

Planning Appeal
On behalf, of
CTIL and Telefónica O2 (UK) Ltd

Agricultural Land, off B4035
Near Sibford Ferris
Oxfordshire
OX15 6LL

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1. Introduction and Grounds of Appeal

- 1.1 The proposed communications pole and associated development would, if submitted now, be permitted development. It benefits from a general permission as set out in The Town and Country Planning (General Permitted Development) (England)(Amendment)(No.2) Order 2016 (SI No. 1040). However, at the time the application was made a full planning application was required. It is the refusal of this planning application that is in front of the Inspectorate.
- 1.2 After the applicant, CTIL – on behalf of Telefónica O2, had surveyed the area for an appropriate and acquirable site, pre-application letters and plans were sent to the LPA (Cherwell Council), Ward Councillors and the Parish Council. A full planning application was then submitted and validated on 26th October 2016.
- 1.3 After consideration by the case officer the application was refused on 21st December 2016.
- 1.4 The application was refused for the following reason:

The proposed development, by virtue of its prominent siting on higher land next to the highway and being visible from the public right of way, along with its height and functional design, would appear as a visually incongruous and jarring structure in this landscape and would cause harm to the rural character and appearance of the area and the setting of the Cotswolds AONB. Clear and convincing justification has not been provided that there are not more suitable alternative sites available in a less sensitive location to accommodate this development. Thus, the proposal is contrary to Policies ESD12, ESD13 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, saved Policies C28 and C39 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

- 1.5 In coming to their decision, it is considered that Cherwell District Council did not give enough weight to the technical and operational requirements of the technology. In addition, the proposed structure would be screened and is sited in such a way to reduce its impacts as much as is possible. A photomontage has been supplied with the appeal to demonstrate this point. Underpinning all of this is the increased importance given to

communications and connectivity by central Government, especially through planning policy in the National Planning Policy Framework (NPPF).

2. Background and Technical Information

- 2.1 This section sets out the background to the application and why the proposal is required by the appellant, as well as setting out some of the technical characteristics of a communications proposal such as this.
- 2.2 An information sheet accompanied the planning application and accompanies these appeal papers entitled '*General Background Information for Telecommunications Development*'. As the title suggests, this gives an overall backdrop against which this appeal should be assessed. It helps to explain some of the rationale for the siting and design of the proposed pole. Further specific details about CTIL are included below.
- 2.3 In 2009, the Vodafone and Telefónica groups announced they would share their telecommunications infrastructure assets across Europe. Vodafone and Telefónica are Mobile Network Operators (MNOs). In the UK, this was taken forward as the 'Cornerstone' project. Both companies are entirely independent and have their own business strategies competing in what is a very competitive market. However, through the sharing of infrastructure, a significant amount of consolidation could take place which both reduced the overall environmental footprint of the infrastructure i.e. less individual base stations, and improved 2G and 3G coverage for both operators. In addition, where there was a need to provide new coverage, a Cornerstone base station would already be, in effect, a mast share, as it could host two different operators from the outset. Obviously that approach tied in with prevailing planning policy.
- 2.4 When Ofcom distributed licences for 4G networks in 2013, both Vodafone and O2 were successful recipients. Whilst set out in more detail in the appeal papers, the different network technologies can be summarised as follows:
- 2G (or GSM) – basic voice and text services
 - 3G (or UMTS) – basic data and internet access
 - 4G (or LTE) – high speed data transfer (mobile broadband)
- 2.5 After the award of this licence, the two companies integrated their networks further and entered a new agreement where they jointly own and manage a single network grid across the UK. This initiative strengthened the network infrastructure partnership created

through 'Cornerstone' and resulted in the formation of a new joint venture company owned equally by both parent operators known as CTIL. The 4G rollout could therefore use the existing shared network as its basis with new base stations only being required where there was no existing base station available which could be upgraded.

- 2.6 At the same time as these market developments have been taking place, Government, recognising the importance of connectivity to the day-to-day lives of its citizens, has been working to support the delivery of new services. This importance is now widely recognised. The Ofcom Infrastructure Report – Connected Nations (2015) states:

High quality, widespread communications, fixed and mobile, are an engine of our economy and the pulse of our society. They are not nice to haves, but essential enablers of working and social lives. As businesses and consumers drive an ever-increasing demand for communications, the infrastructure that serves them must keep pace with their demand and needs.

- 2.7 The Department of Culture Media and Sport (DCMS) who have oversight of the communications sector stated recently (May 2016):

"The Government acknowledges that there has been a profound shift over the last decade in the way citizens approach and access digital communications. What was once seen as a luxury is now a basic need, and people expect to have access to fast broadband at home, irrespective of where they live, and use their mobile devices anywhere they go"

- 2.8 The Ofcom report quoted above also confirms the increasing trend towards mobile device use only, with voice calls via traditional land lines falling in frequency. Whilst some of this trend can be explained by the increased uptake in household wireless broadband, the devices used to access them are mobile and as such a robust infrastructure needs to be in place to ensure they can also be used outside the home. In 2015, over 66% of the population was using a smartphone compared to just 39% in 2012. The increasing use of these phones and devices such as tablets (3G and 4G compatible) has led to a massive increase in the data traffic on the networks – data traffic volume increased 64% year-on-year to 2015.

2.9 However, access to coverage is still a problem. The same Ofcom report highlighted the coverage levels experienced by households and business across the UK as follows; 2G at 93%, 3G at 88% and 4G at 46%.

2.10 Government has acknowledged there was and is a problem with coverage and set about trying to deal with it in a number of ways. The main initiatives (not including the devolved administrations' own initiatives) are as follows

- The Mobile Infrastructure Project (MIP) – this project was designed to bring coverage to areas which had absolutely no coverage from any operator. Due to funding criteria, it was fundamentally a 2G project however, the base stations built also provided 3G and 4G services from all the MNOs.
- An obligation on the MNOs, announced in December 2014, to provide outdoor voice and text coverage to 90% of UK geographic area by the end of 2017 (previous targets being population driven).
- Increased emphasis of the importance of mobile connectivity through the NPPF, the government's main tool for directing development management and local plan making.
- Revisions to the industry Code of Best Practice (November 2016) with renewed emphasis on the importance of connectivity (and the required infrastructure) for the economy and communities.
- As part of the 2015 revisions to the General Permitted Development Order (GPDO), Part 16 introduced significant relaxations as to what communications infrastructure could be rolled out under permitted development rights.
- Further relaxations to the GPDO were also brought forward in November 2016, increasing the rights enjoyed by the MNOs.
- The Government are involved in ongoing consultation on revising the Code¹ which should allow quicker and easier roll-out of future infrastructure in terms of dealing with landowners and other statutory bodies (outwith the planning system).

¹ The Code is applicable under the Telecommunications Act 1984 (as amended) and the Communications Act 2003 (as amended)

2.11 It is against this backdrop that this planning application was made to Cherwell District Council to help address the lack of connectivity to the area. This shortfall affects residents, businesses, visitors and those simply passing through.

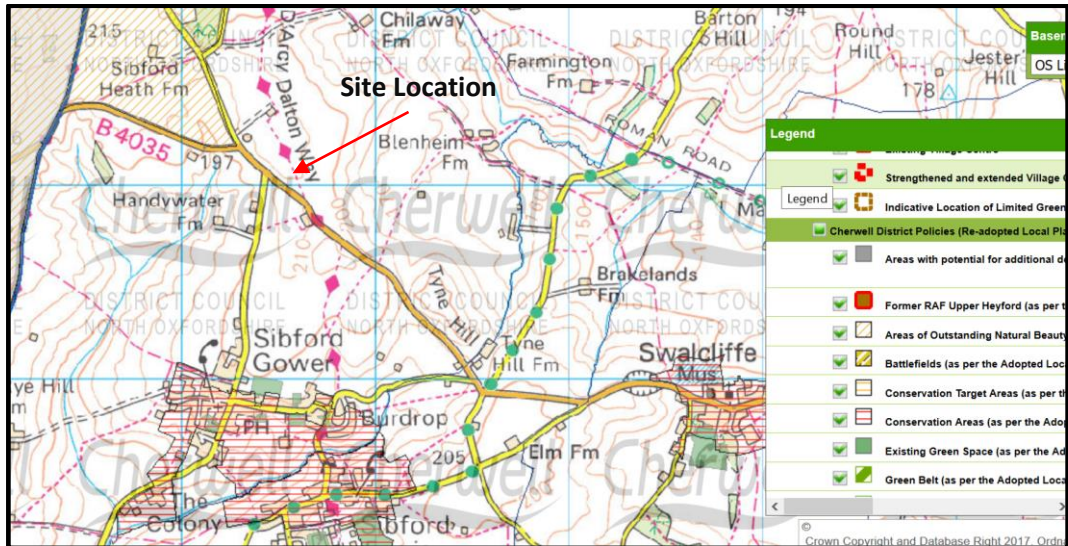
2.12 In the first instance, only Telefónica O2 Ltd will be providing coverage from this mast.

3. Proposed Site

- 3.1 The proposed site is located on the north-west side of the B4035. It is located at the edge of a field adjacent to a tall mature tree.



- 3.2 To the north, south, east and west lies further agricultural land.
- 3.3 As can be gauged from the photo above, and will be apparent when visiting the site, the area is very agricultural in nature with no other uses in the immediate area.
- 3.4 The supplied photomontages show the site location (and mast) in medium range views, in which the majority of views will be taken.
- 3.5 The immediate context of the site, and where most any visual impact will accrue, is the B4035. As the name suggests, this is a small local road which will result in a lower frequency of views than in other 'busier' areas. There is also a public footpath (D'Arcy Dalton Way) east of the site from where views will also accrue.
- 3.6 The Cotswold AONB boundary lies to the north (and west) of the proposed site. This can be seen on the image below taken from the Council's website. It is approximately 250m to the north-east at its nearest. No other planning, environmental or heritage designations would be affected by the proposal.



- 3.7 The overwhelming agricultural and rural area can be seen from the map and the contours demonstrate the undulating nature of the land. In addition, and feeding into the availability and suitability of alternative locations, is the Conservation Area designations which can be seen on the map at Sibford Gower/Sibford Ferris and Swalcliffe. Locations closer to these designations, all other things being equal, would have more of an impact on the integrity of the heritage assets. The current location removes any such concerns.
- 3.8 We have not been able to identify any relevant planning history for the site.

4. Development Plan

4.1 The Planning Acts require that decisions should be made in accordance with the development unless material considerations indicate otherwise.

4.2 The development plan for this location is:

- Cherwell Local Plan 2011 – 2031 (Part 1)
- Cherwell Local Plan 1996 (saved policies)

4.3 Unfortunately, the distinction, and hence differing characteristics, between fixed-line and mobile connectivity is not drawn-out in any policy within the newly adopted Local Plan. The previous Local Plan (which has a number of saved policies including C39) was adopted in 1996, this predates even the explosion in mobile use for voice and text, let alone the current uses of connectivity to connect to laptops, tablets and smartphones. It is also therefore unable to capture future connectivity developments such as the ‘internet of things’. The importance, in terms of economic and social benefits are now well know and set out on the NPPF and can be seen in other initiatives as described and discussed above. It is considered that the policy backdrop may therefore not quite adequately weigh the importance of such connectivity.

4.4 However, there are development plan policies in place and, as such, the proposal should be read against them. In terms of the more recent Local Plan Part 1, we consider the most pertinent policies to be BSC 9 and ESD 12. Taking these in turn:

Policy BSC9

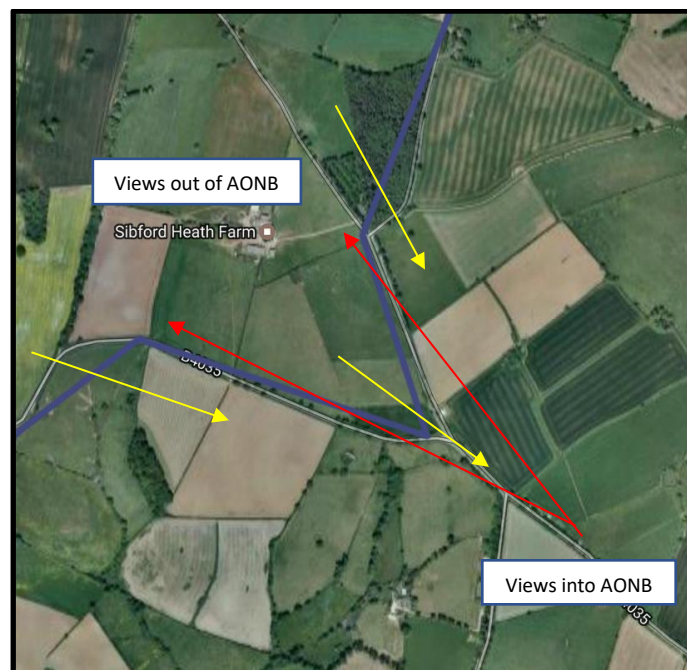
4.5 As introduced above, this supportive policy seeks to ensure that all new development has superfast broadband connectivity. 4G is ‘superfast broadband’ for mobile networks. Connectivity to these networks is, as described in the NPPF, vital for both economic and social reasons. This is especially pertinent in rural areas where connectivity has generally been poor. The infrastructure requirements for mobile connectivity, antennas and masts, are however very different to fixed-line broadband, i.e. a cable in the ground and/or existing telephone wires and cables.

4.6 It is considered therefore that the technical and operational constraints of having a very specific and limited search area, or cell, and a requirement for a certain height for the antennas to operate efficiently, has not been adequately taken into account in this newer policy.

4.7 However, whilst it may not have been drafted in that way, we would consider that, on a fair reading, access to broadband would *have* to include mobile broadband and, as such, it demonstrates the importance of the infrastructure such as that being proposed to the area, especially this rural area – this of course would also include existing development which currently does not have such coverage.

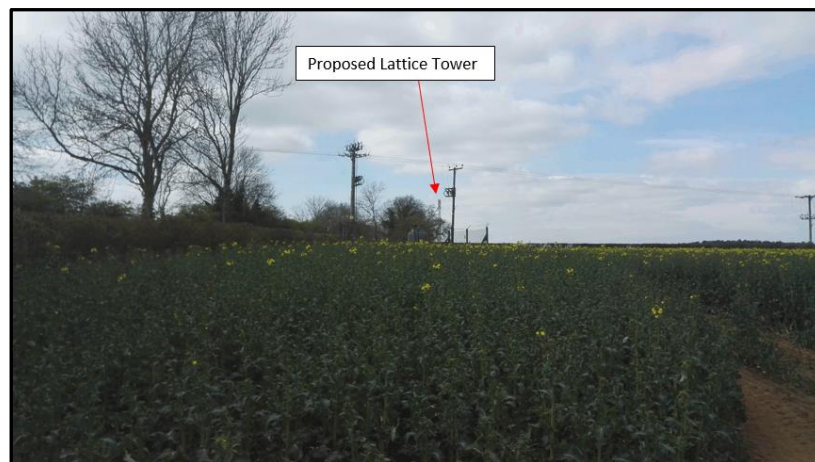
Policy ESD 12

4.8 This policy is in place to control development both within the AONB and also that which would affect the AONB's setting. The proposed tower will be located around 250m south-east of the AONB boundary at its closest point. This boundary itself is not uniformly 250m away, it is at its nearest at the point of a small triangle which juts south from the larger body of the AONB as per the blue lines on the map below² Our annotations on the map denote views out of the AONB (yellow arrows) towards the mast, and views towards the AONB (red arrows) past the mast.



² <http://www.escapetothe Cotswolds.org.uk/map/>

- 4.9 The relative position of the mast in relation to the AONB boundary at it reaches an apex to the south minimises impacts at this specific location. Looking north past the mast's location (from footpath 348/17/20) the boundary moves away in the direction of the view, giving only tangential views across the part of the AONB until not widening out until around 700m, where perpendicular views would be accrued. The montage supplied shows views across the mast towards the AONB (see extract below). The topography and distance combine to mean that there should be no impact on the AONB or its setting. This is also helped by the power lines and supporting poles which run through the same field as the proposed mast and footpath.



- 4.10 The reverse is also true with the views out of the AONB coming through the single apex point at the road junction boundary of AONB – this can also be seen in the submitted photomontages (see extract below).



- 4.11 Bearing this in mind and bearing in mind, the tree(s) which provide screening and backdrop for the proposal close or adjacent to it, and also the trees which line the roads

in the area providing near-screening, we consider that the policy hurdle regarding impacts on the AONB and its setting have been cleared.

Policy C39

- 4.12 The saved policies from the 1996 Local Plan are very old, and as set out above, in mobile telephony terms, an age away. That being said, the criteria-based policy still takes an approach which would be recognised in more up-to-date incarnations. The policy itself states:

C39 THE COUNCIL WILL NORMALLY GRANT PLANNING PERMISSION FOR MASTS AND OTHER TELECOMMUNICATIONS STRUCTURES WHERE IT HAS BEEN DEMONSTRATED THAT:

- (i) IT IS NOT POSSIBLE TO SHARE EXISTING FACILITIES;
- (ii) IN THE CASE OF RADIO MASTS IT IS NOT POSSIBLE TO ERECT THE ANTENNA ON AN EXISTING BUILDING OR OTHER STRUCTURE; AND
- (iii) IN THE AREA OF OUTSTANDING NATURAL BEAUTY AND THE AREA OF HIGH LANDSCAPE VALUE THERE IS NO SUITABLE ALTERNATIVE SITE AVAILABLE IN A LESS SENSITIVE LOCATION.

- 4.13 A simple reading against this policy, the most pertinent despite its age, demonstrates compliance. It is noted that the assumption is that planning permission will be granted in the phrasing of “normally grant”. In terms of the criteria we would note the following:

- i. There are no existing facilities in the area which could be shared
- ii. There are no suitable buildings or structures in the area on which to locate
- iii. The site is neither in the AONB or the AHLV – it *has* been located in a less sensitive location. If we widen out the impacts on the AONB to its setting, then the above analysis would hold, where we set out the limited impacts on the AONB and its setting for the reasons discussed.

- 4.14 The proposed mast and antennas will provide 4G services to the area, allowing residents, businesses and visitors to access high-speed data from the O2 network. It is noted that coverage plots were not provided along with the application however these have been provided with the appeal. Whilst important in terms of giving some demonstration of the coverage characteristics, the Council, we understand did not request these plots should they felt them to have been important in coming to their conclusions. The NPPF does state that LPAs should not “question the need for the telecommunications system”. Plots have been supplied as part of the appeal submission offering the LPA to comment as part of the appeal process and allowing the Inspectorate to see the coverage characteristics.

4.15 We will look further at the Council's reasons for refusal below however would point to the above as being compliance with the development plan. It is considered that when assessing the overall impact then the Council had less regard and have given less weight to this compliance than they should have – especially bearing in mind the lack of prominence the Council has given to mobile connectivity (and its infrastructure) within its own policy documents, when read against the NPPF and the newly revised Code of Best Practice.

4.16 In terms of other planning policy, then we would again point to the NPPF, which should have been a key material consideration in the determination of the application. It is clear from this key Government policy document that communications are a large part of the solution for delivering sustainable development, not least allowing changing work and travel patterns which can reduce the need to travel and generally reduce our carbon footprint. Communications are dealt with in Paragraphs 42-46 with the opening Paragraph stating:

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

4.17 The information sought for a planning application (or an application for prior approval) set out in Paragraph 45 has been supplied with this application and it also considered that the justification for a new ground based tower has been clearly set out.

4.18 We do not consider there to be any other material considerations, and none which have been presented, which would outweigh the general development plan conformity and on that basis, we consider that the Council should have approved this application.

5. Main Determining Issues

5.1 Bearing in mind the primacy of the development plan in the decision-making process we consider that compliance with it, combined with the concerns expressed through the reasons for refusal, to be the main determining issues for this appeal. In summary, the Council's concerns being

- Perceived prominence in relation to the AONB and public views
- Perceived lack of information in relation to site selection

In making any assessment about the impacts, the potential availability of other sites or will also be material i.e. are there any locations which would both provide the required level of coverage whilst having less impact than the current proposal. Also, material will be the backdrop of the emphasis and importance placed on connectivity, especially high data, by the Government exemplified through not just the NPPF, but other documents such as the Code of Best Practice as well as other initiatives, such as the relaxation of permitted development rights.

5.2 As is set out previously, it is considered that in coming to their conclusions, the Council have not given enough weight to all these relevant considerations in coming to their conclusions on the impacts. When given appropriate weight, we consider that this would change any balance in favour of the application. We explore this further below:

5.3 Prominence and impact on AONB and local views

We have highlighted the need for antennas to have certain operating heights above. The lower the base level of antennas in a mobile network then more base stations are required any such proliferation of new structures runs contrary to government and local policies across the UK, including Cherwell. Combined with the varying topography in this area, this constraint means that there will be an inevitable visual impact wherever a mast is to be located. Choosing a location away from the AONB and away from the Conservation Areas, rather than the within these designations, or closer to them, is a way to minimise this impact - this is the development plan policy requirement and that of the NPPF.

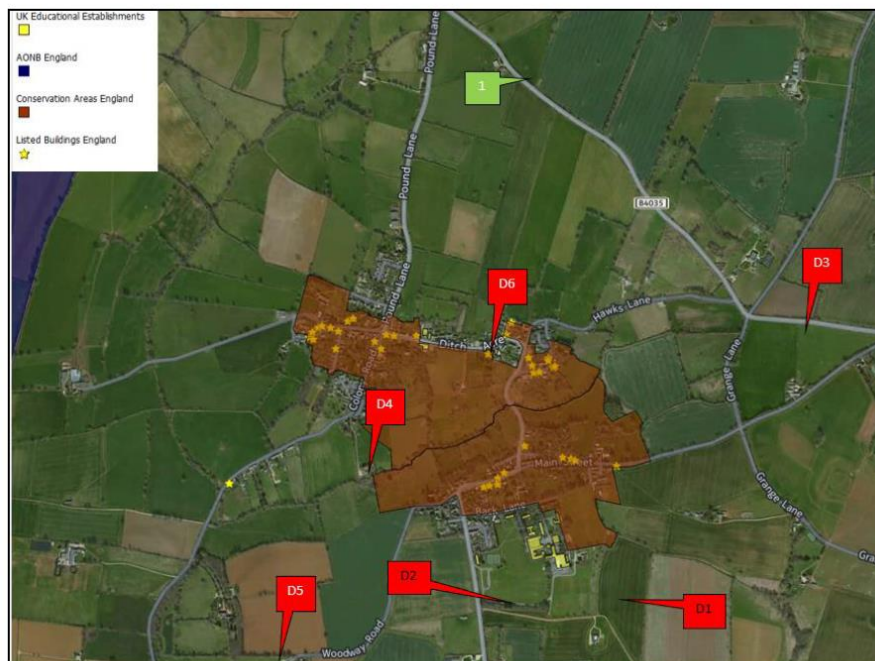
In terms of incongruity, the proposed mast is a standard communications lattice tower of which there are thousands deployed across the UK. Whilst the lattice structure is an engineered structure, its design is 'lightest' available in terms of visual impact. This is due to the light permeable structure and the thickness of metal subsequently required to ensure structural integrity. Solid monopoles of this height supporting antennas tend to be robust and solid in appearance and so have greater impacts over a wider area, standing out as a uniform feature – lattice masts can be effectively lost against their backdrop. In this instance bearing in mind the wider landscape, it was considered that perhaps balancing visual impacts in favour of reducing them over medium and long range was a better option. Further, and again for the reasons set out previously, any such additional impact has been minimised, the aim of the development plan policy. Photomontages have been provided that demonstrate the likely impacts from the proposed mast. This includes views to and from the AONB. It is considered that any visual harm in terms of the AONB or its setting is marginal.

5.4 The Council, in their reason for refusal, has implicitly acknowledged that when harm is identified it may be outweighed by other factors. As set out above, we do not believe the issue to be that not enough justification was provided, more that the Council has not given this justification sufficient weight.

5.5 A list and map of potential alternatives site location was presented alongside the application and is included within the submitted appeal papers. It goes without saying that, with a ground-based mast generally sitting within a compound of no more than 10m x 10m, then any particular search area could have hundreds, if not thousands, of potential site locations. The information provided with the application needed to be read against both the background to mobile infrastructure and also the planning designations and local topography. When combined, areas on low-land, close to the Conservation Areas, in or very close to the AONB would all have greater impacts than the location chosen, all other things being equal. With no existing masts in the area on which to locate and with no suitable buildings or other structures, a new ground based mast was required.

5.6 In addition, subsequent to the refusal and before this appeal submission, the appellant's agents have also re-assessed the area to ensure that if an appeal was to be submitted, it was only done so on the basis that the site being promoted was the best available site i.e. the one which best minimised impacts.

5.7 The sites discounted as part of the application are set out below

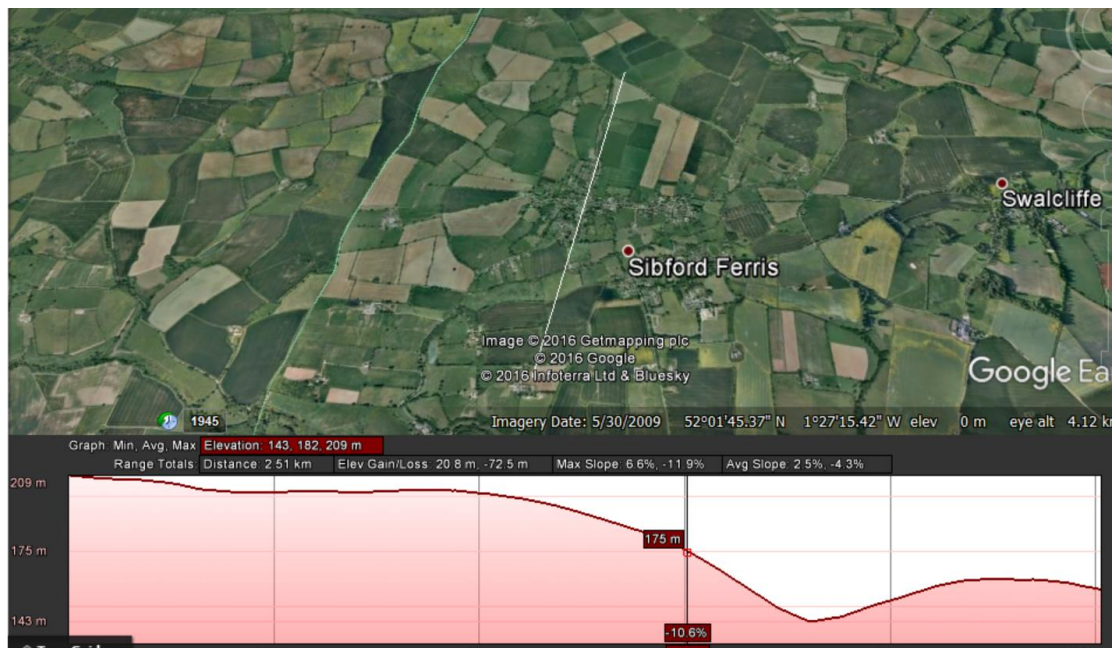


The reasons for the sites being discounted were set out in the application and are in appeal documents. In summary, these are

1. D1 is land just south of the village associated with Blenheim Farm. The location potentially available to the appellant was very close to a badger sett. In any event the location was open and close to the village and Conservation Area boundary. On this basis, it has not been pursued.
2. D2 is land associated with Sibford School. Whilst outside the Conservation area, it would be located close to its boundary and be located within the village. This combined with the proximity to the school itself meant that the option was not progressed.
3. D3 is land associated with Elm Farm. The landowner would not allow apparatus to be sited on their land. This of course eliminates ALL the land associated with Elm Farm and not just this one location.
4. D4 relates to the sewage treatment works. The land here was too low when compared to Sibford Gower and Burdrop and so wouldn't provide the coverage required in these areas. In addition, it would be located very close to the boundary of the Conservation Area.

5. D5 relates to land off Woodway Road. The land here is around 50m lower than the application site and has less in the way of tree cover. A (far) taller mast would be required here to replicate the coverage and so this location would result in greater impacts than the proposed site.
6. D6 is the Holy Trinity Church. Churches can often provide good host buildings for communications apparatus where internal solutions can be located behind (generally) louvres on tall steeples. However, in this instance the building height is too limited to allow apparatus to be installed without undue impact on the listed building, its setting and the surrounding Conservation Area.

5.8 As indicated above, the site selection was reviewed however due to the constraints already identified above, no additional more suitable option has been identified. Of note is the case officer's comments in relation to D5. The reasons for it being discounted in the application are noted however after a re-assessment the biggest concern at this location is the ground height. This would be apparent at any appeal site visit and can be seen on the elevation profile taken from google earth below.



The profile runs from the approximate site location on the left (north) at around 210m to the D5 location at around 160m. At any given height, the antennas located at D5 will have trouble providing coverage to the higher ground to the north around Sibford Gower. The proposed site location can provide this coverage as well as coverage across a far wider area due to the land height. This can be seen in the planning plots which have been

produced to accompany the appeal which show coverage from both the appeal site and D5 - as expected the coverage falls short due to land height.

- 5.9 There were no representations made to the application and no objections raised by statutory consultees. However, one objection was submitted after the decision was made, although the respondent did not what the purpose of the mast was and there has also been a subsequent letter from the landowner who has expressed surprise at the planning decision. We trust the Council will submit these as part of their own appeal submissions.
- 5.10 Taking all the points above together, it is acknowledged that there will be some localised impacts on the skyline in some views, however these are limited by good siting and design. However, importantly there will be little impact on the AONB (see photomontages). Whilst lattice masts are engineered structures, they are not uncommon in rural areas. With careful siting, ensuring both backdrop and screening and no vertical visual isolation, they can be subsumed within a landscape with little impacts. It is considered that this is the case here and the mast would neither appear incongruous or jar. Bearing in mind the lack of any more suitable location in the area, it is considered that the proposed site represents the best balance and compromise of all the competing interests.

6. Conclusions

- 6.1 The proposed mast is required as part of Telefónica O2's network roll-out of 4G technology.
- 6.2 When assessed against the development plan, it is considered that the implicit support given to communications networks in the newly adopted Local Plan and the compliance with the older Local Plan communications Policy C39, both point to the planning application being approved.
- 6.3 The positive backdrop provided by the NPPF and the other characteristics of the proposal allowed the application (and allow the appeal) to be viewed in a supportive manner, which along with the industry and government Code of Best Practice seek to provide a positive and collaborative approach to communications development.
- 6.4 Whilst it is acknowledged that there will be some localised impacts and general visual impacts from the proposed pole at this location, the context within which they are set on the lack of impacts in medium and long range views (especially in views to and from AONB) mean that the siting and design of the proposed mast are acceptable - see photomontages submitted. Notwithstanding this, any impacts must be balanced against not just the communications services the mast will offer, but the technical and operational constraints under which the industry operates.
- 6.5 In coming to their conclusions, it is considered that the Council did not give enough weight to the matters which support the proposal and gave too much weight to matters which did not. It is acknowledged that the Council did not have the benefit of the coverage plots or the photomontages however these could have been requested by the Council at any time, before coming to their conclusions.

6.6 Taking all these matters together, we respectfully request that this appeal is allowed and the appellant can begin to provide high quality mobile communications services to the area.