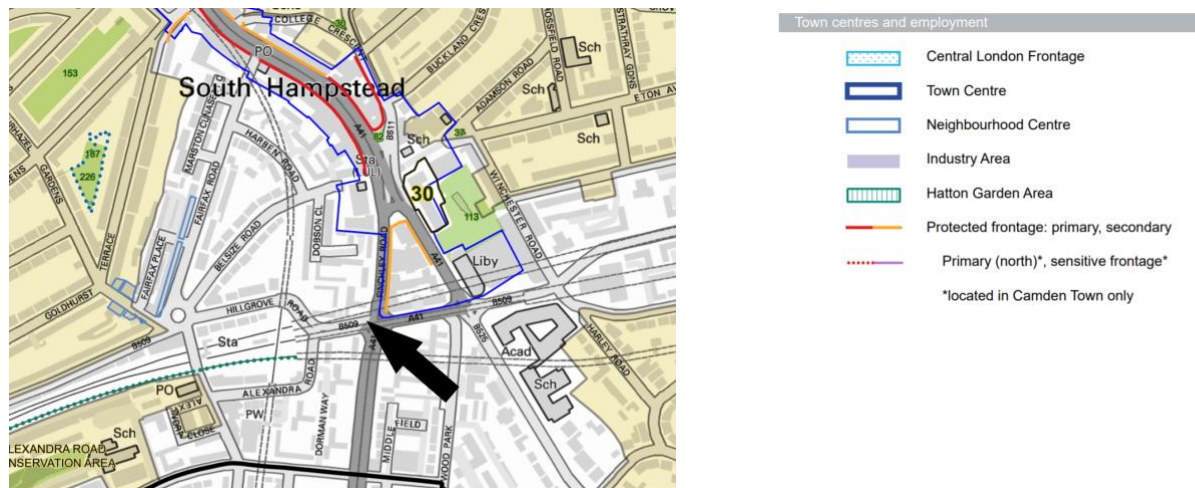
### **The Appeal Site**

- 2.1 The appeal site is located atop of Farjeon House which is located on the junction of Hilgrove Road and Finchley Road in the Swiss Cottage ward of the London Borough of Camden. Both Hilgrove Road and Finchley Road are main routes through the built up area and the junction is signal controlled. The building provides residential accommodation and is 8 story high with parking underneath on the western side. The building is of a style typical of the 1960/70, constructed from brick and has a flat roof. The roof height ranges from 25.29m AGL, 26.60m to 27.50m AGL. There are areas of open space between the main roads and the building which are planted with thick shrubbery and a number of mature trees. A number of the apartments in the building have their own private balconies
- 2.2 Farjeon House is an established base station site currently host to both Vodafone and UK Broadband antenna. There are a total of 6 no antenna on site currently with a top height of 30m AGL. These existing antenna have been sited to minimise their appearance on the street scene and are viewed within the context of the upper plant level (27.50m AGL).



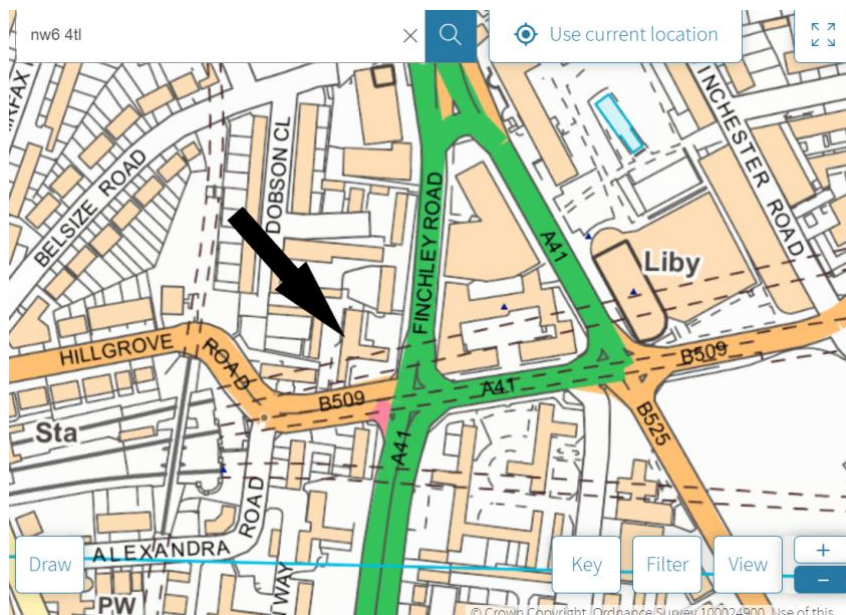
**Image 2: Appeal Site viewed from Hilgrove Road**

- 2.3 Reference to the London Borough of Camden Policies Map (May 2020) and to the Historic England interactive mapping tool confirms that the appeal site is not subject to any statutory or local protections.



**Image 3: Camden Local Plan Policies Map (May 2020) Extract with Legend**

(Source: <https://www.camden.gov.uk/documents/20142/4820180/Camden+Policies+Map+2020+May.pdf/55566da0-7e3e-4c6a-c114-a7acbb3b307a?t=1588776006944>)



**Image 4: Historic England Map Search Extract**

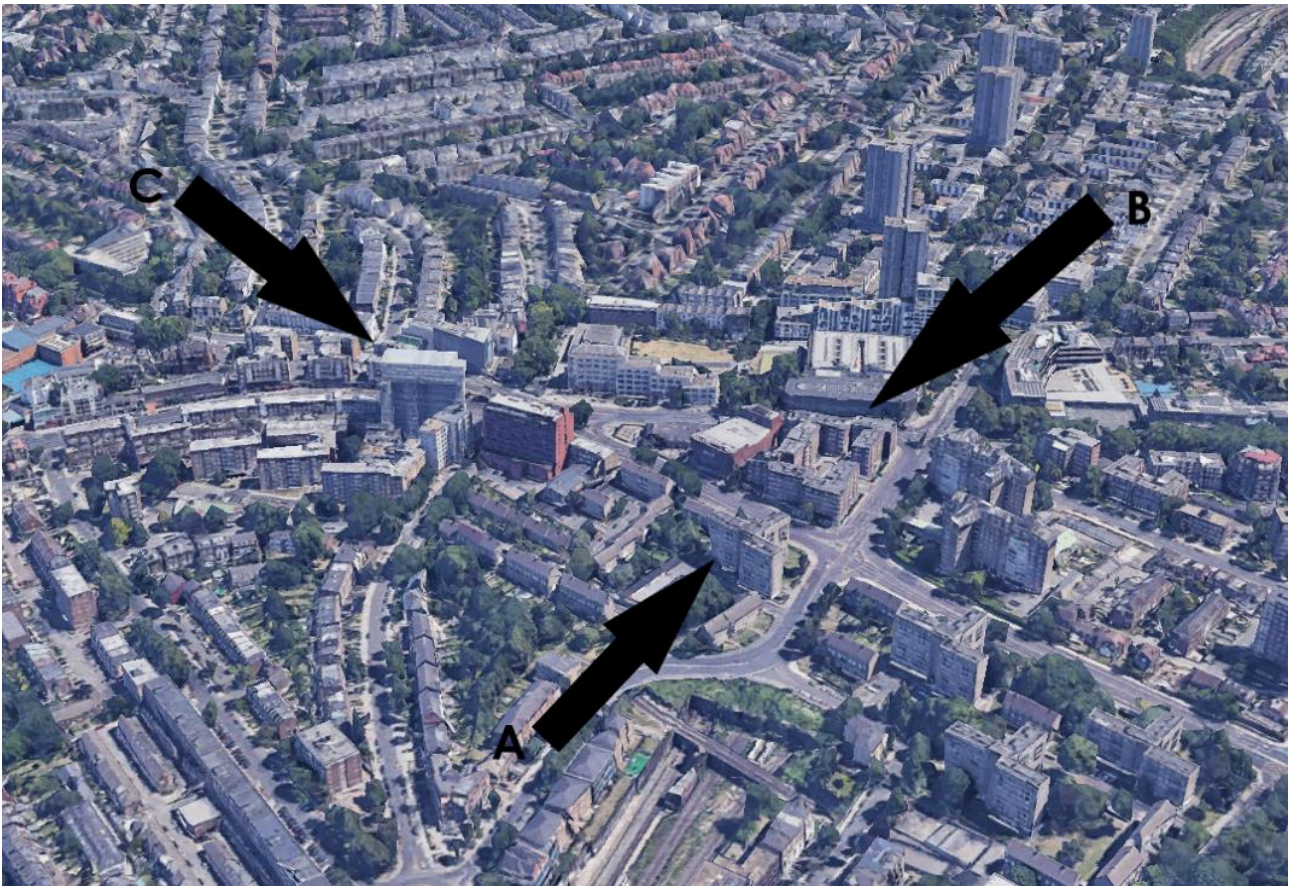
(Source: <https://historicengland.org.uk/listing/the-list/map-search?clearresults=True>)

## Surroundings

- 2.4 The buildings in the immediate vicinity of the site are predominantly residential providing flatted accommodation in a similar style to Farjeon House. The topography of the surrounding area is varied. The Camden Local Plan Policies Map shows that the site is adjacent to a neighbourhood shopping centre and the extract from Historic England shows the building to the east, 'Regency Lodge', is a Grade II Listed Building. Regency Lodge comprises flats and a neighbourhood shopping parade of shops on Finchley Road frontage. To the north of the Grade II Listed, Regency Lodge is the Odeon Cinema Swiss Cottage which is advertised by illuminated projecting and illuminated lettering signs to the Finchley Road elevation. Adjacent to the Odeon Cinema is a BT InLink with digital advertising.

Swiss Cottage London Underground tube station is located circa 200m from the appeal site. There are also a number of street trees in the area as well as within the gardens of the apartment blocks which have become well established and make a positive contribution to the street scene.

- 2.5 Finchley Road is a major classified road providing 4 lanes for vehicular traffic and a separate bus lane. It forms a gyratory with the A41 to the east. The area is the subject of a red route which is demarked by double red lines on the edge of the highway. It is a specific traffic restriction which does not allow vehicles to stop other than in specific areas at specific times.



**Image 5: Birdseye view of the Appeal Site (A), Regency Lodge (B) and Centre Height (C) from the South West**

- 2.6 There is a range of existing street furniture, typical of an inner city area. Streetlighting columns are generally set back from the edge of the public highway and there are numerous columns required for the display of traffic signs and signals. A number of the buildings host various piece of plant and equipment on their roofs which is also common to an area like Swiss Cottage.
- 2.7 The Appellants currently have a base station at Centre Heights which provides coverage to the local area. The existing base station is approximately 200m to the north of the appeal site, however there are plans to redevelop the building and as such the Appellants are required to remove their equipment hence the need for the proposed development.

### **Section 3 - The Appeal Proposal**

- 3.1 The appeal proposal comprises the installation of 12 no antenna apertures, 4 no 600mm diameter dishes, 7 no equipment cabinets and supporting steelwork at roof level. Installation 1x cabinet at ground-level, plus ancillary development.

The equipment cabinets supporting the base station are detailed as follows:

- 3 No. Outdoor Cabinet – 770mm x 770mm x 2500mm (W x D x H)
  - 1 No. AMP5930 Cabinet – 600mm x 480mm x 1600 (W x D x H)
  - 1 No. Link AC MK cabinet – 1200mm x 500mm x 1500mm (W x D X H)
  - 1 No Furo Cabinet – 770mm x 770mm x 2100mm (W x D x H)
  - 1 No 3900A Cabinet – 770mm x 770mm x 2500mm)
  - 1 No Meter Cabinet at ground level – 1100mm x 400mm x 1200mm
- 3.2 Together these elements comprise a mobile telecommunications radio base station that would provide replacement critical infrastructure 2G, 3G, 4G coverage and capacity as well as new 5G services to the heart of Swiss Cottage and the surrounding area and ensure the continued provision of reliable digital mobile connectivity in the public interest.

#### **Section 4: The Need for Development and Benefits Associated with the Proposal**

- 4.1 Mobile Broadband Network Limited (MBNL) is a joint venture owned by EE (UK) Ltd and Three (UK) Ltd. MBNL undertakes the management and network deployment of telecommunications sites on behalf of both EE (UK) Ltd and Three (UK) Ltd. The EE network is also used by the Emergency Services Network (ESN). MBNL is a Code Operator under the Electronic Communications Code.
- 4.2 The agreement allows both organisations to pool their basic network infrastructure, while running two, independent, nationwide networks allowing consumer choice. By doing this, they will both reach far more of the country far faster than they could achieve on their own. The development the subject of this appeal is to be carried out by MBNL on behalf of EE and Three (UK) Ltd.
- 4.3 The appeal development services not only the EE and Three UK Limited mobile networks, but also other Mobile Virtual Network Operators (MVNO)<sup>2</sup> which use the network by lease. Its shared function reduces the need for multiple installations.
- 4.4 The requirement for the appeal proposal stems not from a desire for network expansion or the rollout of new technologies and services but due to the loss of a permanent operational site and the need to prevent a loss of existing network services within the Swiss Cottage area of Hampstead in the London Borough of Camden.
- 4.5 The main instigator for an installation in this location follows the redevelopment of the Centre Height, 137 Finchley Road, NW3 6HY. The building has hosted a base station for a number of years serving the NW6 area of Swiss Cottage on behalf of the Appellants. As previously noted the reason behind the replacement relates to the Landlord's redevelopment plans which involves the Appellants removing their equipment. The site was given permission in 2016 (LPA Ref: 2015/2997/P) for a 2/3 storey extension to create residential units with a roof garden and a single storey rear extension to provide additional retail floor space. As well as the demolition of the existing multi storey car park to make way for a two to four storey mews development. The Appellants are therefore required to remove the antenna and associated equipment from the building and find a replacement site.
- 4.6 It is imperative that a replacement site, be secured and integrated into the networks prior to the redevelopment of the existing base station, in order to prevent a loss of critical services and disruption to the networks in and around the Swiss Cottage area.
- 4.7 As already stated the proposed installation at the appeal site will provide replacement 2G (GSM), 3G (UMTS) 4G (LTE) for both EE and 3 customers whilst also introducing new 5G services. This multi-technology service will be enabled from an existing single radio base station, thus reducing the number of telecommunications installations in the area and ensuring the minimum consistent with the efficient network development.
- 4.8 The purpose of the replacement site is to maintain coverage and capacity in the NW6 area of Camden. The term 'capacity' refers to the fact that each base station can only provide services to a certain number of users at any one time. When this 'Capacity' is exceeded, although 'Coverage' remains present, the base station cannot provide service to any further users and calls/text/data usage would be unavailable. This is contrary to the purposes in which the operator's customers purchased their handheld devices as well as the Government thinking that everyone should have access to the information superhighway wherever they are.

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<sup>2</sup> MVNOs include Sky Mobile, Talk Home Mobile etc

- 4.9 The requirement for the appeal proposal and implications of failing to replace the existing site at Centre Heights, were laid out within Sections 3 and 4 of the Supplementary Information document provided to the Local Planning Authority as part of the planning application submittal documents (**Appendix 2**). As was detailed within that submission, base stations use radio signals to connect mobile devices and phones to the network, enabling people to send and receive calls, texts, emails, pictures, TV and to access services and download/upload data. Base stations are connected to each other by cables or wireless technology. The area each base station covers is called a cell. Each cell overlaps with its neighbouring cells to create a continuous network. Because base stations are low powered radio transmitters, they each have a limited range, meaning that they generally need to be located closest to the area requiring coverage.
- 4.10 Increasingly, people are also using their mobiles in their homes and this means we need to position base stations in, or close to, residential areas. The Ofcom Infrastructure Report 2018<sup>3</sup> found that almost half as much time was spent on landlines than in 2012 while mobile phone data demand grew tenfold.
- 4.11 When an existing site is lost from the network it leaves a very specific “gap” in coverage and capacity within the established network pattern which needs to be filled. The consequence of not doing so is that users of the network find that the services they previously had access to are either limited or removed.
- 4.12 Considering the proposal is to replace an existing base station, it is fundamental that it is placed as closely as possible to the original site so that it will replicate coverage and capacity to the target area.
- 4.13 As noted, the appeal proposal seeks to ensure the continued provision of 2G, 3G and 4G services for EE and Three whilst also providing new 5G services. By way of background, 2G (GSM - Global System for Mobile communication) allows for basic voice calls and text services. 2G operates using lower frequencies than 3G and 4G. These lower frequencies have longer wavelengths which are more resilient to physical obstructions and will, in general, cover larger geographical areas. This contributes to the fact that 2G coverage is often more commonly achieved in rural or remote areas than 3G or 4G. 3G (UMTS - Universal Mobile Telecommunications Service) is a more efficient technology than 2G for voice communications and also allows for data transmission as well as text services as mobile phones, computers, and other portable electronic devices access the internet wirelessly. 4G (LTE, the acronym used for ‘Long Term Evolution’) supports mixed data, voice, video and messaging traffic and offers speeds of up to five times faster than 3G, enabling network users with 4G devices to benefit from ultra-fast internet browsing and access to services, video streaming, gaming, e-mail and downloads. 5G (Fifth Generation Wireless) is the new generation of wireless technology and will deliver the reliable and faster networks of the future. 5G will change how we understand wireless connectivity, moving from something we experience through personal devices to an integrated infrastructure of buildings, transport and utilities, providing enormous benefits for citizens, businesses and urban regions alike. 5G will provide a new level of underlying connectivity to transform services and create new digital ecosystems that will deliver cost and time savings and new amenities to the regions inhabitants. With the ability to connect one million devices per square kilometre, 5G is to offer higher speeds and capacity than anything that has come before. Whether it be in the healthcare, transport, energy or retail sectors, 5G will reshape how we use these services and will bring substantial savings to households, businesses and Councils.
- 4.14 Providing ‘advanced, high quality and reliable communications infrastructure’ is a key Government priority, set out in the NPPF, the joint Department for Culture, Media and Sport (DCMS) and Ministry of Housing, Communities and Local Government (MHCLG) statement (**Appendix 3**), Department for Business, Energy & Industrial Strategy ‘Building a Britain Fit for the Future’<sup>4</sup>, Ofcom Infrastructure reports 2016 – 2020<sup>5</sup>, National Infrastructure Delivery Plan 2016 –

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<sup>3</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

<sup>4</sup> <https://www.gov.uk/government/publications/industrial-strategy-building-a-britain-fit-for-the-future>

<sup>5</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

2021<sup>6</sup>, and 'Digital Connectivity Portal'<sup>7</sup>. The DCMS and MHCLG have called upon Local Authorities in their role as landowner, policy and decision maker to work collaboratively with the digital communications industry to minimise barriers to deployment and the delivery of reliable mobile connectivity.

Joint DCMS & MHCLG "Collaborating for digital connectivity" states:

*"Government is committed to supporting investment in high-quality, reliable digital connectivity so that communities can benefit from faster economic growth and greater social inclusion".*

Section 10 of the NPPF relates to 'Supporting high quality communications' and states:

*"Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution)".*

NPPF, Paragraph 112

*"We will build a Britain that lives on the digital frontier, with full-fibre broadband, new 5G networks and smart technologies"*

BEIS Industrial Strategy – Building a Britain fit for the Future 2017

*"Over the course of 2016, the UK took another step forward in the coverage of its fixed and mobile communications. More people are, or can be, connected to the communications they need, and they are consuming more data as fixed and mobile services become increasingly woven into the fabric of their daily lives and work".*

Para 2.1, Ofcom Connected Nations Concise Summary 2016

*"People expect to be able to make calls and get online where they live, work and travel."*

Ofcom Connected Nations Concise Summary 2019

*"Mobile traffic has increased by 38% with respect to last year (compared to 36% growth the previous year). 4G carries 90% of data traffic (compared to 85% last year) but only carries 21% of voice traffic<sup>29</sup>, with 3G and 2G carrying 73% and 6% of voice traffic respectively".*

- 4.15 The Future Telecoms Infrastructure Review<sup>11</sup> sets out the ambition for the UK. In terms of 4G and 5G (which the proposed appeal site will provide), it states:

*The Government has committed to extend geographic coverage to 95% of the UK by 2022 and so address these 'not spots'. We have introduced changes to the Electronic Communications Code and to planning laws, to make it easier and cheaper to deploy mobile infrastructure. We are working with Ofcom on options to extend coverage. Alongside finishing the roll out of 4G networks to meet existing mobile demand, we want the UK to be a world leader in 5G to take early advantage of this*

<sup>6</sup> <https://www.gov.uk/government/publications/national-infrastructure-delivery-plan-2016-to-2021>

<sup>7</sup> <https://www.gov.uk/guidance/digital-connectivity-portal>

*new technology. We have set a target that the majority of the population will have 5G coverage by 2027*

- 4.16 In this, it is recognised by Government that “5G is expected to enable both an evolution of existing mobile services and potentially revolutionary new services”. The appeal site will provide 5G.
- 4.17 These documents note that improved digital infrastructure lowers barriers to social and economic participation and boosts productivity and earning power.
- 4.18 Critical to achieving this is the ability of operators to deploy appropriate infrastructure. The proposed replacement site will provide new 5G services, and it is required to pick up the loss of network coverage and capacity associated with the removal of 2G, 3G and 4G equipment from the Centre Heights, 137 Finchley Road.
- 4.19 The overriding emphasis in the Government’s current approach and policies for planning is that permission should be granted unless there are compelling reasons why it should not. If the benefits of the proposed scheme outweigh the identified harm caused by the development, the proposal should be allowed to go ahead. As the equipment from the existing base station needs to be removed, there is a clear and demonstrable need for a replacement installation to continue providing mobile phone coverage and capacity to this part of London. It is the Appellants’ intention to demonstrate that the benefits of the proposed replacement installation would outweigh the harm caused to the area.
- 4.20 The benefits of replacement 4G provision as well as new 5G services in particular were outlined to the Local Authority within the planning application, where it was detailed that high-quality communications infrastructure is essential for sustainable economic growth and that high-speed broadband technology and other communications networks can play a vital role in enhancing the provision of local community facilities and services.
- 4.21 Further to the planning application being refused, the COVID-19 outbreak, over a very short period of time, has significantly changed how we live and work, with far-reaching social and economic implications for every community and all parts of the economy across the UK. The Covid-19 pandemic has exacerbated demand and pressure on the Appellants networks.
- 4.22 For the first time in history, all mobile networks sent out a government message to their customers with details of the new shutdown measures. The message from 24 March 2020 reads: ‘GOV.UK CORONAVIRUS ALERT. New rules in force now: you must stay at home. More info and exemptions at gov.uk/coronavirus Stay at home. Protect the NHS. Save lives’. Even the World Health Organisation launched a WhatsApp chatbox allowing people to get instant information about the coronavirus through the smartphone messaging application. None of this would be possible without the physical infrastructure such as masts, antennas, microwave dishes and cabinets which together provide the coverage and capacity to keep people in touch and working. This highlights the essential role that high quality communications infrastructure plays in supporting economic growth and more accessible, inclusive communities.
- 4.23 More importantly, the significance of mobile connectivity during the pandemic was reinforced by DCMS in succinct advice to local authorities and operators published on 02<sup>nd</sup> April 2020<sup>8</sup>:
- ‘Government recognises the ongoing importance of the telecommunications industry at this critical time. Now, more than ever, the country is reliant on fixed line and mobile communications networks. **Telecommunications has therefore been included as one of the critical sectors** in new government regulations and legislation in response to dealing with the COVID-19 outbreak.’ (emphasis added)*
- 4.24 The advice sets out (albeit in relation to emergency access provision) that:

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<sup>8</sup> <https://www.gov.uk/guidance/covid-19-guidance-for-telecommunications-infrastructure-deployment-in-england>

'Fully operational telecommunications infrastructure is needed to support mass homeworking and critical connectivity to emergency services and hospitals. Network operators must be able to rectify network outages promptly and to mitigate any effects of network degradation over the duration of this emergency period.'

4.25 Whilst the circumstances here are clearly not comparable, what is clear is that Government supports fully operational telecoms infrastructure, which is critical infrastructure, and wants to avoid network outages and degradation with the intention of obtaining reliable mobile digital connectivity. In the case of the appeal, an existing site will be lost and in order to maintain a reliable communications network this must be replaced. Without the replacement of an existing base station at Farjeon House, this area of Swiss Cottage area will suffer from unreliable mobile digital connectivity. This will have a detrimental effect on the nearby residents and business as well as people using the services and shops in the area and travelling through by private vehicle and public transport including almost 7 million people using the Swiss Cottage London Underground Station<sup>9</sup>.

4.26 On 13<sup>th</sup> May 2020, MHCLG<sup>10</sup> advised that:

*'site visits and the use of digital technology and virtual meetings should become the norm in planning casework.'*

Lord Greenhalgh clarified:

*'Local planning authorities and the Planning Inspectorate drive the planning process forward and should ensure that it continues to operate effectively to support economic recovery. Moving to digital events and processes will be critical. This means adapting to working virtually, including virtual hearings and events (such as using video-conferencing and/or telephone) and making documents available for inspection online.'*

*The Government expects everyone involved in the planning process to engage proactively.'*

4.27 Given the increasing extent of mobile only online access in households across the UK<sup>11</sup>, the importance of continued reliable mobile connectivity is highlighted to enable public participation in planning committees and other online activities, for example.

4.28 Planning is expected to play a key role in United Kingdom's economic and social recovery from COVID-19. The MHCLG published the 'Planning for the Future'<sup>12</sup> White Paper on 06<sup>th</sup> August 2020. The consultation notes that the '*outbreak of COVID-19 has affected the economic and social lives of the entire nation*'. The consultation proposes reforms of the planning system to streamline and modernise the planning process, bring a new focus to design and sustainability, improve the system of developer contributions to infrastructure, and ensure more land is available for development where it is needed.

4.29 It is noted that much of the proposed streamlining and modernisation will be based on greater use of digital technology. Without the relevant infrastructure in place such as the appeal proposal this will not be possible.

4.30 In order to assist with social and economic recovery, the MHCLG have through the White Paper revitalised the presumption in favour of sustainable development. This will give greater weight to the contribution that development makes to meeting the country's social, environmental and economic objectives. The appeal proposals meet all three objectives of

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<sup>9</sup> <http://content.tfl.gov.uk/station-footfall-figures-2017.pdf>

<sup>10</sup> <https://www.gov.uk/guidance/coronavirus-covid-19-planning-update>

<sup>11</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

<sup>12</sup> <https://www.gov.uk/government/consultations/planning-for-the-future>

sustainable development identified in Paragraph 8 of the NPPF as well as the 'Sustainability Test' set out in the White Paper.

- 4.31 This clearly further demonstrates the Government's perspective that mobile communications infrastructure is critical infrastructure and needs to be fully operational to respond to COVID-19 and to contribute to achieving social, environmental and particularly economic objectives. Providing replacement critical infrastructure at Farjeon House, fully corresponds with the priorities identified by Government as part of an effective response in dealing with COVID-19 and ensuring sustainable development.
- 4.32 The proposed replacement installation, similarly to the existing one, has been designed under MBNL's joint venture agreement. It will also be made available to MVNOs under their agreements with network operators. As such significant weight should also be given to the fact that the site would be shared by two operators while also being made available to MVNOs, hence reducing the need for additional installations at separate locations, which is an approach advocated by the Framework.
- 4.33 Whilst paragraph 116 of the National Planning Policy Framework prevents Local Planning Authorities from questioning the need for development by mobile operators, it does not require that they disregard it and in this case, the Appellants consider that insufficient weight has been afforded to the need to retain critical network services for EE and Three and their MNVOs in the area following the loss of Centre Heights.
- 4.34 The enclosed coverage plots **Appendix 4** provide a simple visual representation of the relevant coverage issues. The plots are modelled using a specialist tool and overlay shading on a base map to represent various signal strengths for indoor coverage.
- 4.35 Indoor coverage provision is imperative across the UK, arguably more so within the major cities such as London where connectivity plays a particularly vital role in commerce. During the COVID 19 pandemic many people are self-isolating or working from home or remotely and are reliant on indoor coverage provision. Without the installation subject to this appeal, the vital indoor levels, which allow customers to access services from within buildings, would simply not be achieved. The existing coverage is shown below in Image 6.
- 4.36 The images show indoor 3G coverage from Three's equipment. Full coverage charts for both operators are enclosed with the appeal (**Appendix 4**). If 3G plots show good coverage, it will follow for other technologies as well.
- 4.37 The tool demonstrates that the removal of the existing site at Centre Heights would result in a deficiency in indoor coverage (grey). Moreover, the loss of services would affect 47% of all mobile users<sup>13</sup> using the Swiss Cottage Underground station, the shopping area and the area to the south of the appeal site.

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<sup>13</sup> <https://www.statista.com/statistics/387202/most-used-mobile-networks-uk/>

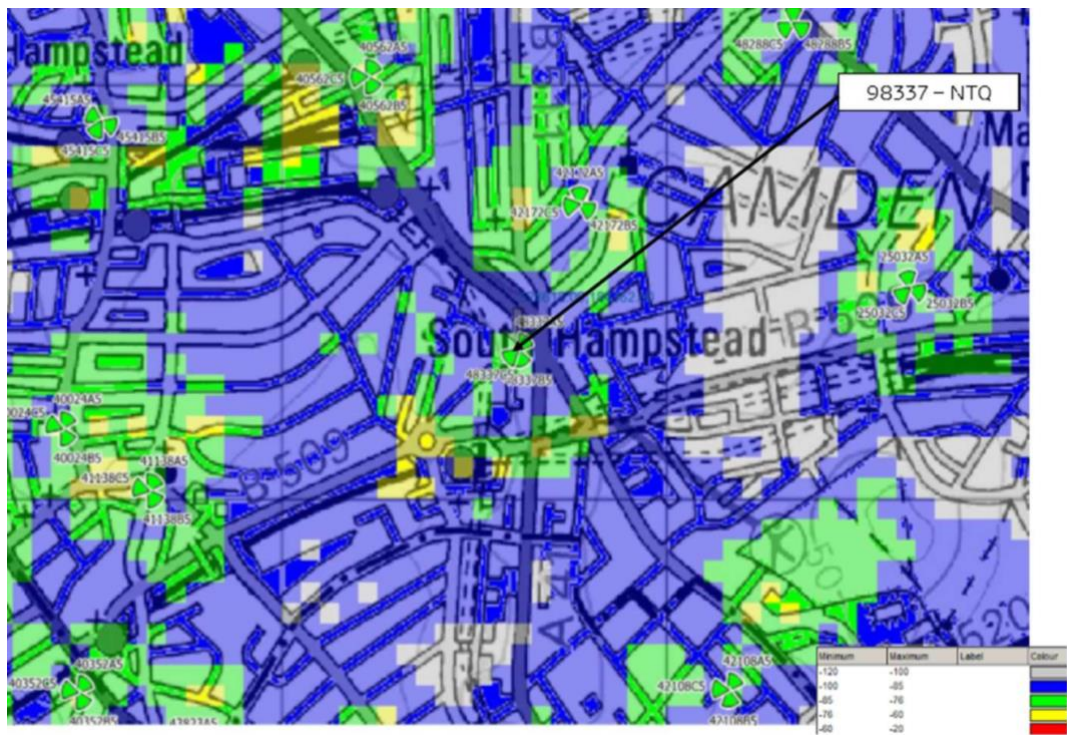


Image 6: Indoor coverage with existing base-station operational. Current situation

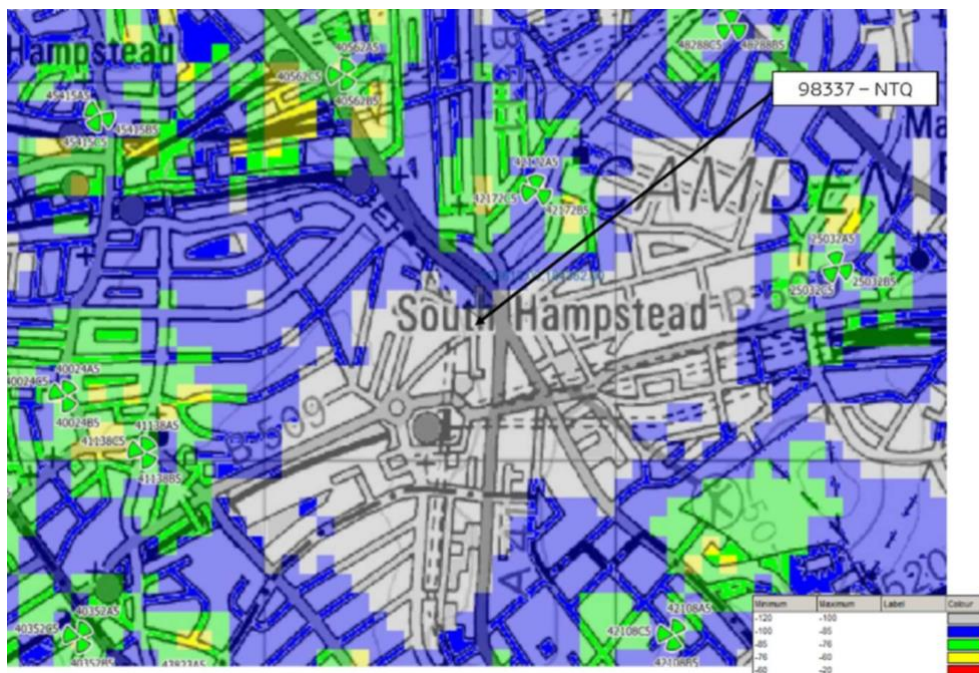


Image 7: Indoor coverage if existing base- station is not replaced.

4.38 Notably, the greater the signal strength and quality, the less likely the call will be dropped or missed and the more likely it will be that a stable internet connection will be maintained when using a smartphone, a tablet with an embedded SIM, or a laptop with a dongle.

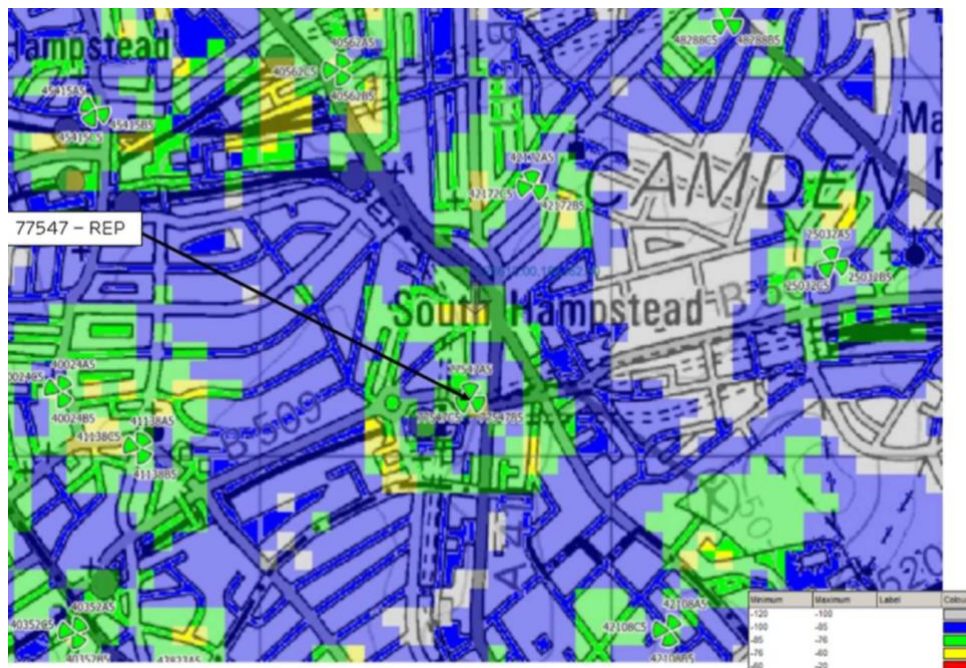


Image 8: Indoor coverage with replacement base-station at application site

- 4.39 As illustrated in image 8 above the introduction of the appeal proposal would maintain high levels of coverage (green and yellow), which is the ideal within urban areas. There is a clear and demonstrable need for the appeal proposal which derives from the fact that it will replace an existing site that will be decommissioned as the building upon which the equipment is located is being redeveloped.
- 4.40 EE and Three networks in central London particularly those adjacent to transport hubs generates a very high demand for service. The coverage plots cannot illustrate the capacity of the site, which the surrounding sites cannot fill. Therefore, coverage is currently worse than the plots can predict. The term 'Capacity' refers to the fact that each base station can only provide service to a certain number of users at any one time. The moment one base station gets removed, only some of that traffic will be picked up by the surrounding base stations, and only if they are not already operating at capacity. When this 'Capacity' is exceeded, although 'Coverage' remains present, the base station cannot provide service to any further users and calls/text/data usage would be unavailable. Therefore, the actual 2G/3G/4G service provision would be virtually non-existent without this replacement site. This is therefore, a critical network consideration for EE and Three's subscribers and those of their MVNOs.
- 4.41 The importance of mobile technology in the UK, and its contribution to the sustainability agenda is emphasised in a series of annual communication market reports published by Ofcom<sup>14</sup>.
- 4.42 In the Ofcom Infrastructure Report - Connected Nations 2016, the report notes that 'the United Kingdom depends on various infrastructures, and one of the most important is the nation's communications'. It goes on to state that '*fast, reliable communications enable businesses to generate prosperity and employment, and our countries to compete. They empower every citizen to take a full part in society and benefit from life's opportunities. Communications also save lives, bind families and friends together, and keep us entertained*'.
- 4.43 Paragraph 5.14 of the 2016 Report highlights that mobile services have become central to the way consumers and businesses live and work. One indicator is that fixed voice has given way to mobile as the primary mechanism for contacting the emergency services. The Report goes

<sup>14</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

on to state that it has found that in major emergencies, native and 'over the top' services on mobile networks are playing an essential role in keeping people connected and informed.

- 4.44 These trends have shifted the role of mobile services from desirable to essential.
- 4.45 The key findings of the report are set out in the Concise Summary Connected Nations 2016. It found that people are consuming more data as fixed and mobile services become increasingly woven into the fabric of their daily lives and work (Paragraph 2.1).
- 4.46 However, paragraph 2.2 of the Concise Summary report notes that for a significant number of consumers, and in many parts of the country, fixed broadband speeds are slow and mobile coverage is poor or indeed non-existent. Ofcom is therefore continuing to work with the industry, the UK Government and the devolved administrations to explore ways to improve the availability and performance of these vital communications services.
- 4.47 On 15 December 2017 Ofcom published Connected Nations 2017. The report acknowledges that as communications play an increasingly critical role in our lives, the supporting infrastructure must keep pace with the needs of people and businesses. Part of Ofcom's role is to help ensure that people across the UK can access a decent internet service, and make phone calls where and when they need to.
- 4.48 The Connected Nations Report 2017 found that the expectation of mobile services is changing as we become more dependent on mobile services and need to access them wherever we are. At the same time the devices we use to access mobile services have changed, with increasing take up of smart-phones and tablets, which require stronger signals than older, simpler phones.
- 4.49 The 2016 and 2017 Reports note that increasing coverage and take-up of 4G is driving data use. The coverage improvements provided by existing measures and commercial deployments are unlikely to fully address consumer needs. Without additional steps, the consumer experience in many rural areas, on roads and on the railways, is unlikely to improve. Achieving near universal coverage throughout the geographical area of the UK and across the road and rail networks, will require significant new investments in mobile infrastructure. Indeed, the average volume data consumed per subscriber per month increased by 46% year on year.
- 4.50 Connected Nations 2018, states *'people now rely on being connected through calls and online services more than ever. So, it is important they have access to reliable, good quality mobile communications, to help them keep in touch with friends and family, shop and pay bills online, or stream the latest must-see TV series.*
- 4.51 Connected Nations 2019, states
- 'Over the last few years, the availability and take-up of superfast and ultrafast broadband, and the coverage and take-up of 4G mobile services have dramatically increased. The UK leads other large European countries for the highest availability of superfast services. The UK also holds a leading position on current 4G mobile network coverage. This demonstrates that policy and regulatory decisions made in the past few years have supported investment in new networks and technology and delivered a good outcome for consumers. Emphasis must now turn to the initiatives needed to ensure that the next wave of network deployment can meet future needs as quickly as possible by further extending the reach of full fibre and mobile networks'.*
- 5.52 The most recent Ofcom<sup>15</sup> report 'Online Nation 2020' published in June 2020 highlights the impact of the Covid-19 pandemic on the demand for mobile connectivity. The report looks in

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<sup>15</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/196407/online-nation-2020-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/196407/online-nation-2020-report.pdf)

depth at what people in the UK are doing online and industry trends amongst other things, found in relation to the increasing importance of mobile connectivity:

- 71% of all measured time spent online was on smartphones.
- 35% of internet users only accessed the internet on mobile devices (smartphone or tablet).
- In 2020, a fifth (22%) of UK adults have a smart speaker in the home and 11% of all UK households own some kind of 'smart home' technology (including devices such as smart home security, smart lighting and smart heating).

4.53 Reinforcing the importance of mobile connectivity as 'critical infrastructure' during the pandemic, the Online Nation 2020 report found:

#### **Covid-19 impact: time spent online reaches record levels**

- *In April 2020, internet users in the UK spent an average of 4 hours 2 minutes online each day, 37 minutes more each day per online adult compared with January 2020.*
- *In April 2020, the reach of education (+3 percentage points), health (+5pp) and government (+5pp) sites had all grown since January.*
- *... between January and April 2020; Houseparty increased from 175,000 to 4 million; Zoom reached 13 million adult internet users in April, up from 659,000 in January.*
- *In February 2020, 73% of UK adult internet users used online text messages, 54% use online voice calls, 35% use video calls and 55% use emails, at least weekly. Nine in ten adult internet users used any of those four services at least weekly.*

#### **Most internet users use online messaging and calling services and use increased during the coronavirus pandemic**

- *Until early this year, online video calling was used much less than other online communication services, with 35% of online adults using online video calling at least weekly in the 12 months to February 2020. In May 2020, this had doubled to 71% of online adult consumers using online video calling services at least weekly, with 38% using them at least daily. Our research suggests that 7% of adult internet users used video calling for the first time as a result of the coronavirus pandemic.*

#### **87% of the UK adult population use the internet Mobile only use has increased dramatically**

- *In 2019, ... the proportion who use only mobile devices has shot up: 35% of internet users accessed the internet solely via a smartphone or tablet in 2019 – a 10 percentage point (pp) increase compared to 2017. Across computers, tablets and smartphones, 71% of time spent online in September 2019 was on smartphones.*

4.54 Moreover, in March 2020, when OfCom finalised the rules for the next mobile airwaves auction, Philip Marnick, Spectrum Group Director at Ofcom noted

*'Demand for getting online, on the move is soaring, with mobile customers using nearly 40% more data year on year. So, releasing these airwaves will bring a much-needed capacity boost – helping mobile customers get a better service. We're also releasing more airwaves to help cement the UK's place as a world leader in 5G.'*

4.55 The continued expansion and development of mobile networks is a key element of the National Infrastructure Delivery Plan 2016 – 2021<sup>16</sup>. This recognises that digital communications

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<sup>16</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/520086/2904569\\_nidp\\_deliveryplan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/520086/2904569_nidp_deliveryplan.pdf)

are now a crucial component of everyday life, with improvements in connectivity being key to a vibrant economy. Camden is the 4<sup>th</sup> highest contributor to GVA in London, contributing 6.8% while its share of UK GVA of 1.6% is up from a revised 1.07% in 2008.

4.56 Paragraph 5.7 of the Code of Best Practice for Mobile Connectivity 2016<sup>17</sup>, states:

*'Good mobile connectivity also promotes sustainability, both for individual communities and across the economy as a whole. For example, it enables home working, thus reducing the need for travel, and so contributes to minimising pollution, and mitigating climate change and helps in the move towards a low carbon economy'.*

*'The principal aim of this Code is to ensure that the Government's objective of supporting high quality communications infrastructure, which is vital to continued economic prosperity and social inclusion for all, is met.'*

4.57 The London Assembly's Regeneration Committee describes digital connectivity within its "Digital Connectivity in London"<sup>18</sup> report, published June 2017, as the **"fourth utility"** (emphasis added), *an everyday necessity alongside water, gas and electricity*" and also noted that *"mobile broadband is, and will continue to be, an essential complement of fixed broadband"*.

4.58 Despite this, across the UK a number of both urban and rural locations continue to suffer from less than adequate coverage provision. The Digital Connectivity in London Report, 2017, notes that:

*"London's economic productivity and international competitiveness face a significant threat in the form of poor digital connectivity. The capital is poorly served, suffering from 'not-spots', 'digital deserts' and a lack of fibre connections. Because big telecommunications companies have struggled to deliver for the capital's businesses and residents, London lags behind smaller UK cities such as York, Coventry and Edinburgh despite its role as a global competitive city. These cities are all significantly better connected, being 'Gigabit Cities' where download and upload speeds reach 1,000 megabits per second (Mbps). Across Europe, London also performs poorly, ranking 26 out of 33 capital cities in 2014 for its average download broadband speed"<sup>19</sup>.*

4.59 The Local Planning Authority have not questioned the need for the proposal but have only given minimal weight to this as a material consideration. Coverage plots formed part of the application and clearly demonstrate the benefits of a replacement installation at Farjeon House.

4.60 Indeed, there are numerous appeal decisions whereby Inspectors have noted the deficiency of radio coverage a material consideration and whereby the street scene including other linear items. In June 2015, the decision of Stafford Borough Council to refuse planning permission for a 17.5m monopole at Land to the front of Crossfields, 35 Cannock Road, Stafford, Staffordshire was overturned by the Planning Inspectorate (APP/Y3425/W/15/3003427 **(Appendix 5)**, confirms this position. In another appeal decision on Anlaby Road in Hull (PINS Ref: APP/V2004/A/11/2154903) **(Appendix 6)**, which related to a 12.5m high dual user replica telephone pole, one equipment cabinet and ancillary development thereto. The Council refused the application on the grounds of the detrimental impact on visual amenity and would fail to preserve the character or appearance of a conservation area. The Inspector allowed the appeal. At paragraph 7 he noted that the harm caused by the monopole would be outweighed by the deficiency in radio coverage to the surrounding area: *"to the extent that the proposed pole would be more prominent than the lighting columns or a telephone pole there would be a marginal failure to preserve the appearance of the conservation area, a desirable objective by virtue of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the relevant development plan policies. Even so, I am satisfied that the*

<sup>17</sup> [https://uploads-ssl.webflow.com/5b7ab54b285dec5c113ee24d/5d5d4cd69a3f3827f30d06e9\\_Codes%20of%20Practice.pdf](https://uploads-ssl.webflow.com/5b7ab54b285dec5c113ee24d/5d5d4cd69a3f3827f30d06e9_Codes%20of%20Practice.pdf)

<sup>18</sup> [https://www.london.gov.uk/sites/default/files/digital\\_connectivity\\_report\\_final.pdf](https://www.london.gov.uk/sites/default/files/digital_connectivity_report_final.pdf)

<sup>19</sup> [https://www.london.gov.uk/sites/default/files/digital\\_connectivity\\_report\\_final.pdf](https://www.london.gov.uk/sites/default/files/digital_connectivity_report_final.pdf)

*very limited harm caused is outweighed by the deficiency in radio coverage in the surrounding area, the Government's support for the growth of telecommunications systems, the benefits of mast sharing and the lack of suitable alternative locations".*

- 4.61 The Camden Profile (January 2020) also sets out that the 'Recalculate estimates show that Camden added £29.1 Bn to the national economy in 2017, an increase of 91% on 2008.' 'Camden is home to the second highest number of businesses in London and is 3rd highest in the UK, with over 36,000 enterprises registered in Camden in 2019. There were 6,765 business 'births', new enterprise start-ups in Camden in 2018.' This is the 2nd highest business births figure in London, with the conclusion in the Profile being Camden is a good place to setup.
- 4.62 Businesses, including startups, will be detrimentally affected should reliable coverage and capacity not be available. As an example, Ofcom in its Online Nation 2020 report states that a shift in consumer behaviour regarding business-focused video calling services has occurred since lockdown, with these *'perceived to provide a better replacement for face-to-face interaction, whereas previously it was mainly used to communicate with friends or family abroad or far away.'* Those continuing to work from home in the area serviced by Centre Heights, 137 Finchley Road, and those businesses already operating or about to re-open for face to face contact, and using the EE or Three networks or their MVNOs, will all benefit from permanent reliable coverage and capacity; mobile provision is recognised as an essential part of the recovery of the economy. At least 47% of individuals and businesses in the area will not have reliable mobile coverage and good capacity should the site not be built.
- 4.63 It is therefore clear that a lack of connectivity means that communities and business are deprived of access to a valuable tool that could be used to boost economic growth and promote inclusive communities. The appeal site would provide critical communications and connectivity services to an area which includes a transport interchange as well as numerous homes and businesses which is in the wider public interest. The loss of the Centre Heights (Site No 98337) would, without the deployment of this replacement site in the area, result in a significant decline in these vital public services, in conflict with the National Planning Policy Framework, which places a strong emphasis on encouraging the continued rollout of high-speed digital infrastructure networks.
- 4.64 The Government clearly recognises the vital importance of the development of essential modern electronic communications services for residents and local economies. Camden had the 2<sup>nd</sup> highest business births figure in London in 2018 and in a time when the country is recovering from the economic downturn caused by COVID-19 this entrepreneurial attitude needs to be nurtured and encouraged by giving businesses the tools that they require. Businesses including startups, will be detrimentally affected should reliable coverage and capacity not be available. As such, the urgent delivery of the required network services continues to be a Government priority. Whilst the appeal proposals are to maintain 2G, 3G, 4G services they will also bring 5G services to the Swiss Cottage for EE, Three and their MVNOs. This is explored in full in Section 4. It is within this policy background that the appeal proposal should have been assessed for the application and should be assessed for the appeal.
- 4.65 It is against this backdrop that the application for planning permission was made to the Council and serves also for this appeal. The completed development at this site will help to address the forthcoming shortfall of 2G, 3G and 4G services to the surrounding area once the neighbouring site is lost whilst also providing new 5G services. The failure to provide such continuation of a reliable mobile digital connectivity service would negatively impact residents, businesses, visitors and those 7 million visitors simply passing through Swiss Cottage London Underground Station in this busy area of London. **It is this backdrop of encouragement and public benefit of critical services which must sit against any harm identified to the surrounding heritage assets.**

## Section 5: The Planning Policy Context

An assessment of the appeal proposal against the National Planning Policy Framework and the Development Plan will now be provided and will be expanded upon within **Section 6**, within the context of a more detailed assessment of impact against the reason for refusal.

### 5.1 National Guidance

#### National Planning Policy Framework (February 2019)

- 5.1.1 The government's National Planning Policy Framework (NPPF) was published on 24 July 2018 and updates the 2012 version. In February 2019 the NPPF was revised again, with minor alterations to wording relating to housing supply and not any parts relating to telecommunications.
- 5.1.2 The NPPF outlines the Government's strategies for economic, environmental and social planning policy in England providing a set of objectives that have been designed to foster the delivery of sustainable development, not to hinder or prevent development. Local planning authorities are directed to approach planning decisions positively and to attach significant weight to the benefits of economic growth. The NPPF also states that where a development plan is absent, silent or out of date then permission should be granted unless the adverse impact of doing so would significantly outweigh the benefits when assessed against the NPPF.
- 5.1.3 Paragraph 7 of the NPPF states that 'the purpose of the planning system is to contribute to the achievement of sustainable development'.
- 5.1.4 In order to achieve sustainable development objectives, the NPPF has identified 3 overarching objectives (Paragraph 8):
  - a) **An Economic Objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
  - b) **A Social Objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
  - c) **An Environmental Objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 5.1.5 The proposed installation meets all three objectives of sustainable development identified in Paragraph 8 of the NPPF as well as the 'Sustainability Test' set out in the White Paper. It is therefore imperative that services and capacity are retained in this area of Swiss Cottage and the application should have been permitted without delay.
- 5.1.6 The NPPF builds on the aspiration to build a strong, competitive economy. Paragraph 80 states:

*'Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to*

*support economic growth and productivity, taking in to account both local business needs and wider opportunities for development. The approach taken, should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation<sup>40</sup>...*

5.1.7 Footnote 40 of the NPPF states:

*'The Government's Industrial Strategy sets out a vision to drive productivity improvements across the UK, identifies a number of Grand Challenges facing all nations, and sets out a delivery programme to make the UK a leader in four of these: artificial intelligence and big data; clean growth; future mobility and catering for an ageing society. HM Government (2017) Industrial Strategy: Building a Britain fit for the future'.*

5.1.8 The Government's latest thinking continues to strongly support communications infrastructure. The NPPF remains very supportive of high-quality communications. Indeed, a whole chapter is dedicated to high quality communications, emphasising the importance that the Government attaches to digital connectivity. Paragraph 112 states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. This wording echoes guidance set out in paragraph 42 of the 2012 version of NPPF. However, it also includes the importance of *reliable* communications infrastructure for both economic growth *and social well-being*. Notably, the Appellants' digital infrastructure networks, play a vital role in continuing the provision of a range of local community facilities and services.

5.1.9 The NPPF continues to support the expansion of electronic communications networks at paragraph 112. It notes that policies should set out how high-quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time. The economic and social benefits of providing high quality and reliable communications infrastructure are well documented.

5.1.10 At the appeal site the proposal is to provide replacement 2G, 3G, 4G coverage and capacity as well as new 5G services. This is in full accordance with paragraph 112 of the NPPF.

5.1.11 Paragraph 113 of the NPPF retains the requirement to minimise the number of installations consistent with the efficient operation of the network but also includes being consistent with the needs of consumers and providing reasonable capacity for future expansion. As previously stated, the appeal seeks to provide a replacement for a site where the Appellants have to remove their equipment. By utilising an existing base station to provide replacement reliable mobile digital connectivity there will actually be a net reduction in the number of installations in the area.

5.1.12 Paragraph 115 states:

*Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:*

*a) 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, technical site or military explosives storage area; and*

*b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or*

- c) *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*
- d) *and a statement that self-certifies that, when operational, International Commission guidelines will be met.*

5.1.13 Section 2 of the Supplementary Information (**Appendix 2**) which formed part of the planning application set out the outcome of pre-consultation discussions with the local planning authority, ward councillors, local MP and schools in the area. These pre-application consultations fully comply with the requirements set out in the Code of Best Practice on Mobile Network Development in England, November 2016.

5.1.14 As described in detail in section 3 of this statement as well as the Supplementary Information (**Appendix 2**) which formed part of the planning application submittal documents the operators have identified this site as the replacement for Centre Heights which is to be redeveloped. The Council in their delegated report assert that insufficient information has been provided when discounting alternative sites and that the information that has been provided is vague and not site specific. A detailed search was carried out in the area for an alternative site for the replacement base station. This is discussed in detail in Section 6 below. There is no other sequentially preferable existing telecoms site in the area which is available to the operators. Furthermore as outlined above by utilising an existing base station on which to locate the replacement equipment there will a net reduction in the number of installations in the area.

5.1.15 In accordance with the last point of Paragraph 115 of NPPF, the application was accompanied by an ICNIRP declaration and clarification letter (**Appendix 7**).

5.1.16 Paragraph 116 of the NPPF retains the guidance set out in paragraph 46 of the 2012 NPPF version which relates to determining applications on planning grounds only. LPAs should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.

5.1.17 The NPPF also provides guidance on proposals affecting heritage assets. Paragraph 189 states that 'in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. Paragraph 190 goes on to state that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset).

5.1.18 The appeal site is located adjacent to Regency Lodge which is a Grade II Listed Building. The building is situated to the east of the appeal site and is separated by Finchley Road which, as described above, is a main arterial route through the area and the subject of a Red Route. The proposed equipment would only be visible from a distance and would not be visible from the footpaths around the building. Anybody within the immediate vicinity of the site would have to intentionally look up in an unnatural position to see the proposed equipment due to its height and position on the roof. The Appellants do not consider that the appeal proposals detract from the setting of Regency House or create visual competition with it. Indeed it could be said that the extant illuminated and digital signage at the Odeon Swiss Cottage and the BT InLink are more harmful to amenity of the area and setting of Regency House.

5.1.10 The NPPF goes on to provide guidance on considering the potential impacts of development on heritage assets. Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to

substantial harm, total loss or less than substantial harm to its significance. The appeal proposal would not result in the loss of any heritage assets.

5.1.20 Paragraph 196 retains advice provided in the 2012 version of NPPF relating to the degree of harm. It states that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The need for the development has been set out in section 4 of this statement and it is considered that this does outweigh the less than substantial harm that the appeal proposal would have.

5.1.21 The appeal proposals are therefore fully in accordance with this most pertinent Government planning policy as set out in the NPPF and will provide continued and improved network provision in the NW6 area.

## 5.2 Local Policy

5.2.1 Notwithstanding the provisions of the Town and Country Planning (Conservation and Listed Buildings) Act 1990 which places a duty on LPAs to have special regard to these heritage assets Section 70 of the Town and Country Planning Act 1990 requires planning applications and appeals to be determined having regard to the provisions of the Development Plan and other material considerations, and section 38 of the Planning and Compulsory Purchase Act 2004 requires applications and appeals to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The main local documents relevant to the determination of this appeal comprise the London Plan (March 2016), London Plan, Intend to Publish 2019, London Borough of Camden Local Plan (2017), CPG Design (2019), CPG Amenity (2018) and CPG Digital Infrastructure (2018).

5.2.2 The Local Authority asserts that the appeal proposal fails to comply with policies D1 and D2 of the Camden Local Plan (2017). An assessment of the appeal proposal against these policies will now be provided and will be expanded upon within **Section 6**, within the context of a more detailed assessment of impact.

### The London Plan (2016)<sup>20</sup>

5.2.3 The London Plan is the overall strategic plan for London, setting out an integrated economic, environmental, transport and social framework for the development of London over the next 20-25 years. In 2016 the Mayor adopted and published further alterations to the London Plan. Notably, the Council failed to assess the proposals against the London Plan. The following assessment is provided:

5.2.4 As well as general policies 7.4 and 7.6 which relate to local character and public realm and 7.8 which relates to 'heritage' the London Plan has two policies in Chapter 4 'London's Economy' which relate specifically to communications networks 4.10 and 4.11. The massing, scale and layout of the appeal proposals does not prevent the area from being coherent.

5.2.5 While it takes a utilitarian form on a building within the setting of a listed building, the building is an existing base station, it provides critical telecommunications infrastructure which underpins reliable digital connectivity within this part of the City further improving experience of those living, working or visiting the area. The appeal proposals are an appropriate design necessary to achieve the required replacement 2G, 3G, 4G services as well as new 5G services for EE and Three and their MVNOs. The Appellants considers that it is clear on balance, the proposal would not cause unacceptable harm to the amenity of surrounding land. Furthermore, no suitable alternatives exist in this instance in terms of location, siting and design. The appeal proposals therefore comply with policies 7.4 7.6 and 7.8 of the London Plan.

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<sup>20</sup> <https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-2016-pdf>

- 5.2.6 Policy 4.10 relates to "New and Emerging Sectors" and identifies measures that could be undertaken to support the evolution of London's science, technology, media and telecommunications (TMT) sectors.
- 5.2.7 Policy 4.11 "Encouraging a Connected Economy" recognises the strategic importance of providing the necessary infrastructure, including modern communications networks, that London requires to secure its long-term growth.
- 5.2.8 The proposed development which would contribute towards achieving this policy objective by improving connectivity across London is entirely consistent with this policy.
- 5.2.9 In 2016 the Mayor adopted and published further alterations to the London Plan. Chapter 4, London's Economy, contains a policy relevant to the installation and upgrade of electronic communication base stations. This is Policy 4.11, 'Encouraging a Connected Economy', which states:

**POLICY 4.11 ENCOURAGING A CONNECTED ECONOMY**

*Strategic*

A *The Mayor and the GLA Group will, and all other strategic agencies should:*

- a) *facilitate the provision and delivery of the information and communications technology (ICT) infrastructure a modern and developing economy needs, particularly to ensure: adequate and suitable network connectivity across London (**including well designed and located street-based apparatus**); data centre capability; suitable electrical power supplies and security and resilience; and affordable, competitive connectivity meeting the needs of small and larger enterprises and individuals (our emphasis)*
- b) *support the use of information and communications technology to enable easy and rapid access to information and services and support ways of working that deliver wider planning, sustainability and quality of life benefits'.*

5.2.10 The proposal to utilise an existing radio base station at Farjeon House fully supports the Mayor of London's objectives set out in Policy 4.11. The site is required to ensure reliable mobile digital connectivity is maintained in the surrounding area in the public interest. It will therefore facilitate the provision of a connected economy in and around the NW6 area of the Camden.

The London Plan (Intend to Publish)<sup>21</sup>

- 5.2.11 Digital connectivity and the benefits it brings to London's global competitiveness now and in the future receives more prominence and importance in the emerging London Plan. Paras 9.6.1 – 9.6.9 encourage the delivery of high-quality / world-class digital infrastructure. Policy SI 6 relates to 'Digital Connectivity Infrastructure'. Para 9.6.1 states that *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'.*
- 5.2.12 Paragraph 9.6.8 states *'the Mayor will work with network operators, developers, councils and Government to develop guidance and share good practice to increase awareness and capability amongst boroughs and developers of the effective provision of digital connectivity and to support the delivery of policy requirements'.*

<sup>21</sup> <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/intend-publish-london-plan-2019>

- 5.2.13 The emerging policies relating to Design (Chapter 3) and heritage conservation (policy HC1) seek to promote proposals that are of 'good design' and are sympathetic to the heritage assets and their surroundings. The proposed replacement base station is positioned and of a scale, appearance and shape that responds to the local context and its needs while also acknowledging the area's capacity for growth.
- 5.2.14 While telecommunications development by its very nature is not there to conserve the historic assets, it can still preserve their character by being located and designed to minimise its impact. In the case of Farjeon House, which is an existing telecommunications base station, there are no design options or alternative siting that would cause even less harm to the setting of the Grade II Listed Regency Court. Everything else would cause the installation to fail in either complying with the ICNIRP requirements or providing a like for like replacement connectivity.
- 5.2.15 The appeal proposal for a replacement shared radio base station is for critical physical infrastructure located at Farjeon House, where it can continue to provide and support the community facilities, employment opportunities and the range of services for the surrounding residential population and businesses.
- 5.2.16 The Appellants network is an integral element in securing the Mayor's vision for the delivery of high-quality/world-class digital infrastructure. More specifically, the appeal proposals are entirely consistent with delivery of the strategic objectives contained in the London Plan, the Draft London Plan and London Infrastructure Plan 2050 (Consultation Draft)<sup>22</sup> which include supporting London and the UK's economy; serving a growing population and making London more liveable. The appeal proposal is in accordance with the policies of the London Plan and Draft London Plan.

#### Camden Local Plan (2017)<sup>23</sup>

- 5.2.17 The Local Plan was adopted by the Council in 2017 and sets out policies and guidance for the development of the borough until 2031. The Council's vision for the borough is set out in the Camden Plan which also acts as the vision for the Local Plan. It states:

*We want to make Camden a better borough – a place where everyone has a chance to succeed and where nobody gets left behind. A place that works for everyone.*

- 5.2.18 Two policies from the Local Plan have been cited in the reason for refusal on the decision notice, D1 and D2.
- 5.2.19 Policy D1 relates to design and sets out the criteria against which proposals will be assessed. The first two criteria of the policy are considered relevant to the Appellants proposal and state:

*The Council will seek to secure high quality design in development. The Council will require that development:*  
*a. respects local context and character;*  
*b. preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage*

- 5.2.20 Policy D1 is a general design policy and was designed to ensure a high quality of design is achieved and is not designed to provide guidance and support for the delivery of essential infrastructure. The Appellants accepts that the need to attain a high standard of design is relevant and the appeal proposal has employed a high standard of design, working within very specific technical constraints, to achieve a proposal that would cause very limited visual harm to the surrounding environment, but that would bring benefits to the community and local economy.

<sup>22</sup> <https://www.london.gov.uk/what-we-do/business-and-economy/better-infrastructure/london-infrastructure-plan-2050>

<sup>23</sup> <https://www.camden.gov.uk/documents/20142/4820180/Local+Plan.pdf/ce6e992a-91f9-3a60-720c-70290fab78a6>

5.2.21 The Decision Notice asserts that the appeal proposals would cause harm to the character and appearance of the host property, wider streetscene and the setting of the adjacent Listed Building.

5.2.22 The Appellants strongly refute this. Although the proposed development increases the number of antennas on the building, the Appellants do not consider that this is to the extent that would cause harm to the character and appearance of Farjeon House, the wider streetscene and the setting of Regency Lodge. Although the proposed antenna are visible within the street scene this does not necessarily equate to harm. Farjeon House already hosts a base station and the proposed development involves the installation of additional equipment to the existing infrastructure.

5.2.23 The layout of the equipment is dictated due to technical requirements and cannot be screened as this would affect the performance of the equipment and not provide the required coverage. Shrouding or screening the equipment would introduce larger structures to the rooftop and have a detrimental visual impact on Farjeon House, the street scene and the Listed Building. The proposed cabinets have been placed in such a way that they are not visible from long or short views of the site, reducing any perceived impact on Farjeon House, the wider streetscene and Regency Lodge. The building is also considered to have other distinguishing features that draw the eye away from the proposed apparatus. The infrastructure that is proposed has been installed in numerous locations across the country and is becoming common place in local street scenes. Many buildings within the vicinity of the site have plant rooms and various equipment on their roofs which is not dissimilar to the proposed development. The appeal proposal is therefore in accordance with the Policy D1 of the Local Plan.

5.2.24 Policy D2 deals with Heritage in Camden and has a specific section on Listed Buildings. It states:

“To preserve or enhance the borough's listed buildings, the Council will:

- i. resist the total or substantial demolition of a listed building;*
- j. resist proposals for a change of use or alterations and extensions to a listed building where this would cause harm to the special architectural and historic interest of the building; and*
- k. resist development that would cause harm to significance of a listed building through an effect on its setting”.*

5.2.25 Point K is the only point relevant to the appeal site. The appeal site is located to the west of Regency Lodge which is a Grade II Listed Building however it is approximately 35m away and is separated by a major road and mature trees. As previously noted telecommunications development is not there to conserve historic assets. However, it can be located to minimise its impact as is the case of Farjeon House and is discussed further in Section 6 Para 6.103. Although the proposed equipment is visible when viewing Regency Lodge but they are long distance views and from very specific angles. The antennas are not prominent when considered against the existing antenna and as such any harm to the adjacent listed building is negligible.

5.2.26 As described, the NPPF requires that decision makers, must in the first instance identify harm and then quantify the harm. When dealing with less than substantial harm to heritage assets, Local Planning Authorities are required to balance harm against the public benefit of the proposed development.

5.2.27 It is the Appellants' contention therefore that the overall level of harm identified to the heritage assets is negligible, less than substantial. The appeal proposal is therefore in accordance with the Policy D2 of the Local Plan.

5.2.28 The Local Plan does not have a policy that is directly relevant to the installation of telecommunications in the Borough. Paragraph 5.10 'Digital Infrastructure' which is included

in the supporting text for Policy E1 – 'Economic Development' states that the "Council recognises the importance of digital infrastructure including telecommunications".

5.2.29 Moreover, it recognises under Para. 2.5 the key priorities for harnessing the benefits of growth the need for 'securing the infrastructure and services to meet the needs of our growing number of residents, workers and visitors' with infrastructure needs including digital infrastructure requirements then identified in Appendix 1 which in turn references the Camden Digital Strategy 2014, again demonstrating the participation of the planning process in supporting digital connectivity via 'Improved internet access through the acceleration of high speed connectivity, including public wireless systems.'

5.2.30 Paragraph 2.6 sets out key priorities for delivering growth and harnessing its benefits which include:

Securing the infrastructure and services to meet the needs of our growing number of resident, workers and visitors.

5.2.31 The paragraph goes on to state that this includes 'digital infrastructure'.

5.2.32 Appendix 1 sets out the infrastructure that is required to deliver the Local Plan. Item 66 deals with digital connectivity and the relevant project/programme is to:

*"Improved internet access through the acceleration of high speed connectivity, including public wireless systems".*

5.2.33 As set out in Section 4 of this statement, people are relying more and more on their mobile devices for internet access whether at home or on the move, this is no longer a 'nice to have' it is 'critical infrastructure'.

#### Camden Planning Guidance Design (Draft July 2020)

5.2.34 The planning guidance document is intended to support the policies of the Local Plan and is a material consideration in determining planning applications. It also states that it does not specifically apply to telecommunications as they are considered in other guidance. However there is a section in the guidance which is relevant to Heritage and looks at integrating new development with heritage assets. The guidance states that:

*"Development proposed to a heritage asset or in close proximity to a heritage asset is informed through understanding of its sensitive context, the historic environment and the significance of the heritage asset and its setting.*

*The Council expects that development not only conserves and avoids harm but also takes opportunities to enhance or better reveal the significance of heritage assets and their settings. Development must respect local character and context and seek to enhance the character of an area where possible".*

5.2.35 The guidance has not been written with telecoms equipment in mind and unfortunately the design of the proposed equipment cannot be altered due to the technical requirements as detailed in Section 6 Para 6.105 below. The antennas have been positioned on the building to enable their effective operation and cannot be shrouded for it to operate effectively.

5.2.36 As previously noted the proposed development would only be viewed when looking at the Finchley Road elevation of the heritage asset, and this is the elevation in which most changes have been made. Notably, the principle elevation of Regency House is viewed from Adelaide Road and from this view point there will be no change to setting of this heritage asset.

#### Camden Planning Guidance Amenity (Draft July 2020)

5.2.37 The planning guidance document is intended to support the policies of the Local Plan and is a material consideration in determining planning applications but makes no reference to telecommunications.

5.2.38 The section on outlook is the only section that can relate to the proposed development and states:

*"Outlook is the visual amenity enjoyed by occupants when looking out of their windows or from their garden. How pleasant an outlook is depends on what is being viewed. For example, an outlook onto amenity space is more pleasant than an outlook across a servicing yard. Particular care should therefore be taken if the proposed development adjoins properties with a single aspect. Any unpleasant features should be screened if possible, for example with permanent landscaping.*

*Developments should ensure that the proximity, size or cumulative effect of any structures avoids having an overbearing and/or dominating effect that is detrimental to the enjoyment of their properties by adjoining residential occupiers. The location of bin or cycle stores, for example, should be carefully considered if they are in close proximity to windows or spaces used by occupiers.*

*It should be noted that the specific view from a property is not protected as this is not a material planning consideration".*

5.2.39 The appeal site is higher than many of the surrounding properties therefore the outlook from those properties will not be detrimentally effected by the proposed development as the occupier would purposely have to look up to view the proposed development. The only properties that would have a direct view of the appeal site would be those in Regency Lodge. As stated previously the site is at least 35m away from the appeal site at ground level across a very busy arterial route. Those that would be able to view the site would be further away. There are also a number of mature trees between the buildings that would screen views of the site.

5.2.40 The view from a property is not protected as it is not a material planning consideration. It is well understood by town planners that there is no entitlement to a view across a third party's land, in this case a view of a rooftop which already accommodates existing plant and is already host to an existing base station. Planning is carried out in the public interest and it is only when private and public interests coincide can a view across a third party's land, in this case the public highway, which is essentially a private property interest become a material planning consideration. As with views over any adjoining land, the fact that the proposed development is visible from nearby properties does not equate with harm and cannot normally be regarded as a material planning consideration. It is only when the visual impact of adjoining development, in this case the proposed radio base station, from a principal living room of a nearby property becomes overbearing can it be considered as a material consideration. It is at this point that public and private interests will coincide. A view from across a busy main road at least 35m away cannot be considered overbearing.

5.2.41 This position was confirmed at appeal for a shared radio base station in Barnet. In allowing the appeal for a 20m mast and 4 radio equipment cabinets in its own fenced compound for the operators Vodafone and O2 at Hadley Wood Station (Pins Ref: APP/Q5300/W/16/3142885)

5.2.42 In reaching his decision, Inspector Fort stated at paragraph 21 of his decision:

*'The proposal may be visible from windows of residential properties. However, due to the separation distances achieved between it and the nearest dwellings and its relatively slim profile at higher level, it could not be said to constitute an overbearing structure that would be unduly harmful to outlook. In terms of the proposal's effects on private views, these are matters that the Courts have held can rarely be instrumental in planning decisions, and as such I only attach very limited weight to these considerations in arriving at my decision'.*

5.2.43 The planning guidance document is intended to support the policies of the Local Plan and is a material consideration in determining planning applications. The first and fourth key messages are particularly relevant to the proposed development and state:

- *The Council will support the expansion of electronic communications networks, including telecommunications and high speed broadband*
- *The Council will require applications for telecommunications development to be supported by the necessary evidence to justify the proposed development.*

5.2.44 The proposed development will not only result in the expansion of telecommunication networks in the area by introducing 5G to Swiss Cottage, more importantly it will replace the site at Centre Heights which will be decommissioned due to the redevelopment of the building and maintain coverage to customers in the area. This will not only help the local economy bounce back from the Covid-19 pandemic but also enable future growth in line with Government aspirations for 'World Class Connectivity'. This will also be achieved while reducing the number of base stations in the area and keeping the number of installations to a minimum which is one of the principle aim's set out in paragraph 13 of the guidance, which states:

*"In particular, the Council will 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 demonstrated to the satisfaction of the Council".*

5.2.45 The need for the development has clearly been set out in section 4 of this statement.

#### Digital Camden (2014)

5.2.46 The strategy was published in 2014 and sets out a series of actions to support the uptake of high quality, next generation connectivity. This includes:

- better connections for businesses and residents already on-line
- tackling the 'digital divide' where people lack the confidence to use IT
- the greater use of digital technology in delivering services

5.2.47 The proposed development would maintain online connections for businesses and residents already online by maintaining the coverage and capacity that would be lost by the removal of Centre Heights from the network if it is not replaced at Farjeon House. It will also improve services to EE and Three customers as well as their MVNO's by providing 5G services.

5.2.48 The Delegated Officers Report makes no reference to the Strategy and therefore appears to have given it no consideration in making their decision.

#### Government Policy Statements

5.2.49 There are a wide range of Government policy statements that emphasise the importance of promoting and supporting the development of high-quality communications infrastructure. These include:<sup>2</sup>

- National Infrastructure Delivery Plan 2016 – 2021<sup>24</sup>
- DCMS & MHCLG "Collaborating for digital connectivity" (2019) (Appendix 3)
- DCMS "Connected Growth: A Manual" (2019)<sup>25</sup>

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<sup>24</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/520086/2904569\\_nidp\\_deliveryplan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/520086/2904569_nidp_deliveryplan.pdf)

<sup>25</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/808980/Connected\\_Growth\\_Manual](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808980/Connected_Growth_Manual)

- BEIS "Building a Britain Fit for the Future 2017"<sup>26</sup>

5.2.50 For the UK to become a leader in connectivity is a strategic priority of central government given it is a huge economic and social driver, as set out in the Future Telecoms Infrastructure Review<sup>27</sup> and many other central government publications. More recently, the PM announced on 30/06/20 'Project Speed'<sup>28</sup>, an initiative to boost post Covid economic recovery by investing in and accelerating infrastructure across the UK, referring specifically to digital connectivity. As set out above, this priority is reflected in the National Planning Policy Framework, the current and draft London Plan and at local level in Camden planning and other policy documents, and thus needs to be taken into consideration when assessing applications for the infrastructure which underpins connectivity.

5.2.51 The Supplementary Information submitted as part of the planning application (**Appendix 2**) provides a review of these documents and policy statements and this will be expanded upon in Section 6 of this appeal statement. It is significant that a wide range of Government Departments and agencies responsible for these policy statements and guidance consistently provide a very strong message about the role connectivity has in the economic and social well-being of the nation. Moreover, as previously stated the Covid-19 pandemic further highlights the critical social and economic benefits of the Appellants network.

5.2.52 Reflecting on the above, it is considered that the proposed development does not conflict with guidance and policies contained in relevant material considerations and is strongly supported by Government policy statements.

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<sup>26</sup> <https://www.gov.uk/government/publications/industrial-strategy-building-a-britain-fit-for-the-future>

<sup>27</sup> <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

<sup>28</sup> <https://www.gov.uk/government/news/pm-a-new-deal-for-britain>

## **Section 6: Response to Reasons for Refusal and Informative**

- 6.1 The reason for the refusal of the planning application is based on an assessment by the Local Authority that the appeal proposal would result in a proliferation of visual rooftop clutter that would cause harm to the character and appearance of the host building, wider streetscene and the setting of the adjacent listed building.
- 6.2 The main considerations for this appeal are therefore quantifying the impacts of the proposed equipment on the host building, wider streetscene and setting of adjoining listed building. Where harm is identified this will be assessed against public benefits. This approach is entirely consistent with Para. 196 of the NPPF which sets out how proposals affecting heritage assets, where any harm identified is less than substantial, should be assessed.
- 6.3 General compliance with the policies cited on the refusal notice has already been demonstrated within section 5 of this statement. This will be expanded upon within this section in particular but also throughout the entirety of this statement, and it will be demonstrated that the appeal proposal for a replacement base station represents an acceptable addition to the skyline and one which complies with the relevant local policies as well as the NPPF.

### **Siting and Design**

#### **Siting**

- 6.4 The application documents (**Appendix 2**) detailed that there are numerous specific constraints associated with site placement in mobile network planning and it has already been touched upon within this statement that radio base stations can each only cover a limited geographical area known as a cell and that cells are designed to overlap to form an unbroken network.
- 6.5 Site placement is always critical in network planning and becomes even more so when one is seeking to replace an existing base station already operating within the established cellular pattern. When an existing site is lost it leaves a very specific and unique gap in the network, much like removing a piece from a completed jigsaw would, which needs to be re-filled if users living and working within and passing through that area are to be able to continue to use their mobile phones and other wireless devices. This places even greater limitations on the potential siting opportunities as many locations will not enable this specific gap to be adequately filled.
- 6.6 When seeking to identify a location for a replacement site in this instance, the Appellants Agent applied the sequential site selection process, as is advocated within the Code of Best Practice on Mobile Network Development in England (2016) (COBP). Produced by the trade body Mobile UK, it should be noted that this guidance was prepared by a Working Group comprising a wide range of Government Departments, agencies, Local Government as well as industry representatives.
- 6.7 Siting considerations for a replacement base station include:
- Distance from base-station it will replace
  - Design of the building, including height and roof-design
  - Ability to acquire roof-space
  - Physical access to build / maintain the base station
  - Potential for neighbouring buildings and trees to obstruct radio signal
  - Minimising environmental impact, including protecting heritage assets
- 6.8 The Appellants take guidance from it in the siting and design of all their new sites and upgrades. This meant that the initial cell search investigation focused on an exploration of existing

telecoms sites and then buildings and other suitably tall structures that may have been appropriate for the accommodation of the replacement apparatus, subject to the technical constraints placed upon operators, and planning constraints imposed by the development plan.

- 6.9 The planning application set out the sites considered, along with the reasons for them being discounted. The main instigator for an installation at the appeal location follows the planned redevelopment of the existing base station site located atop of Centre Heights, 137 Finchley Road, NW3 6HY. This is a well established shared telecommunications site serving the NW6 area of Camden on behalf of EE and Three and their MVNOs.

#### Existing sites

- 6.10 The first step in the site selection process is to determine whether any existing telecoms sites within, or close to, the search area could be utilised. Base stations may be located on or in buildings, street furniture (lamp-posts), rooftops, individual or shared ground-based masts, including those designed to be located on the sides of roads, or may be hosted by other masts such as broadcast radio or TV masts.
- 6.11 It has already been detailed that the requirement for this site stems from the planned removal of the existing site at Centre Heights, 137 Finchley Road, NW3 6HY (circa 200m north), a situation which has arisen due to reasons beyond the control of the Appellants. Farjeon House, Hilgrove Road, Kilburn, NW6 4TL which accommodates existing telecoms apparatus, is the best and most obvious choice of location for a permanent replacement telecommunications site in this area. As was noted within the application documents, no other existing site has been identified which can be used to meet the very specific technical requirement for replacement coverage.
- 6.12 O2 Site No 1846, Langhorne Court, Dorman Way, off Alexandra Road, Swiss Cottage, NW8 6NJ NGR: 526580/184020): The site was considered for a replacement as part of the 2018 search. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to the site being located to far south out outside of search area.



Image 9: Existing telecommunications base stations in the area.

#### Buildings and existing structures

- 6.13 Overground House, Finchley Road, NW3 6HY, NGR: 526611, 184259: This building was considered as part of the 2018 search for a replacement site. This building is located immediately adjacent to the existing site on Finchley Road and is therefore ideally located to replicate coverage. However, this building is not suitable for the installation of a telecommunications base station due to the design of the sloping cladded roof. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.14 16 Northways Parade, London, NW3 5EN, NGR: 526630, 18442: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to clipping from the surrounding taller buildings. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.15 New College Court, Finchley Road, NW3 5EX NGR: 526502, 184527: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to being too far north of the target area. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.16 Elgar House, 11-17 Fairfax Road, London NW6 4EX, NGR: 526379 184372. This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being low rise and partially blocked by mature trees and being on the edge of the search area to the west of the target area. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.17 Byron Court, Fairfax Road, London NW6 4HB NGR: 526380 184210: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to being too far west of the target area. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.18 Sheridan Court, 47 Belsize Road London NW6 4RY, 526387 184144: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being low rise and too far west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.19 57 Belsize Road, London NW6 4BE, NGR: 526318 184076: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being low rise and too far west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.20 47 Belsize Road, London NW6 4BE, NGR: 526387 184144: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded

that a site in this location would not provide the required level of replacement coverage to the target due to the building being low rise and too far west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.

- 6.21 Zara café, 95A Fairfax Road, London NW6 4DY, NGR: 526316 184143: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being low rise and too far west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.22 154 Loudoun Road, London NW8 0DJ NGR: 526390 184019: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location was too close to an existing site in the network (EE Site No. 63377) which would cause interference between cells and therefore service degradation. This building was therefore discounted in favour of a site share at Farjeon House.
- 6.23 Dinerman Court, 38-42 Boundary Road, London NW8 0HQ NGR: 526321 183890: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being too far south west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.24 Southbury, 144 Loudoun Road, London NW8 0RY 526444 183932: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location was too close to an existing site in the network (EE Site No. 63377) which would cause interference between cells and therefore service degradation. This building was therefore discounted in favour of a site share at Farjeon House.
- 6.25 Quintin Kynaston, Marlborough Hill, London NW8 0NL, NGR:526552 183679: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being too far south to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.66 Blair Court, Boundary Road, London NW8 6NT, NGR: 526681 183909: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being too far south east to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.67 Buttermere Court, Boundary Road, London, NW8 6NS, NGR: 526678 183831: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being too far south east to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.68 Boydell Court Street, Johns Wood Park, London NW8 6NG NGR: 526725 184078: This building was considered as part of the 2018 search for a replacement site. However, this building is not

suitable for the installation of a telecommunications base station due to its sloped construction. There is no build solution in which to affix antenna to sloped roofs. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.

- 6.69 Taplow, Adelaide Road, London, NW3 3NU, NGR: 526922 184230: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target due to the building being too far south east to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.70 The Royal Central School of Speech and Drama, 62-64 Eton Avenue, London NW3 3HY, NGR: 526706 184405: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to clipping from the surrounding taller buildings. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.71 Harrold House, Finchley Road, NW3 6JX, NGR: 526480 184488: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to clipping from the surrounding taller buildings. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.72 Glover House, Harben Road, London, NW6 4RJ, 526435 184428: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to the building being too far north west to replicate coverage. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.73 12 Northways Parade, London, NW3 5EN, NGR: 526625 184453: This building was considered as part of the 2018 search for a replacement site. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to clipping from the surrounding taller buildings. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.
- 6.74 Cresta House, Finchley Road, NW3 6HY, NGR: 526620 184240: This building was considered as part of the 2018 search for a replacement site. This building is located immediately adjacent to the existing site on Finchley Road and is therefore ideally located to replicate coverage. However, this building is not suitable for the installation of a telecommunications base station due to the design of the sloping cladded roof. Moreover, given planning policy encourages the use of existing sites where possible over the development of a new site, and given Farjeon House already hosts telecoms equipment on its roof, this option was discounted in favour of Farjeon House.

#### Ground based sites

- 6.75 EE Site No 79902, 156 Loudoun Road, Swiss Cottage, NW8 0DJ (NGR: 526361,184080). The site was considered for a replacement as part of the 2018 search. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of

replacement coverage to the target area due to the site being the next cell in the network to the west (230m west). It would not be technically possible for a site in this location to replicate the coverage of the existing site at Centre Heights, 137 Finchley Road.

- 6.76 EE Site No 63377, Pavement adjacent to Gillies House, Hilgrove Road, Swiss Cottage, NW6 4TW (NGR: 526528,184136). The site was considered for a replacement as part of the 2018 search. However, radio engineers for EE and Three concluded that a site in this location would not provide the required level of replacement coverage to the target area due to the site being the next cell in the network to the west (60m west). Moreover, as the Appellants are replacing an existing rooftop site a streetworks installation simply could not replicate the coverage and capacity of the existing site at Centre Heights, 137 Finchley Road.
- 6.77 The site search detailed above led the Appellants to select an existing base station as the best possible location within the relevant area to deploy a replacement site. The Appellants therefore conclude, that there is no sequentially preferable, suitable and available alternative location for EE and Three's base station to the appeal proposal.
- 6.78 Unlike most other locations observed, this site is not surrounded by taller neighbouring buildings and trees. The building is sufficiently high to enable radio waves to clear the surrounding structures and reach the target area. More specifically the height of the replacement antennas and consequently the height of the host building is similar to that of 137 Finchley Road and as such the appeal site is able to replicate the existing coverage pattern as closely as possible.

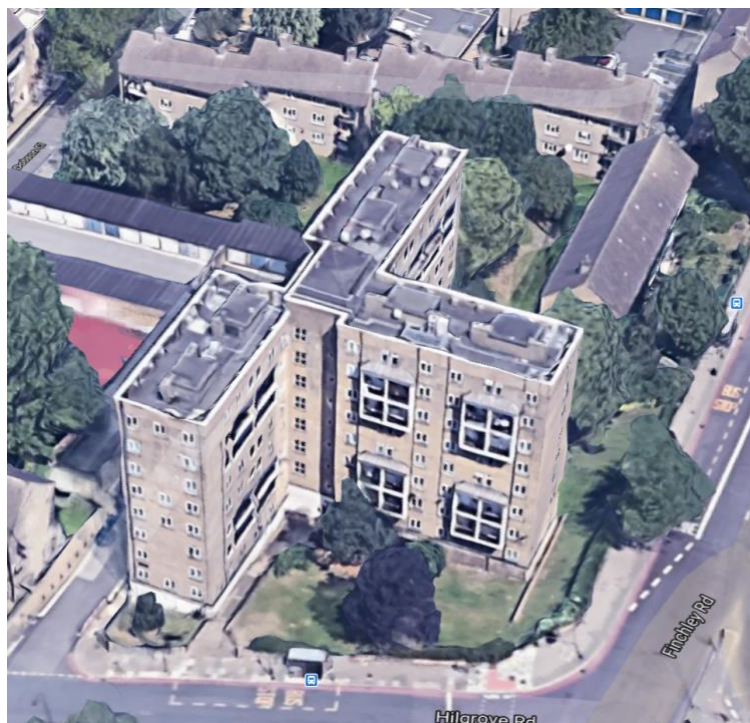


Image 10: 3D view of Farjeon House

- 6.79 As previously noted the Appeal site is an existing telecommunications base station, hosting Vodafone equipment. Any views in the public realm area at a distance. Image 10 above clearly shows that although the existing antenna are visible, they are viewed in the context of existing plant rooms and air conditioning units all of which exceed the main roof level but remain congruous in the streetscene.
- 6.80 Contrary to the view put forth by the Local Authority, although located on a corner site the location is not a prominent one given that the site is located on rising land benefit from screening in some views provided by existing elements in the street scene.



Image 11: View of site from junction of Alexandra Road / Hilgrove Road

- 6.81 Indeed longer views of the equipment are confined to limited stretches of Finchley Road, Adelaide Road and Hilgrove. Moreover, within these views the equipment will be viewed in the context of existing street furniture and roof based infrastructure. Visibility of the installation does not automatically mean its siting would cause harm to the amenity and living conditions of residents. The Council's assertion that the character and appearance of the streetscene and the visual amenity of neighbouring occupiers would be harmed is therefore unsubstantiated.
- 6.82 The Appellants have exhausted all feasible potential alternative siting options within and in reasonable proximity to the cell area. The appeal site remains the best available solution for a replacement installation to ensure continued coverage provision in this area until the permanent replacement option is operational. The comprehensive efforts undertaken during site selection and lack of any more suitable, feasible option is considered material to the assessment of the appeal proposal. Moreover, as previously detailed the Appellants have identified an existing telecommunications base station, on a building thus avoiding as additional roof based installation or indeed a ground based structure,
- 6.83 The Planning Inspectorate determined that a lack of alternative options can outweigh the visual impact associated with telecommunications installations, even in locations deemed prominent which is clearly not the case here. In determining one such case, where the decision of the Broadland District Council (Cricket Ground and Pavilion, Hall Lane, Felthorpe, Norwich NR10 4BX) to refuse planning consent for a 27m high ground based structure located in a greenfield location close to housing (PINS Ref: APP/K2610/W/17/3176890, attached at **Appendix 8**) the Inspector stated:

*"In accordance with the requirements of paragraph 45 of the Framework, there is also evidence before me to demonstrate the search for alternative sites in the local area including existing structures. This involved the consideration and assessment of a number of sites both prior to the submission of the planning application and subsequently to accompany the appeal submission. For various reasons, the proposed site appears to be the only practical alternative to the existing site. . . Paragraph 46 of the Framework states that the need for telecommunications equipment should not be questioned. Furthermore, I note that the Council raised no objections at the application stage to either the need for the mast or to the possibility of any alternative sites which might be preferable. I therefore attach significant weight to such issues. I therefore conclude that while the proposal would cause some harm to the character and appearance of Hall Lane this would be outweighed by the need for the proposal and the lack of alternative sites that would cause less*

*material harm. The proposal would therefore be in accordance with paragraphs 42 and 45 of the Framework".*

- 6.84 Similarly, in allowing an appeal which overturned the decision of the London Borough of Bexley to refuse consent for a 12.5 metre high street furniture style monopole and associated equipment housing on Highways Land on Halfway Street, Adjacent to Co-Op Supermarket, Sidcup, Kent, DA15 8DJ (Pins Ref: APP/D5120/W/15/3033745 (**Appendix 9**), the Inspector concluded that:

*"I consider it unlikely that there is an alternative which would meet the operator's needs as effectively but with materially less harm. The need and lack of better alternatives weighs in favour of allowing the appeal. I conclude on balance that whilst the proposal would harm the character and appearance of the locality, this would be outweighed by the need and lack of better alternatives".*

- 6.85 Although in this case, the Appellants contend that the visual impact of the current appeal proposal would not be unacceptable, the Inspector's findings in this case, and that quoted previously, are considered to have relevance given the Local Authority's justification for refusing planning permission for the proposed replacement site.
- 6.86 The Local Planning Authority comment at Para. 3.2 that "*Langthorne Court, Dorman Way, NW8 6NJ is another site that was assessed and acknowledged that this would be a suitable alternative site*". The Appellants do not disagree with this position but as previously advised Langthorne Court is further away from the existing site than the Appeal site and from a radio planning perspective Farjeon House is the best fit.
- 6.87 Within the Local Authority's delegated report, Para 3.2 asserts that no information was provided to justify the site selection process and that the information provided was considered to be "*to vague and not site specific enough*". The Appellants dispute these assertions. Page 5 of the Supplementary Information which formed part of the original submittal documents and is appended clearly set out the site selection process. For the purposes of the appeal, the Appellants have expanded the information in Para's 6.9 to 6.78 above.
- 6.88 Notwithstanding the above, the Planning Inspectorate confirmed that there can be more than one suitable site in an appeal for a 12.5m column, 2 no. 300mm transmission dishes, 2 no. equipment cabinets and ancillary development in Totley Brook Road, Sheffield, S17 2QS (Pins Ref: APP/J4423/W/17/3188962. The Inspector allowed the appeal and confirmed at Para 16 "*with regards alternative sites, I have noted the appellant's submissions within the supplementary information as well as the contention of interested parties regarding the need for fuller consideration of siting. Nevertheless, I am mindful that even if alternative sites were available, there is no requirement within the Framework or the GPDO for developers to select the best feasible siting where a site as proposed is considered to be acceptable*".
- 6.89 The Local Authority made no reference to the specific technical and locational constraints that led to the site selection. In addition, the Local Planning Authority despite having questioned the robustness of the site selection exercise has not suggested that any more suitable option exists. The Appellants remain confident that a mast share of the existing base station is the best siting currently available to replicate the critical services provided by the existing site at Centre Heights, 137 Finchley Road.

## **Design**

- 6.90 The Local Planning Authority has justified its refusal of planning permission by the perception that the appeal proposal's location, scale, height and design would result in visual rooftop clutter which would cause harm to the character and appearance of the host property, wider streetscene and the setting of the adjacent listed building. Siting has been addressed in the preceding section and it has been demonstrated both that a comprehensive search was undertaken to identify the best siting solution and that the option put forward (an existing base station site) is an appropriate and acceptable one. It has also been discussed in section 6.82

that the prominence of the location as alleged by the Local Planning Authority is unsustainable. The Appellants remains confident in their view that the design solution subject to this appeal represents the best option currently available to achieve the technical objective within the surrounding areas of Swiss Cottage whilst avoiding any unacceptable level of harm to the host building, wider streetscene or setting of the listed building.

- 6.91 Following receipt of the decision notice, the reason for refusal was fully assessed by the Appellants. Further checks with the design and radio engineer were carried out to establish whether there was any possibility to re-orientate antennas of other base stations to allow the search area to be moved. Considering the proposal is to replace the existing base station, it is necessary for it to be positioned as closely to the site it will replace as possible so it can replicate coverage and capacity and reach its target area. The Appellants consider that the development proposed is the best currently available planning option to meet local network requirements, ensuring that its customers continue to experience the same level of service provision that they have become accustomed to, once the existing site at the Centre Heights is decommissioned.
- 6.92 The delegated report (Para. 4.8) asserts that little justification has been provided to justify the design and the number of antennas required. Section 3 of the Supplementary Information document and MBNL '5G and Future Technology – Delivering the UK's Telecoms Future' (Appendix 10) provided to the Local Authority as part of the planning application submittal documents presented a detailed reasoning for the design of the appeal proposal. For the purposes of the Appellants will expand upon this information.
- 6.93 Face mounted antenna on Farjeon House elevations: The existing site at Centre Height utilises face mounted antennas. However, the antennas cannot be face mounted on Farjeon House due to the location of the windows and adjacent buildings. The antennas would simply be too low. Their signal, instead of covering the whole target area, would be blocked by the buildings facing the antennas. Moreover, proximity to the building on the other side of Finchley Road would make such installation non-compliant with the ICNIRP guidelines. The windows of that building are too close for the base station to operate safely. Image 12 below show an example of face mounted antenna.



**Image 12:** Face mounted antenna on Centre Heights, 137 Finchley Road

- 6.94 Face mounted antenna around the plant room walls: This option was considered but was discounted because it would restrict access to the main roof due to this area of the roof falling into ICNIRP exclusion zones.
- 6.95 Antennas set back from main roof level: This option was considered but was discounted due to clipping<sup>24</sup>. MBNL '5G and Future Technology – Delivering the UK's Telecoms Future' submitted as part of the application advised *"It is anticipated that many of the proposals will involve locating antennas closer to the building edge to avoid such 'clipping' and if this is not possible then the antennas may have to be located on structures in the centre of the roof but raised to a height to avoid the same 'clipping' issues. This presents more complex issues for both the designers and for the Local Planning Authorities, where previously 2G, 3G or 4G systems could be accommodated without the need for extra supporting structures or raising the antenna heights. 5G has a far more complex radio requirement and is affected far more than existing systems by surrounding obstructions and structures. Consequently, in order to install new equipment supporting the 5G rollout designs will be very different to those of the existing networks"*. Image 13 below show an example of antenna placement close to the edge of a building.

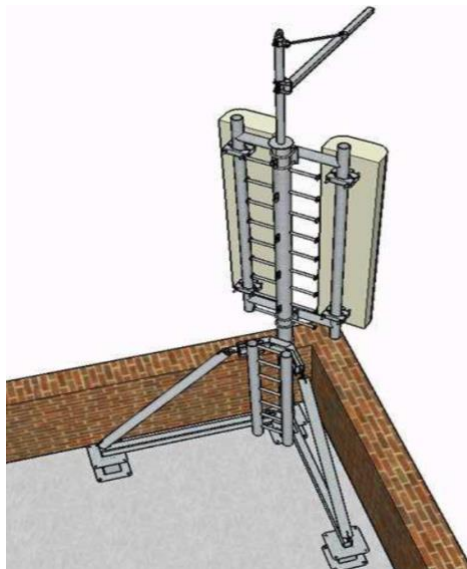


Image 13: Extract from MBNL '5G and Future Technology – Delivering the UK's Telecoms Future' showing typical 5G rooftop deployment

- 6.97 Use of smaller antennas: The proposed antennas are 2.2m high. A top height of 30.67m AGL and 32.07m is required here to meet ICNIRP requirements and provide effective replacement coverage and capacity for Centre Heights, 137 Finchley Road. It is not possible to use shorter antenna due to the additional frequencies that are now required to continue to provide the latest technologies and increased demand for mobile connectivity service that has been generated over the years. For example, shorter antennas would not provide the necessary latest 4G and new 5G technologies. In effect, shorter antennas would not provide all the necessary service provision to the surrounding area that customers have come to expect to be available whenever and wherever especially in this high density, busy part of the operators network close to Swiss Cottage London Underground station and Finchley Road.
- 6.98 Reduced antenna numbers: Due to the technical requirement for both operators (EE and Three), the number of antennas cannot be reduced. The proposed 12 no. antennas is the absolute minimum to provide a like for like 2G, 3G and 4G replacement service for both operators as well as new 5G services, thus a reduction in antenna numbers is not possible.

- 6.99 Stub Mast on plant level: This type of design was not even considered for the appeal site but it is one of the designs available for the operators on a rooftop. Due to its bulk and industrial appearance, it is more appropriate for commercial settings. For a stub mast on the plant level to enable coverage and ensure ICNIRP compliance, there would be a need for approximately a 6m plus high structure which would clearly be a prominent and incongruous feature in the streetscene. Moreover, a structural survey would need to be undertaken to confirm if the roof is able to support the weight of such a tower.
- 6.100 GRP Extension to Main Roof Level: The antennas are unshrouded for technical reasons. The higher the radio frequency the more signal attenuation there is. The radio frequencies that 5G operates at is particularly sensitive to interference from solid objects. The higher frequency 5G antennas are therefore unable to operate effectively through the Glass Reinforced Plastic that a shroud is made up of and as such if these antennas were to be shielded then they would not be able to provide the necessary coverage to the target coverage area. Moreover, in the case of the appeal site, whilst from a design perspective it is possible to wrap the antenna in a GRP plant extension it would require an increase in height of approximately 2.5m above the main roof level. This would clearly result in a very bulky and prominent structure, significantly protruding above the roofline. The design with unscreened antennas would be lower and therefore much less intrusive and reflects the design of the existing equipment of site.



Image 14: GRP Extension on 55 Oxford Street (PINS Ref: APP/X5990/W/16/3162918)

- 6.101 The Appellants are satisfied, not only that the design proposed represents the best possible solution (reflecting the existing Vodafone and UK Broadband equipment on site), but also that sufficient information was provided to the Local Authority at application stage to evidence this.
- 6.102 The appeal proposals seek the addition of 12 no. antenna apertures, 4 no. 600mm diameter dishes, 7 no. equipment cabinets and supporting steelwork onto rooftop, 1No. cabinet at ground-level, plus ancillary development.
- 6.103 The preceding paragraphs set out the design is the best available subject to technical and operational constraints. The Appellants are utilising an existing base station, thus assisting the Council in their aim of “keeping the number of installations to a minimum consistent with the

efficient operation of the network". The site is not a new site, rather network consolidation and for the reasons set out in Para 6.100 the Appellants are not able to camouflage the equipment.

- 6.104 The base-station has been designed to accommodate replacement apparatus, allowing provision of 2G, 3G and 4G mobile connections to the surrounding area to continue for EE, Three and their MVNOs. It has also been designed to accommodate new 5G technology, introducing ultra-fast mobile connectivity capable of operating the 'Internet of Things'. This upgraded and replacement infrastructure will provide higher mobile down-load speeds and more reliable, quicker phone connections. There would be increased 4G capacity to provide services to a higher number of people. This physical infrastructure makes it possible for people to work from home without needing to return to the office.
- 6.105 These improved services can only be provided by using a higher number of antennas that are larger in scale than those at the existing site. This element of the design is informed by the number of communication services being provided (4G, 5G etc); the fact that the base-station will be multi-operator meaning that both EE and Three require an equal number of antennas; and because of the higher technical capability of the antennas.
- 6.106 The antenna apertures must be allowed to unrestrictedly emit a radio signal, meaning they need to be sited at a high position at edge of the rooftop to enable the radio signal to clear surrounding structures, such as buildings and trees, with the aim of avoiding interference. The radio frequencies that 5G operates at is particularly sensitive to interference from solid objects, which necessitates securing the antennas to elevated steel support frames at the height proposed.
- 6.107 The antennas are located in sets of four on the north, east and south elevations. The layout of the antennas is informed by physical constraints of the rooftop and local area, and the outcome of software modelling which positions the antennas in such a way that they collectively provide 360-degree coverage to the surrounding area which includes Finchley Road a main arterial route and Swiss Cottage London Underground Station.
- 6.108 Similarly, the dishes must connect to other base-stations in the wider network by microwave link. As such, they require 'line of sight' which an unobstructed path to neighbouring base-stations.
- 6.109 The antennas must connect to the proposed equipment housing cabinets by electrical cable feeders. The equipment cabinets, an essential component of the base-station, must be located as close to the antennas as possible in order to minimise electrical power losses during operation.
- 6.110 The location and small scale nature of the cabinets in the context of the host building and existing plant, ensures that they would not be highly visible from ground-level, nor greatly affect the appearance of the host building, wider streetscene or setting of the adjacent listed building.
- 6.111 According to the reason for refusal the main issue arising is the effects of the proposal on the character and appearance of the host building, wider streetscene and the setting of the adjacent Grade II Listed Regency Lodge. Having considered the delegated report at no point did the Local Planning Authority attempt to quantify the level of harm to the adjacent listed building.
- 6.112 The Appellants do not share this view as set out below. The appeal proposals have been carefully designed in relation to the existing base station infrastructure, and other pieces of plant such as air conditioning units.
- 6.113 Photomontages have been prepared in support of this appeal (Appendix 11). Unlike the 2D planning drawings, these give the inspector a more life-like representation of the appeal proposals. An extract from the photomontages is shown below taken from Finchley Road, east

side, outside Boydell Court (Image 3, Appendix 11). The proposed image 16 below clearly demonstrates that when considered against the existing situation (Image 15) the appeal proposals will not be prominent or cause harm to the host building, wider streetscene and the setting of the adjacent Grade II Listed Regency Lodge.



6.114 Moreover, the Appellants set out the design philosophy and technical constraints in Paras 6.92 to 6.100 which requires the antennas to be placed at the main roof level on free standing support frames as close to the building edge as possible.

6.115 Para 4.9 of the delegated report states *"Farjeon House occupies a visually prominent location at the junction of Finchley and Hilgrove Roads. The building is dominant in views from the north and south along Finchley Road, from the east along Adelaide Road, and from the south-west along Hilgrove Road. The location is not within a conservation area but does contribute significantly to the character and integrity of the streetscape, as well as forming part of the setting for the Grade II listed interwar Regency Lodge located on the other side of Finchley Road"*.



Image 17: View of Appeal site from Finchley Road looking north

(Source: Google Maps)

- 6.116 Looking north up Finchley Road in longer views it can be seen that Forjeon House and the Grade II listed Regency Lodge have a strong visual relationship being located on the west and east sides of Finchley Road. The Local Planning Authority assert that this relationship is strengthened by the greater visibility created by the presence of the junction and the low-rise housing to the south of the junction. It is clear from Image 17 above that whilst these buildings have strong visual relationship, neither of their skylines are unbroken. Both the Appeal site and Regency accommodate existing roof based infrastructure including plant rooms, metal railings and air conditioning units. The Appellants therefore assert that even though the antennas will break the roofline and extend above the plant level, they will not appear significantly higher than their neighbouring properties and cause harm to the host building or the wider streetscene.
- 6.117 The Local Planning Authority also assert that the appeal proposals would cause harm to the Grade II Listed Regency Court which is circa 35m from the appeal site at it's closest point. The siting of the proposed installation has been carefully considered and although the appeal site and Farjeon House have a strong visual relationship, they are separated by a busy main arterial route and mature trees and much of appeal site is set back from Finchley Road.
- 6.118 Regency Lodge is of a vast scale with the main access to the building being taken from Adelaide Road which is to the east of the Hilgrove Road and Finchley Road junction. The appeal site is not visible from the entrance to the courtyard which leads to the main entrance of the building and has many distinctive features and as such there is no impact of the setting of the listed building from the location.
- 6.119 Although the west elevation of Regency Lodge faces the appeal site, it is this elevation that has been altered the most. The elevation includes a neighbourhood shopping parade, with shop fronts of varying style and designs at ground level including the Odeon Swiss cottage with its illuminated halo signage and BT InLink at the roadside. All of these features draw the eye of pedestrians and motorists which is the purpose. Image 18 demonstrates these altered shop frontages.



Image 18: View of Regency Court Finchley Road

(Source: Google Maps)

6.120 The proposed equipment is visible when viewing Regency Lodge in longer views from Hilgrove Road but these are from very specific angles. The below photomontages demonstrate that within these long views the appeal proposals will be viewed in the context of existing roof based infrastructure including plant rooms.



Image 19: Existing View from Hilgrove Road



Image 20: Proposed View from Hilgrove Road

6.121 At the junction of Hilgrove Road and Finchley Road a pedestrian would be standing with their back to the appeal street if they were viewing Regency Lodge and would have to look up and behind them to see the proposed development which is an unnatural stance to take particularly the level of street level activity in this neighbourhood shopping centre.

6.122 An extract of these photomontages taken from Finchley Road, east side outside Odeon Cinema is shown below.



- 6.123 At 32.07m/30.97m/30.37m AGL the top height of the antenna is marginally taller than the existing Vodafone and UK Broadband equipment. The proposed height is the absolute minimum in order for the telecommunications operators to provide equivalent replacement coverage to this cell area and comply with ICNIRP guidance.
- 6.124 If the antenna were to be any lower, the operators would not obtain their high quality 2G/3G/4G replacement service provision in this area as well as new 5G services. This would be contrary to the aims of the Government of achieving world class digital connectivity for the whole of the UK as well as Telefonica's licence obligations.
- 6.125 Placing masts near similar structures such as lamp posts, utilising simple and unfussy designs is acknowledged in the Code of Best Practice on Mobile Network Development in England to be less likely to dominate and be in discord with the landscape and as a result less likely to have a detrimental impact on the visual amenity of the surrounding area. Farjeon House is an existing base station.
- 6.126 The equipment cabinets have a similar appearance to the existing equipment cabinets already in situ on Farjeon House and the location and small scale of the cabinets in the context of the host building, ensures that they would not be highly visible from ground-level, nor greatly affect its appearance. The delegated report asserts that the proposed '*siting of the more bulky cabinets and taller equipment on the roof's edge would be highly visible and constitute proliferated clutter on this rooftop*'. The photomontages clearly demonstrate that this is not the case with only the top of the cabinet being visible in one of the views provided. In photomontage 3 (Image 17 above) the top of cabinets being visible in views from Finchley Road,
- 6.127 Reasonable consideration of the proposal in the context of the existing base station equipment and adjacent skylines can only conclude that the presence of other roof based infrastructure in the immediate area seeks to provide a setting wherein the additional equipment may appear more congruous.
- 6.128 The photomontages demonstrate the very limited impact the scheme atop Farjeon House will have on the character and appearance of the host building, wider streetscene and the setting of the Grade II Listed Regency Court. While there will be opportunities to see the proposed equipment from these vantage points, this would be perceived where other rooftops would also be seen. As such the effect on the setting of Grade II Listed 'Regency Court' would be limited and the proposal would cause less than substantial harm, if at all.
- 6.129 The proposed development is considered to be no more harmful to the setting of the Listed Building than the changes that have been made to the shop fronts over the years and the existing base station and roof based infrastructure. Accordingly, the proposed development

is considered to have less than substantial harm on the Listed Building which the benefits outlined in section 4 of this statement are considered to outweigh.

- 6.130 Consequently, the proposal has been designed to resemble existing roof based infrastructure and will be seen in the context of existing plant and air conditioning units which line Finchley Road. As such, the appeal proposals would not appear out of place on the host building or wider streetscene and setting of the Grade II Listed building. As a result, the appeal proposals would respect the character, appearance and variety of the local environment and would not have an adverse impact upon the amenities of the locality or the Grade II Listed Regency Lodge.
- 6.131 As previously stated, the fact that the additional antenna will be visible, to varying degrees from Finchley Road, Hilgrove Road and Adelaide Road does not mean that they would necessarily and purely by virtue of its presence be harmful to the street scene or to the wider area and Grade II Listed 'Regency Lodge'. Structures such as that proposed by the Appellants are now largely accepted as being ordinary elements of urban and suburban street scenes and so have increasingly less capacity to draw the eye, particularly in areas surrounded by established vertical elements, such as the appeal site. It is submitted that this should have weighed more heavily in the Local Authority's assessment of potential impact.
- 6.132 The Appellants therefore consider that the proposals for a replacement base station on an existing base station site would neither be visually dominant nor adversely affect the visual amenity of the host building, wider streetscene and setting of the Grade II Listed Regency Lodge; this is amply demonstrated in the montages. The appeal proposals would therefore have no significant adverse impact on the character and appearance of the area and any harm to the setting of heritage assets is less than substantial.

*The decision notice states: "In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019".*

- 6.133 The Appellants dispute this assertion. The Council did not seek to work with the applicant's agent 'in a positive and proactive way' as advocated in the NPPF guidance during the course of the application. On the contrary, in an email dated 30<sup>th</sup> April 2020 the Agent requested an extension of time to determination period to allow the production of professional photomontage images which the Agent considered would allow the Local Planning Authority to more fully assess the visual impact of the development. In making the request the Agent noted that this approach adhered to Para. 38 of the NPPF.
- 6.134 The Local Planning Authority, did not respond to this request for an extension of time and issued the decision on 07<sup>th</sup> May 2020.
- 6.135 In an email dated 12<sup>th</sup> May 2020, the Local Planning Authority defended this approach by stating

*"This application is time sensitive and the Council did not think the visuals suggested by yourself would have changed the decision. Therefore an extension of time would not have been appropriate in this instance".*

### **The Significance of an Appropriate Balancing Exercise**

- 6.136 The delegated report states at Para. 5.2 "Given the assessment outlined above, it is considered that the proposed telecommunications equipment **would result in harm** to the setting of the adjacent listed building (Regency Lodge). It is recognised that the proposed scheme would result in better network coverage, and as such, some public benefit would be derived from the scheme however, weighing the harm caused as a result of the development against this public

*benefit, the proposal is considered to be contrary to Section 16 of the NPPF (2019) which seeks to preserve heritage assets". (emphasis added)*

- 6.137 Para. 190 of the NPPF requires that Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.
- 6.138 In considering the potential impacts of any development, Local Planning Authorities are required to quantify the level of harm to heritage assets. Considering the Local Planning Authority concluded the proposed telecommunications equipment would result in harm to the setting of the adjacent listed building (Regency Lodge) they don't appear to have quantified whether this harm is less than substantial as they are required to.
- 6.139 Paragraph 196 of the Framework states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 6.140 It is a requirement of the Town and Country Planning Act that applications should be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise and a feature of the NPPF that a balancing exercise must be carried out. Indeed, even where designated heritage assets are affected by development proposals it is an NPPF requirement to weigh the harm against the public benefits of the proposal, in line with paragraph 196 of NPPF.
- 6.141 When telecommunications proposals are considered, it is necessary to carry out the balancing exercise weighing the need for development and the magnitude of public benefits of the proposed base station against the perceived concerns about the development's visual impact and availability of alternative locations and the possibility to design the scheme differently without impacting the operational needs of the operators.
- 6.142 As has already been presented, there is a clear and demonstrable need for a replacement radio base station in the area and this is not disputed by the Council. Similarly, the equipment proposed to achieve this is not greater than what is required. The same applies to the height of the proposed antennas. The selected location and design is a compromise between technical requirements and the impact on the wider streetscene, including the setting of the listed Regency Lodge.
- 6.143 Inspectors at appeal have determined that a balancing exercise must be carried out weighing the need for telecommunications equipment and the associated public benefits against the harm in allowing the development to take place.
- 6.144 In an appeal decision for a 10m streetworks installation on Chelsfield Road, Orpington, the Inspector allowed the appeal stating that the proposals would not detrimentally affect the character and appearance of the area and the visual and residential amenity of occupiers of neighbouring properties would not be adversely affected (see para 11 PINS ref: APP/G5180/W/3151769 at **Appendix 12**)
- 6.145 The Inspector in relation to the same site on Chelsfield Road allowed a full award of costs against the Council. The reasons are set out in paragraphs 7 and 8 of the PINS decision APP/G5180/W/3151769 see **Appendix 12**. The Inspector found that *'there is no specific reference in either the officer's report or indeed the Minutes of the Council's Plans Sub-Committee to indicate that the need for additional telecommunications equipment in the area or the implications of a lack of alternative sites were weighed in the balance in the Council's decision of the proposal and its subsequent decision to refuse to grant prior approval'* (emphasis added). The Inspector went on to state at paragraph 8 *'The somewhat cursory reference in the Council's appeal statement stating that it was not considered that the need outweighed the material harms identified is not sufficient evidence to indicate that an appropriate balancing exercise had been undertaken to support its decision. Without any*

evidence to demonstrate that this had been done therefore I consider that for the Council to have refused to grant prior approval and to continue to pursue the appeal amounts to unreasonable behaviour'. (emphasis added)

6.146 The issue of benefits and planning balance was also considered in Appeal Ref: APP/X5990/W/16/3162918, 55 – 59 Oxford Street, London, W1D 2EQ. The proposal related to the installation of 9 no antenna inside a 'replica' GRP extension to the plant room.

6.147 The Inspector found that the proposal would cause some limited harm, due to the increased height of the plant room and, to a lesser extent the additional cabinets on the roof. However, the Inspector concluded *'whilst I have paid special attention to the desirability of preserving or enhancing the character and appearance of the conservation area, the above factors lead me to conclude that there is less than substantial harm to the character of the building and the Soho Conservation Area, Therefore, whilst there is some conflict with WCP and UDP policies, the less than substantial harm that I have identified is outweighed by the clear public benefits of the proposal in maintaining and improving vital communications infrastructure at an important location'*.

6.148 In July 2020 the decision of Royal Borough of Windsor and Maidenhead to refuse planning permission for a roof based telecommunications base station was overturned by the Planning Inspectorate at (PINS Ref: APP/T0355/W/20/3246710) Intersystems House, 70 Tangier Lane, Eton SL4 6BB. Within the decision notice, the Inspector stated:

*'Taking all of the above public benefits, in particular the support given within the Framework for the delivery of mobile technology and the absence of suitable alternative sites within the vicinity and applying the balancing test of paragraph 196 of the Framework, I am of the view that taken together, these provide a clear and convincing justification to outweigh the considerable importance and weight to the desirability of conserving the heritage asset, which in this case is the Eton Conservation Area'.*

6.150 It has already been demonstrated above that the Local Planning Authority ignored the technical and operational constraints of the operator in its assessment of the proposed replacement telecommunications scheme.

6.151 The Council's delegated report (**Appendix 13**) makes a cursory reference to the requirement for a balancing exercise stating (Para. 5.2):

*"It is recognised that the proposed scheme would result in better network coverage, and as such, some public benefit would be derived from the scheme however, weighing the harm caused as a result of the development against this public benefit, the proposal is considered to be contrary to Section 16 of the NPPF (2019) which seeks to preserve heritage assets.*

6.152 The delegated report at Para. 3.1 acknowledges that the appeal proposals will replace an existing site. However, at 5.2 the delegated report states "the proposal would result in better network coverage". The planning balance exercise appears to completely miss the point that the need for the installation stems from the impending loss of the existing site at Centre Heights, 137 Finchley Road thus preventing the loss of existing services rather than provide network expansion.

6.153 More fundamentally the Local Planning Authority made no reference to the clear strong national support for advanced, high quality communications infrastructure. The importance of connectivity is all too evident in paragraph 112 of the NPPF:

*'Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next*

*generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high-quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution)'.*

6.154 The delegated report makes a cursory reference 'to the benefits of providing improved infrastructure for the telecommunications network' but fails to fully acknowledge the wider public benefits.

6.155 The social and economic benefits are a significant material consideration which should be weighed against the minimal visual impact associated with an installation in this discreet location. HM Treasury outlined such benefits in its report 'Fixing the Foundations: Creating a More Prosperous Nation' – July 2015. Paragraph 7.1 of the plan set out that 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.

6.156 Paragraph 7.2 goes on to highlight strong support for high quality communications infrastructure. It states:

*'by reducing 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 March, of near universal 4G and ultrafast broadband coverage'.*

6.157 MPs have noted in parliament that the UK's Superfast Broadband connectivity was 'relatively poor' and businesses in rural areas, in particular, were losing out from patchy coverage.

6.158 As such, there is continuing and growing strong national support for high quality communications infrastructure. This is demonstrated in the commitment to review permitted development rights and as discussed by David Cameron in Prime Ministers questions in March 2016, where he stated:

*'Our constituents now want coverage for the internet, they want coverage for mobile phones...we need to make sure we change the law in all the ways necessary to make sure...the masts are built, we increase coverage and we ensure everyone is connected to the information superhighway'<sup>29</sup>*

6.159 The British Infrastructure Group of MPs (BIG) led at the time by Grant Shapps MP is dedicated to championing better infrastructure across the UK. The October 2016 BIG Report has investigated how the Government can improve mobile coverage for the millions of customers who receive inadequate service. It demanded that all operators improve their mobile coverage with a deadline of December 2017. The report called for the Digital Economy Bill to be prioritised by the Government to reform the Electronic Communications Code and allow Ofcom to fine mobile operators that do not meet their coverage targets. This report was signed by numerous MPs, many of which have made detailed comments regarding poor connectivity in the UK. An extract of this assessment can be found below:

*"A lack of digital connectivity has a detrimental effect on business operations, productivity and output and hence competitiveness in the global market place. Securing digital connectivity is thus critical to the UK's long term prosperity. A key challenge for the digital sector is a persistent digital divide between those who have access to the latest technologies and those who do not, with resulting social and*

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<sup>29</sup> <http://www.britishinfrastructuregroup.uk/reports-and-briefings/mobile-coverage/>

economic exclusion, particularly as dependence on e-services and digital communications increases".

*"The Assessment goes on to note that 'Universal digital connectivity would serve as an equaliser of economic opportunity in that it enables participation in a modern digital economy'. Therefore, this Needs Assessment further explains the consequences of a lack of coverage and the effects this has on social and economic prosperity. This clearly highlights the importance of maintaining high quality 2G, 3G and 4G coverage to this very busy area of the capital, where the social and economic benefits outweighed the environmental considerations".*

- 6.160 This commitment has now been fully endorsed with amendments under Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which came into force on 24<sup>th</sup> November 2016 and the new Electronic Code<sup>30</sup> which came into force at the end of December 2017.
- 6.161 The Future Telecoms Infrastructure Review<sup>31</sup>, produced by DCMS, sets out the future for telecoms in the UK and the opportunities that these advancements in digital connectivity will create.
- 6.162 Digital infrastructure is central to the future of the UK economy. This national strategy will create the right market and policy conditions to secure world-class connectivity for all, but it needs to be accompanied by changes from within the sector. Industry has a critical role in delivering the world-class connectivity we need, and the focus should be on growing the market and improving consumer experiences. This is a long-term strategy and one which will only be achieved by government and industry working together.
- 6.163 Paragraph 3 states: *'Wide-scale deployment of these next generation technologies will be key to the UK remaining globally competitive, and support the regional rebalancing of the economy by creating new opportunities, in areas like health, education and public services'.*
- 6.164 Paragraph 46 states *'The security and resilience of the UK's telecoms networks is also of paramount importance. The Government expects operators to invest in the security and resilience of the new networks, and build effective supply chain relationships that support this.'*
- 6.165 By refusing this proposed replacement telecommunications radio base station without fully considering the economic and social benefits that it will bring to the local community the Council has gone against its own clear policy objectives, preventing its residents, businesses, those using the road and rail networks and visitors alike from accessing basic services such as the internet which is widely considered by the Council, the Government and economists alike to be essential for life in the 21<sup>st</sup> Century and is no longer a luxury that one can do without.
- 6.166 Notably, whilst the benefits arising from this installation are local, the site forms part of a national network which in turn will assist the Government in meeting their ambition of world class digital connectivity for the UK. Moreover, as previously noted almost 7 million passengers use Swiss Cottage London Underground Station on an annual basis.
- 6.167 Whilst the appeal proposals are to maintain 2G, 3G and 4G to the Swiss Cottage the site will also be provide new 5G services to the area. Government support for 5G and the associated social and economic benefits are well documented as set out in the following paragraphs.
- 6.168 Ministers from the DCMS and MHCLG wrote to all CEOs of Council's in England setting out its position **'Collaborating for digital connectivity'** (March 2019) (**Appendix 3**) in respect of supporting investment in high-quality, reliable digital connectivity. The Government acknowledges that such infrastructure is essential for communities to benefit from faster economic growth and greater social inclusion. Ministers state:

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<sup>30</sup> <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code>

<sup>31</sup> <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

*'It is essential to keep pace with growing demand for internet bandwidth and mobile data from local businesses, residents and those who visit our communities. As outlined in the Future Telecoms Infrastructure Review, the Government would like to see nationwide full fibre coverage by 2033. We would also like the UK to be a world leader in 5G, with the majority of the population covered by a 5G signal by 2027. We are writing to ask for your help in supporting the investment necessary to achieve these objectives.*

*Recent years have seen substantial investment in mobile and fixed digital infrastructure across the UK.*

*While mobile coverage across the UK has been significantly improving, there are still too many areas where coverage is poor. The UK has now achieved 95% superfast broadband coverage but still only 6% full fibre coverage.*

*We need to create the market and policy conditions necessary to support the large-scale commercial investment required to extend and future-proof digital connectivity. A key part of this is making it easier for operators to deploy infrastructure. To help to achieve this, the Government recently reformed the Electronic Communications Code - the statutory framework which underpins agreements between communications network providers and those in both the private and public sector who can provide sites for the installation of network equipment. The purpose of the reforms was to make it easier and more cost effective for communications network providers to deploy and maintain digital infrastructure.*

*Local authorities have an essential role to play as site providers. As Chief Executives, you can support investment in digital communications infrastructure by ensuring your organisations have policies and procedures in place that promote effective engagement with the digital communications industry and minimise barriers to deployment'.*

6.169 DCMS have produced 'Connected Growth: A Manual for Places Working to Boost their Digital, Cultural and Social Connectivity'<sup>32</sup>. The Manual recognises that Digital Infrastructure underpins the digital, cultural and social infrastructures to develop places where people want to live, work and visit. Over the next few decades our digital networks will be the enabling infrastructure that drives economic growth and productivity.

6.170 The Manual recognises that 'the Digital Infrastructure sector contributed £33bn to the UK economy in 2017 (1.8% of GVA), up by a third since 2010. A core contributor to connected growth in local areas, direct benefits from improved digital connectivity include large increases in download speeds leading to more productive economic activity. It is estimated that by subsidising upgraded infrastructure in certain postcodes £9bn of turnover was added to firms in those postcodes'.

6.171 Moreover, a range of evidence shows direct benefits from improved digital connectivity, including large increases in download speeds leading to more productive economic activity. Wider potential impacts are in areas such as remote healthcare, education, travel and transport, and wellbeing, including loneliness. Gigabit- capable technology will ensure future opportunities in these areas, plus technologies such as AI or the Internet of Things, will be available to everyone in every region.

6.172 Page 38 states:

*'Designing intervention*

*Public funding will be dependent on local areas having a clear plan to reduce and remove barriers to deployment and adopting best practice. You should work with providers to support commercial deployment of both broadband networks and*

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<sup>32</sup> <https://www.gov.uk/government/publications/connected-growth>

mobile coverage infrastructure (in terms of conventional macro-level mast deployment and small-cell deployment at street-level):

- The Digital Connectivity Portal<sup>33</sup> provides guidance for local authorities and network operators on effective policies and processes to facilitate deployment of broadband and mobile networks.
- Introduction to Community-led schemes provides guidance on options'.

6.172 Matt Warman MP Parliamentary Under Secretary for Digital Broadband wrote to all Local Authority Chief Executives in November 2019 setting out DCMS position on '5G – The Next Mobile Generation'.

6.173 The letter states:

*'More than any previous generation of mobile networks, 5G has the potential to transform the way we live and improve economic productivity. Networks will have the capacity for millions more devices to be connected at the same time, enabling businesses and communities to operate more efficiently. It will allow cities and communities to manage traffic flow, monitor air quality and control energy usage through real-time management of high volumes of data.'*

*A recent report estimated that local authorities will share collectively an annual £2.35 billion of efficiency savings, from reduced social care costs for the elderly through 5G monitoring, to savings through smarter street lighting.<sup>1</sup> We want the UK to take early advantage of these benefits, so it is good news that all of the four main mobile network operators - EE, O2, Three and Vodafone - have started to deploy 5G networks. We expect 5G to go live in up to 50 cities and towns by the end of 2020. In order to support the deployment of 5G and extend mobile coverage, particularly in rural areas, the Government recently published a consultation on the principle of proposed reforms to permitted development rights, which closes on 4 November.*

6.174 The Government consulted on 'Proposed reforms to permitted development rights to support the deployment of 5G and extend mobile coverage'<sup>34</sup> in August 2019. The consultation sought views on the principle of amending permitted development rights for operators with rights under the Electronic Communications Code (Code Operators) to support deployment of 5G and extend mobile coverage, and the circumstances in which it would be appropriate to do so.

6.175 Paragraph 1 of the consultation states: *'The Government recognises that widespread coverage of mobile connectivity is essential for people and businesses. People expect to be connected where they live, work, visit and travel. That is why the Government is committed to extending mobile geographical coverage further across the UK, with continuous mobile connectivity provided to all major roads and to being a world leader in 5G'. Paragraph 9 reaffirms Government aspirations to be a world leader in 5G.*

6.176 Paragraph 10 advises *'the case for 5G is compelling as it will bring faster, more responsive and reliable connections than ever before. More than any previous generation of mobile networks, it has the potential to improve the way people live, work and travel, and to deliver significant benefits to the economy and industry through the ability to connect more devices to the Internet at the same time – creating the so-called "Internet of Things". This will enable communities to manage traffic flow and control energy usage, monitor patient health remotely, and increase productivity for business and farmers, all through the real-time management of data'.*

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<sup>33</sup> <https://www.gov.uk/guidance/digital-connectivity-portal>

<sup>34</sup> <https://www.gov.uk/government/consultations/proposed-reforms-to-permitted-development-rights-to-support-the-deployment-of-5g-and-extend-mobile-coverage>

6.177 Although much of the emphasis of the consultation relates to the deployment of 5G and the rural network it also relates to potential changes to the General Permitted Development Order and enabling deployment of radio equipment housing on land without prior approval. This clearly shows the importance the Government places on getting the infrastructure in place to deliver world class connectivity for all.

6.178 There have been numerous appeal decisions where the Inspector has attached significant weight to the benefits, alternative options, technical constraints and NPPF in a balancing exercise of all the valid material considerations, including visual impacts and the impact on heritage assets.

6.179 In October 2018 the decision of Winchester City Council to refuse prior approval for the installation of a 17.5m high monopole and associated equipment housing on Andover Road, Winchester, required to replace an established site being lost from Vodafone's network, was overturned by the, PINS Ref: APP/L1765/W/18/3197522, attached at **Appendix 14**). Within the decision notice, the Inspector stated that:

*"I attach significant weight to the public benefit arising from the continuation of local service provision.....Having regard to all relevant considerations, including national planning policy and the potential availability of alternative sites, my findings are that the proposal's public benefit in maintaining and enhancing local telecommunication coverage and capacity would outweigh the limited harm arising to the character and appearance of the area".*

6.180 In determining another such appeal in December 2017, in which the decision of the London Borough of Harrow to refuse prior approval for the installation of a 12.5 metre high monopole and associated equipment housing on highways land, the Corner of Wendela Court and Sudbury Hill within a Conservation Area was overturned, (APP/M5450/W/17/3180345, also attached at **Appendix 15**), the Inspector concluded that:

*"The proposal would be permitted development and provide public benefits in extending the telecommunications capacity of the area. In applying the balancing test of paragraph 134 of the Framework, I consider that these benefits outweigh the harm that would arise from the proposal's impact on the character and appearance of the Conservation Area. "*

6.181 These findings echoed those of a previous case determined in 2016 where the decision of the London Borough of Hillingdon to refuse planning permission for a 15 metre high monopole and associated equipment cabinet on land at the junction of Harmondsworth Road and Sipson Road, West Drayton, UB7 9JJ in a Conservation Area was overturned (PINS Ref: APP/R5510/W/16/3143922, attached at **Appendix 16**). The Inspector in that case concluded:

*"The Framework sets out the importance of an advanced high quality communications infrastructure for sustainable growth and makes specific reference to the development of high speed broadband technology. This is reflected in the London Plan and the public benefit arising from the improvement of the telecommunications infrastructure is a material planning consideration that weighs in favour of the proposal.*

*Taking account of all matters I have concluded that the limited harm caused to the significance of the heritage asset (the CA) would be outweighed by the public benefit that would arise from improving the communications infrastructure".*

6.182 In the latter two mentioned appeals (APP/M5450/W/17/3180345/APP/R5510/W/16/3143922), the Inspector found that the developments would give rise to a degree of harm to the heritage asset in question. Despite this, the importance of providing a quality communications infrastructure was recognised by the Inspector and was awarded due weight in the determination of the cases brought. That weight was sufficient for the appeals to be successful despite the recognised harm. In the case of this appeal, the same public benefit would occur,

which must again be weighed against harm to heritage assets. In contrast to the above mentioned appeals the Appellants are seeking to utilise an existing base station on which to deploy their replacement equipment which is clearly sequentially preferable to the installation of a new ground based mast. Also, notably as with the case brought against Winchester City Council, the dismissal of the appeal would contribute to a loss of existing services rather than a delay to network expansion.

- 6.183 On balance, the LPA have attached no weight to the social and economic benefits of providing reliable and high quality fixed and mobile broadband connections support growth in productivity, efficiency and labour force participation across the whole economy. This is contrary to NPPF. Inspectors give considerable weight to the public benefits of high-quality communications infrastructure.
- 6.184 The Appellants consider that the magnitude of positive benefits of this proposal to the wider community outweigh any perceived negative impact on the character and appearance of the street scene and setting of the Grade II Listed Regency Lodge.

## Section 7: Summary

- 7.1 The Appellants have demonstrated the need for the appeal proposal, which would retain quality, reliable digital communications and connectivity services within this area following the impending loss of an existing site within the Appellants network. Evidence of the benefits of high quality communications infrastructure in terms of boosting economic growth, promoting social inclusion and enhancing the provision of local community facilities and services has been provided. It is contended that the Local Authority did not give sufficient weight to this need when balancing the very limited impact of the proposal on the street scene and setting of the Grade II Listed 'Regency Lodge' against the increasing importance of providing reliable digital connectivity in the wider public interest.
- 7.2 The Appellants have undertaken an exhaustive search of the area, during which the use of an existing base station site was identified. It has been demonstrated that no more suitable, feasible alternative sites have been identified and that the appeal site represents the optimum option in terms of balancing the technical requirements for the provision of replacement coverage in the public interest with the need to minimise the impact of development as far as is practical.
- 7.3 It has been demonstrated that the appeal proposal, by virtue of its scale, height and design would not cause harm to the host building, wider streetscene, or the setting of the Grade II Listed 'Regency Lodge'.
- 7.4 It has been demonstrated that there is no conflict between the appeal proposal and planning policy and that the Local Authority, therefore, refused the planning application in a manner that is not consistent with their Local Development Framework or with national planning guidance.
- 7.5 For these reasons, the Inspector is respectfully requested that the appeal for the proposed appropriately designed, shared telecommunications base station be allowed to ensure that the existing and future residents, businesses and almost 7 million London Underground visitors continue to use their mobile devices, dependant upon the EE and Three networks in this area.