

Our ref: KJ/MBNL/99309
Planning Permission ref.: 2022/2378/P

Chief Planning Officer
London Borough of Camden
Development Management
Regeneration & Planning
Town Hall
Judd Street
London
WC1H 9JE

18 December 2024

BY PLANNING PORTAL

Dear Sir or Madam,

Town & Country Planning Act 1990

Section 73 application for removal of Condition 5 following grant of planning permission at Matilda Apartments, 4 Earnshaw Street, London, WC2H 8AJ (NGR: E529963, N181325)

Please find enclosed a Section 73 application seeking the removal of Condition 5 imposed on planning consent reference 2022/2378/P granted to MBNL (EE (UK) Ltd & H3G (UK) Ltd) by the Local Authority on the 27 February 2024.

The application seeks the removal of condition 5 which states:

The development to which this planning permission relates shall not be implemented unless and until the planning permission which was granted at appeal on 22/11/2021 under reference 2020/2015/P has not been implemented and has expired.

Reason: To prevent the site from becoming dominated by the cumulative impacts of excessive antenna proliferating the roof-scape of the building in accordance with the requirements of Policy D1 of the London Borough of Camden Local Plan 2017.

Paragraphs 55 and 57 of the National Planning Framework (December 2024) provide guidance on the use of planning conditions:

“54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”

55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

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Paragraph: 003 Reference ID: 21a-003-20190723 of the Planning Practice Guidance sets out the 6 tests that must be satisfied for each condition which an authority intends to apply:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

Paragraph 005 (Reference ID: 21a-005-20140306) of Planning Practice Guidance states that:

“Any proposed condition that fails to meet any of the 6 tests should not be used.”

Grounds for the removal of condition 5 in relation to the 6 tests:

1. *Necessary* - the Applicants granted consent at appeal under reference 2020/2015/P are Cornerstone, Telefonica UK Ltd and Vodafone Ltd, which are other Licensed Operators. Paragraph 122 of the National Planning Framework states that, *“Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators.”* Condition 5 is anti-competitive as it is granting consent against the authorised legal implementation of another consent.
2. *Relevant to planning* – Condition 5 is relevant to planning.
3. *Relevant to the development to be permitted* – Condition 5 is not relevant to the development permitted as it concerns a completely separate authorised consent.
4. *Enforceable* – Condition 5 is not enforceable as it relates to the actions of a separate third party.
5. *Precise; and* – Condition 5 is precise, albeit unreasonable.
6. *Reasonable in all other respects* – Condition 5 is unreasonable as it relates to a separate consent managed by a third party for which the Applicants have no control over. Equally, the consent is based upon the premise that both installations would be unsuitable contrary to Policy SI 6 of the London Plan which states that *“To ensure London’s global competitiveness now and in the future, development proposals should: (2) **meet expected demand for mobile connectivity** generated by the development... (3) **support the effective use of rooftops**”*. It is also contrary to paragraph 120 of the National Planning Framework in that, *“the number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum.....Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged”*.

For the reasons set out above and having regard to the 6 tests and the planning practice guidance, Condition 5 should be removed, and the Applicants should be allowed to implement the planning consent without complying with this condition.

We look forward to your acknowledgement and decision in due course.

Yours faithfully



Katy Jessop

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For and on behalf of MBNL (EE (UK) Ltd & H3G (UK) Ltd)