

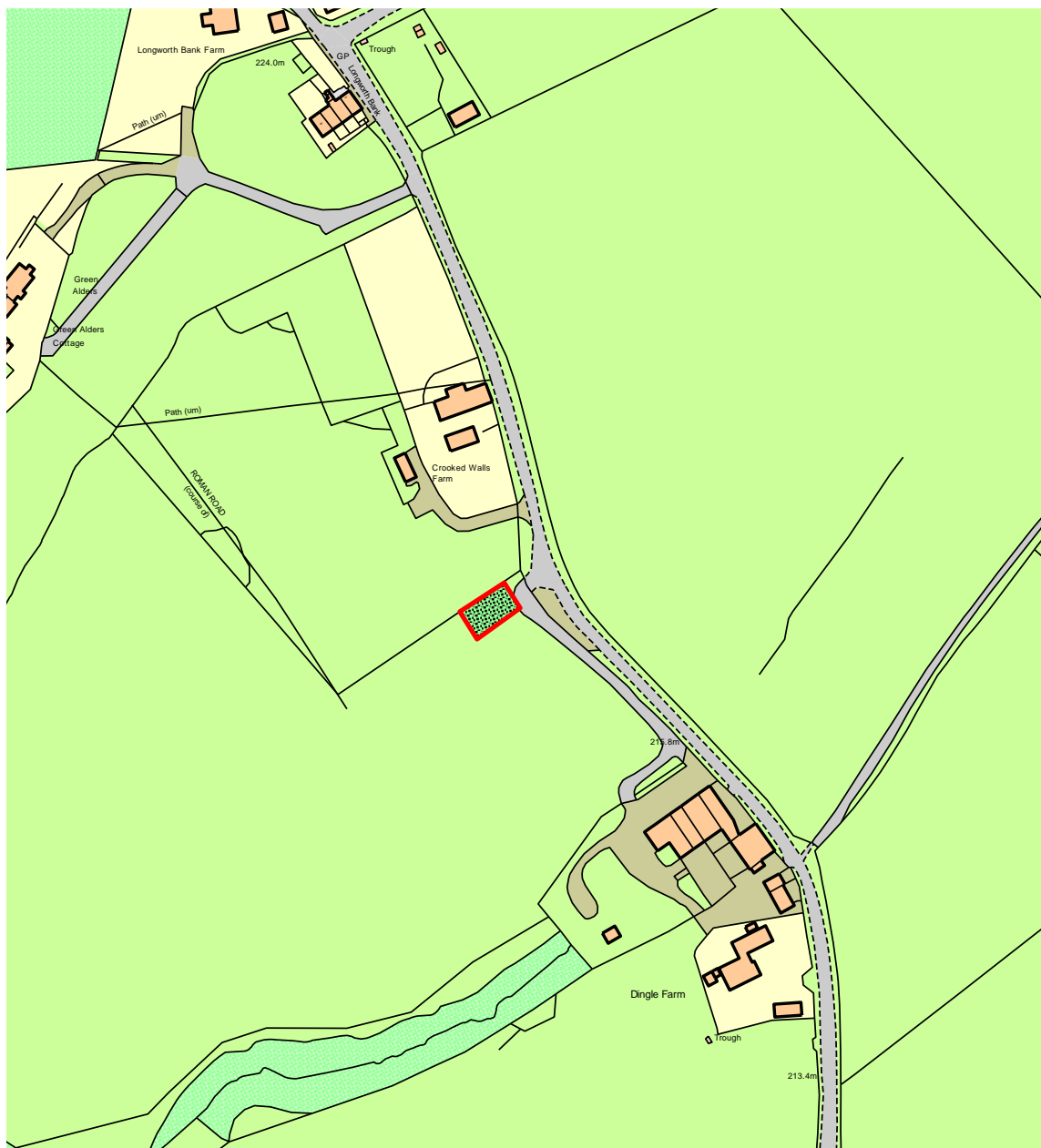
Proposed development: 11m pole mast, antennas, ground based apparatus and ancillary development

Site address: Land to North Dingle Farm, Blackburn Road, Edgworth, Bolton, BL7 0QE

Applicant: EE Ltd

Ward: West Pennine

**Councillor Jean V Rigby
Councillor Julie H Slater
Councillor Neil Slater**



1.0 SUMMARY OF RECOMMENDATION

- 1.1 The proposed development is recommended to be granted prior approval permission, subject to the conditions detailed in Section 5.0.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

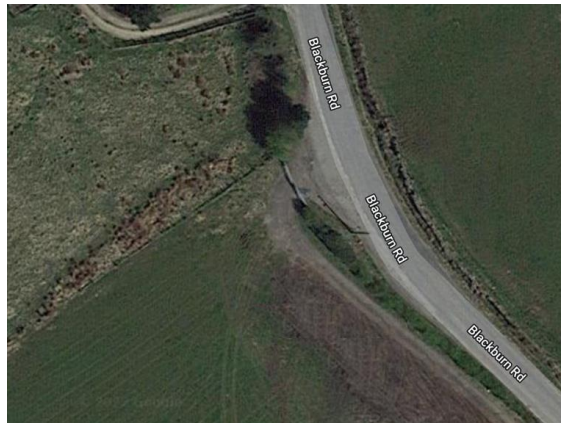
- 2.1 This application is presented to the Planning and Highways Committee, in accordance with the Council's scheme of delegation, and given the fact that a significant number of objections have been received from members of the public together with North Turton Parish Council. A summary of those objections is detailed below in Section 7.0.
- 2.2 The objections raised principally concern the siting and appearance of the development together with the potential for harmful impacts to be caused for visual amenity and landscape character. A number of wider concerns have also been raised, which predominantly involve the presence of adjacent listed buildings and residential properties, the potential for private views to be obstructed, and the fact the site is positioned within the green belt.
- 2.3 The proposed development has been publicised through letters to residents of the nearest 10 properties on the 11th March 2022. A site notice was also displayed outside of the site on the 22nd March 2022. For clarity, should any further comments be made ahead of the committee meeting, they will be presented as part of a committee update report.
- 2.4 The Council's development plan supports new telecommunications developments and associated works, provided they constitute sustainable development and accord with the development plan when taken as a whole.
- 2.5 The proposal will deliver a new telecommunications mast, various associated ground-based radio equipment housing cabinets, a fenced compound area, a small parking area for emergency vehicles and supplementary landscaping for screening purposes. The intention of the development is for the provision of enhanced 4G mobile coverage to serve the emergency services alongside local commercial markets.
- 2.6 On balance, the proposals would be satisfactory from a technical point of view, with all issues having been addressed during the application process, or capable of being controlled or mitigated through appropriately worded planning conditions.
- 2.7 The key issues to be addressed in determining this application are as follows;
- The siting and appearance of the proposed development;
 - Ensuring the amenities of neighbours are adequately safeguarded;
 - Assessing any potential impacts on the local highway network;
 - Assessing any potential impacts on adjacent listed buildings;
 - Establishing likely impacts on visual amenity and landscape quality, and;
 - Ensuring public health is adequately safeguarded.

3.0 RATIONALE

3.1 Site and Surroundings

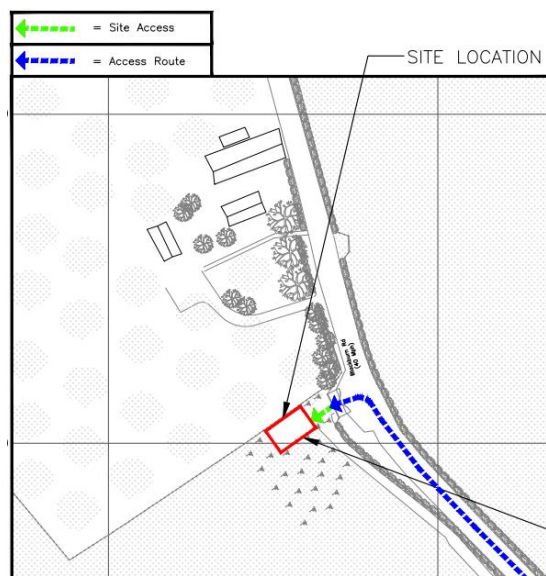
- 3.1.1 The application site is small plot of agricultural land located to the north of the village of Edgworth, within the green belt. Discounting the access arrangements, the site covers an area of circa 104 square meters. Agricultural land uses enclose the site to all sides with Blackburn Road positioned to the east. A number of listed buildings are located within 500m of the application site with the closest being the farmhouse and stone barn at Dingle Farm to the south.

Figure One – Satellite image of the site



- 3.1.2 The site benefits from an existing vehicle access point from Blackburn Road, which historically has been used to access the agricultural land. Buildings in various uses intersperse the surrounding countryside with dwellings, agricultural buildings and commercial buildings all found. Land levels rise towards the east and fall towards the west resulting in the site occupying a relatively exposed position within the wider landscape.

Figure Two – Location Plan showing the extent of the site



3.2 Proposed Development

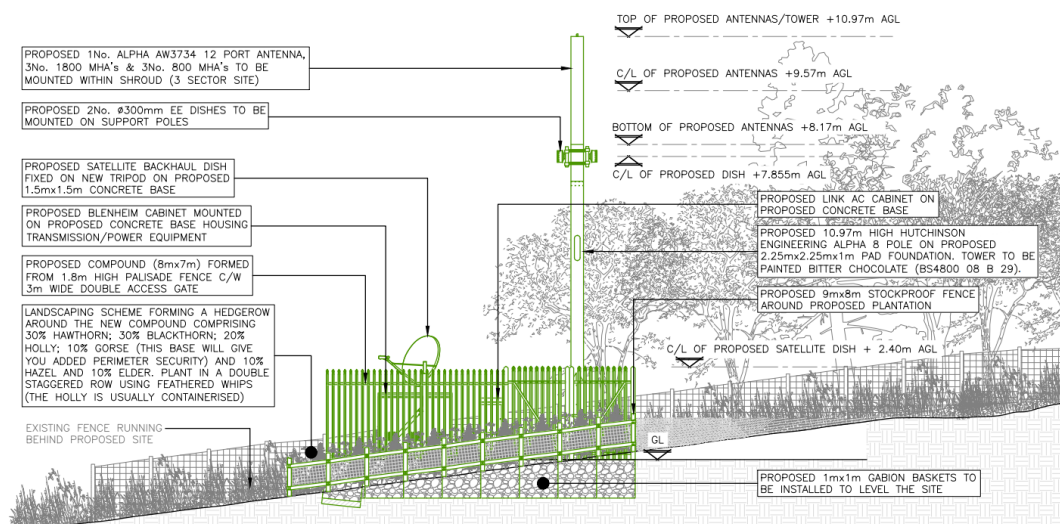
- 3.2.1 This is an application for prior approval made under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The application involves the installation of an 11m telecommunications mast together with various associated ground-based radio equipment housing cabinets and satellites. A fenced compound area and small parking area for emergency vehicles would be formed. Supplementary landscaping would also be provided for screening purposes to two sides of the compound area.

Figure Three – Proposed Site Plan



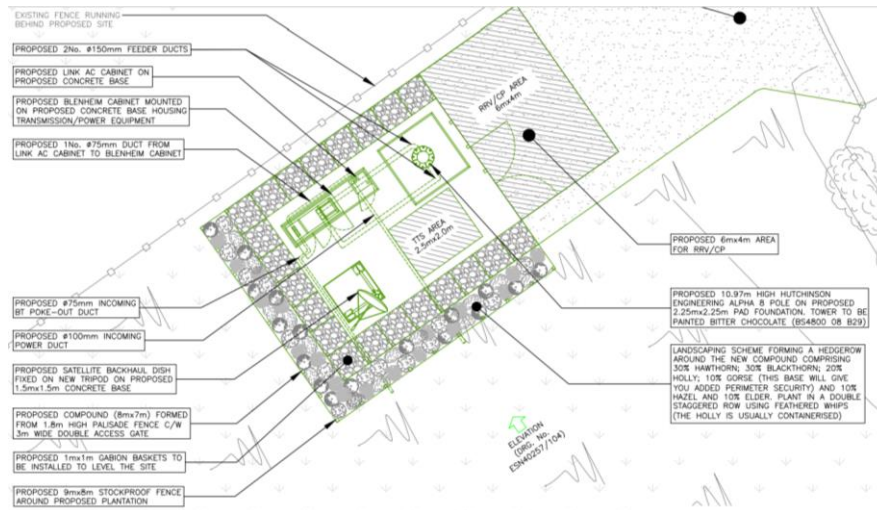
- 3.2.2 The proposed mast would have an exact height of 10.96m with a dark brown outer coating applied. It would be supported by a concrete foundation 5 square meters area. A number of ancillary structures would also be installed around the base of the mast, which include numerous associated ground-based radio equipment housing cabinets and satellite dishes.

Figure Four – Proposed Site Elevation



- 3.2.3 The proposed compound area would enclose the mast and ancillary structures. The entire facility would sit upon a gabion foundation with various concrete platforms constructed to provide flat surfaces for the mounting of equipment and parking of emergency vehicles. 1.8m high palisade fencing would enclose all four sides of the facility complete with a 3m wide access gate. A mix-species hedgerow would also be planted to the southeast and southwest sides of the compound, enclosed by stock fencing. Native species such as Blackthorn, Holly and Hazel would all be included within the hedgerow planting mix.

Figure Five – Proposed Site Plan



- 3.2.4 The application has been brought forward as part of the Home Office program for the renewal of the emergency services network (ESN) – moving from the current Airwave service (which cannot provide data services), to a 4G service provided by EE. A commercial 4G service will also be provided by the proposal for local residents and businesses.

3.3 Case Officer Site Photos



3.4 Policy Context

3.4.1 Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended)

- Schedule 2, Part 16, Class A: Electronic communications code operators

3.4.2 Local Plan Part 2 (2015)

- Policy 8: Development and People
- Policy 10: Accessibility and Transport
- Policy 11: Design
- Policy 39: Heritage
- Policy 41: Landscape
- Policy 44: Telecommunications

3.4.3 The National Planning Policy Framework (2021)

- Section 10: Supporting high quality communications

4.0 **ASSESSMENT**

4.1 The GPDO

4.1.1 Schedule 2, Part 16, Class A of the GPDO permits the installation of some ground-based masts and associated equipment on unprotected land, such as the application site. These proposals are therefore initially assessed against the requirements of Part 16 in order to establish if they are compliant with the regulations. If so, the local planning authority should make an assessment of the siting and appearance of the development as a whole, in accordance with the requirements of Part 16.

4.1.2 Class A – *Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of;*

(a) The installation, alteration or replacement of any communications apparatus;

(b) The use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use; or

(c) Development ancillary to radio equipment housing.

4.1.3 *A.1 - (1) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than on a building) is not permitted by Class A(a) if in the case of the installation of a mast, the mast, excluding the antenna, would exceed a height of;*

- (i) **25 metres above ground level on unprotected land;** or
- (ii) *20 metres above ground level on article 2(3) land or land which is a highway;*

4.1.4 At 11m in height, the proposed mast would not breach the above limit for unprotected land. Given its exposed location however, an assessment is required by the local planning authority in relation to the siting and appearance of the development as a whole, as per the relevant conditions of Part 16.

4.1.5 The principle of development is established by the GPDO and the provisions of Part 16 do not specifically require regard be had to the development plan. That said, the policies in the development plan and the Framework are material considerations as they are relevant to matters of siting and appearance. Therefore, they should be duly applied to any assessments of this type.

4.2 Siting and Appearance

4.2.1 Some dwellings are positioned in the vicinity of the site with the closest being those at Crooked Walls Farm, at circa 80m away. Policy 8 requires all development proposals to secure a satisfactory level of amenity for surrounding occupants with reference to the relationship between buildings. Concerns have been raised in consultee and public comments given the presence of dwellings nearby.

4.2.2 However, the distances involved would adequately prevent the proposals appearing overbearing to neighbours or causing any harmful impacts upon their outlook generally. Specific concerns have been raised in public comments in relation to the potential for losses of private views to be caused yet such impacts are immaterial to the assessment of prior approval applications. On that basis, the proposed siting of the development would not be harmful the residential amenities of the nearest neighbours, in compliance with the relevant requirements of Policy 8.

4.2.3 Access would be gained from Blackburn Road via an existing field access point. Policy 10 requires all development proposals to not prejudice road safety, or the safe and convenient movement of all highways users. Following the development being brought into use, any associated vehicle movements would be for emergency and maintenance purposes alone. They would be low in frequency and likely only involve a single vehicle.

4.2.4 The mast and compound area would also be adequately set back from the carriageway edge to prevent any visibility issues for passing motorists. On that basis, the proposed siting of the development would not prejudice the safety or function of the local highway network to an unacceptable extent, in compliance with the relevant requirements of Policy 10.

4.2.5 As detailed above, a number of listed buildings are located within 500m of the application site with the closest being the farmhouse and stone barn at Dingle Farm to the south. Policy 39 requires all development proposals with the potential to affect any designated heritage asset, either directly or indirectly including by reference to their setting, to sustain or enhance the significance of

the asset. The potential for negative impacts upon the setting of the adjacent listed buildings to occur has been raised in public comments.

- 4.2.6 However, the closest listed building to the site is the stone barn at Dingle Farm, which is in excess of 130m away from the proposed development, as shown below in Figure Six. The levels of separation involved would be adequate to prevent any adverse impacts on the setting of those listed buildings materialising and such a position is supported in the comments made by the BwD Heritage Advisor. On that basis, the proposed siting and appearance of the development would adequately sustain the historical significance of adjacent listed buildings, in compliance with Policy 39.

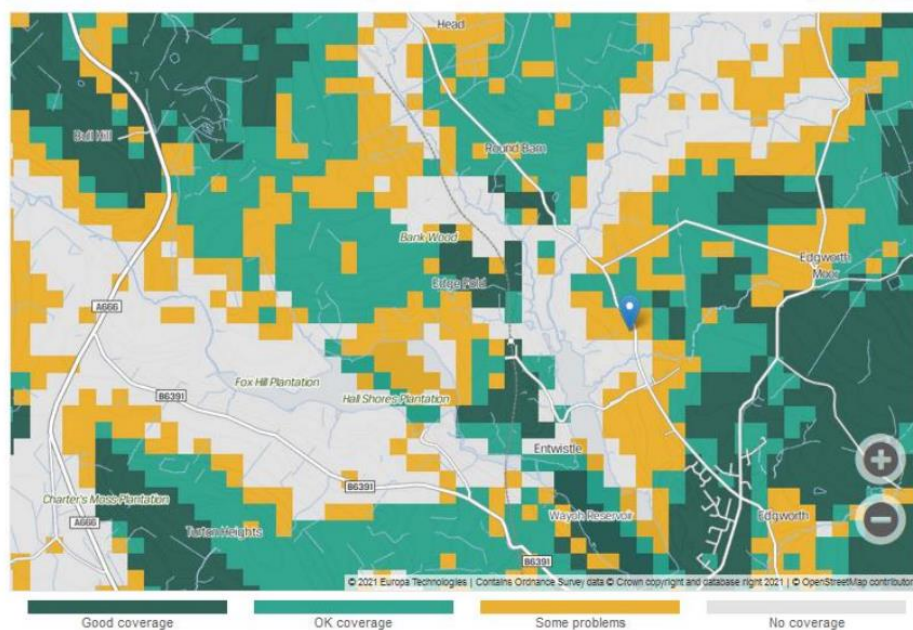
Figure Six – Location of nearest listed buildings in relation to the site



- 4.2.7 As detailed above, the site is positioned on an exposed rural hillside that can be viewed from numerous public vantage points in all directions. Aside from low-level hedgerows and the occasional taller tree along the boundary with Blackburn Road, the site has no existing screening in place to lessen the visual impacts of the development.
- 4.2.8 Policy 11 requires all development proposals to demonstrate an understanding of sites wider context and make a positive contribution to the visual amenity of the local area. Policy 41 requires all development proposals to avoid unacceptable impacts on landscape character together with the principal traits associated with it.
- 4.2.9 In relation to the siting and appearance of telecommunications developments, Policy 44 reiterates those requirements. The impacts of such developments on the landscape must be minimised through appropriate siting, design, materials and colours. In addition, Paragraph 115 of the Framework states that such forms of development should be sympathetically designed and camouflaged, where appropriate. Concerns have been raised in public comments on landscape character and visual amenity grounds.
- 4.2.10 This application is a resubmission of a previously refused proposal, which is detailed below in Section 6.0 together with the reason for refusal. The reason for refusal involves harmful impacts on the surrounding landscape and visual amenity of the local area generally.

- 4.2.11 It is acknowledged that this application is proposed at the same site with a height reduction in the proposed mast now shown on the submitted plans. The brown coating of the mast would to a certain extent harmonise with the adjacent telegraph poles yet the structure would be noticeably taller than the existing street furniture in the vicinity.
- 4.2.12 This application has been supplemented with evidence regarding existing coverage networks. Given that the proposals would partly serve the emergency services, the developer has strict criteria on the level of radio coverage that has to be provided together with the resilience of such coverage. Undulating topography provides some obvious constraints for the operating parameters of such technologies as does the presence of tall and dense vegetation.
- 4.2.13 A coverage plan is shown below in Figure Seven and many of the low coverage areas are within low-lying and inaccessible valley bottoms. Moreover, by majority those areas are not served by the road network. Such provision is essential for this type of application given that vehicles must be able to access the site in times where there is a breakdown in coverage.

Figure Seven – 4G Coverage Plan



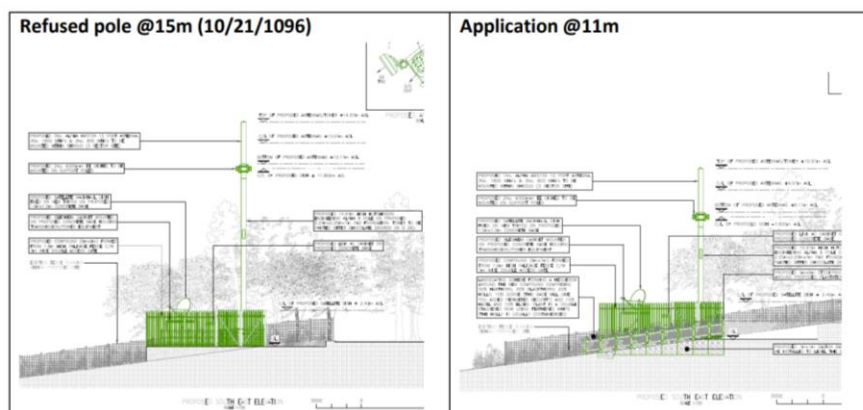
- 4.2.14 It is acknowledged that other sites may exist locally that could potentially accommodate the development. However, the use of any such roadside sites would likely lead to a similar level of visual harm to the immediate and wider area as these proposals. The presence of more buildings in comparison to other sites cannot be given much weight when assessing landscape impacts as the character of landscapes is almost exclusively derived from natural features.
- 4.2.15 In addition, the compromises made by the developer with this amended submission must be given a significant level of weight in the overall planning balance. An indicative image of the proposed mast is shown below Figure Eight in the context of the existing wooden telegraph poles.

Figure Eight – Indicative image of proposed mast viewed from the east



4.2.16 Alongside a 36% height reduction when compared with the previously refused proposals, the developer is willing to plant landscaping around the most exposed flanks of the compound area in order to provide screening for the proposed ground based structures and security fencing. Such measures are seldom seen with telecommunications developments and they are a testament to the developer's willingness to work with the Council and local community in the hope of mitigating visual harm.

Figure Nine – Comparative heights of proposed and previously refused mast



4.2.17 When those positive amendments are considered alongside the public benefits of the proposals in the form of enhancing communications coverage for the emergency services, on balance, the proposals would not lead to any material level of harm for character of the surrounding landscape or public visual amenity generally. For those reasons, the proposed development accords with the relevant requirements of Policies 11, 41, and 44 together with Paragraph 115 of the Framework and is therefore acceptable with reference to siting and appearance.

4.3 Wider Considerations

4.3.1 Concerns have been raised in consultee and public comments given the site's position within the green belt. However, prior approval applications are not

subject to such assessments and that position is detailed within an abundance of case law.

- 4.3.2 In relation to the potential health implications, local planning authorities should not seek to determine health and safety matters that are subject to separate controls. Provided applications are accompanied with an International Commission on Non-Ionizing Radiation Protection (ICNIRP) certificate, local planning authorities are not required to make any further assessments on health and safety matters. Such a certificate accompanies the application. Comments are yet to be provided by BwD Public Protection and any comments made will be presented as part of a committee update report.

4.4 Summary

- 4.4.1 This prior approval application involves the installation of a 11m high telecommunications mast, associated radio equipment housing cabinets and fenced compound area. Subject to appropriate conditions, the proposed development would be acceptable on all the relevant planning grounds, in accordance with the local and national policies detailed in Section 3.4.

5.0 **RECOMMENDATION:**

5.1 **Delegated authority is given to the Strategic Director of Place to approve planning permission, subject to the following conditions.**

1. The development must begin not later than the expiration of 5 years beginning with the date on which the approval was given.

REASON: In order to ensure the proposal accords with the relevant provisions of the Town and Country Planning (England) (General Permitted Development) Order 2015.

2. The development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings: Site Location Maps, ESN40257/101, ESN40257/102 and ESN40257/104.

REASON: In order to ensure the proposal accords with the relevant provisions of the Town and Country Planning (England) (General Permitted Development) Order 2015.

3. The external finishes applied to the development hereby approved shall be as stated on the application form and approved drawings and those details shall not be varied within the prior written consent of the Local Planning Authority.

REASON: In order to ensure the proposal accords with the relevant provisions of the Town and Country Planning (England) (General Permitted Development) Order 2015.

6.0 RELEVANT PLANNING HISTORY

- 6.1 10/21/1096 – 15m telegraph pole mast, antennas and ground based apparatus – Prior Approval is refused – November 2021.

Reason for refusal

1. *The proposed siting and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The proposed development therefore fails to comply with Policies 11, 41, and 44 of the Blackburn with Darwen Borough Local Plan Part 2 (2015) together with Paragraph 115 of the National Planning Policy Framework (2021).*

7.0 CONSULTATIONS

7.1 BwD Public Protection

- 7.2 BwD Heritage Advisor – I have reviewed the supporting documents, which include plans and elevation drawings and a planning statement. The key heritage issue for the LPA to consider is whether the proposed development will harm the character or appearance of the listed buildings or the contribution to the significance made by their setting.

The application site is in an open rural location, which is located 180 metres to the north-west of Dingle Farmhouse and Barn. There are also four other designated heritage asset within the immediate vicinity of the site.

Dingle Farmhouse was built in C17 and is constructed from sandstone rubble with quoins and a slate roof, a double chimneystack is located on the ridge at the junction of the second and third bays. It has a three-bay baffle-entry plan with a modern glazed porch to the rear which links the house to a modern addition. The house is two storeys with the doorway located at the junction of the second and third bay. The doorway has a large lintel with a small square panel for a date stone above. The house has a range of different size stone mullion windows.

The barn located 30 metres north east of Dingle Farm is dated 1727. It is constructed from coursed sandstone rubble and has a corrugated sheet roof. The barn has a broad rectangular plan with three bays, the south side wall has a wagon entrance with a segmental stone arch and keystone. The right gable to the road has a stone mullioned window.

The application is for the installation of an 11 metre telegraph pole communications mast, antennas and associated ground-based apparatus. The overall site will be 104 m², the proposed telegraph pole will be painted in 'bitter chocolate'. Landscaping is to be introduced around the site, this includes the introduction of 1 metre x 1 metre gabion baskets and a hedgerow comprising of a variety of plants, including Hawthorn, Holly and Blackthorn etc. The area will be surrounded by a 1.8 metre high palisade fence.

The Planning Statement notes that – The application has been brought forward as part of the Home Office program for the renewal of the emergency services network (ESN) – moving from the current Airwave service (which cannot provide data services), to a 4G service provided by EE. A commercial 4G service will also be provided by the proposal benefitting local residents, business, and visitors to the area.

The location site is the same as that from a previous application (10/21/1096), which was for a 15 metre high pole. I note that I raised no objections to the previous proposal.

The Planning Statement notes that the application was refused in late November 2021 and that an appeal has been lodged against that refusal and issues surrounding the timing of the decision are included within that appeal. As is set out in the appeal papers, the EE radio planners have made a concession on coverage and have been able to propose the smaller structure in this application.

There are four Grade II designated heritage assets within 500 metres of the site, Dingle Farmhouse, Dingle Barn, Green Alders Farmhouse and Cottage, and Hill Top Farmhouse. All of the assets date from the C17th and C18th and there has been little development at their location since that time. Therefore, their original rural setting will be a contributory factor to their significance.

The planning statement explains that the proposed location has been chosen due to its association with the significant vertical infrastructure (large pylons and other poles) which line the fields in this general location.

Historic England's Planning Note 3 (second edition) entitled The Setting of Heritage Assets (2017) describes setting as being the surroundings in which a heritage asset is experienced. It discusses how views can contribute to the significance of an asset and the importance of relationships between buildings.

As with the previous application, I consider the view of the development from the heritage assets to be somewhat obscured by trees, the topography, or modern agricultural structures. Additionally, there are existing power lines visible and as such the telecom station should not be a significantly prominent feature within the setting of the listed heritage assets.

Overall, I feel that the proposed scheme will have no discernible impact on the surrounding heritage assets. The proposed colour of the pole (bitter chocolate) will match the existing telegraph poles located nearby and the introduction of landscaping to the site will also lessen the impact of the ground-based apparatus on the surrounding landscape.

(Conclusion) As I am required to do so by the Planning (LBCA) Act 1990 I have considered the duty imposed by section 66(1) and given it considerable weight in my comments. I consider the proposal would meet the statutory test 'to preserve', causing no harm to the designated heritage assets. Therefore, no

balancing exercise is required as per NPPF P.202. As such, the proposal meets the objectives of Chapter 16 of the NPPF and the policies of the Local Plan.

7.3 Natural England – No objections.

7.4 North Turton Parish Council – We object to application 10/22/0237 for the erection of an 11m telecom mast on land to the north of Dingle Farm, Blackburn Road, Edgworth, on the grounds that it is close to residential property and within the green belt.

7.5 Ward Cllrs

7.6 Summary of public representations

- The proposed siting of the development is not suitable;
- Residential properties are positioned adjacent;
- Private views may be effected;
- Harm may be caused to the setting of adjacent listed buildings,
- Only a minor height reduction is proposed with these amendments;
- Adverse landscape impacts may be caused;
- The development features a large compound area, and;
- The site is positioned within the green belt.

8.0 CONTACT OFFICER: Christian Barton – Planning Officer

9.0 DATE PREPARED: 08th April 2022

10.0 SUMMARY OF REPRESENTATIONS

Objection – North Turton Parish Council. Received - 23/03/2022

North Turton Parish Council objects to application 10/22/0237 for the erection of an 11m telecom mast on land to the north of Dingle Farm, Blackburn Road, Edgworth, on the grounds that it is close to residential property and within the Green Belt.

Objection – I R Williams, Dingle Farm, Blackburn Road, Edgworth, BL7 0QE. Received. - 28/03/2022

Dear Mr Barton,

Re: Planning reference number: 10/22/0237

This planning application follows on from application number 10/21/1096.

At that time I, and I'm sure many of my neighbours, objected to that proposal and it was subsequently declined.

This new application does nothing to address any of the issues raised last year, and therefore I once again wish to object in the strongest possible terms.

There is no point in repeating the contents of my letter last year, so I have simply attached it for reference.

I'm sure that the objections received from my neighbours last year also remain relevant to this application.

The reasons provided for refusing permission last year was:-

"The proposed siting and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The proposed development therefore fails to comply with Policies 11, 41, and 44 of the Blackburn with Darwen Borough Local Plan Part 2 (2015) together with Paragraph 115 of the National Planning Policy Framework (2021)."

This application does absolutely nothing to address those concerns.

Whilst the new mast has been slightly reduced in height, the new plan is actually far worse than the old plan as the area for the ground station has grown by 24% which will now doubt impact on the visual amenity even more.

Heritage

The Council is also under a free-standing statutory duty which exist above any policy requirements. This comes from s.66 of the Planning (Listed Building and Conservation Area) Act 1990 and require the Council to pay special regard to the desirability of preserving or enhancing the listed building or it setting. This statutory duty was wrongly cited by the Conservation Officer in the previous refusal as being the duty under s.72. However this is the duty as to conservation areas rather than listed buildings.

The importance of this statutory duty was emphasised in *Barnwell Manor Wind Energy Ltd v East Northants DC* [2014] EWCA Civ 137 where Sullivan LJ set out at that considerable weight is to be given to the duties under s.66.

My own home, Dingle Farm, is a Grade 2 listed building, as is Green Alders.

The applicants in their planning statement have said that the agricultural buildings provide an immediate separation from my home to the proposed site.

They don't.

I will have a very clear sight line straight out of my windows looking directly at it (as will Green Alders), and the "more modern" agricultural buildings may be more modern than 1650 when my own home was built, but nevertheless the Barn is also Grade 2 listed!

The property is very close to Crooked Walls which I assume was built in the 18th century and the cottages at Longworth Bank will be of a similar age.

Consistency

The approach to previous decisions and the importance of consistency in decision making was set out by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P & CR 137 at page 145;

"To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."

A decision maker when dealing with previous decisions must first ask if they are 'like cases' which cannot be distinguished in some relevant aspect. If they are, and the decision maker is disagreeing with 'some critical aspect' then the decision maker must give reasons for the departure.

Here the decisionmaker very clearly found that this was an unsuitable location for a telecommunication mast. This was not a matter of the height of the mast but the placing of the mast and surrounding complex in a highly visible location in the landscape. There has been no change in relation to the siting of the mast and therefore these are 'like' cases. The Council must refuse the application unless they can explain why an alternative decision (beyond the mere reduction in height) is justified. If they failed to do so then they would be liable to challenge in the High Court on the basis of *North Wiltshire* (as applied in *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] EWCA Civ 1305)

Conclusion

This application does nothing to address my original concerns or the reasons why that application was refused.

If anything, this application is even worse as the ground station is now significantly larger than the original application, impacting even more on the “visual amenity” of those properties in the immediate vicinity and of those driving along Blackburn Road where the installation will be directly in their sight line.

I therefore once again wish to register my objection in the strongest possible terms.

Objection – Stephen & Shelley Halstead, Crooked Walls Farm, Blackburn Road, Edgworth.
Received - 28/03/2022

Dear Sir,

I am writing to register my objection to the erection of a telecommunications mast and ancillary equipment detailed in application for prior approval 10/22/0237. This is a follow up application to 10/21/1096 which was rejected by Blackburn with Darwen planning department in November 2021. The prior approval application 10/21/1096 was for a slightly taller mast but had a smaller footprint. This application covers 104 sq metre whereas the previously rejected proposal measured 84 sq metre.

When considering ‘siting and appearance’ the Delegated Decision Officer report for 10/21/1096 concluded that;

As detailed above, the site is positioned on an exposed rural hillside that can be viewed from an abundance of public vantage points in all directions. Aside from low- level hedgerows and the occasional taller tree along the boundary with Blackburn Road, the site has no existing screening to lessen the visual impacts of the development. Whilst it is acknowledged that telecommunications masts need to be of a certain height in order to function correctly, in order to comply with the visual requirements of the aforementioned policies, it must be ensured that such forms of development are sited in a way that minimises any visual impacts caused.

The critical point is that the Officers concerns were one of siting within the landscape rather than just the height of the mast. Despite the minor reduction in the height of the mast the point still applies. The site in question, North of Dingle farm is in an open position, viewable from many vantage points with very little vegetation nearby. Policy

44 of the local plan states such installations should be sited in a way that minimises impacts on the landscape. The proposal would continue to be contrary to Policy 44 of the Local Plan.

I have two further concerns in relation to the determination of this prior approval application.

Heritage assets / Listed buildings

Green Alders and Dingle Farm are both Grade 2 listed buildings and have uninterrupted views of the proposed development, contrary to the report for 10/21/1096 the view to the development from these heritage assets is NOT 'mostly obscured by trees, the topography or modern agricultural assets'. This statement is incorrect. I also add that the council is under a free-standing statutory duty which exists above any policy requirements. This comes from s.66 of the Planning (Listed Buildings and Conservation areas) Act 1990 and requires the council to pay special regard to the desirability of preserving or enhancing the listed building or its setting. The importance of this statutory duty was emphasised in **Barnwell Manor Wind Energy Ltd v East Northants** (2014) EWCA Civ 137 where Sullivan LJ set out that considerable weight is to be given to the duties under s.66.

In the report for 10/21/1096 the conservation officer quoted the Planning (Listed Buildings and Conservation Areas) Act 1990, considered the duty imposed by section 72 (1) and gave it considerable weight in his comments. However s.72 refers to conservation areas rather than listed buildings. S.66 is applicable in this case.

Consistency

The report for 10/21/1096 recommended prior approval to be refused because the proposed siting and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The development failed to comply with policies 11,41 and 44 of the Blackburn with Darwen local plan Part 2 (2015) together with paragraph 115 of the National Planning Policy Framework (2021).

All the points raised for the refusal of 10/21/1096 are applicable for the new application 10/22/0237 and therefore to be consistent the same conclusion should apply. The Applicant has not addressed them by reducing the height of the mast. The previous decision was not because the mast was too high but because the proposed mast was, and is, in the wrong location. The approach to previous decisions and the importance of consistency in decision making was set out by Mann LJ in **North Wiltshire District Council v Secretary of State for the Environment** (1992) 65P & CR137 at page 145.

'To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant aspect. If it is distinguishable then it usually will lack materiality by consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgements and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case on aesthetics. On other occasions they may have to be elaborate.'

Any decision maker when dealing with previous decisions must first ask if they are 'like cases' which cannot be distinguished in some relevant aspect. If they are and the decision maker is disagreeing with some critical aspect then the decisionmaker must give reasons for his departure. In this case the decision maker clearly found that this was an unsuitable location for a telecommunications mast. This was not a matter of the height of the mast but the placing of the mast and surrounding fenced compound in a highly visible position in the landscape.

There has been no change in relation to the siting of the mast and therefore 10/21/1096 and 10/22/0237 are 'like' cases. The council must refuse this application unless they can explain why an alternative decision (beyond the mere reduction in height) is justified. If they fail to do so they would be liable to challenge in the High Court on the basis of **North Wiltshire** (as applied in **DLA Delivery Ltd v Baroness Cumberlege of Newick** (2018) EWCA CIV1305)

Conclusion

The Decision officers report for 10/21/1096 included the quote;

'The coverage plan contained within the submitted planning statement details large areas of land that could potentially accommodate the development. Much of the land identified is significantly more screened by existing landscape features. Conclusively an abundance of other sites exist in the local area that could potentially accommodate the proposed development without causing the level of visual harm that would be caused here.'

In applying for the same site, the statement above has been ignored by the developer for this new application. A telecommunication mast contained within a compound

surrounded by palisaded fencing is clearly out of place in this location and the application should be rejected.

Objection – N W Polding, 153 Hospital Road, Bromley Cross, Bolton. Received - 30/03/2022

I would like to register my objection to the planned telecommunications mast and ancillary equipment contained within a compound in planning application 10/22/0237.

The site, North of Dingle Farm is in an area of open countryside which can be seen from many vantage points. Not only is there a 10 metre mast but the compound is surrounded with security fencing that covers an area of 104 square metres . There are no trees nearby to hide what will clearly be a very visible site.

There must be more appropriate locations for this mast, the area around Edgworth and Entwistle must have locations which are viable and offer a more camouflaged setting. I am sure the many walkers and visitors to this area will not appreciate views ruined by the proposed development.

I believe a previous planning application for the same site was rejected by the planning department because it infringed policies 11,41 and 44 of the Blackburn with Darwen local plan (2) as well as paragraph 115 of the National Policy Framework (2021) and the same should happen for this application.

Objection – Amanda Gaunt. Received - 30/03/2022

I wish to object to planning application 10/22/0237

A telecom mast of this size within a significant fenced compound will clearly cause a harmful visual impact on an area of open countryside. Surely there must be more suitable locations which are better screened by trees and vegetation.

The proposed site has been rejected previously and the new application which has a slightly smaller mast but a larger compound should also be rejected because of visual amenity.

Objection – Neil Isherwood, 9 School View, Edgeworth, Bolton. Received – 01/04/2022

Having read through the new application it appears that the new application does nothing to address any of the issues raised from the previous application, hence this letter of objection.

I understand that the reasons for refusing permission last year were.

“The proposed siting and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The proposed development therefore fails to comply with Policies 11, 41, and 44 of the Blackburn with Darwen Borough Local Plan Part 2 (2015) together with Paragraph 115 of the National Planning Policy Framework (2021).”

As stated above, this application does not address any of those concerns.

Indeed, the new plan is actually worse than the old plan with the area for the ground station now covering a substantial increase in land usage which will impact even more on the visual amenity. I do see that the new mast has been slightly reduced in height, but the land increase far out weighs this point

Heritage

The Council is also under a free-standing statutory duty which exist above any policy requirements. This comes from s.66 of the Planning (Listed Building and Conservation Area) Act 1990 and require the Council to pay special regard to the desirability of preserving or enhancing the listed building or it setting. This statutory duty was wrongly cited by the Conservation Officer in the previous refusal as being the duty under s.72. However this is the duty as to conservation areas rather than listed buildings.

The importance of this statutory duty was emphasised in *Barnwell Manor Wind Energy Ltd v East Northants DC* [2014] EWCA Civ 137 where Sullivan LJ set out at that considerable weight is to be given to the duties under s.66.

Consistency

The approach to previous decisions and the importance of consistency in decision making was set out by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P & CR 137 at page 145;

“To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate.”

A decision maker when dealing with previous decisions must first ask if they are ‘like cases’ which cannot be distinguished in some relevant aspect. If they are, and the decision maker is disagreeing with ‘some critical aspect’ then the decision maker must give reasons for the departure.

Here the decisionmaker very clearly found that this was an unsuitable location for a telecommunication mast. This was not a matter of the height of the mast but the placing of the mast and surrounding complex in a highly visible location in the landscape. There has been no change in

relation to the siting of the mast and therefore these are 'like' cases. The Council must refuse the application unless they can explain why an alternative decision (beyond the mere reduction in height) is justified. If they failed to do so then they would be liable to challenge in the High Court on the basis of North Wiltshire (as applied in DLA Delivery Limited v Baroness Cumberlege of Newick [2018] EWCA Civ 1305)

Conclusion

This application should therefore once again be refused

I would like to register my objection to this application.

Objection – L J Cliff, Dingle House, Blackburn Road, Bolton. Received – 01/04/2022

At that time many neighbours objected to that proposal and it was subsequently declined. This new application does not address any of the issues raised last year, and therefore I wish to object to it.

The reasons provided for refusing permission last year was :- The proposed siting and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The proposed development therefore fails to comply with policies 11, 41, and 44 of the Blackburn with Darren Borough Local Plan Part 2(2015) together with paragraph 115 of the National Planning Policy Framework (2021) This application does nothing to address those concerns.

Whilst the new mast has been slightly reduced in height, the new plan is actually worse than the old plan as the area for the ground station has grown by 24 percent which will no doubt impact on the visual amenity even more.

HERITAGE

The council is also under a free standing statutory duty which exist above any policy requirements. This comes from s.66 of the planning (Listed Building and Conservation Area) Act 1990 and require the council to pay special regard to the desirability of preserving or enhancing the listed building or its setting. This statutory duty was wrongly cited by the conservation officer in the previous refusal as being the duty under s.72. However, this is the duty as to conservation areas rather than listed buildings.

My home is a grade 2 listed building as is Dingle Farm and Green Alders.

The applicants in their planning statement have said that the agricultural buildings provide an immediate separation from my home to the proposed site but they don't.

I will have a clear distinctive view straight from my windows looking directly at it(as will Dingle Farm and Green Alders) **CONCLUSION** This application does nothing to address my original concerns or the reasons why that application was refused. If anything, this application is even worse as the ground station is now significantly larger than the original application, impacting even more on the visual amenity of those properties in the immediate vicinity and of those driving along Blackburn Road where the installation will be directly in their sight line.

I therefore once again wish to register my objections to this planning application.

Objection – Antony Farnworth, The Elms, Grange Road, Bromley Cross, Bolton. Received – 04/04/2022

Once again, I would just like to register my objection to this application on the grounds that it would spoil the beautiful countryside and surrounding area.

I can not see how reducing the height from 15m to 11m would change anything.

Comment – Georgia Halstead, (Little Doghouse Owner), 307 Darwen Road, BL7 9BT. Received 24/04/2022

I am writing regarding application 10/22/0237.

The previous application 10/21/1096 was resoundingly rejected by Blackburn with Darwen Planning and local residents.

The council's view only a few months ago was that the *'proposed site and appearance of the development would fail to ensure that detrimental impacts on the surrounding landscape are appropriately minimised, which would be harmful to the visual amenity of the local area. The proposed development therefore fails to comply with the policies 11, 41 and 44 of the Blackburn with Darwen Borough local plan part 2 (2015) together with the paragraph 115 of the national planning framework 2021'*

Siting

The officer clearly believes this is an unsuitable location for a telecommunication mast, and I would strongly agree with him. The new application is on the same site as the previous application, but now covers a larger area, there is no change in siting from this application to the previous one. Therefore, it must be rejected on the same grounds.

Again, I would support the officers view that *'an abundance of other sites exist in the local area that could potentially accommodate the proposed development without causing the level of visual harm that would be caused here'*.

There is no change from one application to another. Quoting the officer, an 'abundance' of alternative sites do exist. The new application details 6 locations, that are apparently not appropriate for their requirements. The applicant has far from exhausted all options and doesn't seem to have explored the **abundance** of other sites since their last application.

This is now a proposed 11 metre mast, no information has been presented as to what the impact of a slightly reduced mast would be. I can only conclude this would reduce the coverage, and therefore make the proposed site less suitable.

Surely a site where the level of visual harm is not as great, that can accommodate a 15-25 metre mast and gain better coverage is more appropriate.

Appearance

In the last application the 15-metre proposed monopole was described as **'extremely prominent in height from a number of public vantage points in the local and wider area'** The new application at 11 metres in height will continue to be prominent and continue

to tower above all the adjacent buildings and would appear highly incongruous with the immediate and wider setting. The new application has moved the site further down the field away from the road, making it even more prominent in open farmland and away from 'vertical infrastructure' causing greater visual harm to the immediate and wider area.

The officer reflecting on the previous application stated, '*negative visual impacts would be exacerbated significantly through the construction of a relatively large compound area surrounded by tall security fencing*'. In the new proposal the compound area is even bigger than before now at 13000 x 8000 whereas previously it was 12000 x 7000 with tall security fencing still present. Stones and a few bushes will do little to make the site less prominent or shield the open farmland from the appearance of this construction.

In conclusion, this application, like the previous application must be rejected on the grounds of siting and appearance.

The qualities of the surrounding landscape would be seriously harmed by this development, and as the officer put it in his report when rejecting the previous application '*it would be a detriment to public visual amenity, the proposed development therefore fails to comply with policies 11, 41, and 44 together with the paragraph 115 of the framework.*'

Comment – Margaret & Terry Whittaker, 1 Edgworth Views, School Lane, Edgworth. Received – 04/04/2022

The first application for the mast was refused and the only difference to this application is that it is slightly reduced in height but wider at ground level?

The surrounding properties are beautifully kept old traditional homes, and even from the road out of Edgworth Village the mast would be visible.

This is Greenbelt area and a modern phone mast is out of keeping.

We have lived in this area of Edgworth for over 40 years and strongly disapprove of siting a phone mast in this particular location.