

Appellant reference: KDB/MBNL/27873APPEAL

LPA application reference: PN/25/99280

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)
THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED
DEVELOPMENT) ORDER 2015**

**Statement of Rebuttal to LPA's Award of Costs
Request**

**On behalf of Mobile Broadband Network Limited, EE Ltd and H3G
UK Ltd.**

August 2025

A planning appeal by written representation against the decision of Eastleigh Borough Council to refuse Prior Approval for the installation of replacement telecommunications apparatus on the pavement at Drummond Road, Shamblehurst, Hedge End, Eastleigh, Hampshire, SO30 2AH

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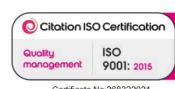


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1. Introduction and background

- 1.1 This statement is submitted in response to Eastleigh Borough Council's application for a full award of costs in relation to the appeal at Drummond Road, Shamblehurst, Hedge End, Eastleigh, Hampshire, SO30 2AH (APP/W1715/W/25/3369416). The Appellant firmly opposes the Council's application. The appeal was pursued reasonably, proportionately and fully in line with the statutory framework as provided by s. 78 of the Town & Country Planning Act 1990 (as amended).
- 1.2 The proposed installation falls under development granted planning permission by the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), specifically Part 16 of Schedule 2. This consent recognises the essential role of telecommunications infrastructure and grants such development permission in principle, subject only to a planning condition, requiring the prior approval of the Local Planning Authority on matters relating to siting and appearance. The application and appeal were submitted on this basis. Nevertheless, the Local Planning Authority do not have a right to question the need for such infrastructure, as stated within the National Planning Policy Framework, under Part 122: "Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure".
- 1.3 By application dated 22/04/2025 the Appellant, on behalf of EE and H3G (UK) Ltd, applied for the prior approval of the Council for the erection of a 20m street works monopole, with associated cabinets, cables and antennas. The application was accompanied by a planning statement and covering letter. It had been preceded by a traffic light assessment of the proposal's impact and consequent consultation with the Council's planning department, 3 x Councillors and a Pre-school establishment. Notice was served on the Hampshire County Highway Department as 'owner' of the site, informing them of the proposal.

2. Response to the application for costs

- 2.1 Costs orders in planning matters are the exception and limited strictly to the narrow circumstance in which a party's unreasonable behaviour causes another to incur otherwise unnecessary expense. The threshold to be cleared by an applicant is, rightly, notoriously high. The test to be applied is summarised in *Planning Appeals: A Procedural Guide*¹: -

3.2. Costs

3.2.1. All parties are expected to meet their own appeal expenses.

3.2.2. If a party does not behave reasonably, they leave themselves open to costs being awarded against them. This would be on the basis that their

¹ [Planning appeals: procedural guide - GOV.UK](https://www.gov.uk/guidance/planning-appeals-procedural-guide)

unreasonable behaviour had directly caused another party to incur expenses that would not otherwise have been necessary.

- 2.2 Further guidance is provided by the Government's [Claim planning appeal costs: Overview - GOV.UK](#):

You may be able to claim costs if someone involved in your appeal behaves unreasonably and costs you money. This includes if they:

- *fail to co-operate with you or others*
- *miss deadlines*
- *fail to turn up to a site visit, hearing or inquiry*
- *gave information that was wrong or declared after the deadline*

- 2.3 In this premise, the presumption is that the Council must meet its costs of responding to the Appellant's appeal and the burden of proving that an order should be made against the Appellant rests with the Council.

- 2.4 The Council's application falls manifestly short of satisfying that burden of proof and it is denied that the Appellant acted unreasonably as asserted or at all:

- a) there was no failure to co-operate. Planning Officers were regularly contacted as part of a pre-application consultation exercise and during the application process. All communication was considered and subsequent submissions made in light of formal and informal feedback, in the course of appropriate and open engagement between the Appellant and the Council;
- b) no deadline for the application or appeal was missed;
- c) there was no failure to meet any obligation on the applicant; and
- d) no information provided was wrong or declared after a deadline.

Specific Claims of Unreasonable Behaviour

- 2.5 Section 2 of the Costs application raises specific accusations which are addressed in turn below: -

- *The Council considers that the appellant has failed to provide adequate technical and planning justification for the proposed development.*

- 2.5.1 In a pre-application consultation exercise, the Council were provided with a Site Detail sheet, which explained the reason for need for a replacement mast, outlined discounted sites considered less appropriate and outlined the planning policy relating to the proposal. This was then re-enforced by a Planning Statement that accompanied the application, based on a Site Specific Supplementary Information Form standard template provided by Mobile UK as part of their Code of Best Practice and used ubiquitously across the industry. This provided more details of the technical justification. The form and extent of the technical information provided was similar to all other applications made by DOT Surveying and other planning consultants supporting Operator's applications. It has been sufficient to justify many hundreds of successful telecom site proposals across the UK. (It should be noted that the Council's response to the pre-application consultation

exercise was received after the end of the pre-application consultation period and after the prior approval application was submitted).

- 2.5.2 While the Officer suggests that “Several alternative sites were dismissed without detailed assessment, including locations which may have offered opportunities for significantly reduced environmental, economic, and social impact”, environmental, economic and social impact are planning issues that are not directly related to siting and appearance. Siting and appearance are the only relevant factors, under the terms of the planning condition attaching to planning permission granted by the GPDO.
- 2.5.3 The search of the area to find both the proposal site and the discounted sites was carried out to try and find any a) existing telecom sites; and b) existing buildings before choosing a greenfield option, as described within the Planning Statement as a hierarchy of site choice. The suggestion that this was unclear is without foundation. Had the Officer sought clarification, it would have been immediately apparent that no such sites or buildings exist within the search area. The pre-consultation exercise was carried out precisely to obtain information such as other suitable sites from the Planning Authority. As the correspondence, relating to the pre-application consultation and through the application process, attached in Appendix 1 to this Statement, shows, no such input was provided.
- *the appellant claims that the existing site is being decommissioned, no documentary evidence has been provided to support this assertion.*
- 2.5.4 Legal agreements for occupying sites are often commercially sensitive. It is generally accepted as standard practice across the industry not to include commercially sensitive legal notices in planning applications; the cost of installing a replacement site is usually demonstrative enough of the requirement for a replacement site. At any point during the pre-consultation or application process, the Officer could have requested a copy of the correspondence confirming the loss of the existing site but failed to do so. The validity of the need for a replacement site has been proved, as the old mast has already been demolished.
- *The absence of coverage mapping, signal strength data, or information on the performance of nearby installations undermines the credibility of the claimed need for the proposed installation at this specific location.*
- 2.5.5 This ground is misconceived. This information was provided to the Council on two separate occasions, acknowledged in writing, and referenced in the appeal statement. The Planning Officer requested details of the search area and coverage plots on 8th May, as can be seen in the correspondence contained in Appendix 1. On 20th May, 3 days before the application was refused, coverage plots were sent to the Council and acknowledged. Further, figures 4, 5, 6 and 7 within the Appeal Statement (dated 15/07/2025) provided the same radio coverage plots relating to coverage mapping and signal strength, demonstrating the need for the proposal. Plainly, the Appellants complied with the guidance outlined by paragraph 120 of the NPPF.

- *the appellant failed to engage with a formal objection raised by Hampshire County Council in its capacity as the Local Highway Authority*
- *the appellant relied on generalised assertions regarding available clearance widths without reference to accepted design standards or site-specific safety analysis.*

2.5.6 This ground is also misconceived. Contact was made with the Highway Authority at the time the application was submitted, as ‘owners’ of the site (a requirement under a planning condition of the GPDO). (A copy of the Notice was submitted to the Planning Department with the prior approval application) In response to the Notice, the Highways Officer queried the effect of the proposal on the width of the shared use cycle/pedestrian path and was provided with a dimensioned drawing showing this detail (albeit, unknowingly on the day that the Council issued their decision notice - The delay between the Council’s request and the response was occasioned by annual leave of the Planner responding to the query.) No response was received back from the Highways Department following this correspondence. The email chain in evidence of this is provided in Appendix 2.

2.5.7 As a matter of note, the gap between the paved area edge and cabinet doors, when open, is 1.785m (2.599m when closed) The minimum width of pedestrian pavements (outlined in DoT Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure Dec 2021) is 1.5m or an absolute minimum of 1m for a maximum distance of 6m. The minimum width for a single cycle lane (outlined in DoT Cycle Infrastructure Design July 2020) is 2m or an absolute minimum of 1.5m. The proposal complies with these requirements.

Reasonableness of Appealing the Refusal

- 2.6 The Appellant’s clients (as Licensed Code System Operators under the Telecommunications Act 2003, providing a voice service) have a duty under the terms of their OFCOM licence to provide emergency service calls and comply with a range of other obligations². This is overlaid by a coverage requirement, by agreement with the Government, to cover 90% of the UK landmass, referred to as the General Voice Coverage Obligation (GVCO). The radio coverage provided by the existing site being removed under a Notice to Quit, would have contributed to satisfying that obligation. The Operators, in the process of losing this coverage, are, therefore, under an obligation to find an alternative site to replace the radio coverage being lost.
- 2.7 The Operators’ duty to maintain coverage, explained above, aligns with the Eastleigh Borough’s Local Development Plan and this proposal was brought forward in good faith to meet that legal obligation within the Hedge End area. Without rehearsing the merits of the proposal, this explains why a mast that the Council considers offensive in planning terms, is nevertheless needed within the site search area.

3. Sufficient Evidence in Prior Approval Context

² [General Conditions of Entitlement Unofficial Consolidated Version 1 Oct 24](#)

- 3.1 While, the Council asserts that insufficient evidence was submitted, it is important to note that the prior approval process for permitted development operates under a different evidential threshold than a full planning application. The information provided was proportionate to the statutory requirements of Part 16, addressing matters of siting, appearance and the operational need arising from network changes. There is no legal requirement within the permitted development regime to exhaustively assess every potential alternative site. The Council's attempt to impose such a burden is therefore beyond their statutory remit, particularly where the chosen location offers practical viability in closing identified coverage gaps.
- 3.2 In this case, the appellant supplied an assessment of seven alternative sites within the search area, setting out clear and specific reasons why each was unsuitable. Engagement with the Case Officer included the provision of coverage plots, demonstrating both the need for improved service in the locality and the rationale for selecting the appeal site. Furthermore, the Planning Statement consistently referenced and explained the siting and appearance considerations, as well as the proposal's compliance with both the Local Development Plan and the National Planning Policy Framework.

4. Conclusion

- 4.1 The application and subsequent appeal were pursued in accordance with the relevant planning framework and the statutory duty under the Communications Act 2003. Proportionate and sufficient evidence was provided throughout the process.
- 4.2 The Council's application for costs purports to rely upon:
- 4.2.1 matters that are unrelated to a consideration of siting and appearance, despite that being the only criteria that is relevant to the exercise of the Council's discretion at prior approval;
 - 4.2.2 an alleged absence of technical evidence of the need for a replacement mast, despite that evidence having been provided on two occasions; and
 - 4.2.3 lack of proven justification for the taking the apparatus of the existing mast, although that mast has physically been removed;
 - 4.2.4 an alleged lack of engagement with the Highway Department, although evidence relating to their objection as statutory consultee to the prior approval application was provided. (Timing meant it was not reported to the Planning Authority before they made their decision.)
- 4.3 In all the circumstances, the application for costs is misconceived and, whether effective or not, the appeal and its pursuit by the Appellants is reasonable. We therefore request the application for costs be dismissed.

Appendix 1

Pre-application and application correspondence with the Planning Department



27873 - Drummond
Road SW - Pre Appli



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mmond%20Road%2

Appendix 2

Correspondence with the Hampshire Highways Department



RE 27873 -
Drummond Road SV