

**APPLICATION REFERENCE: PL/2021/01609/PN****Site Address:** Telecommunications Mast Widney Road Bentley Heath Solihull

<b>Proposal:</b>	Prior notification for a 18.0m Phase 8 monopole c/w wrapround cabinet at base and associated ancillary works.
<b>Web link to Plans:</b>	<b>Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at:</b>  <a href="https://publicaccess.solihull.gov.uk/online-applications/">https://publicaccess.solihull.gov.uk/online-applications/</a>

<b>Reason for Referral to Planning Committee:</b>	<b>Number of objections received</b>
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<b>Recommendation:</b>	<b>REFUSAL</b>
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**EXECUTIVE SUMMARY**

An application has been submitted seeking the determination as to whether or not the Prior Approval of the Local Authority is required for a new electronic communications mast and associated equipment to be used by CK Hutchinson Networks (UK) Limited (Three).

The proposed mast would be an 18m high monopole with a wraparound cabinet at base and development ancillary works. Following challenge from the local planning authority to the applicant regarding the siting and need of the proposed apparatus, no satisfactory evidence has been submitted to justify the proposed scheme. It is considered in this instance that, although there is a demonstrable requirement for the proposed structure, it has not been demonstrated that there are no more suitable sites available to the applicant, and that there are no material considerations to outweigh the visual harm created by the proposal.

**BACKGROUND AND CONTEXT**

The proposed mast is required as part of the new West Midlands roll out of 5G electronic communications technology. The West Midlands has been selected to become the innovative home to the UK's first multi-city test bed for 5G services, which will pave the way for a more extensive and future roll out of 5G across the UK.

The development of a network to provide 5G services within Solihull is essential to enable this to happen and to meet the region's commitment to providing this service. The huge advances in technology made possible by the provision of a comprehensive 5G network will provide the next significant step forward in mobile connectivity, and will enable an unprecedented leap in the capabilities of electronic communications, including:

- Hospital outpatient appointments and emergency consultations carried out remotely by video link not subject to dropage or latency barriers. As well as being more convenient for patients, this means they can play back their appointment at a later date or share it securely with a family member or carer to help inform their care.
- "Connected Ambulances" - Paramedic crews at an incident could access specialist advice while they are at the scene, e.g. video conferencing with consultants or other clinical specialists. Live streaming of patient data from ambulance en route.
- Live streaming of CCTV footage from public transport buses, enabling immediate action against anti-social behaviour. "Intelligent cameras" using artificial intelligence (AI) to identify incidents could provide the opportunity for far greater coverage than is possible at present.
- Although at an early stage, 5G will have the capability to allow the development and use of autonomous vehicles, which will transform the way we travel, preventing major accidents, improving traffic flow and reducing energy consumption. The West Midlands Combined Authority will partner with Jaguar Land Rover (a significant Solihull based employer) to facilitate real world testing of driverless cars.

In addition to the above obvious and significant future benefits of the 5G network, the network also brings with it massive improvements to the general speed, capacity and technology available for general internet and electronic communication users, both home and work based. The recent social and working restrictions imposed on the nation by the Covid19 pandemic have highlighted just how important this improved connectivity capacity will be going forward, and demand for improved services will be huge.

A recent report also 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.

It is therefore clear that 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 effectively. 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.

However, in order to provide the advances available through the 5G network, new hardware, masts and equipment is required that is not as flexible in terms of height and design as previous generations. Given the technical requirements of the antennas and masts required to provide 5G coverage, the heights of masts generally

need to be higher than before, and antennas cannot be designed as sensitively as before. This will obviously have a greater impact upon street scenes than older telecoms apparatus, and the implications of this will be explored later in this report.

5G uses higher frequency radio signals that have a shorter range and will require more base station sites than the existing networks. It is very important to note that mobiles can only work with a network of base stations in place where people want to use their phones (or other wireless devices). Without base stations, the technology everybody relies on simply won't work.

With the above in mind the application must therefore be determined in accordance with the procedures as set out the Town and Country Planning (General Permitted Development) Order, which restricts the issues that can be considered to the siting and appearance of the mast only.

## **MAIN ISSUES**

The main issues in this application are:

- Whether there is a technical requirement for the proposed mast;
- Whether a suitable assessment of the area has been undertaken to justify the siting of the proposal;
- Whether the proposal will be harmful to the character and appearance of the area; and
- Whether any visual harm caused by the proposal is outweighed by the requirement for the mast, the lack of any more suitable alternatives and the attempts that have been made to lessen the visual impact of the proposal as far as is practicable.
- Highway safety

Other Material Considerations:

- Health
- Residential Amenity

## **CONSULTATION RESPONSES**

### **Statutory Consultees**

The following Statutory Consultee responses have been received:

Local Lead Flood Authority – No objection

### **Non Statutory Consultees**

The following Non-Statutory Consultee responses have been received:

SMBC Highways – Objection – Loss of proposed site for benches

## **PUBLICITY**

The application was advertised in accordance with the provisions set down in the Town and Country Planning (General Development Procedure) Order 2015.

25 responses were received from 22 addresses. 21 objecting to the proposal including Dorridge and District Residents Association and one letter of neutral comment. All correspondence has been reviewed and the main issues raised are summarised below:

- Highway safety
- Not appropriate location
- Excessive size
- Close to residential
- Alternative sites more appropriate
- Impact on living conditions of residential properties
- Dangers to health
- Insufficient neighbour notification
- Busy local shopping and residential area
- Obscure sightlines
- Busy congested junction
- Benches being installed will be not used
- Devalue property
- Affect community spirit and morale
- Noise pollution
- High cross wind trap
- Contrary to Policy U1 of the KDBH Neighbourhood Plan

## **PLANNING ASSESSMENT**

Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that: -

‘Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise’.

The National Planning Policy Framework at paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

On the 13<sup>th</sup> May 2021 the Local Plan Review was submitted (via the Planning Inspectorate) to the Secretary of State for independent examination.

This marks the next stage in the preparation and adoption of the plan. The advice in the NPPF at paragraph 48 states “Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Greater weight, but not full weight, can therefore be given to the submitted plan, but this may still be dependent on the circumstances of each case and the potential relevance of individual policies. In many cases there are policies in the new plan which are similar to policies in the adopted plan which seek the same objectives, although they may be expressed slightly differently.

It is considered that relevant policies pertinent to this application have limited weight in the planning balance, and as a result do not alter the recommendation of approval reached in this report.

This report also considers the proposal against the Development Plan (Solihull Local Plan), the relevant policies of the National Planning Policy Framework (“NPPF”) 2019, the National Planning Practice Guidance

## **APPRAISAL**

### Whether there is a technical requirement for the proposed mast

The National Planning Policy Framework states that local planning authorities should not question the need for the telecommunications system, which the proposed development is to support. The Government’s latest thinking strongly supports communications infrastructure.

The NPPF is 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. However, it also includes the importance of reliable communications infrastructure for both economic growth and social well-being.

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 NPPF Paragraph 112 makes specific reference to 5G: 'Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G).'

With the above in mind, the Government is already forward thinking the evolution of data networks and seeks planning decisions to take account of this. 5G technology provides increased speed of data and more capacity in the network, to ensure that handheld devices can continue to be used for the purposes in which they were purchased. This will bring even greater economic and social benefits to the area.

Paragraph 113 of the NPPF retains the requirement to minimise the number of installations consistent with the efficient operation of the network but also include being consistent with the needs of consumers and providing reasonable capacity for future expansion.

Paragraph 116 of the NPPF relates to determining applications on planning grounds only. Here the NPPF states that decision makers 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.

The proposed mast is required as part of the new 5G network rollout. It is submitted on behalf of Three. This report has already set out that the West Midlands has been selected to become the innovative home to the UK's first multi-city test bed for 5G services, and that the development of a network to provide 5G services within Solihull is essential to enable this to happen and to meet the region's commitment to providing this service.

In order to roll out the 5G network, the operators are seeking to upgrade their existing networks. Accordingly, where existing base stations can be upgraded through the installation of the additionally required antennas they will, but where they cannot be upgraded new base stations are required. In this instance, the existing Three network is not covered, and as such a new installation is required. This also justifies the limited cell search area for each proposed 5G cell, as they must either constitute the upgrading of an existing base station, or failing that be located near to an existing base station. In such situations if it were too far from the existing base station it would create a new cell and interference between the cells and therefore wouldn't work effectively.

It is therefore considered that there is a technical requirement for the proposed installation within the indicative search area for this cell.

#### Whether a suitable assessment of the area has been undertaken to justify the siting of the proposal

The applicant has submitted an indicative cell search area plan, which outlines the extent of the area within which a site is sought to meet the network coverage objectives of both operators.

In searching for a suitable site, the NPPF advises that for a new base station, the applicant should explore the possibility of erecting antennas on an existing building, mast or other tall structure ahead of selecting a site for a ground based installation. In this instance the cell search area is a very limited area of the borough that is centred around the operators' existing 3G and 4G mast in the area. The area of the search is so constrained because the operators understandably, having regard to government guidance, based their 5G rollout strategies primarily on upgrading their existing base stations to accommodate the required apparatus where possible. As such, the operators requirements for new base stations and upgrades follows the cell structure of their existing 3G and 4G networks, and the new 5G apparatus needs to be installed either on an existing base station (upgrade), or close to an existing station (new installation) in order to provide the required contiguous network coverage.

Within the search area, aside from the site the subject of this application, several possible alternative sites were considered but rejected. Objectors to the proposal have also suggested possible alternative sites. During the assessment process of this application these sites have also been considered by the applicants, but also rejected. The alternative sites considered, together with the reasons for discounting the sites are as follows:

D1. Widney Road – Discounted due to residential amenity.

D2. Widney Road – discounted due to visibility splay issues.

D3. Widney Road – pavement outside of service station discounted due to visibility splay issues.

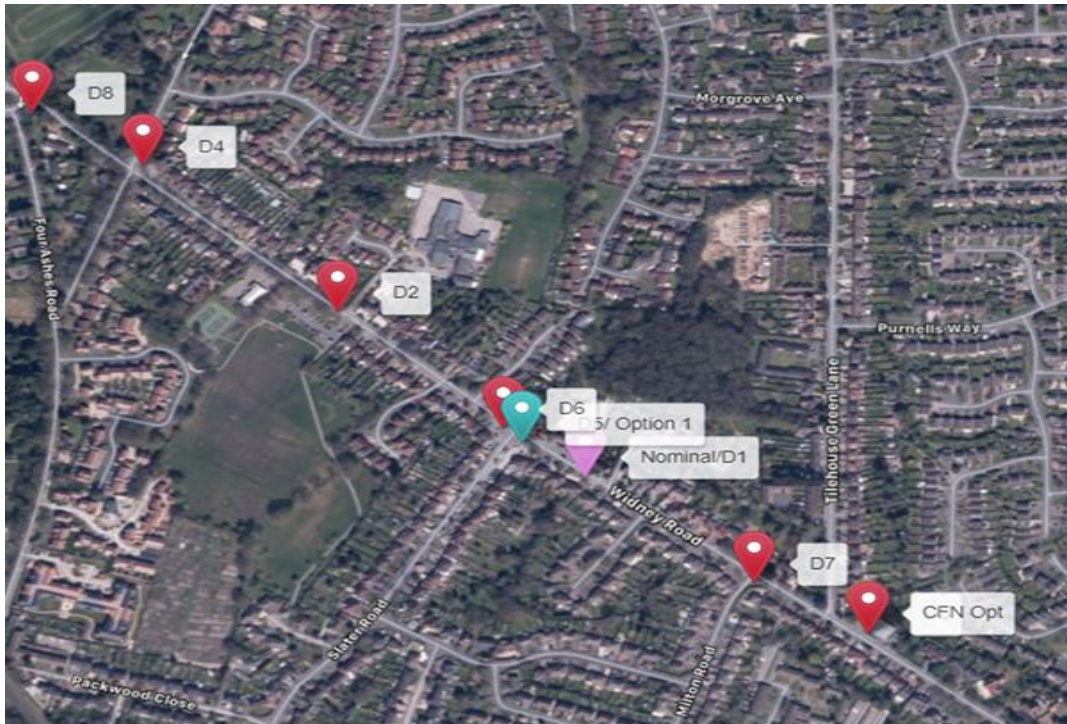
D4. Widney Road – discounted as directly in front of residential properties.

D5. Widney Road – potential option however existing bike racks mean there is insufficient space.

D6. Widney Road – discounted as planters lead to insufficient space and Overhead cables would also cause build issues.

D7. Widney Road - discounted due to residential amenity issues.

D8. Widney Road – discounted as pruning of tree canopy likely to be required.



Residents had identified some land within the park area to the West of the proposed site. Officers did ask the applicants to reconsider this location. Unfortunately no response has been received from the agent.

Taken as a whole, this application does not satisfy the Council that there are no suitable alternative locations for what is proposed which would result in less overall harm. As a consequence and as an overview at this stage, the proposal does not meet the requirements of SLP Policy P14, the objectives of which are set out above. Neither would this meet the requirements of paragraph 115 of the Framework.

Whether the proposal will be harmful to the character and appearance of the area

Policy P14 iii of the SLP specifically relates to telecommunications development. It advises, "That the Council will seek to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses in considering proposals for new development and will support the development of electronic communications networks including telecommunications and high speed broadband.

Policy U1 of the Knowle, Dorridge and Bentley Heath Neighbourhood plan stated that the provision of mobile phone masts and other telephony or communications transmission or receiving equipment will be permitted provided that it does not materially harm the character or appearance of the area within which they are located

The Council will have regard to the needs of telecommunications operators, any technical constraints on location of telecommunications apparatus, the potential for sharing sites, the impact of development on its surroundings, the sensitivity of the environment and the design and external appearance of telecommunications



apparatus. Development in or adjacent to sensitive locations will be permitted only if there is no other technically suitable location that both meets operational requirements and causes less environmental harm and any mast is at a distance of at least twice its height from the nearest residential properties”.

An 18m high streetworks style mast is proposed (the height of which it has been demonstrated is required due to both coverage and obstruction purposes) to minimise its visual impact on the area. In essence it is designed to appear as an additional item of street furniture and relate to the existing lampposts within the area that provide context to aid assimilation into the street. However, as set out previously in this report, it is recognised that due to the technical constraints of the available technology to provide 5G coverage, the proposed mast is both taller, bulkier and not of such a sensitive appearance as historic 3G and 4G proposals such as the existing base station nearby. This, however, is unavoidable and no more sympathetic design solutions exist that are available to the operators. The proposal is therefore the lowest in terms of height, and the most sympathetic in terms of appearance, option available.

This notwithstanding, the mast would clearly be visible when travelling along Widney Road and Slater Road, which are relatively long straight roads. The mast would be discernibly taller than nearby streetlights and surrounding buildings themselves and would appear as an unduly dominant and intrusive structure.

It has come to the attention of the LPA during the lifetime of this application that there are two benches to be installed within the site of the proposed mast and cabinets. It is believed that they are to be installed in the imminent future, and are being installed to enhance the public realm. This bears testament to the fact the area is a well-used and important social and focal point within the heart of Bentley Heath, and when considered in this context the mast would have a severely harmful impact on the local character of the area and blight its enjoyment by local residents.

The Council acknowledge there may be technical reasons why the mast must be of this height, width and design as detailed above. Nevertheless, the development would still result in a highly prominent and visually intrusive structure. Its excessive height in comparison to any other nearby features and utilitarian appearance would not be in-keeping with the character of this area.

The proposed equipment cabinets are to be painted green. It is considered that they would have the appearance of underground service equipment boxes (e.g. BT equipment cabinets) that are common features within highway verges. And would, themselves, not be unduly harmful to the visual amenities of the area.

Having regard to the above, it is considered that the proposed mast is not situated within the most appropriate location available to the applicants. Despite the careful design and siting as stated above, it will have a negative harmful impact upon the character and appearance of the area primarily by virtue of its height, appearance and no backdrop within the area. The proposal is therefore contrary to Policies P14 and P15 of the Solihull Local Plan and Policy U1 of the KDBHNP and significant weight must be given to this in the planning balance.

Whether any visual harm caused by the proposal is outweighed by the requirement for the mast, the lack of any more suitable alternatives and the attempts that have been made to lessen the visual impact of the proposal as far as is practicable

A balancing exercise must therefore be taken to determine whether it has been demonstrated that the degree of visual harm is offset by whether or not there is a demonstrable need for the proposal and whether or not there are any more technically suitable locations and designs that will meet operational requirements and cause less environmental harm.

This report has already set out that there is a demonstrable requirement for the mast to provide coverage within the area and height of the proposal is the most environmentally sensitive solution that is available to the operators having regard to their operational requirements. However it has not been demonstrated that there are no more suitable sites within the area that would enable a successful integration into the streetscene.

These very same issues had to be balanced when an existing mast elsewhere in the borough was refused by the Planning Committee, but later allowed at appeal. In allowing the appeal the Inspector made the following comments:

- The main issues are the effect of the appearance and siting of the proposal on the character and appearance of the area and whether any harm caused would be outweighed by the need to site the installation in the location proposed having regard to any alternative sites.
- The monopole would be roughly twice as tall as the street lamps and taller than the row of trees. It would also, necessarily be taller than the neighbouring buildings so that the antennas at the top of the pole can provide their intended coverage. However there are one or two trees in the wider setting, such as that outside the shops on Oxhill Road and that on the corner of Pear Tree Crescent, which are broadly similar in height to the proposal. The shape and colour of the pole would be simplistic and comparable to the street lamp columns, albeit of a wider girth, and the cabinets would be modest in scale and not dissimilar to other equipment boxes, such as those near the pedestrian crossing at the junction of Yardley Wood Road and High Street. Overall, although the pole would contrast with its immediate surroundings in terms of its height, in all other aspects of its appearance it would not be incongruous in its context. Consequently I consider the harm to the character and appearance of the area resulting from the development as a whole would be no greater than moderate.
- Balanced against that harm is the need to boost the capacity of the networks in this area including 2G, 3G and 4G. Chapter 10 of the National Planning Policy Framework identifies that high quality communication infrastructure is essential for economic growth and social well-being. The appellant has provided information showing the poor level of coverage of their networks in the immediate locality compared to the wider area, and I am satisfied that a need in the vicinity has been demonstrated.

- Significant weight can also be given to the fact that the monopole would be shared by Vodafone and Telefonica, hence minimising the need for installations at additional locations, which is an approach advocated by the Framework.
- Policy P14 of the Solihull Local Plan advises telecommunications development will be discouraged in residential areas unless there are no other locations that meet operational requirements and cause less harm. I do not consider it is likely that other sites which cause less harm are reasonably available.
- In summary I consider the moderate harm the installation would cause to the character and appearance of the area is outweighed by the benefits of a high quality communications network facilitated by the proposed development on this site.

The above clearly sets out the government's stance that even when moderate visual harm is identified, this can and should be outweighed by the issues as set out in this report; namely technical need.

However, in this instance, it has been found that the proposal will create significant harm to the character and appearance of the area, and that it has not been fully demonstrated that there are no more suitable sites available. As such, Officers are not content that the degree of harm created by the proposal, particularly having regard to its height and appearance, is outweighed by the need for the development or any of the other material considerations in favour of developing the 5G network within the area as set out in this report. This follows the advice as set out in Policy P14 and the proposal is therefore contrary to this policy.

### Highway considerations

The application site is on land that forms part of the adopted highway and which is subject to the provisions contained within the 'Highways Act 1980' and 'New Roads and Streetworks Act 1991'. The applicant is an Electronic Communications Code

Network Operator (ECCNO). The installation of communication apparatus by an ECCNO is governed by the Communications Code issued under the 'Communications Act 2003'. The code allows telecommunications operators to install communications apparatus under, over, in, on, along or across publicly maintainable highways.

SMBC's Highway Engineers have raised concern regarding the installation of the proposed mast and associated equipment in the location of where proposed benches are to be installed, thereby preventing the benches from being installed. They do not, however, raise any highway safety related concerns. The issue of the implication of the proposal upon the siting of the benches has previously been discussed in this report, but when assessed against the requirements of Policy P7 of the Local Plan, the proposal is compliant with the terms thereof. Neutral weight should be attributed to this in the planning balance.

## Other Issues

### Health

Paragraph 116 of the NPPF states that Local Planning Authorities must determine applications on planning grounds. Paragraph 116 states “They should not seek to prevent competition between different operators, question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission guidelines for public exposure.”

In this instance the applicants have provided a certificate confirming that the proposed installation does fall within ICNIRP guidelines and thus the proposal is in compliance with ICNIRP guidelines – the International Commission on Non-Ionizing Radiation Protection for public exposure.

The NPPF at paragraph 115(c) is clear in that for a new mast or base station, in addition to all other requirements, the applicant must provide a statement that self-certifies that, when operational, International Commission guidelines will be met. Paragraph 115(c) reads as follows:

*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:*

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

The applicants have met this requirement and there is no evidence to suggest that what has been submitted is inaccurate or incorrect.

Despite this, several objections to the proposal on health grounds have been submitted. Officers have previously sought the advice of Public Health England concerning the health implications of the 5G network.

Public Health England (PHE) advises the UK Government on the public health aspects of exposure to radio waves, including those from mobile phone base stations and other radio transmitters in the environment, of which the 5th Generation (5G) of mobile telecommunications technology will be one of them. Although 5G technology brings new services and reflects the latest evolution in mobile communications technology, it does that through the use of radio waves which are not new, and have been transmitted into the environment for a range of purposes over many years.

It is important to note that PHE provides public health advice on limiting exposures to radio waves based on the published scientific evidence.

Based on the accumulated evidence and reviews, PHE advises that the guidelines of the ICNIRP should be adopted and there is no convincing evidence that radio wave exposures below the ICNIRP guideline levels cause adverse health effects. PHE advises that exposures to Electromagnetic Fields (EMFs) in the environment, including those arising from 5G are normally well below the levels recommended in the ICNIRP guidelines.

PHE's view is that "It is possible that there may be a small increase in overall exposure to radio waves when 5G is added to an existing network or in a new area. However, the overall exposure is expected to remain low relative to guidelines and, as such, there should be no consequences for public health."

The Office of Communications (Ofcom) has measured the radio wave emissions from equipment used to transmit mobile phone signals and other wireless services for several years. Recently it extended its measurement programme to cover the frequencies being used for 5G. Focusing on 22 5G sites in 10 cities across the UK, on areas where mobile use is likely to be highest, emissions were a small fraction of the relevant ICNIRP guideline level – in line with the above PHE advice. The maximum measured at any site was approximately 1.5% of the guideline level. PHE acknowledges the difficulty in development of exposure protection guidance, which is that the interpretation of studies of potential health effects is a matter of judgement, and there is a spectrum of opinion within the scientific community and elsewhere. PHE is aware that different groups have concerns about EMFs and where they have proposed alternative limits, these do not appear to have a scientific rationale based on health effects in the same way as the ICNIRP guidelines. PHE is not aware, therefore, that these initiatives are driven by any scientific evidence that has been overlooked in its own advice.

It is accepted that health considerations and public concern can in principle be material considerations in determining applications. However, having regard to the views produced by PHE and the fact that the proposal is compliant with the ICNIRP guidelines, it is not considered that any health concerns relating to the proposal outweigh the public benefits of approving the application.

Accordingly, in relation to the health implications of the proposal, the proposal is compliant with the recommendations as set out in adopted national planning policy relating to applications for mobile phone mast applications and there are no grounds to refuse the application based on health concerns.

### Residential amenity

The proposed mast is located within a predominantly residential area, though is to be sited upon a site that, due to the extent of the highway at this location and the adjacent commercial properties, is perhaps as distant from housing as is possible having regard to the limited extent of the cell search area and the technical requirements of the operators.

Policy P14 of the Local Plan states that electronic communications masts must be sited at least twice their distance from the nearest dwelling houses. The nearest residential dwellings to the proposal are numbers 110 and 112 Widney Road to the

north, which are around 32m away from the proposal and flats are above 2 Slater Road and 239 Widney Road located to the south and east of the proposal and are about 21m and 14m respectively away. The flat above 239 Widney Road is the closest property. This is clearly within twice the height of the proposed mast and hence fails to comply with the requirements of Policy P14.

However, it should be noted that, as set out above, the NPPF advises that Local Authorities should not insist on minimum distances between new telecommunications development and existing development. This element of the policy therefore is therefore inconsistent with national policy.

Having regard to the distances involved, the slimline nature and appearance of the proposed mast, it is considered that the proposal will not result in any undue impact upon the amenities currently enjoyed by the occupiers of any dwellings.

As such, non-compliance with P14 in its entirety is not considered sufficient grounds on which to refuse the proposal on neighbour amenity grounds. Neutral weight should therefore be attributed to this in the planning balance.

#### Public Sector Equality Duty

In making your decision, you must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions). The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 it is only one factor that needs to be considered, and may be balanced against other relevant factors.

In light of s149 the objector's health concerns have been considered and it is not considered that the recommendation to approve the proposal in this case will have a disproportionately adverse impact on the health of the (objector) public or any other protected characteristic.

#### Human Rights

In determining this application, Members should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant).

The Council has considered the objections in light of the Human Rights Act in particular with regards to Article 8 and the recommendation to approve the proposal is considered a proportionate response to the submitted application.

The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to approve the proposal is considered a proportionate response to the submitted application based on the considerations set out in this report.

## **PLANNING BALANCE AND CONCLUSION**

Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The Council maintain that there would be conflict with the development plan as a whole by virtue of the proposal's impact on local character and appearance, the effect on the living conditions of nearby residents, highway safety and its failure to comply with the SLP's policies on the siting of telecommunications equipment.

Paragraph 112 of the Framework advises that high-quality communications infrastructure is essential for economic growth and social well-being. It also states that planning decisions should support the expansion of electronic communications networks, including next generation mobile technology such as 5G.

SLP Policy P14 is also generally supportive of the development of communications networks in principle. The development would enable 5G coverage in this area and improvements in 4G and ESN provision. The broad economic and social benefits of this are recognised and are important material considerations in favour of the proposal.

The Council accept that there is a need for the proposed 5G cell within the general vicinity of the site, but do not accept that it has been reasonably demonstrated that there are no more suitable sites available. Furthermore, having regard to the siting, height and design of the mast, the proposal will have a significant harmful impact upon the character and appearance of the area.

There is therefore no justification for the proposal that outweighs the harm caused by the siting of the mast and its impact on the character and appearance of the area.

While the Council have regard to the potential benefits of the development, these do not outweigh the harm identified that would be caused and which carries more weight than the weight attributed to the benefits of the scheme.

There are therefore no material considerations that would lead the Council to a decision other than in accordance with the development plan in this case. The proposal is therefore not compliant with policies P14 and P15 of the Solihull Local Plan 2013, Policy U1 of the Knowle, Dorridge and Bentley Heath Neighbourhood plan and the aims and objectives of the NPPF.

## **RECOMMENDATION**

For this reason, the application is recommended for refusal for the following reasons:

1. The proposed electronic communications mast and its associated equipment cabinets would, due to their height, size, appearance and location constitute a poorly designed, poorly integrated, overly prominent and harmful form of development that would be detrimental to the visual appearance and character of the area and street scene. As such, the proposal would be contrary to Policies P14 and P15 of the Solihull Local Plan 2013, Policy U1 of the Knowle, Dorridge and Bentley Heath Neighbourhood Plan and advice contained within the NPPF