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The Planning Inspectorate
Temple Quay House
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Dear Jessica,

Town and Country Planning Act 1990
Appeal by Cornerstone
Site Address: 164 Shaftsbury Avenue, Camden, London, WC2H 8HL

I write in connection with the above appeal against the refusal of planning permission (Ref. 2021/5339/P) 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 roof, and ancillary works.**

1.0 Summary

- 1.1 The appeal site is located on the corner of Shaftsbury 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.
- 1.2 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.
- 1.3 The host building is not identified as making either a positive or negative contribution to the character and appearance of the Seven Dials 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 Shaftsbury 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.

- 1.4 The building is not listed and is located within the South Hampstead Conservation Area. The building and wider terrace of properties (nos. 2-92 (even)) are identified as a group of buildings which make a positive contribution to the special character and appearance of the conservation area (South Hampstead Conservation Area Appraisal and Management Strategy statement, adopted February 2011).
- 1.5 Planning permission was refused on 01 October 2023 (a copy of the decision notice was sent with the questionnaire) 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 roof, and ancillary works. It was refused for the following reason:
- 1. 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 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.*
- 1.6 The Council's case is set out in detail in the Officer's Delegated Report and it will be relied on as the principal Statement of Case. The report details the appeal site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire.
- 1.7 In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

- 2.1 In determining the above-mentioned application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The full text of the relevant policies was sent with the questionnaire documents.
- 2.2 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 03 July 2017 and replaced the Local Development Framework Core Strategy and Camden Development Policies documents as the basis for planning

decisions and future development in the borough. The relevant Local Plan policies as they relate to the reasons for refusal are:

- A1 Managing the impact of development
- A4 Noise and vibration
- D1 Design
- D2 Heritage
- E1 Economic development

2.3 Additionally, the Council has published a new Draft Camden Local Plan (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications which has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026). However, in this particular case, it is not envisaged that there would be any changes within the emerging new local plan that would be material to the appeal proposal.

2.4 The Council also refers to the following supporting guidance documents:

Camden Planning Guidance

- CPG Design (January 2021) - chapters 1 (Introduction), 2 (Design excellence), 3 (Heritage), 7 (Designing safer environments) and Chapter 9 (Building services equipment)
- CPG Digital infrastructure (March 2018) - Telecommunications equipment (paragraphs 11- 15)
- CPG Amenity (January 2021) - chapters 1 (Introduction), 2 (Overlooking, privacy and outlook), 3 (Daylight and sunlight) and 6 (Noise and vibration)

Other guidance

- Seven Dials Conservation Area Statement (adopted 1998)
- Code of Best Practice on Mobile Network Development (November 2016)

2.5 The Council also refers to the following legislation, policies and guidance within the body of the Officer's Delegated Report:

- National Planning Policy Framework (2023)
- London Plan (2021)

3.0 Comments on the Appellant's Grounds of Appeal

3.1 The Appellant's grounds of appeal are summarised as follows:

1. Common ground
2. Notice to quit (NTQ) and GPDO
3. Public benefit and connectivity
4. Harm to significance of designated heritage assets

4.0 Common ground

- 4.1 The Appellant states that the appeal differs from a 'normal' appeal in so far as it is common ground between the parties that the appeal proposals (taken on their own) are acceptable and that this should have resulted in a planning approval from the Council.
- 4.2 The Appellant also states that it is common ground with the Council that the appeal site is the most suitable location for replacement coverage in this area.

5.0 Response to ground of appeal 1

- 5.1 While the Appellant states that it is common ground between both parties that the appeal proposals are acceptable, this is not strictly speaking the case and it is important to emphasise at the outset that the Council only considers the appeal proposal to be acceptable subject to the completion of a Section 106 legal agreement.
- 5.2 The Council considers that the appeal proposals would result in harm to the character, appearance and historic interest of a number of designated heritage assets (the harm being 'less than substantial'). The approval was therefore an 'on balance' decision weighing up this harm against the potential public benefits of the proposed electronic communications at the appeal site and taking into consideration a planned decommissioning of an existing base station at a nearby site (125 Shaftesbury Avenue).
- 5.3 The Council would not have granted planning permission for the appeal proposals for a new base station at the appeal site under circumstances where the existing nearby site would also remain operational (except for an agreed period until full operational capability of the appeal site was confirmed). It is noted in this regard that the National Planning Policy Framework (NPPF) in Paragraph 119 of Chapter 10 (Supporting high quality communications) advises 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 to provide reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged'*.
- 5.4 In view of the existing site planned to be decommissioned (125 Shaftesbury Avenue) being located outside of the red line boundary for the appeal site (as shown on the submitted site location plan ref. 101 rev B), and given that the appeal proposal would only be acceptable to the Council under circumstances where the decommissioning of this existing site could be guaranteed, the Council considers the completion of a

Section 106 legal agreement to be an essential and necessary means by which this could take place and be secured.

- 5.5 The Appellant also states that it is common ground with the Council that the appeal site is the most suitable location for replacement coverage in this area. However, the Council has not expressed a view in this regard.
- 5.6 As detailed in the original application submission for the appeal site, the Appellant lists 11 sites which were considered as possible alternative locations by way of evidence that the possibility of erecting antennas on an existing building, mast or other structure had been explored. The Appellant considered all 11 sites to be unsuitable and discounted them for various reasons (as summarised in Paragraph 7.2 of the Officer's Delegated Report). A new site (the appeal site) was therefore chosen by the Appellant and on this basis a planning application was submitted.
- 5.7 No assessment has been made or view expressed by the Council as to whether the appeal site is a more suitable location than any other. The Council has considered the appeal proposal on its own individual merit, having due regard to all relevant current policies and guidance, planning and appeal history. It is the Council's view that the proposal for a new base station at the appeal site is acceptable 'on balance' under circumstances where an existing site is decommissioned subject to a Section 106 legal agreement to ensure that the existing site ceases to operate and all associated equipment is removed in an agreed and timely manner.

6.0 Notice to quit (NTQ) and GPDO

- 6.1 The Appellant argues that the landowner of the existing site intended to be decommissioned (125 Shaftesbury Avenue) has served a 'Notice to Quit' (NTQ) on the Appellant, and as such, there was never any need for a Section 106 legal agreement. Further, the Appellant provided some previous NTQ appeal decisions in support of this position.
- 6.2 The Appellant states that the apparatus at the existing site will need to be removed under the conditions of the GPDO when the appeal site becomes operational and therefore the Council's concerns are unnecessary and unjustified.

7.0 Response to ground of appeal 2

- 7.1 In regard to the NTQ referred to by the Appellant, it is firstly noted that this is a matter between the Appellant and the landowner. The Council, therefore, is not party to this notice and has no involvement in regard to it. As such, it does not form a basis on which it can be relied upon that an existing site (125 Shaftesbury Avenue in this case) would be decommissioned in a timely fashion as required by the Council.

- 7.2 Secondly, it is also brought to the Inspector's attention that the Council has not been provided with a copy of the NTQ document (redacted or otherwise), nor been given any indication of the date when the NTQ would come into force. The 'Site Specific Supplementary Information' provided by the Appellant as part of the original application submission in 2021 vaguely states that the Appellant has been '*given a finite period of time to find a replacement site*'.
- 7.3 Therefore, notwithstanding that any NTQ is a matter between the Appellant and the landowner and would not in the Council's view provide a satisfactory legal mechanism to secure the necessary decommissioning of the existing site in a timely fashion, the Council has not received any clear and specific indication or assurance of when the existing site would be 'switched off' and cease to operate with all associated equipment removed. As such, the Council maintains that a Section 106 legal agreement is a necessary legal mechanism to provide this assurance and secure the required relevant decommissioning works.
- 7.4 Turning to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), the Appellant asserts that the apparatus at the existing site will need to be removed under the conditions of the GPDO when the appeal site becomes operational.
- 7.5 it is noted that GPDO prior approval was first granted for the siting of electronic communications equipment in 1998 at the existing site (125 Shaftesbury Avenue). Under Part 16 of the GPDO, development is permitted subject to the condition that any antennas and associated apparatus provided in accordance with any such approval is removed from the land or building on which it is situated as soon as reasonably practicable after it is no longer required for electronic communications purposes.
- 7.6 While the Appellant refers to a NTQ served by the landowner in regard to the existing site (125 Shaftesbury Avenue) as indication that all apparatus will be removed, it is not inconceivable that the landowner could change their mind and alter their intention, so allowing instead a continued use of the existing site for electronic communication purposes. Under these circumstances, equipment and apparatus for electronic communications purposes would not need to be removed as required by GPDO legislation given that the existing site would remain operational.
- 7.7 The GPDO legislation would therefore not provide an adequate mechanism for discontinuation of the existing site under these circumstances, but rather, in the absence of an agreed Section 106 legal agreement, there is the potential that the existing site could remain active indefinitely (in parallel with electronic communications operation at the appeal site as proposed).
- 7.8 It is also noted from the appeal submission that the Appellant considers it necessary to replace the existing site with a 2nd replacement site to the west (126 Shaftesbury

Avenue) in addition to the appeal site. This provides additional concern in the Council's view.

- 7.9 While the Appellant referred to 'another site in WCC' in an email in 2023 prior to the determination of the appeal application, the specific site was not named and no details were provided ('WCC' being Westminster City Council in this case). As such, the original application submission did not refer to the need for more than one site being required, and therefore, it wasn't possible to take any such arrangement (the appeal site and a 2nd replacement site at 126 Shaftesbury Avenue operating in tandem) into consideration in so far as it might be necessary or relevant.
- 7.10 In fact, now that the Appellant has named the particular site in the appeal statement, it becomes clear that this specific site is referred in the 'Site Specific Supplementary Information' provided by the Appellant as part of the original application submission (Fire Station, 126-134 Shaftesbury Avenue). However, rather than being proposed as a replacement site as is the case now (the site is located within the borough of Westminster), the document states that it was considered as an alternative site, but discounted in favour of the appeal site.
- 7.11 This demonstrates how arrangements for the appeal proposals can change over time, which in this case is now the need for two rooftop sites (rather than a single replacement site which is the subject of this appeal). That is quite understandable given the complexity and demand for connectivity in this part of central London as referred to by the Appellant. It is therefore not beyond the realms of possibility that the landowner's circumstances might also change in regard to the existing site (125 Shaftesbury Avenue) so as to allow a continued use of the site for electronic communication purposes at some point in the near future.
- 7.12 Therefore, given that the Appellant confirms on page 18 of the Appeal Statement that they will seek to remain on the rooftop of the existing site until such a time as both replacement sites become operational (the appeal site and a 2nd site at 126 Shaftesbury Avenue), there is additional concern to the Council given the potential for the existing site to remain active indefinitely or to operate longer than is necessary. This is particularly the case given that the Appellant confirms that the timescales for the operational use of both replacement sites is still unknown.
- 7.13 Furthermore, there is uncertainty of securing the 2nd replacement site (the Appellant states it *'is hoped to be 126 Shaftesbury Avenue'*), as well as, uncertainty in regard to the appeal site as the stated position of the landlord in representations made to the Council during the course of the application was to strongly object to the appeal proposal, stating that *'in any case, the site is not available nor deliverable for such telecommunication equipment'*.
- 7.14 For the reasons set-out above, therefore, and contrary to the Appellant's view, the Council considers its concerns to be both necessary and justified in regard to the need for a Section 106 legal agreement, especially in light of the complexities

surrounding the appeal proposal. Recognising this, a legal agreement is considered by the Council to be especially important and can form the basis for negotiation prior to completion which would allow for a more detailed discussion and consideration of the factors affecting the timely decommissioning of the existing site. It is the Council's view that a legal agreement along these lines could allow for this, while also providing the necessary assurance to the Council for the decommissioning of the existing site in a timely manner.

- 7.15 Finally, while the Appellant relies heavily on a NTQ and GPDO legislation in support of their assertion that a Section 106 legal agreement is not necessary, it is noted that in spite of this, the Appellant suggested during the course of the application that a condition might be attached to any approval requiring that the original apparatus would need to be removed from the existing site within a finite amount of time after the first operational use of the new base station at the appeal site.
- 7.16 Whilst it is reiterated that the Council is willing to grant permission for the appeal proposal conditional on the existing site and equipment (at 125 Shaftesbury Avenue) being decommissioned and removed, a planning condition would not be an appropriate means of achieving this outcome given that the existing site is located outside of the red line boundary for the appeal site (as shown on the submitted site location plan ref. 101 rev B).
- 7.17 In view of this, the Council maintains that a Section 106 legal agreement is an essential and necessary means by which this should take place and secured as such through a planning obligation.

8.0 Public benefit and connectivity

- 8.1 The Appellant argues that the submitted Heritage Appeal Statement demonstrates both the overall lack of impact from the appeal proposals taken on their own, but also that any simultaneous impacts from apparatus on nos. 164 and 125 Shaftesbury Avenue would be easily outweighed by the public benefit.
- 8.2 The Appellant states that maintaining connectivity when it is threatened forms part of the London Plan and the NPPF and that this connectivity would have substantial public benefit. Further, it is the Appellant's view that the weight given to the public benefits by the Council was too low, and if weighted appropriately, it would outweigh any identified harm of having two installations in situ (though the Appellant states that there would never be two sites operating in situ).

9.0 Response to ground of appeal 3

- 9.1 The Council strongly disputes the Appellant's claim that that the weight given to the public benefits of the proposal was too low. It is not possible to know on what basis the Appellant has reached this conclusion as no evidence has been provided to support that assertion.

- 9.2 Paragraphs 5.7 to 5.11 of the Officer's Delegated Report outline the consideration given to the need for planning balance in light of the public benefits which could arise from the appeal proposal. In fact, in this particular case, the Council acknowledged the importance of the appeal site and communications cell in providing coverage to a busy central London location which forms part of the West End and Theatre district, including its position in close proximity to the Charing Cross Road (A40) which is a major transport route.
- 9.3 The appeal site is therefore recognised in the Officer's Delegated Report as being a key cell within the wider mobile network due to the high density of users and very high demand for network coverage. With this in mind, and giving full consideration as required by Paragraph 208 of the NPPF to the public benefits that could arise from providing continuous 2G, 3G and 4G network coverage in the area, as well as, improved connectivity and network enhancement provided by 5G coverage, the Council considers, on balance, that the benefit to the public arising from the appeal proposal outweighs the limited harm introduced to the character and appearance of the host property, wider Seven Dials Conservation Area and designated heritage assets.
- 9.4 It is the Council's view that the above demonstrates an appropriate level of weighing up of public benefits as required by Paragraph 208 of the NPPF and that full consideration has been given in reaching the decision to grant planning permission subject to the completion of a legal agreement. This does not mean that public benefit was the only consideration. The NPPF is clear that the degree of harm from the appeal proposal is equally important to consider, so that an assessment of the impact of any proposal is fully understood. Should any harm be identified to any heritage assets (as is the case in this appeal application), it is then that any weighing up process should be carried out. The Council adopted this approach in line with the NPPF.
- 9.5 The Appellant refers in several places in the Appeal Statement to the appeal site and the existing site operating together in situ. In contrast, the Appellant also emphasises that there would never be two sites operating in situ which accords with the appeal application which did not propose the operation of two sites, but rather sought planning permission for a new base station at the appeal site (with an existing site nearby intended to be decommissioned). The appeal proposal was therefore considered by the Council on that basis and assessed on its' own merits, taking into account the relevant site context, all consultation responses received, and any relevant planning history, policies and guidance
- 9.6 Details and information regarding any public benefits attributed to the existing site at 125 Shaftesbury Avenue (which falls outside the red line boundary for the appeal site), therefore, were not submitted by the Appellant as part of the application submission and the Council was not required to make an assessment of these or any public benefits attributed to two sites in operation together. As such, the Appellant's

assertion that any simultaneous impacts from apparatus at the appeal site (no. 164) and an existing site (no. 125) would be easily outweighed by the public benefit is irrelevant to the consideration of the appeal proposals.

- 9.7 As indeed, would any similar consideration of any public benefits arising from a 2nd replacement site, specified in the Appeal Statement as being '126 Shaftesbury Avenue', but referred to in the 'Site Specific Supplementary Information' as having been discounted as an alternative site in favour of the appeal site. Notably, and inconsistently, the Appellant does not refer to any public benefits of this site even though it is also deemed necessary by the Appellant in tandem with the appeal site to replace the existing site, though it does not form part of the appeal proposals.
- 9.8 The Council agrees with the Appellant in terms of the importance of maintaining connectivity and the substantial public benefits that can arise from electronic communications. In line with both the London Plan and the NPPF, the Council supports the expansion of electronic communications networks, including telecommunications and high-speed broadband.
- 9.9 It is important to emphasise again at this point that the Council supports the appeal proposals. Notwithstanding that the Appellant does not agree with the Council on the necessity of a Section 106 legal agreement, it is not the Council's intention or desire for connectivity to be lost or adversely impaired in any way, but rather, that it is established as being fully operation at the appeal site, working in tandem initially with the existing site for an agreed period until fully operational, prior to the subsequent decommissioning of the existing site. The Council maintains that a Section 106 legal agreement will allow for uninterrupted connectivity of this kind and for the potential public benefits of the appeal proposals to arise, while also ensuring that the existing site ceases to operate and all associated equipment is removed in an agreed and timely manner.

10.0 Harm to significance of designated heritage assets

- 10.1 The Appellant argues that the anticipated harm suggested by the Council at the existing site (125 Shaftesbury Avenue) has not been quantified and that the delegated report and decision notice only refer to unsightly proliferation of apparatus. The Heritage Appeal Statement is considered by the Appellant to quantify the harm at the existing site (125 Shaftesbury Avenue) and finds it to be the same level as the apparatus taken on its own.
- 10.2 The Appellant does not consider that the cumulative impact of existing equipment on existing site (125 Shaftesbury Avenue) in conjunction with the appeal site would result in an increase in harm caused. The cumulative impact of both sets of equipment would still result in 'less than substantial harm at the lower end of the spectrum'. The Appellant argues that the additional harm does not exist.

11.0 Response to ground of appeal 5

- 11.1 The Inspector is firstly requested to note that the Council accepts the need for the appeal site and existing site to work together in tandem for an agreed period of time until the appeal site is confirmed as being fully operational in order to ensure that connectivity is maintained.
- 11.2 Thereafter, the Council would seek the decommissioning of the existing site in order to avoid an unacceptable contribution in combination with the appeal site to an unnecessary and unsightly over-proliferation of electronic communications equipment in the locality. This is in line with Paragraph 119 of Chapter 10 (Supporting high quality communications) of the NPPF which advises that '*The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent*'.
- 11.3 Given that the appeal site would be fully operational at this point, the needs of consumers, the efficient operation of the network, as well as, the provision of a reasonable capacity for future expansion would be achieved. As such, any use of the existing site would be unnecessary and would lead to an over-proliferation of equipment in the area which would exceed the minimum requirement as advised by the NPPF.
- 11.4 Paragraph 205 of Chapter 16 (Conserving and enhancing the historic environment) of the NPPF advises that '*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*'.
- 11.5 Both the Appellant and the Council agree that the appeal proposal would cause harm to designated heritage assets (this being 'less than substantial' in this case). Paragraph 205 confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to conserving the asset irrespective of the potential harm amounting to 'less than substantial' in regard to any asset's significance.
- 11.6 Therefore, given that the degree of harm arising was only considered to be acceptable 'on balance' when weighing up this harm against the potential public benefits of the proposed electronic communications at the appeal site and on the basis that the existing base station at a nearby site (125 Shaftesbury Avenue) would be decommissioned, then under circumstances where both sites would continue to operate together, the Council would not have granted planning permission.
- 11.7 In this situation the appeal proposal would not accord with Paragraph 119 of the NPPF as an existing base station would remain operational, and in combination with the new base station at the appeal site, would lead to an unnecessary over-proliferation of electronic communication equipment and an inappropriate net gain in the amount of equipment across both sites.

- 11.8 Additionally, as the Council places great weight in the first instance on the conservation of designated heritage assets in accordance with Paragraph 205 of the NPPF, then under circumstances where the existing site would remain operational, the Council does not consider the 'less than substantial' harm to be acceptable as the operation of a new base station at the appeal would be unnecessary given that network connectivity and service levels could continue to be provided by the existing base station (at 125 Shaftesbury Avenue).
- 11.9 Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the South Hampstead Conservation Area, under s.72 of the Planning (Listed Buildings and Conservation Area) Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013.

12.0 Conclusion

- 12.1 Having regard to the entirety of the Council's submissions, including the content of this statement, the Inspector is respectfully requested to dismiss the appeal.
- 12.2 If any further clarification of the appeal submission is required, please do not hesitate to contact Tony Young on the above direct dial number or email address.

Yours sincerely,

Tony Young
Planning Officer - Planning Solutions Team
Supporting Communities Directorate
London Borough of Camden