Planning Appeal

On behalf of

Cornerstone

Installation of electronic communications equipment on rooftop comprising 6 x antennas and 2 x dishes on tripod structures, fixed to steel grillage and plinth on plant room and ancillary works.

London Borough of Camden Ref: 2021/5339/P

Cornerstone REF: 235679_20

No 164 Shaftesbury Avenue

Camden

London

WC2H 8HL

Contents

[1] The MHCLG has become the Department for Levelling Up, Housing and Communities (DLUHC) – mobile connectivity, and access to it, forms an important part of the levelling-up agenda

1. Introduction and Grounds of Appeal

1.1 The communications apparatus subject to this appeal is required because there is soon to be a coverage and capacity gap in the area for VirginmediaO2 (trading as O2, and named as VMO2 in this document) and the appellant (Cornerstone) is seeking to address this. In line with planning policy and best practice, a roof-based solution is being proposed. This is also encouraged through the General Permitted Development Order which allows roof-based apparatus such as this with only a Notification sent to the Local Planning Authority (LPA) required. However, as the appeal site lies within a Conservation Area, these rights do not apply, and a planning application was required.

1.2 The proposed development is for the installation of electronic communications equipment on rooftop comprising 6 x antennas and 2 x dishes on tripod structures, fixed to steel grillage and plinth on plant room and ancillary works. The proposed development would be on the roof of 164 Shaftesbury Avenue, London WC2H 8HL.

1.3 A planning application for the apparatus was submitted to The London Borough of Camden ("the LPA") on 6th May 2022 (LPA ref: 22/1542/F). It was refused by delegated authority on 1st October 2021. The application was refused for the following reason:

> *The proposed development, in the absence of a S106 legal agreement securing a clear and agreed framework and timetable for the decommissioning of an existing site (no. 125 Shaftsbury* (sic) *Avenue) so that it is no longer in operational use and for the timely removal of all associated apparatus from the rooftop and any other parts of the site, would be likely to contribute unacceptably in combination with the application site to an unnecessary and unsightly over-proliferation of electronic communications equipment in the locality, which would adversely impact on the character and appearance of both sites and buildings, the wider local environment, including the conservation areas (Seven Dials (Covent Garden) and adjacent Denmark Street), as well as, being harmful to the special architectural and historic interest of nearby listed buildings and their settings, contrary to the requirements of policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.*

1.4 The appellant's existing base station, and where VMO2 currently have apparatus, is 125 Shaftsbury Avenue. The owner has redevelopment plans[2] for the building meaning it is no longer compatible with telecommunications use and so the owner of the building has sought the removal of the apparatus. It is for this reason a replacement site is required.

[2] Whilst discussions were already ongoing, this has accelerated in recent months with the sale of the building in Dec 2023 to Mitsubishi Estate. An associated press release stating – "*The joint venture said in the press release that the acquisition represents an opportunity to redevelop the building and implement smart office features and sustainable solutions, with Edge specialising in leveraging technology to develop more efficient facilities*."

Actually, two sites are being proposed to replace the one site both due to the smaller coverage footprints achievable from smaller buildings, ongoing capacity issues in this very busy area, as well as increasing networks demands for data – more details below.

1.5 This is a very busy area of central London with a high population, especially transient. The area has residential, retail, theatre, pub & restaurant and office uses. Based on an extrapolation of UK subscribers[3], 29% of the population will use VMO2 for mobile connectivity (calls, texts and data) in the area. Should a solution for providing replacement coverage and capacity not be implemented, local users (including business users and those visiting and travelling through the area) currently experiencing access to connectivity will suffer from a more pronounced lack of reliable 'essential' connectivity – devices will simply stop working.

1.6 As can be seen, the reason for refusal relates simply to the applicant not entering to a Section 106 agreement. The impacts from the scheme itself are considered to be acceptable by the LPA, the informative on the decision notice stating (our emphasis):

> *Without prejudice to any future application or appeal, the applicant is advised that the reason for refusal attached to this decision notice could be overcome by entering into a Section 106 Legal Agreement* ***in the context of a scheme that is acceptable in all other regards.***

However, and whilst the acceptability of the scheme is common ground with the LPA, the Inspector will be looking at the proposals *de novo*. As such, this statement does cover more ground than simply the reason for refusal.

1.7 In refusing the application for the reason given, it is considered that the LPA did not give enough weight to the information provided by the appellant as to why the legal agreement was not required. In addition, and whilst the existing apparatus will be getting decommissioned, the appellant has submitted a heritage assessment which also looks at the situation where the existing and the proposed apparatus remains *in situ*. Bearing in mind the lack of impacts identified even under those circumstances, **it is considered the legal agreement was never necessary this should be the main consideration for the appeal.**

1.8 The NPPF states that where less than substantial harm on heritage assets is identified then any such harm must be weighed against any public benefits[4]. The impact from the appeal proposals is at the lower end of less than substantial. This is demonstrated in the attached independent Heritage Appeal Statement (HAS) – Appendix 18. It is also further considered that the cumulative impact of the existing and proposed apparatus is at the lower end of less than substantial. Having mobile connectivity in this very busy area of central London

[3] https://www.which.co.uk/reviews/mobile-phone-providers/article/best-mobile-networks-overview-amhDx1F0z41t

[4] Paragraph 208 NPPF

is very important and the weight to be afforded will be very high. It is considered that the weight given to the 'public benefits' by the LPA was too low and that if weighted appropriately, it would outweigh any identified harm of having two installations *in situ* (of course as described throughout, there would never be two sites *in situ*).

2. Background and Technical Information

2.1 This section sets out the background to the application site and why it is required by the appellant as well as setting out some of the technical characteristics of a communications proposal such as this – **importantly in this case, is the replacement nature of the appeal proposals. The proposed apparatus is only required as an existing site is being removed (and to stress, the reason no Sec 106 is required to secure its removal).**

2.2 Set out in this statement, the application documents and the delegated report, VMO2 provide their current network coverage though apparatus installed on the roof of 125 Shaftsbury Avenue. The owner of that building has advised the appellant that this apparatus must be removed due to their own redevelopment proposals. Such is the complexity and demand for connectivity in this part of central London, VMO2 will need two rooftop sites to provide this replacement connectivity and ensure the area is experiencing the most up to date, reliable service (the second proposed site is within the Westminster Council area). We have supplied radio plots (Appendix 17) with the appeal, and that document also provides some commentary on this matter.

2.3 Two matters to note are that, firstly, in effect, the Inspector is being asked to consider if the appeal proposals are acceptable (including in conjunction with the existing site at no. 125) without the Sec 106 agreement requiring removal of the existing site. Impacts will need to be balanced against the benefits provided – in making that assessment the weight to be afforded ensuring ongoing connectivity to the VMO2 network should be substantial. Secondly, that weight should be substantial both because of the importance attached to it by Government and policy makers but also because the site in question is within central London where such connectivity should be a given. That importance is set out in this statement and applies as much to replacement connectivity, such as the appeal proposals, as it does to new connectivity.

2.4 The appellant, Cornerstone, is independent of any Mobile Network Operator (MNO) and provides communications infrastructure which the MNOs then use to provide radio coverage. This is done predominantly to enable the sharing of infrastructure however where this has not been possible, such as this case, then Cornerstone can provide infrastructure to individual MNOs – in this case VMO2.

2.5 As the Inspectorate should know, the market for mobile communications services is growing inexorably and the MNOs are now rolling out new 5G networks at the same time as building out their existing 4G networks. Some 3G networks are being switched off to free-up spectrum. 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)
- 5G – next generation superfast and low latency data transfer

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 and has been for some time, with the National Planning Policy Framework (NPPF) calling access to these networks "*essential*".

2.7 The Department of Digital, Culture Media and Sport (DCMS) which has oversight of the communications sector stated[5] back in 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 It reflects the Greater London Authority's (GLA) own understanding and approach[6]:

> *"Digital connectivity is about access to fast and reliable internet connection (fixed or mobile) which enables users to benefit from smart and digital services. It is the 'fourth utility' and everyday necessity alongside water, gas and electricity"*

The GLA has set up its own 'team' – Connected London. This has clear aims and objectives as it sets out on its webpage[7], stating:

> ***Our vision for connectivity in London***
> *We want to ensure that London is the best connected city in Europe, where affordable full fibre connections are available to all homes and businesses.*
>
> *Londoners need to be able to access digital connectivity they require to take up increasingly digitally delivered services.*
>
> *As suggested by the Journal of Productivity analysis. A Rightmove report also suggests that properties without access to higher broadband speeds see a 20 per cent reduction in their value. The number of connected devices – whether*

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523788/Electronic_Communications_Code_160516_CLEAN_NO_WATERMARK.pdf

[6] https://www.london.gov.uk/sites/default/files/digital_connectivity_report_final.pdf

[7] https://www.london.gov.uk/programmes-strategies/business-and-economy/mayors-priorities-londons-economy-and-business/connected-london

on the person, in the home, the street or workplace – is growing at a huge rate and Ofcom estimates it will increase 12-fold by 2026, with mobile data usage growing at over 30 per cent a year.
This includes collection, analysis and sharing of data on the performance of the built and natural environment, as well as water and energy consumption, air quality, waste, noise and congestion.

City, boroughs, providers and developers must all work together to ready the capital for full fibre and 5G, to cope with growing capacity needs and serve hard-to-reach areas

2.9 In a further acknowledgement of this shift, the Government introduced further relaxation to the permitted development regime in 2022[8]. Introducing these changes, it stated:

We are delighted to be bringing forward these important changes which will ensure that the planning system supports the delivery of mobile infrastructure, as part of our mission that by 2030, the UK will have nationwide gigabit-capable broadband and 4G coverage, with 5G coverage for the majority of the population.
We all need access to reliable, high quality digital connectivity. The demand for mobile data in the United Kingdom is increasing rapidly, and the COVID-19 pandemic has demonstrated how vital digital connectivity is to enable people to stay connected and businesses to thrive and grow. …
We also want citizens, businesses and public services to get the maximum benefits from 5G, which will bring faster, more responsive, more reliable connections than ever before. This consultation response sets out the changes we are going to make to ensure that the planning system continues to support the delivery of mobile network infrastructure. It will support our levelling up agenda by helping improve mobile coverage for communities and businesses, spreading the benefits of digital connectivity across the country.

2.10 The annual OFCOM Connected Nations report is a good starting point for analysing trends in the telecommunications sector and this highlights both the sheer size and importance of the sector to the UK but also the huge increases in data demand from the mobile networks. The most recent 2023 report (Appendix 2) states:

Mobile traffic continues to grow, with greater 5G traffic growth
Mobile traffic continues to experience significant year on year growth although the rate of this growth has been slower, with the dominant share (81%) continuing to be carried across 4G networks (Figure 3.10). From 2022

[8] https://www.gov.uk/government/consultations/changes-to-permitted-development-rights-for-electronic-communications-infrastructure-technical-consultation/outcome/changes-to-permitted-development-rights-for-electronic-communications-infrastructure-government-response-to-the-technical-consultation

to 2023, total monthly traffic has risen from 724 PB to 905 PB, an annual growth of around 25%.

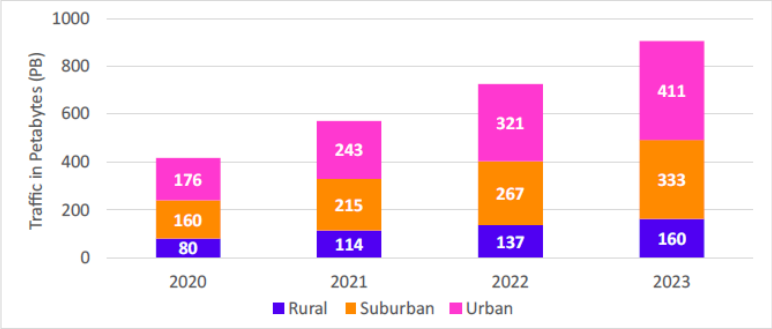
5G traffic has shown the highest growth from 63 PB in 2022 to 151 PB in 2023, a growth of around 140%. This data traffic was generated from a device pool which now includes at least 43% 5G capable handsets (up from around 20% in 2022)118 and represents around 17% of the total mobile traffic, up from around 9% in 2022.

Distribution of mobile traffic

Most of the mobile data traffic (c.82%) is generated in urban and suburban areas (Figure 3.11). Data consumption continues to be divided between urban and rural areas as well as across the various nations of the UK in a way which largely mirrors population distribution, rather than any significant difference in data consumption of a typical user in rural areas or any specific UK nation when compared.

In 2023, urban areas experienced higher mobile traffic growth than the UK average (c.25%), reaching a 28% year-on-year increase.

Figure 3:11: Total monthly mobile data traffic in rural, suburban and urban areas (2020-2023)



Source: Ofcom analysis of operator data (June 2020, May 2021, May 2022, May 2023).

2.11 As we can see, Government has acknowledged there is a problem and has set about trying to deal with it in a number of ways. The main initiatives (not including the devolved nation's own initiatives) are as follows:

- Future Telecoms Infrastructure Review[9] – this Review and subsequent report underpins the current Government approach with reforms suggested through the ECC and the planning system (Appendix 3).

- Electronic Communications Code[10] – this legal framework underpins the relationship between the MNOs and landowners. In order to speed up the

[9] https://www.gov.uk/government/publications/future-telecoms-infrastructure-review
[10] https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-comm-code

deployment of communications infrastructure the Government sought to encourage the treatment of communications infrastructure like other essential infrastructure.

- Reform and relaxation of planning permitted development rights. Hand in hand with the above is relaxations on permitted development rights to allow MNOs to deploy apparatus without the need for planning permission (implemented in April 2022)

- Shared Rural Network (SRN)[11] – the Government and MNOs are committed to spending £1bn on ensuring rural areas are not left behind and have as much access to advanced communications networks as those living in urban areas, with all the benefits this brings.

- Barrier Busting Task Force[12] – In the words of the Government itself "*The government's Barrier Busting Task Force (BBTF) was set up towards the end of 2017. Its key objective is to* ***identify and address the barriers preventing the fast, efficient and cost-effective deployment of gigabit-capable broadband and improved mobile coverage, including next generation 5G technology.*** *The Task Force is a key part of the government's strategy for delivering national gigabit broadband as soon as possible and ensuring that the majority of the UK population have access to 5G by 2027, as we know that the investment cases for these technologies are sensitive to build costs*". The success, progress and ongoing challenges of the Task Force were set out in their report (Appendix 4).

- Ongoing Government Communication – Alongside and part of the foregoing is a number of communications from the Government to local authorities with the purposes of making the provision of connectivity (such as the appeal proposals) more efficient. The communications below are appended (Appendices 6-8):
    - DCMS & MHCLG Letter to Local Authorities – Collaboration (2019)
    - DCMS Letter to Local Authorities CEOs – 5G (2019)
    - DCMS Minister's letter to Local Authorities on 5G (2019)

- UK Wireless Infrastructure Strategy 2023 (Appendix 19) – this crystalises previous policies and strategies into a simple Strategy document with the aim, amongst others, of ensuring stand-alone 5G coverage across the UK by 2030. The appeal proposals will form part of the delivery of the Strategy. The Strategy will certainly not envisage the loss of connectivity in such a busy area as this part of central London. The Ministerial Forward to the Strategy states:

[11] www.srn.org
[12] https://www.gov.uk/government/publications/barrier-busting-task-force-next-steps/barrier-busting-task-force-next-steps

"Connectivity has brought benefits for British households and British business, boosting growth, productivity, and opportunity for all. And change shows no sign of stopping. In fact, we find ourselves on the brink of a new revolution which promises to transform the world once more.

5G will be the cornerstone of our digital economy. With higher capacity and lower latency, standalone 5G will drive growth in the industries of today and tomorrow, including in emerging sectors like artificial intelligence where Britain leads the world. Just take smart ports, where 5G-enabled remote operation can help us to move containers more quickly, efficiently, and safely, boosting our international competitiveness. 5G can improve our public services, too, in everything from education to social care. In transport, for example, we can use 5G to power forward progress in everything from real time travel information to augmented reality navigation and self-driving buses and taxis.

This is an incredible opportunity; widespread adoption of 5G could see £159 billion in productivity benefits by 2035. And it is exactly the kind of opportunity which the Department for Science, Innovation and Technology was created to seize. It is my personal mission as the department's first Secretary of State to put Britain right at the forefront of scientific and technological progress. By bringing together world-class research and a dynamic business ecosystem, we can harness enterprise and innovation to grow the economy, driving forward the delivery of one of the Prime Minister's 5 priorities.

To do all this, we need world-class digital infrastructure. Last year, we met our ambition to deliver a basic 5G signal for the majority of the population by 2027 - 5 years early. And we have redoubled our efforts to build gigabit broadband in remote regions like Cornwall or Cumbria, together with our work to extend 4G coverage across the country through the £1billion Shared Rural Network.

Today, we are setting our sights even higher, with our ambition to deliver nation wide coverage of standalone 5G to all populated areas by 2030, ensuring that we can bring its full benefits to villages and rural communities well beyond cities and towns.

Government will lead by example, putting wireless connectivity right at the heart of new and existing infrastructure to ensure that we do build infrastructure fit for the digital age. 5G will improve the safety, punctuality, and connectivity of our trains. Today, we are announcing that our new hospitals will be 5G or equivalent wireless enabled, enabling us to take advantage of cutting-edge healthcare innovations.

By flying the flag for 5G, government will drive private investment. We are also working with local authorities and businesses to ensure that they are ready for 5G - investing £40 million to create 5G Innovation Regions across the UK and building better markets by boosting competition and creating the conditions for informed consumer choice.

We will strengthen the infrastructure that underpins these markets, too, by managing Spectrum for the benefit of all, driving forward the rapid deployment of

mobile networks, and ensuring that rigorous cyber-security requirements are respected.

But we are not just thinking about tomorrow; we are thinking about the day after, too. Our 6Gstrategy outlines how we will draw on our expertise and experience and provide an initial investment of up to £100 million to pioneer future telecoms and 6G research and shape the global debate on the standards which underpin it, protecting our position in an increasingly competitive global economy, securing the UK's international competitiveness and ensuring that our wireless future works for British people and businesses in every corner of the country."

2.12 It is against this backdrop that the application for planning permission was made to the LPA and serves also for this appeal. The completed development at this site will directly replace the apparatus and service due to be lost from 125 Shaftsbury Avenue, in conjunction with 126 Shaftesbury Ave. The failure to allow a continued reliable mobile digital connectivity service would negatively impact residents, tourists, businesses, visitors and those simply passing through this very busy area of central London. **It is the above backdrop of encouragement and public benefits which must sit against any less than substantial harm identified to the surrounding heritage assets.**

3. Appeal Site

3.1 The appeal site is located on the roof of 164 Shaftsbury Avenue. From the LPA's own delegated report, the site is described thus:

> *The application site is located on the corner of Shaftesbury Avenue and Mercer Street and comprises a 7-storey 1970's office building with basement car park. The surrounding area generally contains a mix of commercial uses and forms part of London's busy West End and Theatre district.*
> *The upper part of the host building consists of a main flat roof area with a plant room located towards the rear south-east corner. The main roof has a low parapet wall and along with the plant room, it accommodates mechanical plant and service equipment, a steel walkway, an aerial/antenna, handrails and a number of beehives.*
> *The host building is not identified as making either a positive or negative contribution to the character and appearance of the Seven Dials (Covent Garden) Conservation Area in which it is situated. While the building itself is not listed, it is positioned opposite a Grade II listed building, the former Saville Theatre (no. 135-149 Shaftesbury Avenue). There are also several listed buildings located to the east and south-east of the site in Earlham Street, Mercer Street and Monmouth Street.*

3.2 No 164 is also described in the submitted heritage assessment as is the surrounding conservation area. Nos 164 and 125, in relation to the surrounding area, can be seen in the aerial image below:

3.3 As can be seen, and will be apparent at the site visit, 125 Shaftsbury Avenue is significantly taller than 164. This explains why two sites are required to provide replacement coverage.

In effect 125 will block the signal from 164 and so the additional replacement site on the other side of 125 is required (west northwest). In addition, the Cornerstone radio planner has added some additional commentary in the radio plots supplied with the appeal which states:

> *VMO2 requires site 80187 to provide coverage and capacity to this busy area of Shaftsbury Ave and Seven Dials this is a coverage and capacity replacement for NTQ 9050. The area currently struggles at peak times and has severely impacted service to customers in the area and inbuilding service, this requires the further site 24180 which is mainly for capacity uplift (as was originally new demand for the area) but has been brought in as a partial replacement for 9050 due to the additional capacity required in the area further to the NTQ requirement.*

For reference:

- 80187 – appeal site
- NTQ 9050 – this site being lost at 125 Shaftesbury Avenue
- 24180 – the second replacement site to the west (No 126 Shaftesbury Avenue)

3.4 The appeal site and surroundings are fully set out in the HAS and so we will not repeat that assessment here.

3.5 In making any analysis, it should be recognised that permitted development rights[13] set out the acceptable parameters of development in non-Article 2(3) land. This sets limits on the numbers of antenna systems and height of apparatus on building roofs. On buildings of this height, the GPDO allows apparatus 6m above the highest part of the building with no permission or prior approval required from the Council. This apparatus is only 7m above the main roof level and only 4.11m above the highest part of the roof (the plant room).

3.6 The above is noted as it should help to frame the analysis about what are acceptable visual impacts of building-based apparatus, even when located within Article 2(3) land. This is for three main reasons.

- It demonstrates the Government's commitment to ensuring MNOs use of buildings instead of erecting new ground-based masts i.e. how would the same level of part replacement connectivity be obtained were apparatus not located on a building such as this?
- It acknowledges the technical limitations of the apparatus and what is needed to ensure replacement radio coverage.

[13] The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016 (as amended)

- It shows the level of visual impact that the Government considers to be inconsequential enough on the surrounding area that no permission is required from the LPA outside article 2(3) land.[14]

For Article 2(3) land such as the appeal site, it is important that a base line of 'harm' is established at the outset to help in the assessment of the 'less than substantial' harm in the case. Anything that would be permitted development in non-Article 2(3) such as the appeal proposals, should therefore be at the lower end (minor) of the less than substantial spectrum in Article 2(3) land. Indeed, this is common-ground with the LPA.

3.7 For this specific proposal of note is that the highest part of the apparatus is only 4.11m above the highest part of the building, considerably less than the 6m allowed under the GPDO and hence demonstrating how the design is limiting the impacts on the Conservation Area whilst achieving technical objectives to ensure no loss of service to customers in the area.

3.8 Whilst the cumulative impact of having communications apparatus on both Nos 164 and 125 is implicit in the reason for seeking a Sec 106 agreement, it is not explicit and at no point has the LPA quantified the impact of both schemes together. Whilst it is the case that the removal of the apparatus on 125 is the very reason for the application and now appeal on No 164, the submitted heritage assessment considers the cumulative impact of having both *in situ*. The conclusions are that "*there would be less than substantial harm at the lower end of the spectrum*" and that "*When considered and seen in conjunction with the equipment of No. 125, this impact is considered to be the same."* and therefore **the requirement for a legal agreement should not arise in the first place**. This is explored below.

[14] There are conditions on the use of permitted development which ensure that MNOs minimise as far as practicable the visual impacts of building-based apparatus.

4. Main Determining Issues

4.1 Bearing in mind the type of development proposed, its location and the reason for refusal set out by the Council, it is considered that the main determining issue for this appeal is:

- Was a legal agreement, through a Sec 106, required to make the proposals acceptable?

In addition, the following need to be considered in terms of the overall acceptability of the proposals:

- Impacts on heritage assets – decision-makers have an obligation to have special regard to heritage assets through Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- Any constraints the appellant has regarding technical and operational characteristics in terms of siting and design – especially bearing in mind the replacement nature of the site.
- Any public benefits of the provision of mobile connectivity in central London, which when taking into account the restraints, needs to be balanced against any harm identified (para 208 of the NPPF).

In making any assessment about the impacts, legislation sets out that the planning analysis should be against the development plan – this is discussed in the next section. The potential availability of other sites will be material i.e. are there any other locations which would both provide the required level of replacement coverage and capacity whilst having less impact than the current proposal? Also material will be the backdrop of the emphasis and importance placed on connectivity, especially increased demand for data, by the Government exemplified through not just the NPPF, but other documents such as the appended DCMS Code of Practice for Wireless Network Development in England (Code of Practice) and UK Wireless Strategy (2023) as well as legislative initiatives, such as the Digital Economy Act 2017 (and the more recent Product Security and Telecommunications Infrastructure Act 2022) and recent relaxation of permitted development rights (see paras 2.5 – 2.11 above).

4.2 Bearing in mind the above, the common ground with the LPA on impacts and the reason for refusal, we will focus on what we consider to be the main determining issue:

<u>Was a Sec 106 agreement required to make the proposals acceptable?</u>

4.3 The proposals are for rooftop antennas on a relatively tall, unlisted, building within the Seven Dials (Covent Garden) Conservation Area. The appellant agrees with the LPA in that the building (No 164 Shaftsbury Ave) makes a neutral contribution to the Conservation Area. Full drawings and visualisations were provided which show the likely impacts from the proposed replacement apparatus.

4.4 The appellant also agrees with the LPA that the proposals would have a less than substantial impact (at the lower end of this scale) on the heritage assets – these being the Conservation Area and the nearby listed buildings. The impact from the proposed apparatus is fully explored in the submitted Heritage Assessment.

4.5 With that being the case, if planning is to be approved, then any such impacts would need to be weighed against the public benefits of the proposals – this is explicit in para 208 of the NPPF but is also the basis of any planning assessment. Of note in making any assessment is that the rooftop of No 164 previously hosted communications apparatus very similar to what is being proposed (antennas and rails/platforms) with that planning application being approved in 1999 (LPA Ref: PS9904574).

4.6 Bearing in mind that the existing apparatus has been on the roof of No 125 since 2002, then there has been apparatus on both roofs contemporaneously before, with no Sec 106 agreement in place between any party nor any issues raised around cumulative impacts.

4.7 The submitted HAS sets out fully the assessment of impacts as to why the impacts would be at the lower end of 'less than substantial'. The officer's delegated report also makes a detailed assessment of impacts across paras 4.11 to 4.33 – this assessment comes to the same conclusions (in para 5.1). This assessment makes no mention of the cumulative impacts of having both lots of apparatus *in situ* at the same time – no assessment of such impacts appear to have been undertaken by the LPA. The rationale for the LPA's requirement for a legal agreement (paras 7.8 – 7.10) appears to be proliferation, or to paraphrase the NPPF, keeping the number of masts and sites to a minimum.

4.8 It is the appellant's case that the public benefits of the proposal outweigh any impacts on heritage assets and that this would be the case even without any agreement seeking the removal of the apparatus on No 125. Although this position is heavily caveated on the basis that the apparatus **will** be removed once replacement connectivity is secured – indeed the landowner of No 125 may force its removal even before this.

4.9 The reasons no legal agreement is required are set out below:

- Unnecessary:
    - The appeal proposals are for a replacement site. The very substantial investment by the appellant is only being made because the existing site is being removed. They would not be undertaking this endeavour if the existing apparatus were to remain indefinitely. The LPA's concerns are therefore unnecessary.
    - Once the replacement apparatus proposed at the appeal site and 126 Shaftesbury Avenue were to become operational, the apparatus on No 125 would be switched-off. Once this was done it would be 'redundant' apparatus and the appellant would be legally bound to remove the

apparatus under Part 16 of the GPDO under which it was installed – this requires, as a condition, redundant apparatus to be removed. Again, the LPA's concerns were unnecessary and unjustified.

- Reading of the NPPF – the LPA (in their rationale for seeking to impose the legal agreement) cite the NPPF in paragraph 7.10. However, whilst the NPPF does seek to keep the number of masts and sites to a minimum, importantly this should be "*consistent with the needs of consumers, the efficient operation of the network*". As witnessed through this appeal, obtaining and maintaining connectivity in such a busy area as central London is very difficult. The sheer number of users, the pattern and density of development, the building materials and the number of heritage assets make providing 'masts' (inc. rooftop apparatus) fraught with problems including technical and operational, seeking agreements with landowner and navigating the planning system. To add to this list is if that landowners sometimes require the removal of apparatus such as is the case here on No 125. This can result in connectivity being lost to customers and users of mobile devices in the area. The wording of the NPPF allows for such situations and affords flexibility in the number of masts insofar as it is consistent with the needs of the users and efficient operation of the networks. As set out, even if the landowner wasn't imposing the removal of the apparatus on No 125, the appellant would be removing it anyway under the terms of their legal obligations however does need the flexibility allowed by the NPPF to secure replacement coverage at both replacement sites before turning off and removing any redundant apparatus. This demonstrates that the legal agreement should not have been necessary to make the appeal proposals acceptable.

- Replacement of No 125 by two sites – in this case, due to the height of No 125 and the coverage and capacity provided from its roof, it will take two new rooftop base stations to replicate the connectivity and ensure the most up to date reliable connectivity is provided. This was set out by the agent to the LPA during the course of the application, albeit it was only understood after the LPA first mooted the Sec 106. One of the bae stations is the appeal proposals and the second is hoped to be No 126 Shaftesbury Avenue. This is the Soho Old Fire Station located to the west at 126 Shaftsbury Avenue. That option is currently being secured through the normal planning and acquisition process, with no planning or prior approval application required. Therefore, whilst the landowner at No 125 may force the appellant to remove the apparatus on their preferred timescales, the appellant would seek to remain on that rooftop until such a time as the sites at No 164 and No 126 became operational. As these timescales are unknown and out of the control of the appellant, the appellant was not enthusiastic about entering into a legal agreement with the LPA. However, it is the case that even on these timescales, the apparatus on No 125 would not be operational either indefinitely or operate longer than is necessary. These were the substantive

concerns set out in para 7.8 of the delegated report. Again, this demonstrates that the legal agreement should not have been necessary to make the appeal proposals acceptable.

- Cumulative impacts – the cumulative impacts of having apparatus on the roofs of No 125 and No 164 is explored in the submitted HAS. Whilst the LPA, in para 7.9 of the delegated report consider that "*the existing base station and proposed development in combination would result in an unnecessary and unsightly over-proliferation of electronic communications equipment in the locality*", they do not quantify those impacts however do state that the impacts would be "*harmful*". The HAS does quantify the impacts, stating:

  > *6.15. The appeal proposals are only considered to result in "less than substantial harm at the lower end of the spectrum" to the Seven Dials Conservation Area through the provision of roof-level equipment which would be visible from limited locations and add to the clutter on the roofscape of the Conservation Area. When considered and seen in conjunction with the equipment of No. 125, this impact is considered to be the same.*
  > *6.16. Whilst the appeal proposals and existing equipment of No. 125 may be visible in the context of the other identified heritage assets, it should be noted that visibility does not equate to harm, and in the case of these assets, the visibility would not impact on the characteristics or elements which contribute to the significance of the assets given the established variety of built form within their settings.*

  In the same way as the public benefits of the appeal proposals on their own outweigh any impacts, so do the public benefits outweigh the cumulative impacts of having apparatus on both No 125 and No 164. This would be the case even if the apparatus were to remain *in situ* in the long term due to the low level of harm identified (however, this would not be the case for the reasons set out above). The appellant's apparatus is being removed from the roof of No 125, but even if it wasn't in medium term, the impacts of the existing and proposed is limited, at the lower end of less than substantial, and are convincingly outweighed by the public benefit of ensuring the continued provision of reliable mobile digital connectivity. Again, this demonstrates that the Sec 106 should not have been necessary to make the appeal proposals acceptable.

- Permitted development rights – Part 16 of the GPDO allows the deployment of communications apparatus as permitted development without the need for the planning or prior approval of the LPA. No 125 is not located within any Conservation Area and is not listed. In these circumstances, even if the appellant were to remove their apparatus through any legal agreement, another MNO

could simply notify the LPA of their intention to deploy rooftop apparatus at No 125 and any perceived gains for the LPA would be immediately lost. The legal agreement would thus have served no purpose – it cannot control the fate of No 125. It should also be noted that the current apparatus on No 125 is minimal in nature and permitted development rights would allow for more apparatus and taller apparatus and whilst there is a condition in the GPDO which requires apparatus to minimise impacts as much as practicable where it can be viewed from some heritage assets, if would not restrict deployment of further apparatus on the roof. Again, this demonstrates that the Sec 106 would, or at least could, have no actual effect and so should not have been sought. **Again, and to emphasise, the appellant would remain on No 125 if they could, however they have been issued with an NTQ and the owner wishes them to remove their apparatus.**

- Precedent (inc. appeals) – the appellant obviously has had to deal with the loss of existing sites through the Notice to Quit (NTQ) process for years. In all that time, it has never been asked to enter into a legal agreement to secure removal of the NTQ site, usually for the very simple and straightforward reason that it is being removed in any event – its removal being the very reason for any application a legal agreement would be attached to. Set out above, this being the case, there should be no reason to seek such an agreement. To support this position, the agent, during the course of the application supplied the LPA with some appeal decision to demonstrate other 'NTQ' appeal sites which were proposed to replace existing sites and where legal agreements were not considered to be necessary. As these appeals were submitted during the course of the application, we have included these within the appeal papers (under section 10).

- Third Party actions – whilst it may have been possible for the appellant to enter into a legal agreement, it would only have been between them and the LPA. There are other parties involved.

    - Landowner of No 164 – this party would not be involved in the Sec 106. As can be seen from the application correspondence and delegated report, there was an objection to the proposals from the landowner – whilst this is noted and planning runs with the land, it demonstrates the work involved to finalise commercial agreements with landowners and where circumstances on the ground can change due to the requirements of others outside of any legal agreement.
    - Landowner of No 125 – this party would not be involved in the Sec 106. It is the actions of this landowner which has driven the need for the appeal proposals in the first instance.
    - Westminster Council (as LPA) – a potential second site required to replace No 125 is at 126 Shaftesbury Ave, to the west within a different LPA area

(the boundary is along Charing Cross Road and West Street just to the west of the Nos 164 and 125). Any planning application, or application for prior approval, would need to go through that process and receive the appropriate approvals. This could also extend to the Planning Inspectorate should an application be refused, and an appeal required (like this one). At the current time, drawings for a proposal at no. 126 are being prepared to comply with permitted development rights, providing they can meet technical requirements.

- Landowner of potential second site #1 – at Wingate House 93-107 Shaftsbury Avenue, a prior approval application was submitted and granted deemed consent. The LPA then approved works to the building for the owner including rooftop plant and roof terraces, and despite the deemed consent, this permit removed telecommunications permitted development rights such that there was no subsequent design to account for the owner's works which could also gain planning approval, due to the heights required to ensure ICNIRP safety now breaching protected height thresholds. .
- Landowner of potential second site #2 – the appellant is currently in discussion with the owner of the Old Soho Fire Station at 126 Shaftsbury Avenue. Assuming that a commercial agreement can be reached, and planning obtained, then this site will form the second part of the replacement for the connectivity being lost from the apparatus on No 125. However, as timescales and outcome are uncertain, the appellant couldn't commit to a Sec 106 which sought the removal of the existing apparatus with any known outcome on the second replacement site at No 126 where third parties have direct impacts on the final outcome.

<u>Impacts on heritage assets – Seven Dials (Covent Garden) Conservation Area, Denmark Street Conservation are and nearby listed buildings</u>

4.10 A HAS accompanies the appeal. We will not replicate that assessment here and it should be read in conjunction with this statement. The appeal site lies within the Seven Dials (Covent Garden) Conservation Area. It is also close to Denmark Street Conservation Area and is close to and within the settings of a number of listed buildings. The existing apparatus on No 125 lies outwith both Conservation Areas. The HAS also considers these stating that:

> *6.15. The appeal proposals are only considered to result in "less than substantial harm at the lower end of the spectrum" to the Seven Dials Conservation Area through the provision of roof-level equipment which would be visible from limited locations and add to the clutter on the roofscape of the Conservation Area. When considered and seen in conjunction with the equipment of No. 125, this impact is considered to be the same.*

6.16. Whilst the appeal proposals and existing equipment of No. 125 may be visible in the context of the other identified heritage assets, it should be noted that visibility does not equate to harm, and in the case of these assets, the visibility would not impact on the characteristics or elements which contribute to the significance of the assets given the established variety of built form within their settings.

4.11 As set out in the HAS, the quantifying of impacts includes both the appeal proposals on their own (i.e. in the event the apparatus doesn't remain on both buildings other than in the very short term) and also the impacts of both the appeal site and the existing apparatus on No. 125 (in the event the apparatus at No. 125 can stay until both replacement sites are live). The Heritage Assessment makes no conclusions over how long both sets of apparatus would remain *in situ* however, as we set out, the apparatus on No. 125 has to be removed and this has been required by the owners of that building, under the legal agreement known as NTQ. Again, in this regard, the Sec 106 seeks to replicate something which is already required under other mechanisms. Therefore, any impacts are in the short or at worst medium term if the appeal were allowed without any legal agreement in place.

4.12 In both cases, the harmful impacts on the heritage assets were considered to be 'less than substantial' (and at the lower end of that scale). Taking into account the requirement of para 208 of the NPPF that low level of identified harm would need to be balanced against the public benefits of the proposals, in both cases it is considered that the very significant public benefits of access to the connectivity provided (set out in extensively in this appeal statement and which should be afforded very significant weight) would outweigh these harmful impacts.

4.13 Some of the public benefits were set out in the application documents however, bearing in mind the balancing exercise required by para 208 of the NPPF, we have added to that in this statement and its accompanying and appended documents.

4.14 In making the above assessment we have taken into account the representations (objections) made during the course of the application by local stakeholders. Other design solutions had been considered, most noticeably a GRP screening solution, however its bulk was considered to have greater impacts and look more incongruous, than the apparatus taken on its own.

<u>Technical and Operational Limitations</u>

4.15 Mobile connectivity is very different than fixed-line communications in that the physical link between infrastructure and the 'service' it provides is lost. This has proved difficult for the planning system over time as the service benefits are wide and dispersed whereas any physical impacts are very localised. For sites that are being lost such as we have here,

it is also more difficult to visualise lost mobile connectivity than a cut fibre – albeit we will all be familiar with the frustrations of dropped calls or no connectivity when undertaking an important task online e.g. making a payment.

4.16 The Department of Digital, Culture, Media and Sport (DCMS) Code of Practice 2022 (Appendix 5) goes a long way in setting out the technical and operational constraints of mobile communications infrastructure and this is set out below (our emphasis).

> *Technical and operational considerations*
> *64. All wireless network installations are principally guided by the technical need for the site and the technical constraints placed upon transmitting a signal. The siting and design of such installations must therefore be balanced between visual impact and these needs and constraints. As set out in the siting and design section above, the three primary technical and operational considerations for installation sites are: ensuring that wireless infrastructure provides an appropriate level of coverage over the intended geographical area; ensuring that sites have sufficient capacity to meet user demand; and, requiring a connection to the wider network 'backhaul'.*
>
> *65.* ***Planning authorities should take account of these constraints,*** *and those set out below, on network deployment and siting and design, when considering proposals.*
>
> *5G network deployment considerations*
> *66. With the introduction of 5G, more equipment will be required to provide coverage and capacity. 5G, as well as 4G, are data-driven technologies, and high volumes of data will be transmitted between base stations and wireless devices. 5G will require a denser network of base stations than previous generations, including more fixed line fibre optic cable for reliable and high capacity backhaul.* ***The siting of 5G installations will be more constrained and guided by these special technical and operational considerations.***
>
> *67. Due to the scale and technological constraints of 5G equipment, in some cases previous camouflage design solutions, such as tree mast designs and concealing antennas in flagpoles,* ***may not be practicable or suitable****. In these cases, simple designs with particular attention to colouration and finishes may help reduce visual impacts on a site-specific basis.*

4.17 In addition, 5G antennas do have a different ICNIRP profile than the previous generations of networks and this means taller apparatus if the antennas are to be located centrally. The Code of Practice states:

*41. **Operators should look to utilise existing buildings and structures before deploying ground-based equipment. The use of buildings and rooftops by operators as sites for the installation of wireless network equipment has greatly helped to reduce the environmental impact of these networks**. The siting and design of building-based apparatus will be dictated by the rooftop on which it is located. As such, building-constraints of a particular rooftop (see the section below on 'Technical and Operational Considerations' for the constraints that affect this). However, operators should seek to reduce visual impacts where possible.*

Planning and visual considerations

*42. Mast positioning: building-based masts have to be sited to provide sufficient coverage for the surrounding area and **positioned to avoid shadowing and antenna 'clipping'. 'Clipping' is dealt with by locating antennas nearer the building edge or on taller structures.** The height of the surrounding buildings also affects the antenna height. The mast siting should minimise the impact above the roofline, commensurate with technical constraints, and/or avoid creating unnecessary clutter on the rooftop. This includes striving to preserve rooftop amenity and retain existing other uses. When using pole mounts, operators should consider, where technically possible, the feasibility of setting apparatus away from the edge of buildings to reduce prominence and minimise the need for potentially intrusive edge protection. Further considerations will need to be taken when installing equipment on structures and/or buildings located in areas where there are heritage assets or within a protected landscape (including within the setting of these areas). Extra care will need to be taken when installing equipment on listed buildings, and within scheduled monuments (see section on 'Listed Buildings and Scheduled Monuments').*

43. Mast design: although there is no standardised rooftop design (it will depend upon structural integrity, accessibility, surrounding buildings, aesthetics and building-owner requirements), masts and equipment on buildings and rooftops should, as far as practicable, be designed so as to fit and/or respect the architectural style of the building/rooftop. This could include being painted or clad to correspond with the background and/or surroundings and should minimise the impact on important views and skyline.

4.18 In coming to any conclusions on the impacts of the proposed apparatus, the availability of a more suitable alternative location with less impacts will be a material consideration. Details of discounted were provided to the LPA and were assessed by the LPA – this is discussed in paras 7.1 – 7.4. It is common ground with the LPA that the appeal site is the most suitable location for replacement coverage in this area.

4.19 Taking all the points above together, it is acknowledged that there will be some harmful impacts on the heritage asset. However, for all the reasons set out above these will be **less than substantial at the lower end of this scale** – this would also be the case even if the existing apparatus were to remain on site at No 125 in the short to medium term. The well documented benefits of reliable mobile connectivity combined with the support it is given through the development plan and the NPPF combine to mean that **the substantial public benefits of the connectivity provided by the proposed infrastructure significantly outweighs any such harm.**

5. Development Plan and other relevant planning policy

5.1 Whilst it is considered that the above analysis distils and explores the main consideration(s) for the appeal, the Planning Acts require that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. An assessment against the development plan accompanied the planning application which is included in the appeal documents. These are discussed further below and look at the above considerations through the prism of the specific relevant policies.

5.2 The development plan for the appeal site is:

- London Plan 2021
- Camden Local Plan 2017

5.3 In the delegated report the LPA list a number of planning policies as being relevant in assessing the application. The most pertinent policies are cited in the decision notice, these being:

<u>Camden Local Plan 2017</u>

- D1 - Design
- D2 – Heritage

5.4 Whilst it is the case that the development plan should be read as a whole, general development policies are rarely able to reflect the *very* specific locational and operational requirements of telecommunications development. These matters can usually be adequately addressed with a well-drafted telecommunications policy which understands the trade-off between potential impacts due to height and locational requirement and the protection of visual amenity. The DCMS Code of Practice discussed above goes into some of the details on these matters. Antennas need to be able to 'see' around them. If they cannot, then they cannot work efficiently. Mobile telecommunications infrastructure has only been around for a short period time, when compared to our landscapes and cities and is therefore predominately 'retro-fitted' into these city and townscapes. Heritage and design policies drafted for other (more general and footloose) forms of development do not take this into account.

5.5 Of specific note is that the London Plan seeks to address this with a policy directed at accommodating the capacity for telecommunications apparatus in new roof space (Policy SI 6 (4) in the City. Whilst not helping in this case, it does point to an understanding of the importance of the roof space of tall buildings for radio propagation purposes. Indeed, Policy SI 6 (3) also looks for development proposals to look for appropriate measures to avoid losing connectivity and if not possible provide mitigation. In this case the appellant has in effect been left on their own to provide replacement coverage and mitigate against

the proposed loss of coverage – planning policy requires support from owners of buildings, development and the LPA.

5.6 Despite being adopted in 2017, some 6 years after the first publication of the NPPF, the Local Plan does not contain a communications policy. The NPPF states:

> *Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time;*

5.7 Whilst it is undeniable that the Local Plan has been adopted, it is also undeniable that it is in conflict with the NPPF as it doesn't contain any policies which meet the NPPF requirements above. On that basis, the weight afforded to the material considerations which do consider the expansion of communications networks and do provide support for access to services and upgraded networks will be increased. The weight afforded to the London Plan digital infrastructure policy and reasoning should also increase. This shift in policy emphasis increases the likelihood of the approval of an application or allowance of appeal.

Local Plan Policy D2 Heritage

5.8 The overall heritage policy (Policy D2) is very wide and reflects the LPA's legislative responsibilities under the Planning (Listed Buildings and Conservation Areas) Act 1990. We will not replicate the policy here as it is long and will be provided by the LPA in any event. In short, it seeks to preserve and where appropriate enhance Camden's heritage assets.

5.9 Bearing in mind the findings in the Heritage Assessment of less the substantial harm (at the lower end of the scale), and bearing in mind that this is common ground with the LPA on this matter, the appellant considers that there is policy compliance with D2 as the character and appearance of the Conservation Area are preserved.

Local Plan Policy D1 - Design

5.10 Again, the policy is lengthy, and we will not replicate it here nor make a criterion-by-criterion assessment. The policy seeks good design across development types. However, as set out elsewhere, communications development brings with it very unique circumstances, which is one of the reasons the NPPF seeks LPAs to have specific policies for it. The design options for communications infrastructure are limited due to, amongst other things:

- Its function; it is infrastructure.
- Height requirements – antennas need to be able to see where the connectivity is required.

- Locational requirements – antennas need to be located where the radio connectivity is required.
- ICNIRP – public exposure limits mean that antennas need to leave space around them to meet these limits. This can mean higher apparatus heights on buildings to ensure safe use and access to users of both the host building and in some cases those adjacent and nearby.
- For replacement sites, such as in this appeal, the apparatus needs to be located as close to the apparatus being lost as possible, to ensure the new coverage fits into the patchwork nature of cellular radio coverage. This is considered in the DCMS Code of Practice which in paragraph 71 states:

  An agreement, or code agreement, is often needed by Code Operators and landowners in order to access land and install wireless infrastructure. However, it is not always possible for an operator and a landowner to reach agreement and this limits the number of sites available to operators for locating their equipment. In addition, the Notice to Quit (NTQ) provisions within code agreements mean that sites have to be relocated. Where NTQs are proposed, the existing coverage and capacity will be removed and as such a replacement site is needed within close proximity to where the existing site was located.

Therefore, it is difficult for a policy, drafted to deal with general development, to take into account these limitations. The weight to be afforded assessment against this policy should be commensurate with this limitation.

5.11 Bearing in mind the delegated report, the reason for refusal and the rationale for seeking a Sec 106 agreement we consider that there is local Plan compliance.

<u>London Plan (2021)</u>

5.10 The London Plan is very supportive of communications and digital connectivity. The Foreword by the Mayor states:

> "*And it's about making London a city with clean air for our children to breathe, and a pioneering smart city with world-class digital connectivity supporting more digital devices to improve the lives of Londoners and enable businesses to thrive."*

5.11 It goes on in the section entitled 'Good Growth' to state:

> "*Planning for a 'smarter' city, with world-class digital connectivity will enable secure data to be better used to improve the lives of Londoners."* (Para 1.0.10)

5.12 And again under 'Growing a Good Economy' it states:

> *"The right infrastructure is also required to help businesses succeed across London. The digital economy, underpinned by world-class digital connectivity, data and digital services is of ever-increasing importance, improving processes, opening up new markets and allowing more flexible working."* (Para 1.5.4)

5.13 The London Plan has a specific digital connectivity policy which is replicated below. The supporting text can be found in paragraphs 9.6.1 – 9.6.9. The Council should supply this part of the Plan within their appeal submissions although, as not cited in the reason for refusal, there may be no requirement – which, if the case, would be a peculiar situation, with the most pertinent policy not even being included in documents. In any event, we have replicated below, Policy SI 6 itself states:

> *Policy SI 6 Digital connectivity infrastructure*
>
> *A To ensure London's global competitiveness now and in the future, development proposals should:*
>
> *1) ensure that sufficient ducting space for full fibre connectivity infrastructure is provided to all end users within new developments, unless an affordable alternative 1GB/s-capable connection is made available to all end users*
>
> *2) meet expected demand for mobile connectivity generated by the development*
>
> *3) take appropriate measures to avoid reducing mobile connectivity in surrounding areas; where that is not possible, any potential reduction would require mitigation*
>
> *4) support the effective use of rooftops and the public realm (such as street furniture and bins) to accommodate well-designed and suitably located mobile digital infrastructure.*
>
> *B Development Plans should support the delivery of full-fibre or equivalent digital infrastructure, with particular focus on areas with gaps in connectivity and barriers to digital access*

5.14 Bearing in mind the requirement for replacement connectivity in this area and the lack of any less harmful alternatives, the siting of the proposal is considered to minimise its impacts and be acceptable. Criterion 4 specifically encourages the use of rooftops. The LPA should be using Criterion 3 to accommodate replacement coverage and working with stakeholders on mitigation – This refusal and not using the most pertinent development plan polices suggest the LPA is not taking this aspect seriously enough. The HAS considers the impacts and quantifies them as less than substantial at the lower end of this scale. The LPA have no issues with the proposals taken in isolation and assuming the existing apparatus on No 125 is removed – as it will be removed, there is common-ground on this matter. The LPA previously approved a very similar scheme on the roof of No 164 in 1999. Further, as the apparatus on the roof of 125 was installed in 2002, it must have been the case that both lots of apparatus (Nos 164 and 125) were *in situ* at the same time and so this is a planning/visual/heritage situation has that we believe to have happened before with no issues raised.

5.15 We would apply the same caveat to general development policies from the London Plan as we do the Local Plan. Whilst such policies are important and should be used in assessing applications within London, the weight to be afforded must change with development type and the extent to which each policy is relevant.

5.16 In terms of the above policy analysis, of note are the legislative requirements[15] the Council need to follow in refusing an application. Section 35(1)(b) of the Development Management Procedure Order 2015 as amended, in relation to local planning authorities, states that:

> *"where planning permission is refused, the notice must state clearly and precisely their full reasons for refusal, specifying all policies and proposals in the development plan which are relevant to the decision"*

Thus, it is clear the LPA considers the proposal at No. 164 complies with the requirements of the NPPF and the London Plan. Also relevant is the informative which accompanied the decision which is clear that the proposals would be acceptable if a Sec 106 were in place to remove the apparatus at No 125 i.e. it would be the LPA's opinion that there would be policy compliance with a Sec 106 in place.

National Planning Policy Framework (NPPF)

5.17 The central planning document in England is the NPPF. Providing its own commentary on its place and importance in England's planning system, its first two paragraphs state:

> *1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied1. It provides a framework within which locally-prepared plans for housing and other development can be produced.*
>
> *2. 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.*

5.18 Communications infrastructure has a specific section within the NPPF. It brings with it very specific locational and technical factors – this is one of the reasons the NPPF encourages local planning authorities to have specific policies to deal with it. It states (para 119):

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

5.18 The NPPF is also clear on how important access to communications networks is, stating:

[15] https://www.legislation.gov.uk/uksi/2015/595/article/35/made

> *Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being.*

It is no mistake that section 10 of the NPPF (our emphasis) is called '**Supporting** high quality communications'.

5.19 To emphasise matters regarding site selection, the NPPF (our emphasis) notes that:

> "*The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion.* ***Use of*** *existing masts,* ***buildings*** *and other structures for new electronic communications capability (including wireless)* ***should be encouraged****."*

5.20 It is important to note the policy encouragement given to using existing buildings such as No 164. This will be especially so in a heritage area such as this, where the building is neither listed nor especially 'sensitive'.

5.21 Also of note is that the LPA previously approved very similar apparatus on the roof of 164 (in 1999) and that this apparatus must have been in place at the same time as the existing communications apparatus on the roof of No. 125 (installed in 2002). Therefore, to the best of our knowledge, the situation the LPA are seeking to avoid through the imposition of the Sec 106 agreement has actually already been the case without a Sec 106 in place.

5.22 Tying in with Criterion A (3) of SI 6 of the London Plan (discussed above) is para 120 (b) of the NPPF. It also seeks to ensure that connectivity in maintained when third party action threaten it or reduce/negate it. In this case, the actions of the landowner at No 125, in seeking the removal of the appellant's existing apparatus is interfering with existing electronic communications services. The appellant I seeking to address this themselves and are seeking the support from the LPA in doing this.

5.23 Bearing in mind the support for communications in the NPPF, it is considered that there is policy compliance with the NPPF. The harm to heritage assets identified is minor, less than substantial and outweighed by the significant public benefits.

6. Public Benefits

6.1 One of the main material considerations for this appeal is the public benefits of access to connectivity. These benefits, and support for it, must be balanced against any visual harm identified and any friction with planning policy. On the 23 September 2020, the then Digital Infrastructure Minister spoke about the ongoing work by the Government and telecoms industry to boost the UK's world class digital connectivity in his keynote speech at Connected Britain 2020:

> *"…'I'd like to take this opportunity to thank everyone in the industry for their tireless efforts at keeping us all connected through an unprecedented period of disruption.*
>
> *…COVID has altered the way we live, work and most importantly, stay connected with our family and friends. The digital infrastructure that keeps us all connected was essential to our daily way of life under lockdown – and is now more important than ever as we head into recovery. Many of these changes – such as increased working from home – will stay with us for the foreseeable future.*
>
> *People have referred to the internet as "the fourth utility" – and it's true. For countless people across the country, having fast and reliable broadband and a good mobile connection is as essential and vital to our daily lives as gas, water and electricity.*
>
> *…That's why I'm committed to working with you to ensure the entire nation has access to world-class, next generation gigabit connectivity that is secure and resilient enough to deal with all sorts of future challenges.*
>
> *This Government is ambitious for the UK's digital infrastructure.*
>
> *And because we know that more citizens are increasingly living their lives online, we will be one of the earliest adopters of 5G coverage, with the majority of the population able to access 5G by 2027.*
>
> *...We know how important local authorities are to the delivery of digital infrastructure, which is why I have written to them, together with the Local Government Minister, to outline how they can work more effectively with the industry…*
>
> *….Turning to 5G, while the commercial rollout of 5G continues at pace, we're pushing ahead with plans to make sure all sorts of industries benefit from this game-changing technology.*
>
> *….since the start of the 5G Testbeds and trials programme, we've now funded 24 5G testbeds across the UK. Between them, those testbeds have trialled almost 70 different 5G technologies, products and applications. And more importantly than ever, we are investing in a range of sectors to foster, build and grow 5G cross wider industry...*

…The world is in the middle of a digital revolution. COVID has accelerated this process, digitising almost every part of our everyday lives and making the infrastructure that connects us more important than ever. That's why it is at the top of the government's agenda…'

This keynote speech highlights the importance that Government places on advanced, reliable, high quality 5G technology. To prevent this technology from being brought into the area would be contrary to the Government's key aims, and the Mayor of London's aspirations to be truly global and competitive. This emphasis by Government is also witnessed by the three different Government letters (Appendices 6-8) sent to local authorities by Government to emphasise the importance of connectivity appended to the prior approval application.

6.2 However, the ability of the UK to full benefit from 5G however is not a 'given' it requires investment and requires new infrastructure. A recent report for the Digital Connectivity Forum[16] states:

The Government wants to position the UK as a global leader in digital connectivity to allow businesses and consumers across the UK to take advantage of the social and economic benefits of advanced wireless networks. 5G is also at the heart of the Government's agenda for levelling up and achieving the UK's net-zero targets. Its widespread deployment will, therefore, be necessary to meet the Government's goals.

6.3 Whilst the appellant provides the infrastructure for any of the MNOs, in this case it would be replacement infrastructure for VMO2. These MNOs operate public mobile communications systems. The roof-based apparatus under appeal will provide coverage and capacity for VMO2 (and its MVNOs[17]). The relationship between these three entities is set out in the above. Whilst a private business, MNOs are required and mandated to provide their services in the public interest. In order to provide these national networks, the infrastructure which underpins them must be delivered locally and the importance of access to communications networks is only increasing. This was true before March 2020 but has been brought into sharp relief since then due to the COVID pandemic. As set out previously, the NPPF (para 118) states:

Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G)…

6.5 Without the essential replacement infrastructure such as that under appeal here, those in the area reliant on the VMO2 network would lose access to their 2G, 4G and 5G networks i.e. their mobile devices would be cut off when the apparatus on No. 125 was removed. Ironically, it is the LPA's fear that it won't be removed that led to the refusal and has led to this appeal.

6.6 The planning application contained information around the public benefits of access to advanced communications networks to support government policy and aspirations. To emphasise this aspect (especially as it relates to the balance against identified heritage

[16] https://www.connectivityuk.org/

[17] There are currently four significant MVNOs (Mobile Virtual Network Operators) using O2's network, namely Giffgaff, Sky Mobile, Tesco Mobile and Lyca Mobile. These are companies which provide communication service to consumers but do not operate their own communication networks

impacts) and quantify, we have appended a number of documents which demonstrate both the benefit and the emphasis on connectivity from Government, other stakeholders and policy makers. These are appendices:

9. Centre for Policy Studies (CPS) Upwardly Mobile 2020
10. Cornerstone Digital Public Benefits 2020
11. LGA Guide to Connectivity 2019
12. Vodafone – Levelling Up (benefits of 5G) 2020
13. PWC – The global economic impact of 5G 2021

The world has changed over the last decade and access to connectivity is now at the forefront of our lives and policy is catching up with this.

6.7 What is clear from these documents is that access to connectivity is not just currently essential, as described in the NPPF, but that its importance is increasing and that this is recognised by academics, politicians and industry. Some might argue, of course, that even more importantly, this is recognised, through increased data consumption, by the public themselves, especially in urban areas such as this. Data usage is set out in the appended OFCOM Connected nations 2023 Report. The extract in para 2.11 above highlights increases in data consumption year-on-year. Meeting this increased demand from the public requires additional infrastructure across the UK. The apparatus proposed in this appeal is replacement infrastructure.

6.10 What this means is that there will be continual and increasing demand on the essential infrastructure which provides the connectivity. By any measure the 'public benefits' of such communications networks and the infrastructure needed to provide them is very substantial. Of note and discussed in the OFCOM 2023 Connected Nations is that data consumption has again increased within urban area s such as central London.

6.11 To complement these documents listed above, below is a non-exhaustive summary of the support that the communications sector is now getting where a common theme is that public bodies (such as LPAs) need to be more attuned to the needs of the sector to allow quicker and better deployment of infrastructure such as that proposed here. We consider it important that the decision-maker is aware of this positive backdrop to the appeal (the appellant has been subject to appeal decisions where the Inspector had opined that they did not have enough information with regard to the public benefits). We have appended the more recent and important documents and have referenced the other, non-appended, documents via footnotes.

Delivering Change – how cities can make the most of digital connections (Centreforcities) 2018[18]

6.12 This document stresses the importance of public bodies engaging with the new technology to ensure that everyone has good connectivity. It concludes:

> "*This new and improved 'hardware' must be matched at the local and national level by far better 'software' that gives individuals, businesses and cities the skills and confidence to take up the potential of better digital connectivity. This will*

[18] https://www.centreforcities.org/publication/how-cities-can-make-the-most-of-digital-connections/

require greater collaboration at the city level to support a cohesive, efficient and responsive skills system, as well as leadership by cities in embracing digital innovation. Failure to do so will likely see the greatest rewards of better digital infrastructure once again accrue to those places and people that have already benefitted from previous advances in technology, thus widening existing digital divides".

Future Telecoms Infrastructure Review 2018 (DCMS) (Appendix 3)

6.13 This document looks at where 'UK PLC' wants to be in terms of its connectivity moving into the near future. Making it easier to deploy sites both through the planning system and through the availability of publicly owned land is crucial. The Review identified four priority areas, one of these being:

> "*Make it easier and cheaper to deploy mobile infrastructure and support market expansion, including the implementation of the wide-ranging Electronic Communications Code (ECC) on site access and consideration of further planning reforms;"*

Report for the Broadband Stakeholder Group – Lowering barriers to telecoms infrastructure deployment 2018 (Analyses Mason)[19]

6.14 Whilst looking at the far wider issues of ensuring the UK has a fit-for-purpose communications networks, once again the planning system is identified as being a blocker to this happening. Decisions such as the refusal of this application form part of that issue. It states:

> *In addition, specific practical issues surrounding the planning process of deployment across the country have been known to result in delays in households and businesses being connected.*

Smart Cities Report 2019 (O2)[20]

6.15 This document sets out the importance and benefits of mobile connectivity to the citizens of cities such as those who would be provided with reliable mobile digital connectivity by the proposed shared installation, and it too recognises challenges through the planning system stating:

> *The worrying thing is none of these benefits are assured. 5G works a bit like a patchwork quilt. It needs a high level of collaboration to hardwire the technology into our cities' infrastructure. The danger is we treat it as an afterthought, when in fact it needs to be planned in now*.

6.16 Whilst above we have set out the words of Government, it is important to note that policy and initiatives are not taken forward in a bubble. Industry and other stakeholder, such as

[19] https://www.analysysmason.com/consulting/reports/lowering-barriers-to-telecoms-infrastructure-deployment/

[20] https://static-www.o2.co.uk/sites/default/files/2019-08/Internet%20of%20Things%20-%20so%20much%20more%20than%20a%20buzzword.pdf

academics, are all aware of the benefits of connectivity. Below is the (2024) summary[21] from techUK of:

> ***The crucial role of advanced wireless to boost connectivity and productivity in the UK***
>
> *At techUK, we recognise that 5G and other advanced wireless technologies have a big role to play towards driving further connectivity to the whole of the UK. Indeed, in recent years, there has been significant progress, in both mobile and fixed connectivity, and the UK government has set an ambition to be a world leader in the next generation of mobile technology. This includes the objective for nationwide coverage of standalone 5G to all populated areas by 2030.*
>
> *For the economy, 5G can boost productivity and efficiency across industries. PwC estimated that 5G technology will add £43bn to the UK GDP by 2030. It can facilitate the development of smart cities, enhances manufacturing processes through automation and IoT (Internet of Things) integration, and supports the growth of emerging technologies like augmented reality and virtual reality. Towards greater productivity, this fosters job creation, increased innovation, and a more competitive business landscape.*
>
> *For UK society, 5G is already enhancing communication and connectivity. It can enable faster and more reliable internet access, benefiting individuals, businesses, and public services. Enhanced connectivity is improving healthcare services through telemedicine, supporting advanced manufacturing, and contributing to smarter transportation systems.*
>
> *The versatility of 5G opens up a myriad of use cases across key sectors and industries. Some key examples of the vital role 5G plays across the UK economy and society include:*
>
> ***Enabling the development of Autonomous Vehicles***
>
> *5G enables real-time communication between vehicles, traffic infrastructure, and central systems. This is crucial for the development and operation of autonomous vehicles, enhancing safety and efficiency on the roads.*
>
> *For instance, autonomous vehicles generate and process massive amounts of data from sensors, cameras, and other sources. 5G's high bandwidth capabilities ensure efficient and fast data transfer between the vehicle and centralized processing systems, supporting complex decision-making algorithms.*
>
> *The integration of 5G technology with autonomous vehicles not only enhances safety and efficiency but also opens up possibilities for new transportation models, such as autonomous ride-sharing and delivery services. It's a key enabler for the widespread adoption and successful operation of autonomous vehicles in the future.*

[21] https://www.techuk.org/resource/the-crucial-role-of-5g-to-boost-connectivity-and-productivity-in-the-uk.html

Facilitating the creation of Smarter Cities

5G facilitates the creation of smart cities by enabling connected infrastructure, such as smart grids, intelligent transportation systems, and efficient public services. This can lead to improved energy management, reduced congestion, and enhanced urban living.

Smart cities use 5G for intelligent transportation solutions, such as traffic management, autonomous vehicles, and real-time navigation. This can lead to reduced traffic congestion, improved public transportation, and a more sustainable urban mobility ecosystem. Indeed, 5G plays a pivotal role in the evolution of smart cities by providing the connectivity and technological infrastructure necessary for the implementation of innovative and interconnected urban solutions.

Improving provision and access to healthcare

In healthcare, 5G supports telemedicine services, allowing for high-quality video consultations, remote patient monitoring, and quick transfer of large medical data sets. This can improve access to healthcare services, especially in remote areas.

Recognised within the UK government's Wireless Infrastructure Strategy, the NHS can leverage 5G to access and update electronic health records more efficiently. This contributes to streamlined workflows, reduces administrative burdens, and enhances overall patient care coordination.

Facilitating quicker communication for Emergency Services

5G enables faster and more reliable communication for emergency services. This includes real-time video streaming, location tracking, and improved coordination during critical situations.

In emergency situations, 5G facilitates quick communication and coordination among healthcare professionals. Real-time sharing of patient data, video consultations, and efficient resource allocation contribute to more effective emergency response and disaster medicine.

Boosting productivity in manufacturing

Manufacturing processes benefit from advanced connectivity through improved automation, remote monitoring, and predictive maintenance. This leads to increased efficiency, reduced downtime, and overall enhanced productivity.

With 5G, manufacturers can remotely monitor and control machinery and equipment. This is especially beneficial for operations in remote locations or for overseeing multiple facilities from a centralized control centre. Indeed, it is a key enabler of the smart manufacturing revolution, bringing about increased automation, connectivity, and data-driven decision-making. Advanced wireless further supports the implementation of digital twin technology, where a virtual replica of physical equipment or processes is created. This allows for in-depth

monitoring, analysis, and simulation, leading to more informed decision-making and optimization of manufacturing operations.

These use cases showcase the transformative potential of 5G across a wide range of industries, paving the way for a more connected and technologically advanced future. However, the UK government must continue to address potential barriers to further roll out of 5G and full fibre connectivity. It is essential to address challenges such as infrastructure deployment and security concerns.

At techUK, we call for the next government to work with the telecoms sector to devise a new strategy that includes targets to encourage the widespread adoption of standalone 5G across businesses. Indeed, a new future network strategy could help 1 million people back into the labour market and add £159 billion to the economy by 2035 through the widespread uptake of 5G, and by using satellite and drone technology to help rural and hard-to-reach communities get connected.

techUK's new Telecoms Infrastructure Working Group will continue to address this, looking at the progress that still needs to be made from the Wireless Infrastructure Strategy, the Future Telecoms Infrastructure Review, and the collaboration needed with local authorities to drive forward the adoption of 5G and full fibre connectivity.

6.17 To summarise some of the key benefits are set out below

- Economic benefits

  - Creating more productive and cost efficiencies for businesses
  - Businesses offering online services can extend their products to a broader audience
  - Local areas and businesses can benefit from tourists and visitors as hotels, attractions, and restaurants can be booked online from anywhere in the world
  - Business owners and services like doctors can provide a faster and more cost-effective service by offering both online appointments and ordering
  - Digital connectivity facilitates economic growth, something which the Government is keen to progress and promote
  - 5G's ability to deliver real-time information (low latency), ultra-fast speeds (critical for high-definition images and video), increased capacity and heightened security will also facilitate learning on the job procedures, thanks to technologies such as Augmented Reality (AR) goggles, which, for example, can give the likes of engineers real-time instructions on how to fix a machine on a production line.

- Social benefits

  - Mobile communications can help people to stay in touch wherever and whenever, which can help improve social wellbeing
  - Convenient access to online commerce or businesses
  - Contacting emergency services is easier, especially in remote areas

- Giving the ability to manage our personal finances and information 24/7
- Using a mobile wherever you go can provide better personal security
- Having access to social networking sites and applications can keep people entertained with their lifestyles and interests
- Access to real-time transport information or timetables
- Smart meter reads for utilities such as gas or electric
- Contacting local authorities
- Promotion of smarter and productive ways of working. For example, working from home can help minimise commuting which can provide better work and home life balance

- Sustainability and Environmental benefits

  - Facilitating remote access to services, education, and commerce, reducing the need to travel and in turn minimising carbon emissions.
  - Better monitoring and control of energy consumption through climate change technology, smart metering and smart energy grids.
  - 5G infrastructure requires fewer heat generating electronic components.
  - 5G enabling of the Internet of Things (IOT) sensor deployment can manage and alert us to pollution risks, health hazards and flood risk.
  - Provision of smart technologies within the agricultural sector will facilitate more efficient and less wasteful practices helping to limit negative impacts.
  - 5G networks allow monitoring of traffic flow resulting in less congestion and better air quality. They also make driverless cars possible; a means of transport that offers better fuel efficiency.
  - Smart cities and buildings can rely upon 5G networks to enable buildings and infrastructure to use automated energy saving through better and more efficient lighting, heating, cooling and other operations.

- Health benefits

  - Support the delivery of healthcare provision and accessibility by enabling people greater access to online services, NHS appointment reminders, reminders to take medicines, make appointments etc.
  - Patients across the country are now becoming accustomed to using remote healthcare services such as NHS 111, virtual GP appointments, and ordering online deliveries of essential medical supplies.
  - 5G's ability to deliver real-time information (low latency), ultra-fast speeds (critical for high-definition images and video), increased capacity and heightened security are going to be fundamental in scaling the patient benefits of remote healthcare and keeping medical records secure and private. For instance, trials have shown that connecting ambulance crews to expert resources using 5G allows paramedics to work with doctors and conduct specialist procedures in real time whilst on the road.

- Education benefits

- Facilitates access to educational establishment databases or booking systems for securing places for the likes of school dinners, field trips, extra-curricular activities, student/teacher reviews, etc.
- Provides access to school/college/university apps for setting and submitting homework/coursework, ensuring news and notifications are delivered efficiently, and for parent/student/teacher interactions.
- The relationship between 5G and education is evolving at a massive rate with educators exploring the relevance of Virtual Reality (VR) technologies for education and training. Crucially, VR can support remote learning, allowing students a presence in the classroom even when working elsewhere.

6.18 It is therefore considered that in coming to their conclusions to refuse the application based on the lack of a Sec 106 agreement, the LPA has not given enough weight to all the relevant considerations. Importantly, it is also considered that they have given too much weight to general development policies which have not taken into account the technical and operational limitations of mobile connectivity technology, nor the significant public benefits of ensuring the most up to date technology is maintained in a very busy area of Central London. When taken into account, we consider that these matters could, and should, change any balance in favour of the appeal proposals.

Appeal Precedent – public benefit

6.19 Finally, on the matter of public benefit and the weight it should be afforded, we are appending three appeal decisions where the public benefits were a determining factor. The submitted HAS concludes that even in combination with any retained apparatus on No 125 any harmful impacts will only be "*less than substantial harm at the lower end of the spectrum*" on Whilst the Inspector noted that there would be some harm from the proposed apparatus on heritage assets, as well as policy conflict, they nonetheless opined that:

> APP/N5660/W/20/3260707 (Appendix 14)
>
> *19. I note that the Council has high aspirations for place making in the area. Furthermore, I have given considerable weight and importance to the desirability of preserving the character and appearance of the CA. However, my findings lead me to conclude that the public benefits of the proposal outweigh the harm to the CA, the LLBs, the hotel and the character and appearance of the area.*
>
> *20. I conclude that the public benefits of the proposal are a material consideration which outweighs the conflict with the development plan. A decision should thus be taken otherwise than in accordance with the development plan.*

6.20 We draw the above appeal to Inspector's attention as it is acknowledged that there will be some impacts from this proposal and, if the Inspector concludes these to be more harmful than set out in the HAS, then it is hoped that the foregoing information gives the Inspector enough information on public benefits to give this aspect the weight it deserves. We would also draw attention to two further appeal decisions these being:

- APP/V5570/W/20/3246770 (Appendix 16)

  Planning Balance
  31. I have found that the proposal would fail to preserve the character or appearance of the CGCA and would cause a minor level of less that substantial harm to the heritage significance of the CGCA and various other designated assets through development within their settings. I have also identified associated policy conflicts. Indeed, the proposal conflicts with the development plan when read as a whole.

  32. However, I have also found that the proposal would deliver significant public benefits through improved digital communications networks. These benefits would outweigh the heritage harms that I have identified. Thus, material considerations indicate that, in this instance, the proposal should be determined other than in accordance with the development plan.

- APP/P4605/W/19/3241791 (Appendix 15)

  "*In this case, the proposed development would result in harm to the visual amenity of the area, with particular regard to the proposal's scale and siting. As such, conflict would arise with Policy PG3 of the Birmingham Development Plan insofar as the development would not reinforce local distinctiveness with a design that responds to site's conditions and the context of the local area. However, I conclude that this harm would, on balance, be outweighed by the economic and social benefits that would stem from the proposed upgrade"*

Of note in these cases, and the reason we have not provided drawings or further details of these appeal proposals, is that we are not inviting comparisons between specific proposals (these will of course be different) but highlighting the more the general principle of the weight being afforded to the socio-economic and hence the public benefits of having continued access to high quality digital connectivity. In our case, it is common-ground with the LPA that there is very little harmful impacts and so no friction with the development plan from the proposals on No. 164 taken on their own. The only friction lies with the LPA's concerns over how long the apparatus on the roof of No. 125 may be in place. The appeal references are provided to demonstrate to the decision-maker that, even with any uncertainty over this aspect, had they given requisite weight to the public benefit, it would have outweighed any limited harm identified from the uncertainty over the removal of the existing apparatus on No. 125 and the lack of a Sec 106 agreement – although, and again, **it must be stressed the owners of the buildings have asked the appellant to remove their apparatus and they are obliged to do so.**

7. Conclusions

7.1 This appeal differs from a 'normal' appeal insofar as it is common-ground between the parties that the appeal proposals (taken on their own) are acceptable and that they accord with the development. It is the appellant's belief that this should have resulted in a planning approval from the LPA.

7.2 However, the LPA sought legal assurances around the removal of existing apparatus on No 125 which the appellant was unable to make and, with no Sec 106 agreement in place, refused the application. The **only** reason for the proposal on No 164 is that the apparatus on No 125 has to be removed – the owners of that buildings have served an NTQ on the appellant. There was never any need for the Sec 106 and the appellant sought to assure the LPA over this including by the provision of previous 'NTQ' appeals where the issue never even arose.

7.3 Notwithstanding this, the submitted HAS demonstrates both the overall lack of impact from the appeal proposals taken on their own, but also any simultaneous impacts from apparatus on No 164 and No 125 – these impacts being "*less than substantial harm at the lower end of the spectrum*". These impacts would be easily outweighed by the public benefit of maintaining connectivity in this very busy area of central London. Maintaining connectivity when it is threatened forms part of the London plan and the NPPF – the appellant is seeking to do this.

7.4 To recap, the proposed replacement apparatus on No 164 is required as part of VMO2's network of 2G – 5G technology. It is required to fill the gap in coverage and capacity in this part of central London when the existing apparatus on No 125 is removed. As No 125 is a taller building providing greater levels of coverage, it will actually require two new sites to replace the lost coverage and to ensure capacity demands can be met. A second replacement site is being pursued to the west at No 126 Shaftsbury Avenue – another reason for the reluctance of the appellant to enter into a Sec 106 agreement being the uncertainty over the time it will take to finalise these separate negotiations and establish a 'live' site.

7.5 This connectivity, and provision of 2G – 5G coverage, is in line with the increasing emphasis central Government, the Mayor of London and Camden all now place on reliable mobile digital connectivity to help achieve economic growth and social inclusion, with connectivity's importance now on a level with water, sewage and other utilities and transport. Appended are a number of recent policy documents and reports which all recognise how the status quo (in terms of planning and stakeholder engagement) needs to shift to more recognition of the public benefits of mobile digital connectivity if the UK is to benefit from emerging technologies reliant on mobile connectivity and the economic,

social and environmental benefits they will bring. The very substantial public benefit the proposals will bring should be given significant weight.

7.6 The anticipated harm the LPA expected from the unspecified time it thinks the apparatus may be *in* situ on No 125 has not been quantified by them – the delegated report and decision notice only referring to unsightly proliferation and apparatus. The HAS submitted by the appellant does quantify any harm and finds it to be the same level as the apparatus taken on its own – there is very little intervisibility as demonstrated in the visualisations submitted with the appeal.

7.7 The application site is within a central part of the city of London. This is a World commercial, financial and tourist destination and centre. Whilst within a heritage asset, the use of a non-listed building with such small-scale apparatus, is considered to be the correct approach for the provision of continued connectivity for VMO2 and its customers in the public interest.

7.8 The Sec 106 was never required as:

- The only reason for the appeal proposals is because the apparatus on No 125 is being lost – the landowner has (in effect) ordered its removal.
- When No 164 (and the second replacement site) are operational, the apparatus on No 125 will need to be removed under the conditions of the GPDO.
- Notwithstanding the tow points above, the HAS demonstrates that the additional harm does not exist – this also being shown in the visualisations submitted.

7.9 Taking all these matters together, we respectfully request that this appeal is allowed, and the appellant can help VMO2 replace and continue to provide a high quality, reliable, mobile digital communications service to the area.