

Town and Country Planning Act 1990 (as amended)

Appeal by CTIL and Telefónica UK Ltd against the decision of the London Borough of Camden to refuse planning permission for the installation of a rooftop radio base station comprising 6 multiband antennas behind a GRP screen and ancillary development at Troyes House, Lawn Road, London NW3 2XT, NGR: 527575, 185042.

**Appellant's Ref: CTIL-148391, TEF-72448, VF-47008
LPA's Ref: 2016/4803/P**

FULL STATEMENT OF CASE



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1. INTRODUCTION

- 1.1 Waldon Telecom Ltd has been instructed by Cornerstone Telecommunications Infrastructure Ltd (CTIL) to make this planning appeal on its behalf and that of Telefonica UK Ltd against the decision of Camden Council to refuse planning permission for the installation of a shared rooftop electronic communications radio base station at Troyes House, Lawn Road, London NW3 2XT.
- 1.2 My name is Ian Waterson, and I am a Chartered Town Planner with over 41 years' experience in town planning. I have been a Member of the Royal Town Planning Institute since 1981. For the past 16 years I have specialised in making prior approval and planning applications, and planning and enforcement appeals on behalf of Electronic Communications Code Operators including CTIL and its joint-venture partners Telefónica UK Ltd and Vodafone Ltd, the former trading as O2. I also make applications and appeals on behalf of; Everything Everywhere Ltd (trading as EE) and its MBNL (Mobile Broadband Network Ltd) site-share partner Hutchison 3G Ltd (H3G), trading as 3 UK; Surf Telecoms, Western Power Distribution's in-house Code Network Operator; UK Broadband and Arqiva, a major site-provider to Code Network Operators – a company which, among other things, provides the infrastructure for the nation's terrestrial television and radio broadcasts. I also act as planning consultant to a number of firms of Chartered Surveyors, and in this appeal I act as planning consultant to Waldon Telecom Ltd.
- 1.3 In previous years I have made applications and appeals for Airwave Solutions Ltd, currently provider of secure electronic communications to the 'blue-light' emergency services, Orange PCS and T-Mobile (which now together comprise EE) and on behalf of Bechtel, amongst others. I have also represented electronic communications site infrastructure providers and similar organisations in respect of telecommunications planning applications and appeals including, ntl: broadcast, Crown Castle UK, Shared Access and GCHQ, among others. Prior to working in the private sector, I had over 25 years' experience as a local government planning officer, in various capacities.
- 1.4 I am familiar with the planning application the subject of this appeal, the appeal site and the council's adopted policies and plans, such as they are relevant to the installation of the shared rooftop electronic communications radio base station at the appeal site.
- 1.5 CTIL is a joint-venture company set up by Telefónica UK Ltd and Vodafone Ltd in November 2012 with the responsibility for the upgrade, roll-out and management of a network of shared electronic communications radio base stations in the UK for the two electronic communications code operators. Prior to November 2012 O2 and Vodafone had for a number of years operated a voluntary site-sharing

arrangement known as the Cornerstone Project. This allowed the two operators to share base stations while retaining separate radio networks.

- 1.6 In February 2013 Ofcom announced the outcome of its 4G spectrum licence auction and Telefónica and Vodafone were both successful with their bids for 4G licences. Since then, through its appointed partners and agents including Waldon Telecom, CTIL has been upgrading O2 and Vodafone's existing base stations to shared single-grid 4G use. In locations such as this part of Camden Council's administrative area where despite the upgrade of existing radio base stations there remain RF (radio frequency) coverage gaps, CTIL is proposing the installation of new radio base stations to provide shared single-grid 4G LTE mobile broadband services for O2 and Vodafone in accordance with Government policy, in the public interest.
- 1.7 The proposed CTIL street furniture installation at the appeal site will therefore provide shared single-grid 4G LTE RF (radio-frequency) coverage for both O2 and Vodafone. It is also being configured to provide 2G GSM digital and 3G UMTS multimedia mobile services for O2 and Vodafone. The reason for this is that while the roll-out of the new shared single-grid 4G network is a priority for CTIL, the primary demand by the public at the present time is for 3G UMTS multimedia mobile services and this is likely to remain the situation for some years to come. Moreover, in this part of Camden, close to Haverstock Hill Neighbourhood Centre, and within 500m of both the Royal Free Hospital and Belsize Park Underground Station where the demand for RF coverage is exceptionally high, basic digital 2G GSM RF coverage is also being provided to ensure as many subscribers as possible are served by the proposed installation.
- 1.8 The CTIL joint-venture will thus enable these two Electronic Communications Code Operators to provide multi-technology RF coverage from a single, shared radio base station and keep the number of sites in telecommunications use to the minimum consistent with efficient network development, which for many years has been a matter to which the Government has attached considerable importance. The radio base station is also being 'future-proofed' to allow the proposed radio base station to be further upgraded, as required. For example, in the Ofcom licence auction in addition to winning a 4G licence in the 800MHz radio spectrum, Vodafone was also successful in winning a 4G licence in the 2600MHz radio spectrum, and the multi-port, multiband antennas to be installed behind the GRP shroud will enable this service to be provided, when required, without the need to replace the apparatus to be installed at this site.
- 1.9 Under the CTIL joint-venture each of the two electronic communications code operators is the 'responsible operator' for the single-grid 4G roll-out in approximately half of the UK, with Telefónica the designated responsible operator in Camden. It was therefore as

agent for CTIL and Telefónica that Waldon Telecom submitted the planning application to the council in January 2016 for the shared electronic communications base station at the appeal site.

- 1.10 This appeal is against the refusal of that planning application by the council's decision notice dated 24 March 2016.

2. THE PROPOSED DEVELOPMENT

- 2.1 The appeal proposal is for a shared electronic communications radio base station comprising 6 antennas and ancillary development to be hidden behind a bespoke colour-coded bespoke GRP screening, designed to reflect the chimneys on the adjoining properties, to be sited on the rooftop plantroom at the rear of Troyes House, Lawn Road NW3 2XT.

- 2.2 The planning application was submitted by Waldon Telecom, as agent for CTIL and Telefónica UK Ltd to Camden Borough Council by application dated 31 August 2016. It sought planning permission for:

'Installation of 6 no. antennas behind a GRP screen and ancillary works' at Troyes House, Lawn Road, London NW3 2XT (NGR: 527575, 185042).

- 2.3 The 1-APP planning application form was accompanied by a cover letter, planning drawings, the prescribed fee, general background information for telecommunications development, and an ICNIRP declaration and clarification (copies included with submitted appeal). The cover letter also stated that the application had been prepared in accordance with the Code of Best Practice on Mobile Network Development in England (July 2013) and that Site Specific Supplementary Information as per Annex E of that Code would be forwarded to the LPA shortly. As is described below that Supplementary Information was subsequently submitted to the LPA by email on 6 October 2016 (copy of documents with included with submitted appeal). There was also further correspondence with the council which included the submission of further information including photomontages and radio plots (copies included with submitted appeal documents) before the council finally determined the application on 31 October 2016.

- 2.4 The drawings submitted with the application show the radio base station at the appeal site comprises:

A rooftop radio base station comprising six half-height, 1.1m long Commscope multiband antennas pole mounted on a headframe standing on the plantroom roof at the rear of Troyes House, with the antennas and headframe completely hidden behind a bespoke GRP screen, colour-coded to match the adjoining building and designed to reflect the chimneys on the adjoining houses, with the electronic

communications apparatus (equipment cabinets etc.) installed within the existing rooftop plantroom and an electricity meter cabinet at ground level at the rear of Troyes House.. The installation is designed to provide 360 degree single-grid 4G LTE single-grid RF coverage for both Telefónica and Vodafone, together with 2G GSM and 3G UMTS RF coverage for the two operators.

- 2.5 The application case officer Robert Lester prepared a delegated report on the planning application (Appendix A). As is detailed in this statement, in the appellants' view this delegated report is unbalanced and deficient in its analysis of the development plan and other material considerations relevant to the determination of the planning application. In particular there is no evidence that the LPA correctly carried out the telecoms balancing exercise that is a requirement for the consideration of telecommunications applications; or properly identified the harm, if any to heritage assets and weighed it against the public benefits of the proposal, which is a requirement of the NPPF. The delegated report is also incorrect at paragraph 2.7 where it states: *'2.5 The telecommunications development would be sited on the stair overrun with a height of 1.7 m and would be a triangular structure with a length of 2.7 m and width of 2.4 m. This development would be formed of 6 antennas sited behind a glass reinforced plastic screen'*. The GRP screen is rectangular in shape, to reflect the tall chimneys on the adjoining buildings and measures 3.3m x 2.6m x 1.8m high

- 2.6 By its decision notice dated 31 October 2016 the council refused planning permission for the following reason:

'1 The proposed telecommunications antennas and GRP screening structure by virtue of its inappropriate siting, its excessive scale and bulk and unsympathetic functional design, would result in a highly visually prominent and incongruous development which would harm the visual appearance and character of the streetscene, particularly the designated views along Lawn Road and would fail to preserve or enhance the character and appearance of the conservation area, contrary to policy CS14 of the Camden Core Strategy, policies DP24 and DP25 of the Camden Development Policies, policies 7.4 and 7.8 of the London Plan and paragraphs 56-68 and 126-141 of the National Planning Policy Framework'.

- 2.7 On its decision notice the LPA has also included an Informative which states: *'The applicant is advised that the Local Planning Authority is of the view that further consideration should have been given to the potential site at Allingham Court, Belsize Park which is outside the conservation area'*. The inclusion of this informative on the LPA's decision notice is unacceptable. At section 6 of the Supplementary Information, included with the planning application, Allingham Court, an existing rooftop telecoms site currently shared by EE and H3G was listed as was one of the alternative sites that had previously been investigated, but which had to be discounted for the proposed shared

radio base station as the landowner was not willing to host O2 and Vodafone on his building - CTIL cannot compel a landowner to allow it to install a shared radio base station for O2 and Vodafone on his property.

- 2.8 As is described at section 7 of this statement, Inspectors at appeal have stated if the LPA has any concerns about the applicants' discounting of alternative sites these should be raised during its consideration of the planning application. There were a number of exchanges of emails between CTIL's agent and the LPA during its consideration of the planning application, but the LPA never raised this matter, nor questioned the applicants' discounting of alternative sites including Allingham Court. It is unacceptable for the LPA to put the Informative on its decision notice, when it was already fully aware the site was not available to the applicants.
- 2.9 This appeal is against the LPA's refusal of planning permission.

3. PRELIMINARY MATTER

- 3.1 As is described in this statement, the bespoke colour-coded GRP cladding that will screen the antennas and headframe from public view has been designed to resemble the chimneys on the adjoining properties. In the delegated report it is stated the LPA is of the view the GRP screen as proposed *'would be a highly prominent addition to the building due to the siting on the stair overrun and the height, scale and design of the structure'*. In the delegated report it is also stated the Belsize Area Conservation Committee objected to what it wrongly called the proposed 'central tower'.
- 3.2 The appellants disagree with these views. Nevertheless, they have prepared a revised design for the bespoke GRP cladding - one in which the cladding does not seek to reflect the adjoining chimneys and stacks but simply replicates the footprint of the existing plantroom on which it is to be sited. This revised design is shown in drawings 200 and 301, both drawings Issue D (copies of revised drawings attached, Appendix B). If the Inspector considers the revised 'plantroom' design for the bespoke, colour-coded GRP cladding is preferable to the 'chimney' design included with the planning application then the appellants would have no objection to a condition on the planning permission requiring them to carry out the development in accordance with this revised design, rather than install the GRP cladding as shown on drawings 200 and 301 Issue B, included with the planning application.
- 3.3 There is no reason why the Inspector should not consider this minor, non-material amendment to the appeal proposal. At two very recently determined appeals at which I represented CTIL, in permitting shared radio base stations for Vodafone and O2, both Inspectors Whelan and Ware at Kenley and Beckenham respectively approved minor, non-

material amendments to the submitted applications, even though the two LPAs, Croydon and Bromley, respectively, both objected to the Inspector considering the revised drawings (copies of appeal decisions at Appendix C).

- 3.4 At Kenley the approved amendment was to remove 2 transmission dish antennas from the proposed telegraph pole mast, and at Beckenham the amendment was to re-site the equipment cabinet. At Beckenham Inspector Ware also agreed to the telegraph style pole being painted Sage to match the adjoining streetlights rather than brown to reflect BT telegraph poles in the area.
- 3.5 At the current appeal site, the proposed minor, non-material amendment is simply to change the shape of the proposed GRP cladding from a 'chimney' design, reflecting the chimneys on the adjoining buildings to a 'plantroom' design, replicating the footprint of the existing rooftop plantroom on Troyes House.

4. DESCRIPTION OF THE APPEAL SITE

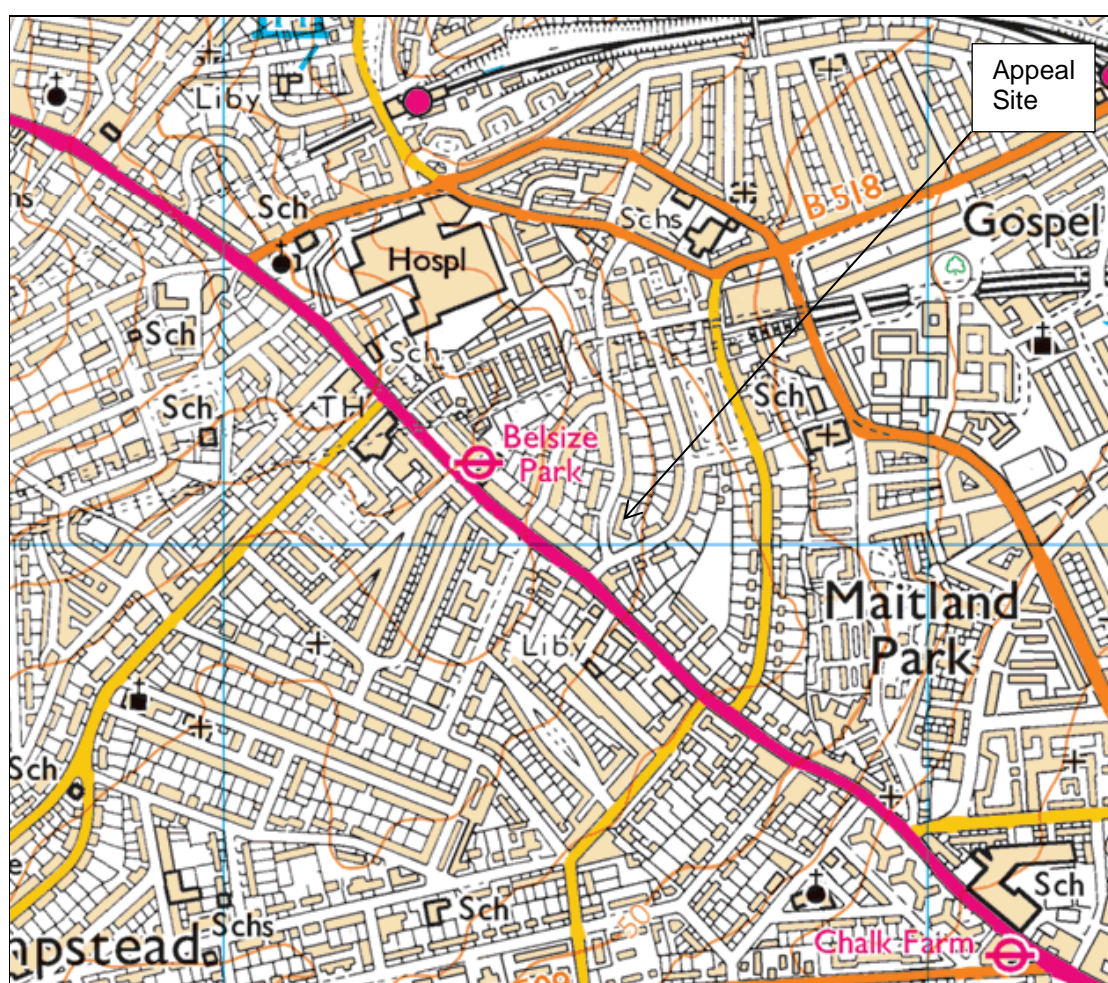


Figure 1: 1:25,000 OS extract showing the location of the appeal site, on the rooftop plantroom at the rear of Troyes House. The density of development in the surrounding area and the location of the appeal site close to the Royal Free Hospital and Belsize Park Underground Station, together with the shops and commercial properties in the

neighbourhood centre along Haverstock Hill (A502), together with the topography and number of mature trees in the surrounding area provide for an extremely high demand for services and a very challenging environment for providing effective RF coverage.

- 4.1 The appeal site is located in and on the rooftop plantroom, which is found at the rear of Troyes House, a post-war, local authority development of flats built to a standard utilitarian design, in the early 1950s, which is sited in the fork of the junction between Lawn Road and Upper Park Road, off Haverstock Hill NW3 - an area in which there is an extremely high demand for mobile electronic communications services and currently wholly inadequate indoor RF coverage (figure 1).
- 4.2 Both Lawn Road and Upper Park Road are quiet residential streets with residents only parking bays along both sides of the roads. There are many mature trees in the area including in the pavements along both sides of Lawn and Upper Park Roads, with many other mature trees in residents' gardens – as is described in this statement mature trees create 'clutter' which attenuates or blocks RF transmissions.
- 4.3 Lawn Road joins Upper Park Road immediately to the south of Troyes House and very short distance (approx. 30 metres) to the southwest Upper Park Road forms a T-junction with Haverstock Hill. Haverstock Hill is a very busy classified road (A502) and bus route with shops and commercial premises along both sides of the road; it is shown as a neighbourhood centre on the LPA's Policies Plan. As its name implies Haverstock Hill climbs northwards past its junction with Upper Park Road and passes both Belsize Park, London Underground Station and the Royal Free Hospital, both of which lie within 500m of the appeal site. This is an area with an extremely high demand for mobile services.
- 4.4 Troyes House is made up from two distinct blocks of flats, which are joined at their southwestern corner. Together the two blocks form an L shape. The short, southern arm, of the L is 3-storeys in height and faces southwest towards the junction of Lawn Road with Upper Park Road. The long arm of the L is 4-storeys high and faces northwest, fronting onto Lawn Road. It is in and on the rooftop plantroom site at the rear of the 4-storey block that the radio base station is proposed to be installed. However, as the installation of apparatus inside the plant room does not constitute development for the purposes of the Town and Country planning Act, it is only the antennas and GRP screening on the plantroom rooftop and AC mains supply meter cabinet against the rear wall of the building at ground level that require planning permission from the LPA.
- 4.5 There is vehicular access to the rear Troyes House where a service area is located, from a private access road running from the west side of Upper Park Road. Pedestrian access to the flats is via communal front entrances from Lawn Road.



Figure 2: The appeal site view northwest, taken from the private access road to Troyes House. The antennas, headframe and GRP screen are proposed to be sited on the plantroom roof, with the meter cabinet against the rear elevation at ground floor level.



Figure 3: View northwest up private access from east side of Upper Park Road. It is not possible to see the plant room on which the apparatus is proposed to be sited as a result of mature trees in the Troyes House site and the gardens of adjoining properties. These mature trees are protected from removal as they are in a conservation area.



Figure 4: Troyes House view north from east side of Upper Park Road, showing the 3-storey arm of the L-shaped block. Mature trees again prevent any view of the plant room on which the antennas and GRP screening are proposed to be sited.



Figure 5: Troyes House, view east from west side of Lawn Road showing the corner of the L-shaped blocks - the three storey element to the right; the four storey element to the left. Again it is impossible to see the plant room on the rear of the 4-storey block from the street.



Figure 6: Troyes House, view southeast of the four storey block from the west side of Lawn Road. As with other publicly available views in the proximity of the appeal site it is impossible to see the plant room at the rear of this block on which the antennas and GRP screening are proposed to be sited.

- 4.6 Other than in the distance along Lawn Road, because of the disposition of the surrounding buildings and the many mature trees, it is only possible to see the plantroom on which the rooftop radio base station is to be sited from along the private access road, which provides vehicular access to the service area at the rear of the flats. Figure 2 shows the view of the appeal site from along this private access road and is included solely for the reason that the plantroom cannot be readily seen from anywhere else. This is not however a publicly available view of the rooftop plantroom development site, which as can be judged from figures 3 to 6, is virtually impossible to see from the nearby surrounding roads.
- 4.7 There are tree planted forecourt gardens in front of both the western and southern front elevations of Troyes House, and the triangle of garden that is found in front of the 3-storey block also contains a number of very large mature trees, which further reduce any possibility of seeing the rooftop plantroom from the surrounding roads. It is on this plantroom that the antennas and bespoke GRP screening are to be erected.
- 4.8 Indeed, as can be seen in the photomontages included with the submitted application and appeal, the bespoke GRP screening, colour-coded to Troyes House and designed to resemble the chimneys on the adjoining houses, will have a wholly acceptable and trivial visual impact in the street-scene from publicly accessible locations.

- 4.9 Most importantly, it is well understood by town planners that there is no entitlement to a view across a third party's land – in this case glimpsed views from back gardens or upper storey windows of nearby properties - of the colour-coded bespoke GRP screening on the rooftop of a 4-storey block of flats. Planning is carried out in the public interest and it is only when private and public interests coincide can views over a third party's land, which are essentially a private property interest, become a material planning consideration. As with views over any adjoining land, that the proposed bespoke colour-coded GRP cladding may be visible from surrounding properties in the area does not equate with harm and cannot normally be regarded as a material planning consideration.
- 4.10 It is only when the visual impact of adjoining development, in this case the bespoke GRP screening on the plantroom, from a principal living room of a nearby property becomes overbearing can it be considered as a material consideration; that is, it is at this point that public and private interests may coincide. This is normally most common and easiest to understand in relation to domestic extensions, where loss of view cannot normally be regarded as a material consideration. However, when the impact of a proposed extension on the view from the principal living room windows of an adjoining property (for example, through serious overshadowing, loss of daylight and sunlight, proximity of long lengths of two- or three-storey blank flank wall along the common boundary between two properties) is such that the adjoining development will appear oppressive, may the public planning interest of the council and private property interests of the occupiers of the affected dwelling coincide. It is at that point that the visual impact of the proposed development on the occupiers of adjoining property can become a material planning consideration, such as potentially to support refusing permission for the development.
- 4.11 This is most certainly not the case at the current appeal site. First, the bespoke, colour-coded GRP screening will prevent the antennas and support structure from being seen at all. Secondly, the rear rooftop location, colour-coding and size of the GRP screening, particularly in relation to the size and design of 4-storey block of flats building on which it is to be sited, together with the many mature trees in the locality, means that any views of the GRP screening will be wholly acceptable both in the street-scene and from any nearby properties. Any views of the bespoke GRP cladding cannot be said to be overbearing and therefore could not have been a material planning issue in the determination of the planning application or in this appeal.
- 4.12 This position was confirmed at a recent appeal in Barnet at which I represented CTIL (Appendix D). In allowing the appeal for a shared radio base station, a 20m tree mast and 4 radio equipment cabinets in its own fenced compound for Vodafone and O2, Inspector Fort stated at paragraph 21 of his decision:

'21. The proposal may be visible from windows of residential properties. However, due to the separation distances achieved between it and the nearest dwellings and its relatively slim profile at higher level, it could not be said to constitute an overbearing structure that would be unduly harmful to outlook. In terms of the proposal's effects on private views, these are matters that the Courts have held can rarely be instrumental in planning decisions, and as such I only attach very limited weight to these considerations in arriving at my decision'.

- 4.13 In *Hunter and others v Canary Wharf*, House of Lords (24 April 1997) a private nuisance case which related to interference with the television reception to a large number of properties in the surrounding area as a result of the 280m high, 50m square, Canary Wharf Tower development (Appendix E), in his judgment Lord Lloyd of Berwick stated:

*'I need add very little on the second point, since I agree with the unanimous decision of the Court of Appeal that interference with television reception is not capable of constituting an actionable private nuisance. I lay stress on the word "actionable." For I would not want it to be thought for one moment that I regard television reception as being of little or no moment. The annoyance caused by the erection of Canary Wharf and the consequential interference with television reception must have been very considerable. But unfortunately the law does not always afford a remedy for every annoyance, however great. The house-owner who has a fine view of the South Downs may find that his neighbour has built so as to obscure his view. But there is no redress, unless, perchance, the neighbour's land was subject to a restrictive covenant in the house-owner's favour. It would be a good example of what in law is called "damnum absque injuria": a loss which the house-owner has undoubtedly suffered, but which gives rise to no infringement of his legal rights. **In the absence of a restrictive covenant, there is no legal right to a view.** The analogy between a building which interferes with a view and a building which interferes with television reception seems to me, as it did to the Court of Appeal, to be very close' [emphasis added].*

- 4.14 Impact on residential amenities is not a reason for the LPA's refusal of planning permission for the proposed development, and paragraph 3.1 of the delegated report states: *'3.1 It is acknowledged that a nearby resident has objected on the grounds of loss of light and outlook. However, given its distance and height/bulk, the development would not result in an amenity impact by reason of loss of light or noise in accordance with policy DP26'.*
- 4.15 To conclude, as can be seen clearly from the images and photomontages, the appeal proposal is neither excessive in scale nor bulk, nor of an unsympathetic design. Similarly, it is most certainly neither prominent nor incongruous in the street-scene. The bespoke

cladding will hide the rooftop antennas from public view and leave the conservation area unharmed.

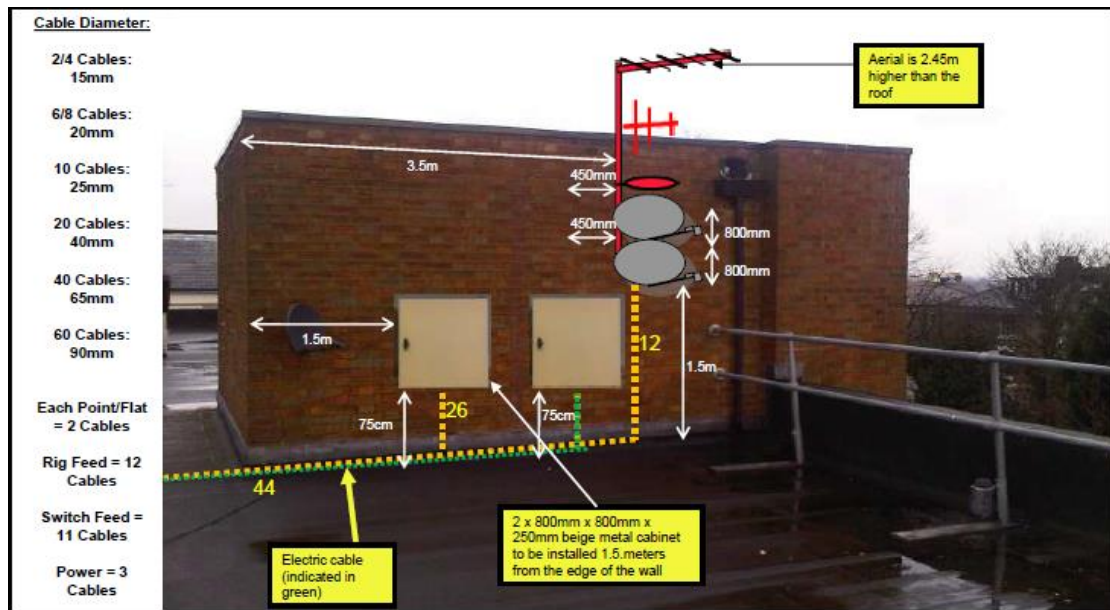
- 4.16 As is demonstrated in this statement, the appeal proposal is for a demonstrably necessary radio base station of the minimum height and a wholly acceptable camouflaged design on the rooftop of a four-storey block of flats of a standard utilitarian design fully in accordance with the development plan and other material considerations including the NPPF. The council should have granted planning permission for the proposed development and saved this unnecessary appeal.

5. RELEVANT PLANNING HISTORY

- 5.1 In the delegated report on the planning application (Appendix A), at 'Site History' the LPA's case officer, Robert Lester, refers to two previous planning applications at Troyes House, both applications for the council's own development and both permitted by the LPA. The appellants do not consider there was anything wrong with either application and the LPA was correct in granting planning permission for both developments.
- 5.2 The first of the two applications (LPA ref 2004/3569/P) was for replacement aluminium doors and windows at Troyes House included the installation of guardrails standing 400mm above the parapet of the flat roof on all the building's elevations (figure 7). The visual impact of the development permitted by the LPA on the Troyes House and the conservation area was considerably greater than the current appeal proposal, but the works were considered acceptable by the LPA and planning permission was granted for the development.



Figure 7: Extract from the permitted, submitted drawings for replacement doors windows and installation of guardrails round rooftop of Troyes House.



Figures 8 and 9 Extracts from the permitted, submitted drawings for satellite dishes, antenna and external cable runs at Troyes House

- 5.3 The second application (LPA ref 2011/3190/P) was for the installation of satellite dishes, an external antenna and external cable runs on Troyes House (figures 8 and 9). Again the permitted works had considerably greater impact on the building and conservation area than the current appeal proposal. Planning permission was again granted for the council's own development, despite objection from the conservation area advisory committee.
- 5.4 As previously stated, in the appellants' view the LPA was correct to grant planning permission for the proposed development on this very large, utilitarian building. However, it is most noticeable in the delegated report on that planning application (copy at Appendix F) any objections to or perceived negative aspects of the development proposal were downplayed or simply set aside, whereas at the current

appeal site the delegated report (Appendix A) does the exact opposite. It emphasises and exaggerates any perceived objection to the development proposal. This is unacceptable behaviour by the LPA. Applicants for planning permission are entitled to have their applications dealt with fairly and consistently by the LPA. Had the LPA taken the same approach to the appellants' proposal at Troyes House as it did to its own development proposals it would have granted planning permission and saved this unnecessary planning appeal.

- 5.5 It is also the case that the current application and appeal is not the first attempt to obtain permission a shared radio base station to provide demonstrably necessary RF coverage to this part of Camden. As is stated at section 5 of the Supplementary Information, application was made at Belsize Park Underground Station on 30 September 2015 for a shared rooftop radio base station for O2 and Vodafone (figure 10). However, the planning application had to be withdrawn on 7 December 2015, before the LPA had registered the planning application, as Transport for London (TfL), the landowner, withdrew its support for the development. As at Allingham Court, without the landowner's agreement it was not possible to install a radio base station at the underground station.

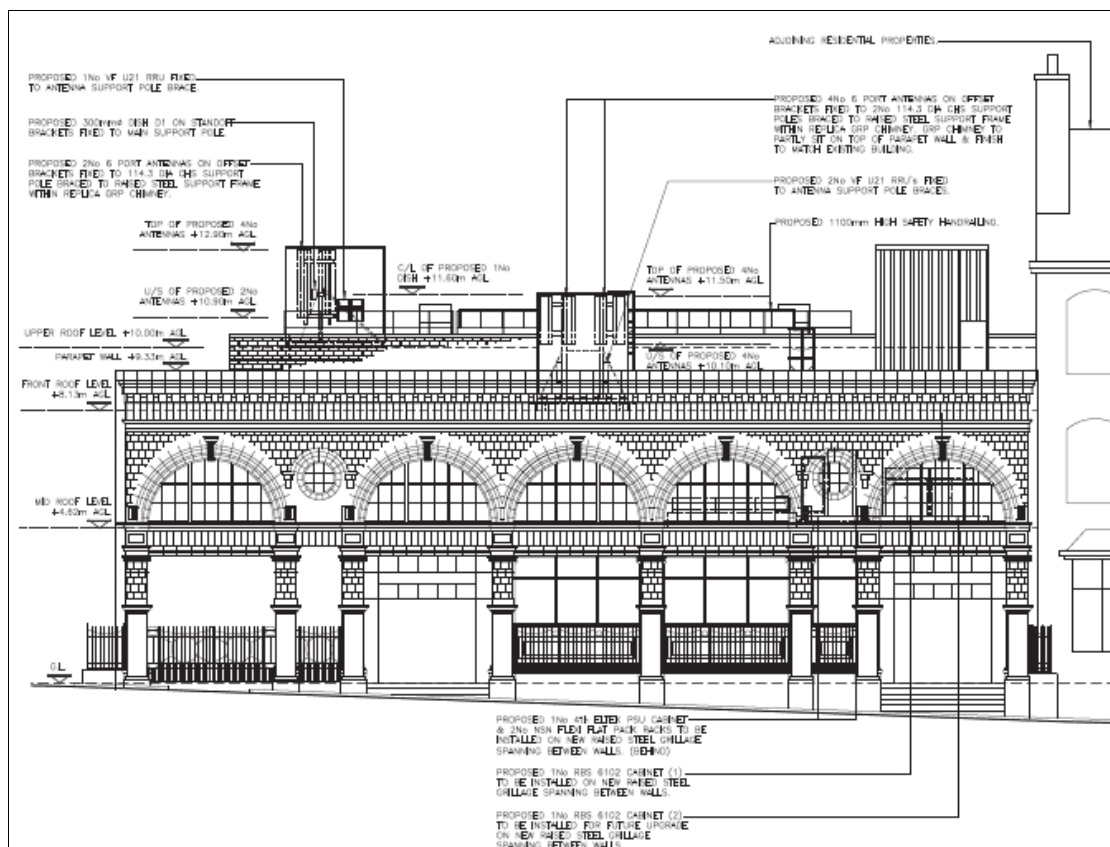


Figure 10: Proposed rooftop installation at Belsize Park Underground Station. The planning application had to be withdrawn before the LPA registered it as TfL no longer wished to permit the installation.

- 5.6 In respect of Allingham Court, as previously described, the LPA has included an Informative on its decision notice stating that *'The applicant*

is advised that the Local Planning Authority is of the view that further consideration should have been given to the potential site at Allingham Court, Belsize Park which is outside the conservation area'. However, when approached the landowner made it clear he was not interested in accommodating a CTIL development for O2 and Vodafone on his property. He was in the process of negotiating with UK Broadband Ltd for a second installation at the site and an option on Allingham Court could not be progressed.

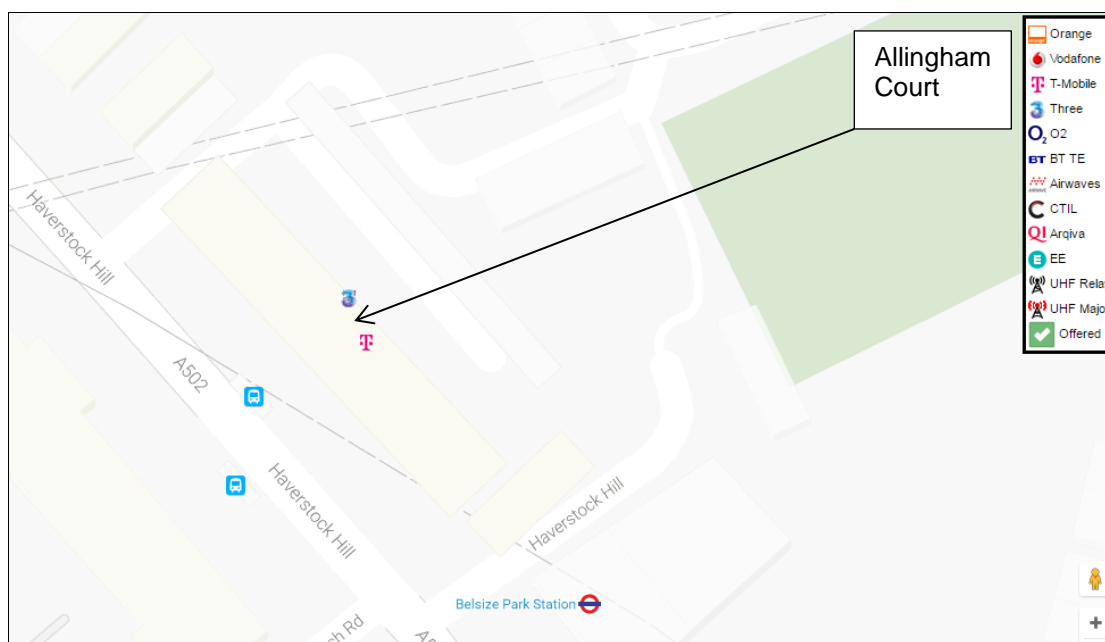


Figure 11: Extract from Mast Data, showing the shared rooftop EE/H3G radio base station at Allingham Court. T-Mobile has since 2010 been part of the 50:50 Everything Everywhere joint venture with Orange PCS; EE has a MBNL network sharing agreement with H3G.

- 5.7 Indeed, the LPA's online Planning Register shows that in December 1999 the LPA granted approval for the installation of a Mercury Personal Communications radio base station at Allingham Court. Mercury was subsequently sold to Deutsche Telekom, who rebranded the service T-Mobile. In 2010 T-Mobile and Orange PCS (owned by France Telecom) formed a 50:50 joint venture Everything Everywhere (now trading as EE Ltd) and, under its MBNL network sharing agreement, shares its sites and radio network with H3G (trading as 3UK), thus explaining the shared EE/H3G radio base station currently shown at Allingham Court (figure 11). However, so far as this appeal is concerned, as stated, Allingham Court is not available to O2 and Vodafone and was properly discounted for site-provider reasons.
- 5.8 Most importantly, for this appeal even if the site at Allingham Court was available which it is not, that would not matter. At a very recently determined appeal in Plumstead in which I represented CTIL the proposal was for a shared street furniture radio base for O2 and Vodafone in a densely built-up urban area (Appendix G). In allowing

the appeal, at the end of paragraph 9 of his decision letter Inspector Seaton stated:

‘With regards alternative sites, I have noted the appellant’s submissions within the supplementary information, but I am mindful that even if alternative sites were available, there is no requirement within the Framework or the GPDO for developers to select the best feasible siting’.

5.9 LPA ref 2016/4803/P (the appeal application): However, as there was no other alternative site available to the operators, on 31 August 2016 Waldon Telecom as agent for CTIL and Telefónica UK Ltd applied for planning permission for a shared rooftop installation at Troyes House (figure 12). As is described in this statement, the half-height antennas are to be completely hidden from view behind a bespoke, colour-coded GRP screen designed to resemble the chimneys on adjoining properties. As stated the LPA refused the planning application by its decision notice dated 31 October 2016.

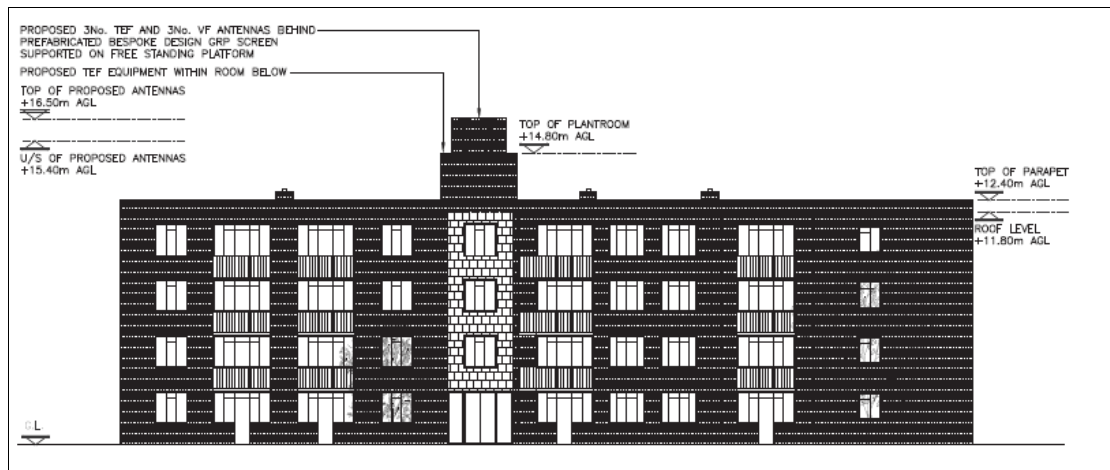


Figure 12: Current appeal proposal, 6 multiband antennas hidden behind bespoke colour-coded GRP screen designed to resemble the chimneys on nearby buildings on the rooftop of Troyes House

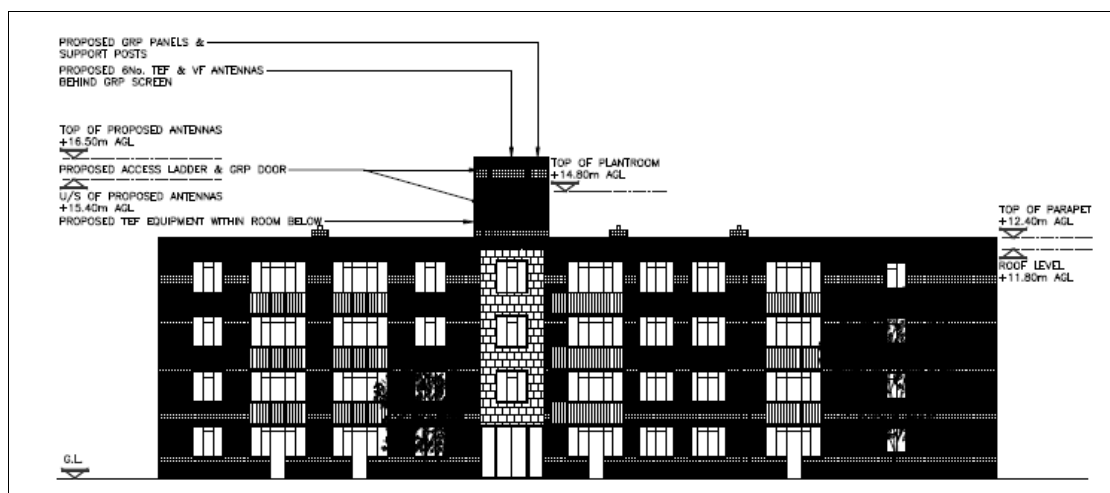
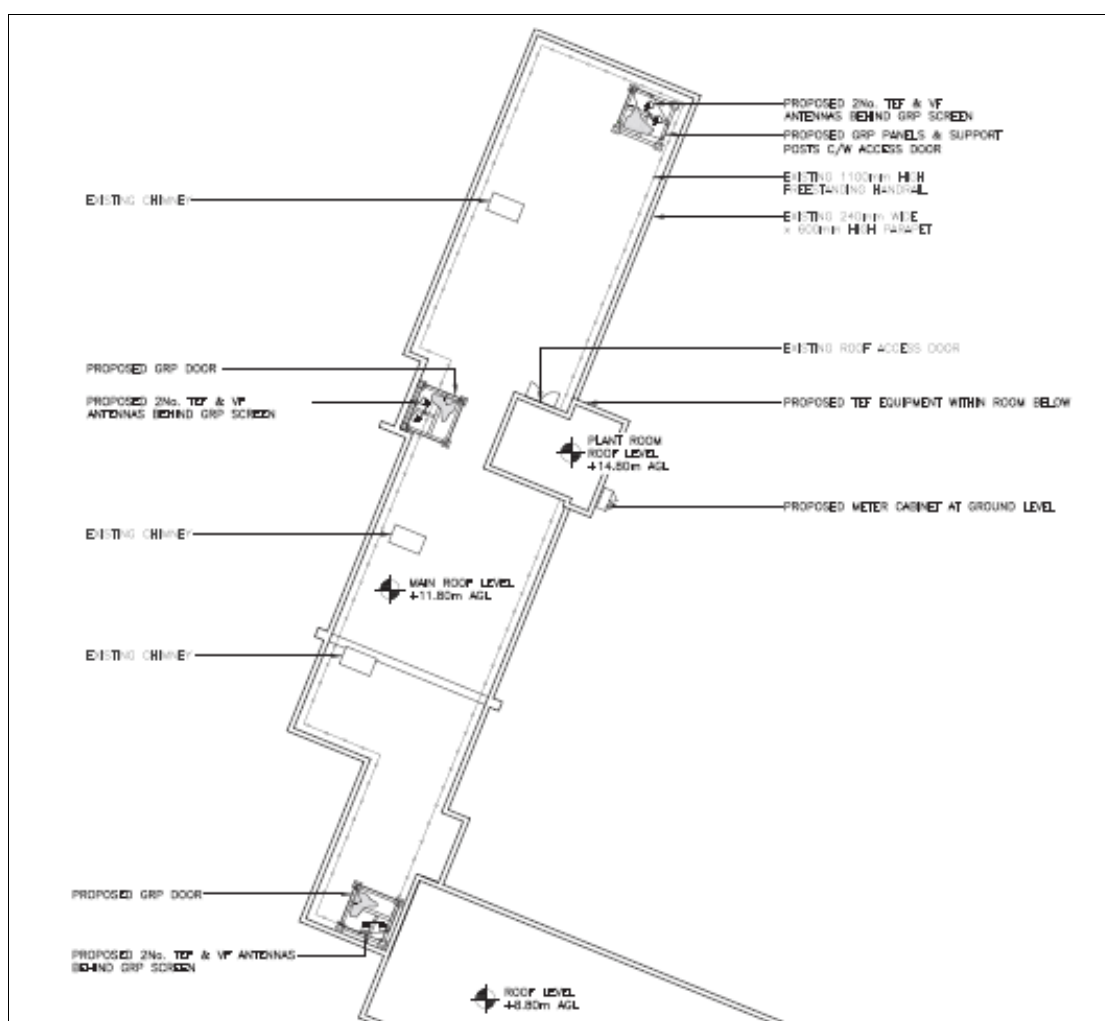


Figure 13: Alternative design for rooftop installation with bespoke, colour-coded GRP cladding designed to replicate existing plantroom

5.10 As is described in the email trails (included with the application and appeal) during the LPA's consideration of the planning application various alternative designs for the rooftop radio base station were discussed with the LPA. One of those alternative designs was for the GRP cladding to replicate the plantroom on which it is sited, and in the revised drawings (Appendix B) the Inspector is also asked to consider this alternative design for the rooftop radio base station (figure 13).



Figures 14 and 15: Application LPA ref 2017/2068/P, with shared GRP screened antennas at the edges of the building - planning application not yet determined by the LPA.

- 5.11 **Planning Application LPA ref 2017/2068/P:** On 7 April 2017 Waldon Telecom as agent for CTIL and Telefónica UK Ltd made a planning application for one of the other alternative designs of rooftop installation at Troyes House discussed during the LPA's consideration of application LPA ref 2016/4803/P (the current appeal application). This is for 2 antennas to be sited in each of three separate locations close to the edges of the rooftop of Troyes House, with bespoke GRP shrouds covering all three sets of antennas (figures 14 and 15). Moving the antennas towards the edges of the building, and thereby reducing the signal 'clipping' caused by the edges of the rooftop has enabled the overall height of the rooftop installation to be reduced. However, the disadvantage of this alternative design is that 3 separate bespoke, colour-coded GRP screens again designed to resemble the chimneys on the adjoining building are required to be installed on the rooftop.
- 5.12 This planning application, LPA ref 2017/2068/P, has not yet been determined by the LPA. If the LPA grants planning permission, this appeal can be withdrawn. However, if it is refused by the LPA, CTIL and Telefónica UK Ltd intend to appeal the LPA's refusal and seek to have PINS conjoin the two appeals, effectively giving the Inspector a choice between 3 alternative designs for the required rooftop radio base station at Troyes House.
- 5.13 To conclude, as is described in this statement, it is considered the installation of 6 half-height multiband antennas and ancillary development in and on the rooftop plantroom at Troyes House, fully screened from public view by bespoke colour-coded GRP cladding designed to reflect the tall chimneys on the adjoining buildings, or to mimic the existing plantroom as shown in the revised drawings, is wholly acceptable and in accordance with the development plan and other material considerations. The LPA should have granted planning permission for the rooftop radio base station at the appeal site and saved this unnecessary planning appeal.

6. THE DEVELOPMENT PLAN

- 6.1 The planning system in England is 'plan-led'. In accordance with section 70 of the Town and Country Planning Act, 1990, and section 38 of the Planning and Compulsory Purchase Act, 2004, in determining planning applications the local planning authority is required to have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations, and is required to determine the application in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise.
- 6.2 In London the Development Plan comprises the Mayor's London Plan and Camden Council's Local Plan, and as is demonstrated in the

following paragraphs, the appeal proposal is in accordance with the development plan's proposals for the appeal site.

The London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011 (March 2016)

- 6.3 In March 2016 the Mayor adopted and published further alterations to the London Plan. Chapter 4, London's Economy, contains an ICT policy relevant to the installation and upgrade of electronic communication base stations. This is Policy 4.11, 'Encouraging a Connected Economy', which states:

'Policy 4.11 Encouraging a connected economy

Policy

Strategic

A The Mayor and the GLA Group will, and all other strategic agencies should:

a facilitate the provision and delivery of the information and communications technology (ICT) infrastructure a modern and developing economy needs, particularly to ensure: adequate and suitable network connectivity across London (including well designed and located street-based apparatus); data centre capability; suitable electrical power supplies and security and resilience; and affordable, competitive connectivity meeting the needs of small and larger enterprises and individuals

b support the use of information and communications technology to enable easy and rapid access to information and services and support ways of working that deliver wider planning, sustainability and quality of life benefits'.

- 6.4 The shared O2 and Vodafone rooftop radio base station at the appeal site is fully in support of Policy 4.11. It will facilitate the provision and delivery of improved ICT to the surrounding area. It will provide improved RF coverage and capacity to the surrounding area. Also having regard to the importance of ICT and mobile broadband to the London economy, the Mayor has published two further documents relevant to the application proposal.

London Infrastructure Delivery Plan 2050 (published 2014)

- 6.5 As part of the work on the London Plan Alterations, the Mayor commissioned work to develop a long term infrastructure investment plan for London, and in 2014 the '*London Infrastructure Delivery Plan 2050*' was published for consultation. The stated aim of the Infrastructure Delivery Plan is to provide for fast, ubiquitous access to the internet from mobile and fixed devices. Chapter 16 of the Plan, Digital Connectivity, indicates how the Mayor's Office will support a mix

of technologies including mobile broadband and future methods of wireless internet delivery to address the capacity crunch in the short term, as well as aiming to make London the first capital city in the world to deploy 5G in the 2020s. Among other matters it is stated:

'Broadband is now considered the fourth utility. The Government has stated that it wants 99% of the population to have superfast connections by 2018. Internet access speeds and coverage affect the productivity of businesses and are now a factor considered by homebuyers. Access is not only essential to many businesses, but also, as more local authorities are encouraged to move the services they provide online, access is essential for residents to be able to take part in a modern society. The Mayor wants every resident and business in London to be able to have affordable high speed internet connectivity, should they choose to access it'.

- 6.6 The appeal proposal fully supports the Mayor's Infrastructure Delivery Plan; the rooftop radio base station will allow, amongst others, residents and businesses living and operating in this part of the council's administrative area; shoppers using Haverstock Hill Neighbourhood Centre; commuters and visitors to London using Belsize Park Underground Station; and with passengers in buses and vehicles passing through the area on Haverstock Hill (A502) and other roads in the area to have reliable high-speed mobile broadband internet connectivity in their homes and businesses and during their visits and journeys.

Raising London's High Speed Connectivity to World Class Levels

- 6.7 The Mayor's report: *'Raising London's High Speed Connectivity to World Class Levels'* amplifies Chapter 16, Digital Connectivity, of his Infrastructure Delivery Plan. The report notes, the availability of internet access not only affects the productivity of businesses and proves essential to the future growth of many firms, it is also vital for many residents to take part in modern society, as more services move online. The report also notes among other matters, that *'Mobile operators already experience difficulty obtaining permission from local authorities...to increase capacity for their networks in areas where there is high demand.* The Mayor, therefore, will be working with central Government and London's local authorities to ensure that strategic communication networks are enabled rather than inhibited by the planning and other regulatory systems. As a last resort and having regard to the strategic importance of London Plan Policy 4.11 the report states:

'The Mayor has overall strategic responsibility for planning in London...The communications network of London is clearly one of strategic importance. Should the implementation of the London Plan across strategic agencies not provide the adequate flexibility for the development of a robust communications network, whether based on

existing technologies or future ones, the Mayor will seek to bring planning applications for communications infrastructure within this strategic responsibility, with the ability to take them over for his own determination...'

- 6.8 As with the London Plan and the London Infrastructure Delivery Plan, the application proposal is fully in support of the objectives of *Raising London's High Speed Connectivity to World Class Levels*. It is regrettable that Camden Council is failing to support the Mayor's forward looking policies for reliable high-speed mobile electronic communications, in refusing to grant permission for O2 and Vodafone's shared radio base station at the appeal site.
- 6.9 In the delegated report the LPA lists the Mayor's London Plan as a relevant policy and at section 5, one of the report's conclusions is to refuse the application as contrary to the London Plan. There is however not a single word in the delegated report identifying in what way the development is contrary to the London Plan. More remarkably in the LPA's decision notice it is stated the proposal is contrary to the London Plan policies 7.4 and 7.8 – policies which appear 'out of thin air' with neither explanation nor justification for their inclusion in the LPA's decision notice.
- 6.10 That said, in relation to policy 4.11, the London Plan's ICT policy – the directly relevant policy for the appeal proposal – the LPA must agree the appeal proposal is in full accordance with this London Plan policy, which is not referred to in the LPA's decision notice. This is because Article 35 of the Development Management Procedure Order 2015 requires:
- '35.—(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters— (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision'.*
- 6.11 Turning now to London Plan policies 7.4 and 7.8 - as stated, other than listing the London Plan in the delegated report, there is not a single word about either of these London Plan policies, or in what way the proposed development is contrary to their provisions, unlike Camden Council's own planning policies which are each listed separately and their implications analysed in detail in the delegated report. In the appellants' view the most likely reason for this state of affairs is that these two London Plan policy reasons were thought of by the LPA at the last minute, when the decision notice was about to be issued and were simply added to the reason for refusal, most certainly without any detailed consideration or analysis of their direct relevance to the development proposal.

- 6.12 All that said, dealing with these two London Plan policies in turn, the first policy 7.4 deals with Local Character (copy of policy included with LPA's questionnaire), and in the delegated report it is stated:

'Troyes House is a 4 storey building with a flat roof constructed from brick with projecting concrete balconies. The building is set back from Lawn Road/Upper Park Road behind landscaped gardens and low front boundary wall.'

The site is located within the Parkhill Conservation Area. The eastern side of Lawn Road and both sides of Upper Park Road contain 4 storey semi-detached Victorian dwellings with traditional architectural detailing. The western side of Lawn Road contains two storey inter-war dwellings built in the Arts and Crafts style. The site is located close to the junction of Upper Park Road and Haverstock Hill. There are several high post war blocks of flats located near the site on Haverstock Hill.

The Conservation Area Statement (CAS) identifies the Troyes house site within the Lawn Road/Upper Park Road residential area and states that the post 1945 flats on the site replaced previous war damage. The building is identified as a neutral contributor to the area. The CAS states that the houses on the eastern side of Lawn Road are pairs of 1860s semi-detached brick and stucco villas designed by William Lund'.

- 6.13 For whatever reason, the authors of the CAS (copy included with LPA's questionnaire), appear to have been constrained from saying anything negative about Troyes House, a Camden Council owned development, or any other municipal building in the conservation area. The CAS therefore describes Troyes House as being a 'neutral building' in the conservation area. Nothing could be further from the truth. The reality is that Troyes House has all the architectural merit of a 1950's telephone exchange, which it resembles in many respects.
- 6.14 In the appellants' view, Troyes House is completely out of character with its leafy conservation area setting of Victorian and Arts and Crafts buildings. Among many other things, the brick from which Troyes House is built is the wrong colour for the Victorian buildings it adjoins on both Lawn Road and Upper Park Road, and the red brick Arts and Crafts dwellings on the opposite side of Lawn Road. It is also completely devoid of any of the interesting details found on those adjoining buildings. Troyes House also has a strongly horizontal emphasis, whereas the Victorian Villas it adjoins have a strong vertical emphasis. This horizontal emphasis is further emphasised by the fenestration and balconies on Troyes house, which are both utilitarian in design and completely wrong for the east side of Lawn Road. Similarly, the adjoining Victorian Villas and Arts and Crafts houses have pitched roofs unlike Troyes House which is flat roofed.
- 6.15 As the delegated report states, Troyes House is a post-war development. It was built in 1952 on the site of a former convent that

was bombed-out during the war. At the time Troyes House was built there were still shortages of building materials and the primary objective of the council and government at that time was to provide as many dwellings to standard, utilitarian designs, as quickly and as cheaply as possible. To claim Troyes House is a 'neutral building' is a misnomer. By any objective criteria Troyes House is a negative building with a negative visual impact on the conservation area. The only real saving grace for Troyes House is that the many mature trees at the junction of Lawn Road and Upper Park Road assist considerably in reducing the building's visual impact in the street-scene.

- 6.16 That said, the appeal proposal, as can be seen in the images and photomontages will have trivial additional visual impact on Troyes House or in the conservation area street-scene. It will have neutral visual impact in the conservation area. So far as London Plan policy 7.4 is relevant to the installation of a rooftop radio base station completely hidden from public view behind a bespoke colour-coded GRP screen, designed to resemble either a chimney or the plantroom on which it is sited; the appeal proposal is in accordance with the policy 7.4's provisions.
- 6.17 The second London Plan policy with which the LPA alleges the proposed development does not conform is policy 7.8, Heritage assets and archaeology. The policy states:

'Policy 7.8 Heritage assets and archaeology

Policy

Strategic

A London's heritage assets and historic environment, including listed buildings, registered historic parks and gardens and other natural and historic landscapes, conservation areas, World Heritage Sites, registered battlefields, scheduled monuments, archaeological remains and memorials should be identified, so that the desirability of sustaining and enhancing their significance and of utilising their positive role in place shaping can be taken into account.

B Development should incorporate measures that identify, record, interpret, protect and, where appropriate, present the site's archaeology.

Planning decisions

C Development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate.

D Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.

E New development should make provision for the protection of archaeological resources, landscapes and significant memorials. The physical assets should, where possible, be made available to the public on-site. Where the archaeological asset or memorial cannot be preserved or managed on-site, provision must be made for the investigation, understanding, recording, dissemination and archiving of that asset.

LDF preparation

F Boroughs should, in LDF policies, seek to maintain and enhance the contribution of built, landscaped and buried heritage to London's environmental quality, cultural identity and economy as part of managing London's ability to accommodate change and regeneration.

G Boroughs, in consultation with English Heritage, Natural England and other relevant statutory organisations, should include appropriate policies in their LDFs for identifying, protecting, enhancing and improving access to the historic environment and heritage assets and their settings where appropriate, and to archaeological assets, memorials and historic and natural landscape character within their area'.

- 6.18 As stated previously, there is nothing in the delegated report to indicate in what way the appeal proposal does not accord with policy 7.8. Indeed, looking at the criteria in 7.8 only criterion D appears in anyway relevant to the installation of a rooftop radio base station on a 'neutral building' in a conservation area.

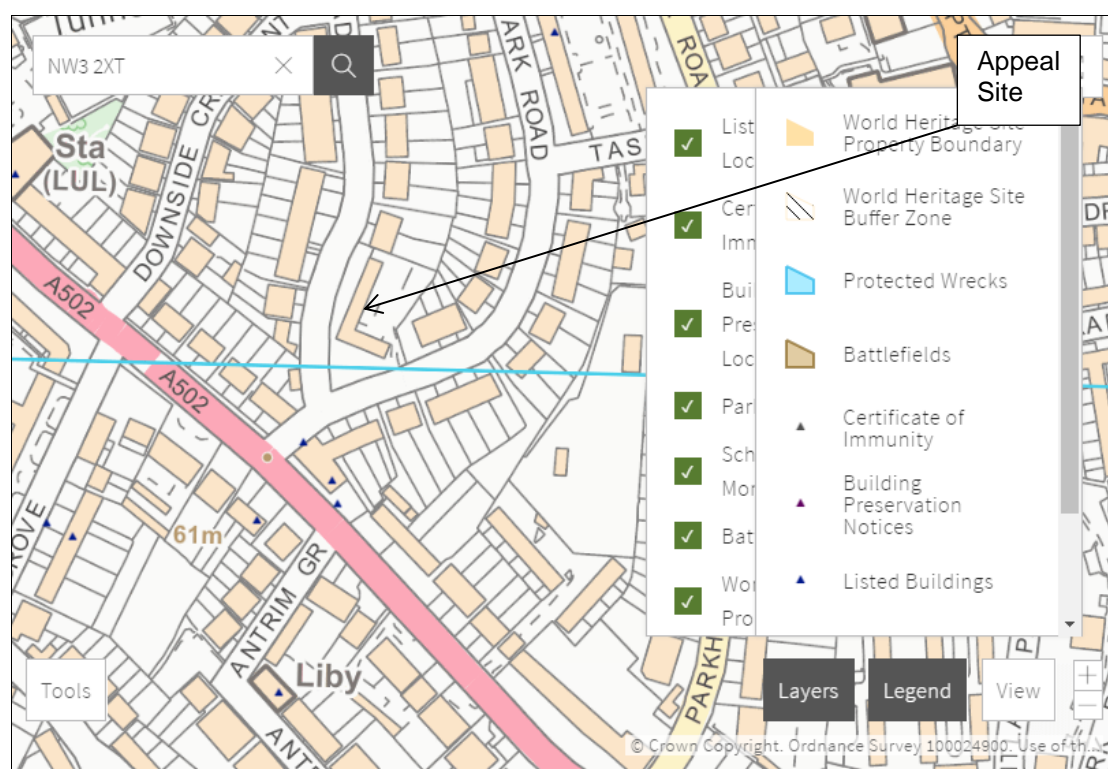


Figure 16: Extract from Historic England's 'National Heritage List for England' website showing listed buildings etc. in the vicinity of the appeal site

- 6.19 In relation to criterion D, at figure 16 is an extract from Historic England's 'National Heritage List for England' website showing listed buildings in the vicinity of the appeal site. The nearest listed building to the appeal site, shown by a black triangle on the map extract, is a K2 telephone box sited at the back edge of the pavement on the east side of Upper Park Road close to its junction with Haverstock Hill. The other two listed building also shown by black triangles are for 148 Haverstock Hill and the front garden wall to the same property. The appeal proposal does not affect any listed buildings.
- 6.20 In respect of any impact on the Park Hill Conservation Area in which the appeal site is located, it is Troyes House itself a very large utilitarian building that has the impact on the conservation area. Any visual impact from the appeal proposal, antennas hidden completely from view behind a colour-coded GRP screen will be trivial as can be seen in the photomontages included with the application and appeal. Indeed, it is noticeable that apart from listing the photomontages in the heading to the delegated report, there is no further reference to these most important documents, which provide an objective visual assessment of the trivial visual impact of the proposed development on both Troyes House and the adjoining conservation area.
- 6.21 Moreover, at section 7.2 the CAS provides guidance on the installation of satellite dishes in the conservation area - the nearest equivalent development to the appeal proposal and in respect of which it is stated:

'Satellite dishes

Satellite dishes are unacceptable where they are on a main façade, in a prominent position or visible from the street. The smallest practical size should be chosen with the dish kept to the rear of the property, or below the ridge line and out of sight at roof level. Planning permission is usually required'.

- 6.22 The appeal proposal is fully in accordance with CAS guidance on this matter. The apparatus is to be sited at the rear of the building. It is completely hidden from the street by colour-coded GRP cladding and is of the smallest practical size: half-height antennas only 1.1m long are proposed to be installed at the appeal site, to minimise any visual impact on Troyes House or in the street-scene, as compared to the typical 2m or 2.6m long multiband antennas that are normally deployed on rooftop installations. As can be seen in the photomontages the appeal proposal will have a wholly acceptable visual impact in the street-scene and conservation area in general.
- 6.23 To conclude, as demonstrated, the appeal proposal is fully in accordance with the Mayor's London Plan. Most importantly, where there is any conflict between the council's local plan (comprising its Camden Core Strategy and Camden Development Policies DPDs, both

adopted 2010) and the Mayor's 2016 published London Plan, those conflicts are required by law to be resolved in favour of the London Plan, as it is the most recently adopted or published. Section 38(5), of the Planning and Compulsory Purchase Act 2004, requires:

'(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be).'

Camden Local Plan

- 6.24 In January 2016 Camden Council published the most recent version of its Local Development Scheme (LDS) at paragraph 2.2 the LDS states:

'2.2 The Local Plan is currently made up of the following adopted documents:

- *Camden Core Strategy (adopted 2010)*
- *Camden Development Policies (adopted 2010)*
- *Site Allocations (adopted 2013)*
- *Fitzrovia Area Action Plan (adopted 2014)*
- *Euston Area Plan (adopted 2015)*
- *Fortune Green and West Hampstead Neighbourhood Plan (adopted 2015).'*

- 6.25 Only the Core Strategy and Development Policies DPDs are relevant to the current appeal site.
- 6.26 To accompany its local plan, the council has published a Policies Map. On the LPA's Policies Map the appeal site (figure 17) is simply shown within the Park Hill and Upper Park Conservation Area. No other policies are shown as applying to the appeal site. In particular the appeal site is not within any 'Designated Views', which are identified on the Policies Map by the symbols shown at figure 18.

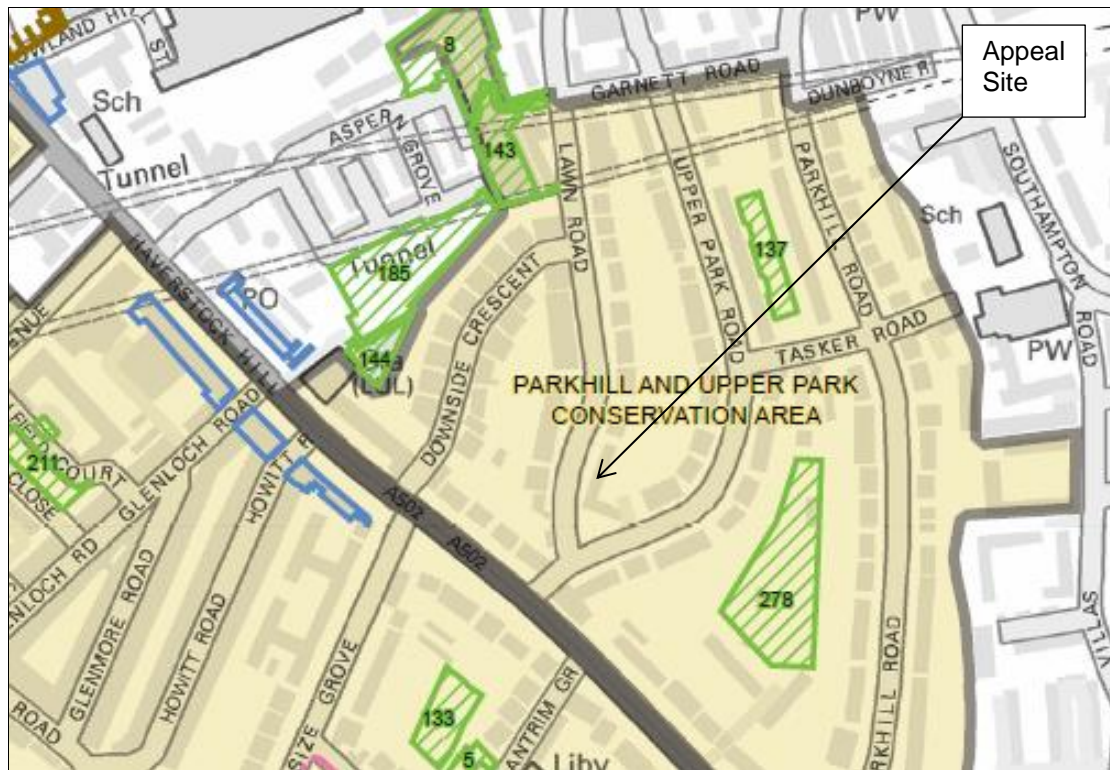


Figure 17: Extract from LPA's Policies Map for the appeal site, which is shown within the Parkhill and Upper Park Conservation Area.

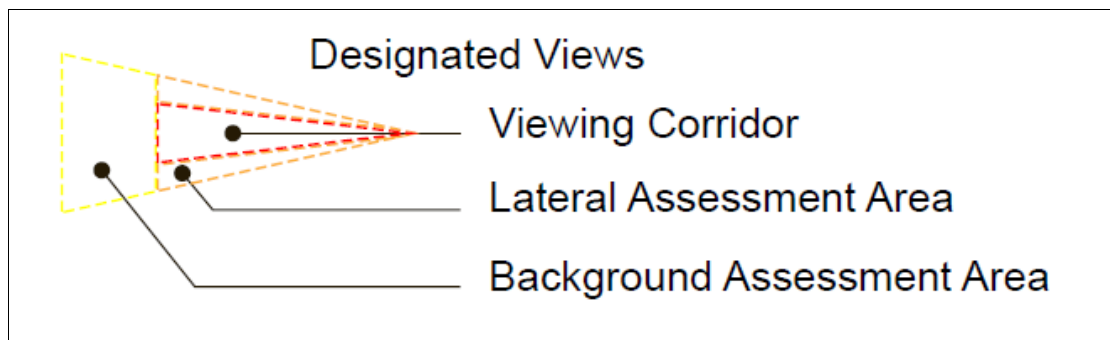


Figure 18: Extract from the key to the LPA's Policies Map showing the symbol used for identifying 'Designated Views'.

Camden Core Strategy DPD (adopted November 2010)

6.27 The rooftop radio base station to be installed at the appeal site is physical infrastructure, a public utility service, necessary to support the local community, and the adopted Core Strategy at CS19 contains a delivery policy for such infrastructure. It states:

'CS19 – Delivering and monitoring the Core Strategy

The Council will work with Camden's Local Strategic Partnership and its other partners to deliver the vision, objectives and policies of this Core Strategy. We will:

a) work with relevant providers to ensure that necessary infrastructure is secured to support Camden's growth and provide the facilities

needed for the borough's communities. Information on the key infrastructure programmes and projects in the borough to 2025 are set in Appendix 1;

b) use planning obligations, and other suitable mechanisms, where appropriate, to:

- support sustainable development,*
- secure any necessary and related infrastructure, facilities and services to meet needs generated by development, and*
- mitigate the impact of development;*

c) work with neighbouring boroughs to coordinate delivery across boundaries; and

d) monitor the implementation of the Core Strategy against the indicators set out in Appendix 4 and publish the results in our Annual Monitoring Report'.

- 6.28 The appeal proposal is fully in accordance with CS19. The rooftop radio base station to be installed at the appeal site will provide mobile electronic communications to the public; a utility service that supports Camden's growth and provides a facility needed by the borough's communities. The installation supports sustainable development: among other things, it reduces the need to travel particularly at peak-periods and facilitates working from home. Most importantly it is provided at no cost to the public purse. Indeed, such is the importance of the provision of such utility infrastructure to meet the borough's present and future needs that at paragraph 19.8 of the Core Strategy it is stated:

'19.8 It is vital that the transport facilities and services, utilities and social infrastructure needed to make development work and support local communities is provided, particularly in the parts of the borough that will experience most growth in future years. Therefore, the Council has engaged with infrastructure providers, delivery partners and other relevant organisations to ensure that necessary infrastructure is planned and will continue to do so to ensure that the infrastructure to support growth is delivered'.

- 6.29 The appeal proposal is clearly fully in accordance with CS19 and again having regard to Article 35 of the DMPO the LPA must agree this is the case; policy CS19 is not referred to in the LPA's delegated report or decision notice.
- 6.30 In the delegated report (Appendix A) the LPA identifies the following Core Strategy policies as relevant to the appeal proposal: *'CS1 Distribution of Growth, CS4 Areas of more limited change, CS5 Managing the Impact of Growth and Development, CS14 Promoting high quality places and conserving our heritage, CS16 Improving*

Camden's health and well-being'. However, in its decision notice the LPA only alleges the proposed development is contrary to policy CS14. Therefore in accordance with Article 35 DMPO the LPA must also agree the development is in accordance with Core Strategy policies CS1, CS4, CS5 and CS16.

6.31 Policy CS14 is the council's conservation policy. It states:

'CS14 – Promoting high quality places and conserving our heritage

The Council will ensure that Camden's places and buildings are attractive, safe and easy to use by:

a) requiring development of the highest standard of design that respects local context and character;

b) preserving and enhancing Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens;

c) promoting high quality landscaping and works to streets and public spaces;

d) seeking the highest standards of access in all buildings and places and requiring schemes to be designed to be inclusive and accessible;

e) protecting important views of St Paul's Cathedral and the Palace of Westminster from sites inside and outside the borough and protecting important local views'.

6.32 In respect of the five criteria in CS14, only criteria a), b) and e) are in any way relevant to the appeal proposal.

First, in respect of criteria a) and b) the proposed development is of the highest standard of design that respects the character and context of the building on which it is sited. As is described in detail in 'Other Material Considerations, National Planning Policy Framework', below, siting a radio base station on the rooftop and at the rear of a very large building is a preferred location in accordance with government policy in the NPPF. The use of half-height antennas and colour-coded GRP screening, which will completely hide the apparatus from public view, is also in accordance with NPPF guidance and will ensure the proposed development will not harm the conservation area and is the minimum amount of development possible at the minimum possible antenna height to provide the required RF coverage to the surrounding area.

6.33 Secondly, in respect of criterion e), as can be seen from figures 12 and 13 above the appeal proposal will not impact on any Core Strategy

Designated Views and in respect of local views at paragraph 5.2 the CAS states:

'5.2 Key views

The key views are:

- *up and down Haverstock Hill*
- *along the curved residential streets*
- *significant gaps between buildings*
- *views towards the Priory and Almshouses*

Up and down Haverstock Hill:

Views up Haverstock Hill culminate in the Town Hall tower; views down Haverstock Hill are towards the City of London and in particular the SwissRe Building (popularly known as the Gherkin).

Along the curved residential streets:

Downside Road, Lawn Road, Parkhill and Upper Park Roads are all curved and sloping which gives a picturesque quality, and (with the exception of Lawn Road) the buildings and streetscape are homogeneous on both sides of the street.

Significant gaps between buildings:

As stated elsewhere in the document the gaps are increasingly developed with infill residential development. The residual gaps are more notable, in particular the gap between numbers 46-48 Parkhill Road which opens to the spire of St Dominic's Priory.

Views towards the Priory and Almshouses

St Dominic's Priory and the St Pancras Almshouses face Southampton Road. St Dominic's is outside the conservation area, but views towards the west end of the priory church along Tasker Road contribute to the character and appearance of the conservation area. Views along Southampton Road include the grassy courtyard of the almshouses and the setting of the Priory'.

- 6.34 None of these 'key views' is shown on any plan in the CAS, and this is for the obvious reason there are so many. Indeed, the criteria for defining 'key views' in the CAS are so wide that virtually any view in the conservation area could fall within one of the listed criteria.
- 6.35 Moreover, in the delegated report the LPA grossly exaggerates any visual impact from the proposed development and wrongly seeks to link it to the ugly box dormers that dominate the pitched roofs of some residential properties in the conservation area and ruin the appearance

both of the building and street-scene stating: *'The appraisal also states that particular care is needed in roof alterations where roofs are prominent in long distance views and raising the roof ridge or dormer windows on the front of roofs are unlikely to be acceptable'*. Troyes House does not have a pitched roof and plantrooms are a common and acceptable design feature of flat roofed blocks of flats and offices.

6.36 All that said, in relation to the views *'Along the curved residential streets'*: first, in the CAS it is notable that Lawn Road is stated to be an exception to the other identified streets, in that the buildings and streetscape in the other roads are stated to be homogeneous on both sides of the street. In Lawn Road this is certainly not the case. Indeed, it is not even the case that the buildings and streetscape are homogeneous along the east side of the street where the appeal site on Troyes House is located. As previously described, Troyes House is out-of-character with the other buildings along this side of Lawn Road.

6.37 Secondly, Troyes House is sited at the junction of Upper Park Road and Lawn Road, with the flats having vehicular access from the Upper Park Road and pedestrian access from Lawn Road. In respect of views up and down Upper Park Road and up and down Lawn Road:

(a) In views up and down Upper Park Road, the appeal proposal will simply not be seen.

(b) In views up and down Lawn Road only the bespoke, colour-coded shroud will be seen. The antennas, feeders and cabling will be completely hidden from public view unlike the Yagi antenna and cabling for the communal TV system permitted by the LPA at Troyes House (figures 8 and 9). Most importantly, as can be seen from the photomontages included with the application and appeal, in views up and down Lawn Road the visual impact of the proposed development will be trivial. The eye is not drawn to the rooftop development, a bespoke GRP chimney which is designed to appear no different to the tall chimneys and other rooftop structures in the street scene. The development will leave the conservation area unharmed.

Most importantly there is no evidence the LPA carried out correctly the NPPF balancing exercise that is a requirement for the consideration of development proposals in the conservation area.

6.38 To conclude, as demonstrated, so far as it is relevant to the appeal proposal, the proposed development is in accordance with the LPA's adopted Core Strategy. Most importantly, as stated where there is any conflict with the London Plan and Core Strategy, in accordance with the requirements of section 38(5) Planning and Compulsory Purchase Act those conflicts are required to be resolved in favour of the London Plan.

Camden Development Policies DPD (adopted November 2010)

6.39 In the delegated report the following policies of the Development Policies DPD are identified as relevant to the appeal proposal DP24, DP25 and DP26, the impact of development on occupiers and neighbours. In its decision notice the council only claims the appeal proposal is not in accordance with policies DP24 and DP25. Therefore, again, in accordance with Article 35 DMPO the council must accept that the appeal proposal is in accordance with policy DP26; that is, the council accepts appeal proposal has an acceptable impact on occupiers of Troyes House and neighbours.

6.40 Policy DP24 is the council's policy for securing high quality design it states:

'DP24 – Securing high quality design

The council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design and will expect developments to consider:

- a) character, setting, context and the form and scale of neighbouring buildings;*
- b) the character and proportions of the existing building, where alterations and extensions are proposed;*
- c) the quality of materials to be used;*
- d) the provision of visually interesting frontages at street level;*
- e) the appropriate location for building services equipment;*
- f) existing natural features, such as topography and trees;*
- g) the provision of appropriate hard and soft landscaping including boundary treatments;*
- h) the provision of appropriate amenity space; and*
- i) accessibility'.*

6.41 In respect of DP24 only criteria a) to f) are relevant to the appeal proposal, which is of the highest standard of design:

In respect of criteria a) and b), as previously described, Troyes House is utilitarian in design and out-of-character with neighbouring buildings in the conservation area. However, the antennas and their support structure are completely hidden from public view behind bespoke, colour-coded GRP cladding, which seeks to mimic the tall chimneys on the adjoining building, or in the revised drawings the plantroom itself.

In respect of criterion c), the use of bespoke, colour-coded GRP cladding to hide the rooftop antennas is most appropriate and has been found accepted by numerous inspectors at appeals for radio base stations in conservation areas. At Appendix H are copies of four of many rooftop telecoms appeal decisions made by Inspectors over the years, where the use of bespoke, colour-coded GRP cladding has

been found acceptable in conservation areas for hiding rooftop antennas on buildings. In each case the use of GRP cladding to screen the antennas was found to be acceptable, with the effect of leaving the conservation area unharmed.

At the current appeal site the rather priggish consultation response included in the delegated report (Appendix A) which states: *'Conservation: Our estate sits in a conservation area so erecting a mast on the roof of our building violates the guidelines for conservation areas. We have been told the mast will be surrounded by GRP, glass reinforced plastic, but this is most definitely not a material to be used in a conservation area such as ours'* and the officer's observation at paragraph 2.7 of the delegated report that *'GRP is a functional and industrial material which would not harmonise with this building or conservation area'* are both factually incorrect and unsupportable, having regard to Inspectors' appeal decisions elsewhere.

Lastly, in respect of criteria d), e) and f), the apparatus is to be sited on the rooftop. Any harm to the building or conservation area will be trivial and the mature trees in the garden of Troyes House and surrounding streets will further screen the development from public view.

It is clearly the case that the appeal proposal is in accordance with DP24.

- 6.42 The LPA also alleges the appeal proposal is not in accordance with policy DP25 (copy of policy included with LPA's questionnaire). Only the first part of DP25 which relates to conservation areas is in any way relevant to the appeal proposal. It states:

'DP25 – Conserving Camden's heritage

Conservation areas

In order to maintain the character of Camden's conservation areas, the Council will:

a) take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas;

b) only permit development within conservation areas that preserves and enhances the character and appearance of the area;

c) prevent the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area where this harms the character or appearance of the conservation area, unless exceptional circumstances are shown that outweigh the case for retention;

d) not permit development outside of a conservation area that causes harm to the character and appearance of that conservation area; and

e) preserve trees and garden spaces which contribute to the character of a conservation area and which provide a setting for Camden's architectural heritage.

- 6.43 First in relation to criterion a), the relevant parts of the Parkhill and Upper Park Conservation Area Management Statement (CAS) including impact on Troyes House and the street-scene, and the policy for the installation of satellite dishes on buildings have already been described, and it is not necessary to repeat that information. As demonstrated the appeal proposal is in accordance with the CAS.
- 6.44 Secondly, in respect of criterion b), for development in conservation areas it is settled law (*South Lakeland District Council v Secretary of State for the Environment and Another*, House of Lords, 1992) that development which protects or enhances the siting or appearance of the conservation area; that is, leaves the conservation area unharmed meets the statutory requirement for development in such areas. In seeking in criterion b) of DP25 that development should both to preserve and enhance its conservation areas, the LPA is seeking to go beyond that statutory requirement for development in such areas. As described, the appeal proposal has trivial impact on the conservation area, unlike some local authority and other development in the conservation area, including Troyes House on which the appeal proposal is sited. The appeal proposal will meet the statutory requirement for development in a conservation area; it will leave the conservation area unharmed. The appeal proposal is in accordance with criterion b).
- 6.45 Criteria c) and d): not relevant.
- 6.46 Lastly, in respect of criterion e), the appeal proposal will not harm any trees or garden spaces, which provide screening to the appeal site. It is clearly the case the appeal proposal is in accordance with DP25
- 6.47 To conclude, as demonstrated the appeal proposal is in accordance with both DP24 and DP25. The LPA should have granted planning permission for the planning application.

Core Strategy and Development Policies Index

- 6.48 Finally, on the LPA's planning policy website it states: '*We have produced an index of all policies contained in the Core Strategy and Development Policies documents to help you find our policies and supplementary planning documentation on particular issues and areas*'. The LPA's Policies Index in relation to Telecommunications development refers to Section 45 of Camden Planning Guidance.

- 6.49 I was unable to find Section 45 in the LPA's Camden Planning Guidance SPG published on its website and therefore telephoned the LPA's Strategic Planning and Implementation Team. I left a message with Anir. Charlotte from the planning department subsequently telephoned and left me a message that section 45 of Camden Planning Guidance had now been superseded. She said the Council now has no local guidance for telecommunications development in Camden and I should now rely on the national guidance in the NPPF.

7. OTHER MATERIAL CONSIDERATIONS

National Planning Policy Framework (March 2012)

- 7.1 In the delegated report (Appendix A) the LPA recognises the importance of the National Planning Policy Framework (NPPF) and at paragraphs 1.1 to 1.15 summarises what it considers to be relevant parts of this up-to-date statement of government planning policy.
- 7.2 The appellants go much further in emphasising the importance of up-to-date Government planning policy, as is demonstrated in the following paragraphs. Most importantly for this appeal the NPPF has been published since both the LPA's Core Strategy and Development Policies DPD were adopted in 2010, and the CAS in 2011. Annex A paragraph 215 of the NPPF is therefore directly relevant, with the weight to be given to the council's adopted planning policies reduced to the extent they do not accord with NPPF guidance.
- 7.3 In respect of the NPPF, the overriding emphasis in the Government's current approach and policies for planning is that permission should be granted unless there are compelling reasons why it should not. In his Foreword to the NPPF the then Minister for Planning stated:
- 'The purpose of planning is to help achieve sustainable development. Sustainable means ensuring that better lives for ourselves doesn't mean worse lives for future generations. Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate.'*
- 7.4 The Minister continued: *"Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision"*. The rooftop radio base station at the appeal site is sustainable in itself, and moreover it supports other sustainable development. It supports better lives for us; it supports economic growth, choice and is part of the new technology the Government wishes to encourage and support. Importantly, it also reduces the need to travel, particularly at peak-

periods, and allows working from home to take place. As demonstrated, the appeal proposal is also in accordance with and supports the Mayor's London Plan and council's adopted development plan.

- 7.5 At paragraph 7 of the NPPF the three dimensions to sustainable development are identified: economic, social and environmental. The proposed installation meets all three dimensions to sustainable development. It is therefore vital that the most up-to-date shared RF coverage with the required coverage and capacity is available to this part of the council's area in the public interest, by allowing the current proposal.

- 7.6 At paragraph 14 the NPPF states:

"14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that:

local planning authorities should positively seek opportunities to meet the development needs of their area;

Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:

—any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

—specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

approving development proposals that accord with the development plan without delay; and

where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

—any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

—specific policies in this Framework indicate development should be restricted."

- 7.7 At the appeal site the proposed development is sustainable, and the public benefits of the proposal would significantly outweigh any minor additional visual impact from the siting of the half-height antennas behind bespoke, colour coded GRP cladding on the rooftop of Troyes House. That the visual impact from the radio base station would be wholly acceptable is clearly shown in the images and photomontages.

The development as currently proposed is clearly sustainable and should have been permitted without delay.

7.8 At paragraphs 19 and 20 the NPPF states:

“19. The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

20. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.”

7.9 Unlike the Mayor, the LPA appears to have a generally negative approach to mobile electronic communications. It does not have any development plan policies specifically relating to the installation of their apparatus, and as described at paragraphs 6.48 and 6.49 above has abandoned its former telecoms guidance in its SPG, and is now solely dependent on Government guidance in the NPPF. The Council has however published a Camden Digital Strategy (Appendix I), but this is primarily inward looking. As the strategy states *‘The majority of the digital initiatives set out in the paper are funded through Camden’s existing capital programme or will be funded through invest to save initiatives that form part of the Council’s current and next Medium Term Financial Strategy’*. It has also, in February 2015, published an Infrastructure Study Update (copy also at Appendix I). However, as with Digital Camden the Infrastructure Study Update, apart from naming O2 and Vodafone as ‘key players’ at paragraph 5.3 of the report has nothing to say about code operators and their mobile services, other than to again looking inwards to state: *‘As part of a London wide initiative, LB Camden also now has a wireless concession to provide public wireless services in areas of high footfall within the borough’*.

7.10 Camden Council’s approach does not appear to recognise or contain any policies in support of the services provided by O2 and Vodafone both licensed by Ofcom to provide mobile electronic communications services to the public. It is clearly the case that the LPA’s approach does not accord with the Mayor’s policy or Government policy in the NPPF. In the absence of any Camden development plan policy for mobile electronic communications, as stated, the Government’s and Mayor’s policies must therefore be relied on for detailed planning guidance on their installation. The appeal proposal as demonstrated is in full accordance with the Mayor’s London Plan, and as demonstrated in this section of the appellants’ statement is also in full accordance with Government Policy in the NPPF. Moreover, the Mayor’s London Plan is the more recently published and is required by law to take

precedence in any conflict between its policies and those of the LPA's DPDs.

- 7.11 Section 5 of the NPPF, at paragraphs 42 to 46, deals with Supporting High Quality Communications Infrastructure. At paragraph 42 the NPPF states:

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

- 7.12 At the appeal site, the rooftop radio base station will providing RF coverage to a densely developed urban area where there is extremely high demand for services and currently demonstrably inadequate radio coverage. The proposed rooftop radio base station will provide shared single-grid 4G LTE high-speed mobile broadband transmissions for O2 and Vodafone fully in accordance with Government policy in the NPPF. It will also provide for 2G GSM and 3G UMTS multimedia RF transmissions, for both operators - 'other communications networks' also fully in accordance with paragraph 42. The appeal proposal is fully in support of paragraph 42 of the NPPF.

- 7.13 At paragraph 43 of the NPPF states: *“43. In preparing Local Plans, local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband. They should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures should be used, unless the need for a new site has been justified. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate”.*

- 7.14 As demonstrated in this statement, there is no existing radio base station site that can be shared, or other rooftops or other structures on which O2 and Vodafone can site their antennas, and the council does not claim there is any suitable and available alternative site, because there is none. Indeed, as previously stated, it was unacceptable for the LPA to include an Informative in its decision notice that further consideration should have been given to Allingham Court when the site-provider had made it clear to CTIL's agent he was not willing to accommodate O2 and Vodafone on his building. The need for a new site is fully justified and the current appeal proposal for a fully camouflaged rooftop radio base station with the apparatus sited within the plantroom is of an innovative design, using half-height antennas, which is both sympathetically designed and camouflaged, using bespoke colour-coded GRP screening. The appeal proposal fully meets the requirements of NPPF paragraph 43.

7.15 At paragraph 45 the NPPF states:

“45. Applications for telecommunications development (including for prior approval under Part 24 of the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:

- the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college or within a statutory safeguarding zone surrounding an aerodrome or technical site; and*
- for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission on non-ionising radiation protection guidelines; or*
- for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.”*

7.16 In relation to the first bullet point of paragraph 45, as demonstrated in ‘The Ten Commitments’ section of the Supplementary Information submitted with the planning application, 2 schools, 1 pre-school and a nursery were identified near the appeal site and pre-application consultation was carried out with them; no response was received to those consultations. Similarly, as is indicated in the Supplementary Information, pre-application consultations were carried out with the LPA, ward councillors and the local MP, and a site notice was posted at Troyes House. The pre-application consultation by the application agent was in full accordance with the Code of Best Practice and NPPF requirements.

7.17 Secondly, in relation to the second and third bullet points at paragraph 45: the application was for a new shared rooftop radio base station. As is described in detail at Section 6 of the Supplementary Information submitted with the planning application, within the search area identified by the radio network planner a thorough search of alternative sites was carried out, with five possible alternative sites considered and discounted for a variety of reasons including explaining why the existing radio base station site at Allingham Court could not be shared. As is also described non-availability for site-provider reasons was the reason for discounting the alternative sites including the proposed installation at Belsize Underground Station where after originally agreeing to support a shared installation for Vodafone and O2, and CTIL had spent thousands of pounds designing a rooftop scheme and

submitting it for planning, TfL withdrew its support, with the result the scheme could no longer be progressed.

- 7.18 The council in its negotiations with the applicants and in its delegated report and decision notice has not challenged the discounting of these alternatives or suggested there is any suitable and available alternative location where it would grant permission for a shared installation for O2 and Vodafone, because there is none. Indeed, availability of an alternative site is not a reason for refusal. Instead, it has included a wholly unacceptable Informative on its decision notice – referring to a site that is not available to the appellants. Planning permission should have been granted for the appeal proposal.
- 7.19 The issue of the way potential alternative sites should be considered by LPA's was dealt with at two PLI planning appeals in Exeter at which I gave evidence for O2. Both appeals were allowed with costs awards being made against the LPA (copies of both appeal decisions and costs awards at Appendix J).

The first appeal concerned a site adjoining the Exebridge Shopping Centre. In dealing with the concerns raised by the LPA's witness in his evidence about the way O2's acquisition agent had dealt with and discounted potential alternative sites; evidence that was challenged in cross-examination by O2's advocate, Inspector Roberts stated at paragraph 22 of his decision:

'22. Although not a reason for refusal, the Council criticised the appellants for not demonstrating to its satisfaction that the landowners referred to by the appellants were genuinely not willing to allow installations on their properties. I do not take the view that planning authorities should not challenge such claims. It is open to planning authorities to seek further information at application stage and the Council could then take a view on the appropriateness of the information before it. In this case the information from the applicants was not challenged, and in the absence of any substantive evidence to suggest that the "willingness" information is wrong, and on the basis of what I was told at the Inquiry, I am satisfied that no suitable alternative locations are available'.

- 7.20 The second appeal was for a street furniture installation at the junction of Belmont Road and Western Way, adjoining the boundary of a conservation area and facing a terrace of Grade II listed buildings. In making a full award of costs against the LPA, Inspector Juniper at paragraphs 6 and 7 of his costs decision dealt with the issue of the LPA seeking to introduce alternative sites at appeal:

'6. A third application for a partial award of costs is made in relation to the work incurred in addressing additional alternative sites. The Council introduced this issue in its pre-Inquiry statement and pursued it through correspondence, introducing the issue of insufficient

information being supplied in relation to the discounting of alternative sites, including the Vodafone facility, together with those listed in its letter of 10 March. There was no reason for refusal in relation to alternative sites and the planning officer dealing with the application had raised no such concerns. Article 22 of the Town & Country Planning (General Development Procedure) Order 1995 makes it clear that notice of refusals should be precise and comprehensive.

7. The Council sought to excuse its introduction of the issue of alternative sites by claiming that the last sentence of paragraph 3 of the grounds of appeal suggested that there was an onus on the Council to identify alternative sites but its witness accepted under cross examination that there was no such reference. He also accepted that this sentence was the same as that pleaded at an appeal (Ref: APP/Y11110/A/08/2062116) relating to a site at the Exbridge Centre and that the appellants had been informed verbally in both cases by the Council that it could not identify any alternative sites. The Council's witness should never have introduced the issue of alternative sites and acknowledged in pre-inquiry correspondence with its advocate that it was potentially vulnerable to a claim for costs on this point'.

- 7.21 At the current appeal site there is no sequentially preferable, or any other suitable and available alternative location for O2 and Vodafone's shared rooftop radio base station to the appeal proposal. As stated during its consideration of the planning application the LPA never questioned the appellants' discounting of alternative sites, and the availability of a suitable alternative site was not a reason for the council's refusal of planning permission. The insertion of a wholly unacceptable Informative on its decision notice is not a reason for refusal.
- 7.22 Lastly and most importantly, the planning application was accompanied by an ICNIRP declaration and clarification letter (copies included with submitted appeal documents). The appeal proposal is fully in accordance with NPPF paragraph 45.
- 7.23 At paragraph 46 the NPPF states: *"46. Local planning authorities must determine applications on planning grounds. They should not seek to prevent competition between different operators, question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission guidelines for public exposure".*
- 7.24 In the appellants' view, in determining the planning application, the council has not had proper regard to the Mayor's up-to-date London Plan. There is also no evidence that the council carried out in any adequate way the NPPF weighing exercise for development in conservation areas (see paragraphs 7.32 to 7.36, below) or the telecoms balancing exercise that is required for the proper

consideration of electronic communications development proposals (see section 8, below).

7.25 For its own reasons Camden Council, continues to refuse wholly acceptable electronic communications development proposals for unacceptable and unreasonable reasons. Had the council paid proper regard to the development plan and other material considerations, it would have granted planning permission for the rooftop radio base station at the appeal site and saved this unnecessary appeal.

7.27 At section 7 the NPPF deals with requiring good design and at paragraph 65 deals specifically with the design of infrastructure. It states:

‘65. Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal’s economic, social and environmental benefits)’.

7.28 As described the radio base station promotes high levels of sustainability. Among other things, it allows people to work from home and reduces the need to travel particularly at peak-hours. Also as previously described, at the appeal site the proposed rooftop radio base station, with the half-height antennas completely hidden behind bespoke colour-coded GRP screens is of the highest possible design and quality, fully in accordance with the requirements of the Mayor’s London Plan and the LPA’s DPDs and CAS. In relation to harm to designated heritage assets, as is described in the following paragraphs, the proposed development’s economic, social and environmental benefits overwhelmingly outweigh any trivial or minor perceived harm to the conservation area.

7.29 The appeal site is in the Parkhill and Upper Park Conservation Area and therefore NPPF Section 12, Conserving and Enhancing the Historic Environment is also most relevant.

7.30 At paragraph 128 the NPPF states:

‘128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include

heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation’.

7.31 The Supplementary Information and other information including photomontages submitted with the planning application met the requirements of paragraph 128, and in this Full Statement of Case it has been demonstrated that having regard to the Mayor’s and council’s local plan policies, the proposal would have an acceptable impact on the conservation area.

7.32 Paragraphs 133 and 134 of the NPPF deal with harm to heritage assets. Paragraph 133 deals with the situation where there is substantial harm or total loss to the heritage asset, paragraph 134 deals with situations where there is less than substantial harm. The two paragraphs state:

‘133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and*
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- the harm or loss is outweighed by the benefit of bringing the site back into use’.* And

‘134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use’.

7.33 Neither in the LPA’s decision notice, nor in the delegated report is the level of harm to the heritage assets identified; the delegated report is deficient in this very important matter. However, the Government’s Planning Practice Guidance (PPG) offers up-to-date advice on assessing harm, in which it is stated:

*‘Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. **In general terms, substantial harm is a high test, so it may not arise in many cases.** For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be*

whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

*While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. **Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all.** However, even minor works have the potential to cause substantial harm' [emphasis added].*

- 7.34 In the appellants' view and having regard to PPG advice, the fully screened rooftop radio base station at the appeal site will cause no harm at all to the conservation area and as demonstrated there are no listed buildings that are in any way affected by the proposed development. Any impact the appeal proposal has on the conservation area is trivial. Even if it were not accepted that the impact on the conservation area is trivial, having regard to PPG advice it must be the case that any harm found is 'less than substantial'.
- 7.35 As stated, paragraph 134 the NPPF sets out a weighing exercise where the harm found is 'less than substantial'. It requires that the harm identified should be weighed against the public benefits of the proposal. At the appeal site, in weighing trivial or at worst 'less than substantial harm' from the proposed radio base station against the substantial public benefits of providing essential RF coverage to the many people living, working or travelling through this part of Camden, the weight is overwhelmingly in favour of permitting the proposed installation.
- 7.36 Indeed, as stated previously, there is a lack of balance in the officer's delegated report. In the appellants' view, had the council carried out the required weighing exercise required by NPPF paragraph 134 it would have concluded the weight was overwhelmingly in favour of granted planning permission for the radio base station.
- 7.37 Lastly at paragraphs 186 to 198 the NPPF deals with Decision Taking by local planning authorities. It is not intended to go through these paragraphs in any detail, but at paragraphs 186 and 187 the NPPF states:

'186. Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

187. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area’.

- 7.38 In relation to electronic communications developments in Camden, as already described, it has to be said the council’s approach to decision-taking is the direct opposite to that advocated at NPPF paragraph 186: it is negative.
- 7.39 Lastly, at paragraph 197 the NPPF states: ‘197. *In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development*’. As described previously, the appeal proposal is for development that is sustainable and supports other sustainable development. Among other things, it enables people to work from home and avoids the need to make unnecessary journeys or travel particularly during peak periods. However, rather than Camden Council applying the paragraph 197 presumption in favour of sustainable development, in the case of electronic communications radio base stations it seems clear the council applies a presumption against this form of sustainable development; which it did at the current appeal site in unreasonably refusing the planning application.
- 7.40 It is clearly the case that the appeal proposal is in accordance with the NPPF; the council should have granted planning permission for the development.

Code of Best Practice on Mobile Network Development in England (November 2016)

- 7.41 The planning application cover letter states the application has been prepared in accordance with the Code of Best Practice, July 2013. However, since the application was determined in November 2016, a revised ‘Code of Best Practice on Mobile Network Development in England’ has been published, to coincide with the coming into effect of the GPD (England) (Amendment) (No. 2) Order from 24 November 2016. (The July 2013 version of the Code referred to in the planning application was itself published to accompany the changes to planning requirements for Part 24 (now Part 16) development brought into force from August 2013 by then Amendment No 2 England Order 2013, SI 2013 No 1868.) All these changes have allowed for a significant relaxation of the previous requirements for planning permission for the installation of electronic communications apparatus including the installation of radio base stations in conservation areas.

- 7.42 Indeed, the only reason the appeal proposal still requires planning permission, rather than a prior approval application to determine the details of the siting and appearance of the development, which has the benefit of the equivalent of outline planning permission, is because 6 antennas are proposed to be installed at the site. Part 16 condition A.1(2)(f)(ii) limits the number of additional antennas to be installed in Article 2(3) land including conservation areas as permitted development to three, though the 3 antennas permitted to be installed can each be up to 3m high, as opposed to the six 1.1m long half-height antennas to be installed at the appeal site.
- 7.43 It is not intended to go through the Code of Best Practice in any detail, just to deal with those aspects of mast sharing, design and camouflaging now set out in Appendix A of the 2016 Code directly relevant to the appeal proposal. These matters are virtually unchanged from those in the 2013 version of the Code, referred to in the planning application, except that in the 2013 Code they were included at Appendix B. However, the whole thrust of the replacement Code in accordance with the NPPF's strong support for sustainable development and the Government's relaxation of permitted development rights for electronic communications development is that permission should be granted wherever possible.
- 7.44 Appendix A of the 2016 Code covers 'Siting and Design Principles', where among other matters, it deals with:

Mast and Site Sharing in respect of which it is stated:

'It has been a longstanding Government policy objective to encourage telecommunications operators, wherever viable, to share masts and sites as a means of minimizing overall mast numbers. The National Planning Policy Framework states that local planning authorities 'should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures should be used, unless the need for a new site has been justified'.

Operators also support site sharing wherever viable. If operators are able to share sites, and install more equipment on each site, this reduces the overall visual impact of network infrastructure, because even though shared sites will tend to be slightly bigger, it means that fewer sites are needed to improve coverage and capacity, infrastructure becomes more feasible, and is more cost-effective to deploy. In fact, sharing of sites is now the norm, and network operators now share much of their network infrastructure via joint venture commercial arrangements'.

- 7.45 At the appeal site the proposal is a shared rooftop base station by O2 and Vodafone to provide demonstrably necessary RF coverage to an

area. The appeal proposal also provides for 2G, 3G and single-grid 4G RF coverage to be provided from the rooftop site for both operators. The appeal proposal accords fully with the Code.

Sympathetic Design and Camouflaging, in respect of which it is stated, amongst other things:

‘Since the introduction of mobile networks, operators have made great strides in developing their techniques for camouflaging their equipment, where appropriate. This can be seen in the newer, more modern masts which are frequently able to blend into their surroundings far more effectively in contrast to some of the older, larger masts that were first built over 25 years ago. The innovative use of colours and shapes by operators has been successful in disguising equipment and this practice should be encouraged to continue wherever appropriate. The use of street furniture may also be suitable for siting small antennas.

Larger antennas may also be effectively concealed by similar methods. These can include familiar features such as: Flagpoles; Street lamp posts; Telegraph pole style designs; Signs.

In addition, the use of Glass Reinforced Plastic, which can be moulded into any shape and coloured appropriately, can be very useful in harmonising features into the landscape. It can, for example, be used to simulate masonry and stone features such as chimneys and plinths’.

- 7.46 At the appeal site bespoke, colour-coded GRP cladding is proposed to screen the half-height antennas from view. In the planning application the cladding is shaped to reflect the chimneys on the adjoining buildings; in the revised drawings the GRP mimics the plantroom on which the antennas are to be sited. The appeal proposal accords with this element of the Code.

- 7.47 Lastly, Appendix A of the Code also gives guidance on ‘Installations on Existing Buildings and Structures’. Among other things, it states:

‘The use of existing buildings and structures by the operators as sites for the installation of their telecommunications equipment is an established measure which has greatly helped to reduce the environmental impact of their networks. Examples of buildings and structures which may be suitable include: • Office/residential blocks

Operators will need to bear in mind the height, scale and architectural style of the building or structure as this will have a significant influence on the design of the equipment used. Extra care will need to be taken when installing equipment on listed buildings, within scheduled monuments (see section on Listed Buildings and Scheduled Monuments below) or on structures and/or buildings located in areas of historic and architectural importance or in designated areas, such as National Parks, Conservation Areas, World Heritage Sites, Sites of

Special Scientific Interest, Areas of Outstanding Natural Beauty or registered Parks and Gardens and Battlefields.

When placing equipment on buildings and/ or structures operators should aim for development to:

- *Be kept in proportion to the building or structure;*
- *Respect architectural style;*
- *Minimise impact above the roof line commensurate with technical constraints;*
- *Minimise impact on important views and skyline;*
- *Avoid creating undue clutter;*
- *Use clean lines and maintain symmetry where possible*
- *Be painted or clad to correspond with the background or to reduce contrast where appropriate*

It is important that the siting of equipment on buildings and structures does not come across as being ill-considered. Careful planning and placing of equipment, to achieve symmetry and balance can help to overcome this. In addition, 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 (e.g. health and safety hand railings)'.

7.48 At the appeal site the proposed shared rooftop installation has been carefully considered. The use of half-height antennas has enabled the GRP cladding to be only 1.8m high yet still provide for the antennas to be fully screened from public view, minimising the installation's impact above the roof-line and on in views and the skyline. Similarly, the GRP is symmetrical and displays clean lines. As previously stated it is be colour-coded to the adjoining building on which it is to be sited, and the intrusive edge protection hand-railings around Troyes House have already been permitted and installed by the LPA for its own development at the site.

7.49 To conclude the appeal proposal is in accordance Code of Best Practice. Moreover, the Code is not referred to in the LPA's reason for refusal, or indeed anywhere within the delegated report - Article 35 of the DMPO again applies – the LPA must accept this is the case.

8. THE CASE FOR THE APPELLANT

The Need for the Development

8.1 The development the subject of this appeal is to be carried out by CTIL on behalf of O2 and Vodafone, two of the successful bidders in the Ofcom organised auction for 'fourth generation' Spectrum Licences to provide high-speed mobile broadband services to the public, under the provisions of the Communications Act 2003. O2 and Vodafone are

Electronic Communications Code Operators for the purposes of Part 16 of the GPDO, evidence of the Government's recognition that they are providing electronic communications networks in the public interest.

- 8.2 Importantly, the Spectrum Licences granted to O2 and Vodafone place obligations on them to provide public telecommunications services within the UK. The 4G system is broadband and has very high-speed data capabilities; the 3G service is multimedia and in addition to voice and text has the capability to enable the transmission and receipt of visual media, including real-time video calls. The 2G system provides basic digital call and text message services.
- 8.3 It is, however, only since 2013 when O2 and Vodafone were both successful in winning 4G Spectrum Licences in the Ofcom auction that they have begun rolling out their joint single-grid 4G LTE network in earnest and at the present time, as is described below, it is for 3G services that there is by far the greatest demand by the public. It is the operators' 3G UMTS networks that are currently the main drivers of their businesses in the UK. In accordance with the requirements of their Spectrum Licences, O2 and Vodafone are required to provide and maintain networks with both sufficient capacity and coverage to meet these needs. This includes providing coverage to main roads in the UK.
- 8.4 The O2 and Vodafone RF coverage plots (included with the application and appeal) show existing 3G RF coverage available from the existing installations in the area to the operators; and secondly, the predicted 3G coverage that will then be available in the area following the installation of the radio base station at the appeal site. 3G plots are provided as they are generally regarded as the most useful. The very high frequency 2100MHz signals are those most susceptible to blocking and attenuation by 'clutter' from trees and buildings. Therefore if acceptable 3G UMTS coverage can be achieved from the proposed rooftop radio base station then shared single-grid 4G LTE RF coverage and 2G GSM coverage will also be satisfactory.
- 8.5 The RF plots show predicted signal strength, by means of colouring:

Pink colouring equates to Dense Indoor Urban RF coverage – this allows users' hand held devices to operate satisfactorily in built-up urban and commercial centres, where there will likely be high buildings and concrete and steel framed commercial buildings.

Orange colouring equates to Indoor Urban RF coverage - areas of dense urban housing, typically Victorian terraced houses with small gardens and yards, or where there are substantial stone built properties, again with limited window openings, or many mature trees which severely attenuates RF signals.

Blue colouring (O2)/Red colouring (Vodafone) is Indoor Suburban RF coverage – satisfactory indoor coverage will be available in modern detached, semi-detached and terrace houses with gardens, typically at lower densities and with larger window openings.

Green colouring equates to In Car RF coverage, which as its name implies will provide satisfactory RF coverage to passengers in vehicles.

In areas with Yellow colouring there will only be outdoor RF coverage, and in areas shown left uncoloured there is likely to be very poor RF reception even outdoors, with calls very likely to be dropped or missed altogether.

- 8.6 In the densely developed residential and commercial areas adjoining the appeal site that includes Belsize Park Underground Station and the neighbourhood shopping centre on Haverstock Hill there is a requirement for dense Indoor Urban RF coverage (Pink colouring) - the greater the signal strength and quality, the less likely the call will be dropped or missed and the more likely it will be that a stable internet connection will be maintained when using a smartphone, a tablet with an embedded SIM, or a laptop with a dongle, particularly having regard to the many mature trees in the surrounding area, which create 'clutter' and severely attenuate or block RF signals altogether.

Current 3G, RF coverage for O2 and Vodafone in this part of Camden is shown in the first radio plots:

For O2, the 'lead operator' in Camden, as can be clearly seen, in the area surrounding the appeal site only Indoor Urban and Indoor Suburban 3G RF coverage is currently available in this part of Camden (Orange and Blue colouring), with an area of Maitland Park to the east only having In Car coverage (Green colouring).

Current RF coverage is wholly inadequate for residents and businesses seeking to use hand-held devices in their homes or businesses. There is a high likelihood of calls being dropped or missed altogether. It will also be impossible for subscribers' hand-held devices to maintain any sort of stable internet connection. The situation for O2 subscribers living, working, travelling to or through this part of Camden is unacceptable.

Similarly for Vodafone subscribers in this part of Camden: again, as can be seen from the first RF plot, in the area surrounding the appeal site inadequate Indoor Urban and Indoor Suburban 3G RF coverage, is all that is available, with areas to the south having wholly inadequate In Car RF coverage.

The situation in this part of Camden is also unacceptable to subscribers to MVNO (Mobile Virtual Network Operator) companies including Giffgaff, Tesco Mobile, Talk Mobile, Talk Talk Mobile and

Lebara, among others, who lease telephone and data spectrum from O2 and Vodafone and 'piggyback' on their networks.

It should also be emphasised that the RF coverage from the proposed installation at the rooftop appeal site is a prediction. Actual RF coverage in the area both existing and predicted is likely to be less than that shown on the RF plots, for intervening buildings, trees and other 'clutter' can severely attenuate RF transmissions, and the effects of buildings, trees and vegetation cannot be built into the radio planning modelling tool, unlike topography. This is for the obvious reason that new development is taking place all the time and trees increase in size through growth from year to year. In the case of deciduous trees the clutter will also vary from season to season; clutter from such trees will be much greater in the growing season when the trees are in leaf, than in winter when the trees are dormant.

Added to this, the demand for mobile services particularly for data is increasing exponentially, as a result of the now almost universal use of 'smartphones' with their access to the Internet and video streaming services. As a result Ofcom has licensed the 900MHz cellular band previously reserved exclusively for 2G transmissions also for 3G use, and the Treasury has instructed Ofcom to auction additional radio spectrum, previously used by the military, to help meet the public demand for services.

The result is the area of RF coverage provided by a radio base station is not only affected by 'clutter' but also changes as a result of the loading on the network. In periods of high usage, the area of RF coverage shrinks and in periods of low demand expands, a concept known as 'cell breathing'. For this reason RF plots are normally prepared with 60% loading on the cell to reflect average conditions.

The second sets of RF plots show the predicted coverage that will be available to O2 and Vodafone subscribers following the installation of the rooftop radio base station at the appeal site. As can be seen in both the O2 and Vodafone plots the whole of the area surrounding the appeal site is predicted to have high quality Indoor Dense Urban signal strength; O2 and Vodafone will be meeting their Ofcom Spectrum Licence obligations and Government policy in the NPPF.

As stated previously, provided 3G UMTS coverage is acceptable from the radio base station then the lower frequency single-grid 4G LTE RF coverage and 2G GSM RF coverage will also be acceptable.

- 8.7 To conclude, there is a clear and demonstrable need for the shared rooftop radio base station at the appeal site. It will enable O2 and Vodafone to provide demonstrably necessary shared single-grid 4G RF coverage and also to provide 2G and 3G services for both operators and to subscribers to MVNOs to this part of Camden in the public

interest. The LPA should have granted planning permission for the planning application the subject of this appeal.

The Importance of Mobile Communications

- 8.8 The importance of mobile technology in the UK is emphasised in a series of market reports published by Ofcom, *'The Communications Market'*. In the introduction to its most recent August 2016 report OFCOM states:

'The total number of fixed voice lines decreased by 0.3 million (1.0%) to 33.2 million in 2015, while the total number of mobile subscriptions, including handset, dedicated mobile data and machine-to-machine (M2M) connections, increased by 1.6 million (1.8%) to 91.5 million during the year.

Fixed-to-mobile substitution in voice calls continued in 2015, when fixed voice call minutes fell by seven billion minutes (9.2%) to 74 billion minutes in 2015 and mobile voice call minutes increased by five billion minutes (2.0%) to 143 billion minutes.

Falling mobile voice prices are likely to have contributed to these trends, as well as the increasing prevalence of mobile tariffs offering unlimited voice minutes, and the convenience of smartphones.

In February 2015, Ofcom varied the licences of the UK's four mobile networks to commit the operators to providing 90% geographic coverage for voice calls by the end of 2017'.

- 8.9 The 2016 report also states:

'A key development in telecoms over the past decade has been the launch of smartphones, and the accompanying growth in the use of mobile data services. This, as well as advancements in the capabilities of mobile devices and the launch of 4G services, has led to data usage increasing significantly. In the UK, the growth of 4G has been rapid; in Q4 2015 4G accounted for almost half of all mobile subscriptions (46%), and 4G take-up increased across all ages, genders and socio-economic groups in 2016. The availability of 4G mobile services has also increased, with the UK having 97.8% outdoor premises coverage by at least one operator in May 2016. The number of M2M connections has also been growing (up 7% to 6.7 million in 2015), as Internet of Things (IoT) devices begin to enter the market'.

- 8.10 The report clarifies what it means by M2M and IoT thus:

'M2M stands for 'machine-to-machine'. The general definition of a M2M connection is a connection between devices, often wireless, where human input is not necessarily required. Commonly used examples of M2M are in smart metering (where the meter reports energy use back

to a central billing database) or a burglar alarm, which may contain a SIM card to enable communication with monitoring offices. Vending machines are another common example, as some may use M2M technology to keep a central computer up to date with stock levels.

The Internet of Things (IoT) describes the creation of new and innovative services by the interconnection of everyday devices, often using M2M connections. Over the coming decade, the IoT is expected to grow to hundreds of millions of devices in the UK alone, bringing benefits to consumers across a number of sectors including transport, healthcare and energy’.

- 8.11 Mobile technology continues to evolve very rapidly, unlike fixed exchange line technology. A reliable indoor mobile connection becomes more vital with each passing day. Only 2 years ago in its 2014 report Ofcom was reporting: *‘In 2004, when we began publishing the Communications Market Report, the proportion of households with broadband was just 16%. This has now grown to 77%. More recently, with the roll-out of new technologies, people have gained access to next-generation telecoms services such as ‘superfast’ broadband and 4G. Take-up of smartphones has continued to increase rapidly over the past year, with six in ten adults now claiming to own one (61%), while household take-up of tablet computers has almost doubled over the past year to 44%. The ways in which people are connecting to the internet continues to evolve, with just under six in ten (57%) saying they personally use their mobile phone to access the internet (up from 49% in Q1 2013), due in part to the increasing take-up of smartphones’.* A comparison with the 2016 report shows the rapid changes that have taken place in less than 2 years.
- 8.12 As stated, the 2016 Ofcom report shows that at the end of 2015 there were 91.5 million active mobile phone subscribers in the UK, a more than 75% increase in the number of active mobile subscribers since 2002, and of these subscriptions 84.8 million were mobile voice connections; a 1.8% increase in mobile voice connections on the previous year. (The remaining 6.7m connections were dedicated mobile broadband and M2M, machine to machine, subscriptions, both of which also increased by 0.4m over the year.) Of the 91.5 million mobile connections 33.5 million (36%) were pre-pay and 58.0 million (64%) post-pay.
- 8.13 The 84.8 mobile voice connections at the end of 2015 compares to a UK population of about 65.1 million people at that date (2015 UK mid-year population estimate). At the end of 2015 there were 1.303 active mobile voice connections for every person in the UK, with over 95% of households having at least one mobile handset. Of these 84.8 million active mobile voice subscriptions 39.5 million (47%) were for 4G. The majority, 45.3 million (53%) were 3G connections, which also provide multimedia services, and a survey in 2014 of adult subscribers who did not have a 4G connection showed that price was the by far the most

important factor in their decision when deciding whether they would take up a 4G plan. It is also important to note 4G subscription numbers are measured by the number of business and residential consumers on a 4G package, including those who do not have a 4G-capable phone, and including consumers in areas that do not currently have indoor 4G RF coverage. This means that the number of 4G subscribers is likely to be significantly greater than those who actually make regular use of a 4G network – the appellants' agent is in such a situation. The mobile subscriptions at SY4 3PZ are for 4G services, but there is neither indoor 3G nor 4G RF coverage at this post code. Effective mobile communications is only available via a Femtocell installed at the property - a mobile phone radio base station smaller than a Picocell, which provides 3G only RF coverage to the property and which connects to UK telecoms network via the fixed, exchange-line, broadband Internet connection.

- 8.14 By comparison with the very rapid growth in the number of mobile handsets, particularly smartphones and tablets with embedded cellular SIMs, the number of fixed exchange-lines, has fallen significantly, by 3.7 million since 2002, to 33.2 million at the end of 2015; made up of 7.6 million business lines and 25.6 million residential lines. With the drop in the number of fixed exchange-lines and increase in number of households in the UK, the percentage of 'mobile dependent' households, that is, those households reliant on mobile phones as their sole means of telephony has increased from 7% to 14% during the period end-2002 to end-2015.
- 8.15 The distribution of the 14% of households that are 'mobile-only' is not evenly spread within society. In 2004 Ofcom showed that 26% of unemployed households, 14% of households with an annual income of below £9.5k and 11% of households with an annual income below £17.5k relied solely on mobile telephony. This skewed distribution remains and at the end of Q1 2013 the most recent date for which Ofcom has provided data while only 11% of households in socio-economic groups A, B, and C1 were mobile-only, 15% of C2 households and 26%, more than one in four, D and E households, did not have a fixed exchange-line, which Ofcom then attributed to a combination of factors including, lower-income households not wanting to commit to lengthy 12 to 18 month minimum-term fixed-line contracts, having trouble passing the credit checks that some providers require, or seeking to control their telephony spend by using pre-pay mobiles as an alternative to fixed telephony.
- 8.16 For the average UK household in 2017 mobile telephony is of far greater importance than fixed exchange-line telephony: in 2015 over 95% of households had access to at least one mobile phone, while only 84% of households had a fixed exchange-line. Indeed, in 2015 there was a considerably greater voice call volume from mobiles than fixed-line telephones: 143 billion voice call minutes from mobile phones, more than double the number made in 2005, and 74 billion

voice call minutes from fixed lines, a 55% decrease since 2005. (In 2005 there were 71 billion voice call minutes from mobiles and 163 billion voice call minutes from fixed lines.)

- 8.17 In addition to voice calls 101 billion SMS (text) and MMS (picture) messages were sent from mobile phones in 2015; a drop on the 110 billion messages sent in 2014, but still 53% greater than the number of such messages sent in 2007, when 66 billion SMS and MMS messages were sent. Ofcom attributes the reduction in text and picture messaging to the use of instant messaging services as a substitute; in particular OTT services such as Facebook Messenger and WhatsApp and expects this trend to continue in future years.
- 8.18 The results published in April 2016 (Appendix K) of an on-line poll, 'Is the Landline Dead?', carried out by Martin Lewis's Money Saving Expert website, which elicited over 26,000 responses, clearly show that for all age groups other than people aged 65+, mobile phones are of far greater importance for making 'all or most calls' rather than landlines, with over 30% of respondents under the age of 35 not even having a home phone.

Still using a landline? How old-fashioned ...

IT could be the end of the line for the landline, as a leading supermarket hangs up on the traditional handset for good.

The move comes as research reveals that half of young people never use their home phones.

The days of families sharing a single line are long gone, and the rise of smartphones with the ability to send texts and emails, browse the internet, take photographs and play music, games and videos – not to mention make and receive calls – has rendered the old-fashioned home phone obsolete for many.

Asda now plans to phase out its range of landline handsets, and concentrate on mobiles. A poll for the chain found one in three people has given up on a home phone, rising to 48 per cent of those aged 18 to 34.

The figures suggest that the handset is destined to join the cassette player and video recorder on the scrapheap, with landlines increasingly used solely to connect homes to the internet.

Asda's mobile phone buyer James McMurrough said: 'Standing in one place to make a call just doesn't make sense any more.

'The truth is that mobiles are more powerful, more affordable and more convenient, and there just isn't a compelling reason to have a landline phone.'

FUGA

MCK

- 8.19 It is not only private households for whom mobile telephony is now the most important means of communication, in 2015 of the 42.9 billion business voice call minutes that were recorded by Ofcom, 24.1 billion minutes (56%) were made from mobile handsets, with 18.8 billion (44%) from fixed exchange lines. By way of comparison, in 2010 there were slightly more calls made from fixed lines, 28.6 billion business voice call minutes, than from mobiles, 28.5 billion business voice call minutes.
- 8.20 Indeed, it is hardly surprising that the majority of telephone calls are now made from mobiles, as it now costs on average over 30% more to make a call from a fixed exchange line as compared to calling from a mobile handset. The average cost of calls from mobiles in 2014 was

8.1p per minute, down from 10.9p per minute in 2007. By comparison, the average cost of fixed line calls increased from 7.6p per minute in 2007 to 11.7p per minute in 2014.

- 8.21 It is therefore not only very important for the low income and 'mobile only' households that live, work and shop in this part of the council's administrative area, but also for businesses operating in Haverstock Hill Neighbourhood Centre and passengers in vehicles and buses passing through the area who are wholly dependent on mobile communications that the necessary RF coverage is provided to enable them to have satisfactory mobile telephony and internet access, and thereby help achieve the Government's objectives for the rollout of modern high-speed and other communications networks.
- 8.22 The very high level of mobile phone use and ownership within the UK population is a very clear indication of the public's overwhelming acceptance of the benefits of mobile communications, which requires the installation of the new and the replacement and upgrade of existing radio base stations to provide the necessary connections between the mobile phones and the UK telecommunications network.
- 8.23 The need for the shared O2 and Vodafone radio base station at the appeal site is undisputed by the Local Planning Authority, need is not identified as a reason for refusing planning permission.

The LPA's Reason for Refusing the Planning Application

- 8.24 In its decision notice the council gives a single reason for refusing planning permission for the proposed rooftop radio base station:

'1 The proposed telecommunications antennas and GRP screening structure by virtue of its inappropriate siting, its excessive scale and bulk and unsympathetic functional design, would result in a highly visually prominent and incongruous development which would harm the visual appearance and character of the streetscene, particularly the designated views along Lawn Road and would fail to preserve or enhance the character and appearance of the conservation area'.

- 8.25 There are three separate elements to the LPA's reason for refusal: (a) inappropriate siting of the development; (b) its excessive scale and bulk; and (c) its unsympathetic functional design. In the following paragraphs each of these three separate elements is examined.
- 8.26 **Inappropriate siting:** As described previously the antennas and bespoke screening are sited on the plantroom at the rear of the 4-storey block of flats at Troyes House. It is not clear in what way the apparatus is considered to be inappropriately sited. The LPA's own CAS provides for satellite dishes (the nearest equivalent development) to be sited at the rear of properties, and Government policy in the NPPF is that existing buildings and structures are sequentially

preferential locations for siting antennas to avoid the need for new masts. Government policy, as proposed at the current appeal site is to share installations and sites keep them to the minimum number necessary for network development. The appeal proposal is in accordance with Government guidance which the LPA in the absence of any local telecoms policy has advised should be followed.

- 8.27 **Excessive scale and bulk:** Again, it is simply not understood in what way the proposed installation is considered to have excessive scale and bulk. As described, half-height, 1.1m high antennas are proposed to be deployed on Troyes House, and at 1.8m to the top of the bespoke GRP colour-coded screening – the minimum height necessary to hide the 6 antennas from public view - the proposed rooftop installation is still significantly lower than the 3 metre limit that considered appropriate by the Government and Parliament for the installation of unshrouded antennas on buildings in Article 2(3) land including conservation areas as permitted development and requiring only an application for a prior approval determination. (As previously stated, it is only because 6 half-height antennas rather than 3 full-height antennas are proposed on Troyes House that a planning application was required, rather than an application for prior approval of the siting and appearance of the details the permitted development.)
- 8.28 Similarly, in respect of bulk, the colour-coded, bespoke GRP shroud is drawn tightly round the antennas and headframe to minimise the bulk of the shroud, while reflecting the appearance of the chimneys on the adjoining buildings. The associated radio equipment is all proposed to be sited within the plantroom, with the AC meter cabinet at ground level, against the rear of the building. It is simply not possible to have less development on the rooftop and provide the required shared multiband radio coverage for both O2 and Vodafone from this site. Again the appeal proposal is in accordance with Government guidance.
- 8.29 **Unsympathetic functional design:** It is alleged in the LPA's decision notice that the GRP shroud is of an unsympathetic functional design. However, as described in this statement the shared rooftop radio base station including the bespoke, colour-coded GRP cladding has been specifically designed to minimise the amount of development while reflecting the chimneys on the rooftop of adjoining buildings. As previously described at Appendix B are revised drawings which show an alternative design for the GRP cladding, which seeks to replicate the plant room on which the antennas are to be sited. However, as can be seen in replicating the plantroom, the area occupied by the GRP cladding is increased. Nevertheless, as previously stated, if the Inspector prefers the GRP cladding to mimic the plantroom, the appellants have no objection to a planning condition to require the rooftop radio base station to be installed in accordance with the revised plan and elevation drawings (200 and 301 Issue D) rather than drawings 201 and 301 Issue B included with the submitted planning

application. Either way the appeal proposal accords with Government guidance in the NPPF.

8.30 **Telecoms Balancing Exercise:** The final issue the appellants wish to address is the balancing exercise, which is a requirement for the determination of telecoms applications. The council is fully aware of the need to provide RF coverage to the area in accordance with Government policy and the operators' Ofcom issued Spectrum Licences. The LPA is however unable to suggest any alternative location available to O2 and Vodafone at which it will grant permission where the operators can site their antennas, because there is none. Therefore, in its decision notice has included the unacceptable Informative that the operators should give further consideration to Allingham Court. However, as previously detailed in this statement the landowner will not accommodate O2 and Vodafone. He is pursuing a development for UK Broadband Ltd in addition to the existing shared EE/H3G installation at this property.

8.31 Previously, I referred to two PLI planning appeals in Exeter at which I gave evidence for O2 and Inspectors Roberts and Juniper's findings in relation to councils identifying and dealing with alternative sites. At both appeals the importance of the telecoms balancing exercise was emphasised in the determination of the appeals and the full award of costs made against the LPA (copies of appeal decisions and costs awards at Appendix J):

8.32 First in respect of the site at the Exebridge Shopping Centre appeal, at paragraphs 29 to 31 of his costs decision Inspector Roberts stated:

'29. It is an important plank of PPG8 that the need for telecommunications development, the lack of alternative sites and technical constraints should be weighed in the balance. The need to carry out this balancing exercise is also referred to in the explanatory text to Policy EN7. Paragraph 8 of Annex 3 says that reasons for refusal will be examined for evidence that the provisions of the development plan, and relevant advice in Departmental planning guidance were properly taken into account; and that the application was properly considered in the light of these and other material considerations.

30. Although the Council claimed to have taken into account the need for the development and the lack of suitable alternative sites, there is no evidence in the delegated report that led to the decision to refuse permission that this was done, or indeed from the Council's evidence at the inquiry. I consider that it is insufficient to say after the event that account was taken of these important considerations, without any evidence to show it. I regard this as being unreasonable.

31. I am satisfied that had the appropriate balancing exercise been carried out, the development should have been permitted. I therefore

find that the appellants incurred unnecessary costs in bringing the appeal’.

- 8.33 Secondly, in respect of the appeal at the junction of Belmont Road and Western Way, adjoining a conservation area and facing listed buildings in making a full award of costs against the LPA, Inspector Juniper at paragraphs 8 and 9 of his costs decision also dealt with the LPA’s failure to carry out the required balancing exercise:

‘8. Finally, a full application for costs is made based on the Council’s failure to undertake the balancing exercise required by PPG8 and Local Plan Policy EN7. The situation is the same as that at the Exebridge Centre Appeal where the Inspector stated in his Costs Decision that ‘It is an important plank of PPG8 that the need for telecommunications development, the lack of alternative sites and technical constraints should be weighed in the balance. The need to carry out this exercise is also referred to in explanatory text to Policy EN7. Paragraph 8 of Annex 3 says that reasons for refusal will be examined for evidence that the provisions of the development plan, and relevant advice in Departmental planning guidance were properly taken into account; and that the application was properly considered in the light of these and other material considerations. Although the Council claimed to have taken into account the need for the development and the lack of suitable alternative sites, there is no evidence in the delegated report that led to the decision to refuse permission that this was done, or indeed from the Council’s evidence at the inquiry. I consider that it is insufficient to say after the event that account was taken of these important considerations, without any evidence to show it. I regard this as being unreasonable. I am satisfied that if the appropriate balancing exercise had been carried out the development should have been permitted. I therefore find that the appellants incurred unnecessary costs in bringing the appeal’.

‘9. The facts of the present case are the same. The delegated report was silent on the issue of need and on the balancing exercise. The Council’s proof identifies the principal issues but makes no reference to need or the balancing exercise. In any event, it was too late to state after the event that account was taken of these important considerations without any evidence to show it. At the inquiry the Council accepted that there were no alternative sites and that the balancing exercise had not been addressed in any report to the Council or in any evidence to the inquiry, either written or oral’.

- 8.34 It was not only at Exeter where Inspectors referred to the importance of council’s recognising and carrying out the telecoms balancing exercise. At a PLI enforcement appeal in Burnham-on-Sea at which I gave evidence for O2, Inspector Belcher in allowing O2’s ground (a) appeal made a full award of costs against the LPA (copies of enforcement appeal and costs decisions at Appendix L).

8.35 In his costs decision at paragraphs 11 and 12 Inspector Belcher stated:

'11. As regard O2's application for a full award of costs the balancing exercise is not set out in the delegated report. Whilst Mr Arnold explained that this was dealt with orally at "meetings" O2 question whether such meetings took place. It is not good enough to say that the balancing exercise was carried out - it is clear from Inspector Roberts' Cost Decision that it was not appropriate to say after the event that the balancing exercise took place. The balancing exercise needs to be recorded within the Report. This reasoning was followed by Inspector Juniper in his Costs Decision.

12. The reason why this has to be the case is a sound one. Unless this was so anyone could turn up at an Inquiry and say that the balancing exercise had been carried out – this is not a sound approach. The Council have to show how they balanced the harm caused by the unauthorised mast against the evidence regarding alternative sites. This was not done by the Council in either the delegated report, the Pre-Inquiry Statement or in the Proof of Mr Arnold. The only inference that can be drawn from this is that the balancing exercise as required by PPG 8 was never addressed. When this is considered in the light of the Costs Decisions referred to above then a full award of costs should be awarded in this case'.

8.36 At the current appeal site there is no evidence the council correctly out the required telecommunications balancing exercise: balancing need for the development, its technical requirements and the availability of an alternative site against any visual impact of the proposed development.

8.37 First, the LPA incorrectly interpreted the RF plots. As described in this statement the demand for RF coverage in this densely built up part of London with Haverstock Hill neighbourhood centre and Belsize Park Underground Station among other developments in the immediate vicinity of the appeal site is for Dense Indoor RF coverage. Put at its simplest O2 and Vodafone as commercial organisations do not spend tens of thousands of pounds and many months carrying out multiple site searches, agreeing Heads of Terms for leases with landlords including Camden Council, designing rooftop radio base stations, preparing drawings and photomontages, and making planning applications and appeals if the radio base station is not required or the required RF coverage can be provided from one of their existing shared sites. Most importantly, the NPPF at paragraph 46 precludes the LPA from questioning the need for the development.

8.38 Secondly, in respect of the technical requirements of the installation there is no evidence that the council considered the need for the antennas to be clear of surrounding clutter and for them to be sited on the plantroom to provide the required RF coverage to the surrounding

area. As stated the fully screened half-height multiband antennas are at the minimum height to provide the required RF coverage.

- 8.39 Thirdly, in respect of an available alternative site, there was none, and as described previously in this statement it is unacceptable for the LPA to simply include an Informative on its decision notice suggesting the applicant give further consideration to Allingham House when the site-provider has made it clear he is not interested in accommodating a shared rooftop installation for O2 and Vodafone on his property.
- 8.40 Lastly, in the appellants' view the council's assessment of the visual impact of the proposed development on Troyes House and the conservation area is grossly overstated, as can be clearly seen from the images and photomontages. It is most noticeable that in the delegated report apart from listing the photomontages in the header to the report, no further reference is made to the acceptable visual impact of the development shown in the photomontages.
- 8.41 To conclude had the council correctly carried out the NPPF weighing exercise and telecoms balancing exercise, together with the objective evidence of the photomontages included with the application it would have granted planning permission and saved this unnecessary appeal.

9. THIRD PARTY REPRESENTATIONS

- 9.1 In its delegated report the council refers to a large number of third party representations received in response to the LPA's press and site notices. Copies of those third party letters and representations are included in the LPA online Register of Planning Applications. It is noted that many of the responses appear to be pro-forma and in respect of the petition give no planning reason why they are objecting to the development proposal.
- 9.2 In respect of other responses received, it is considered that they have been fully addressed in this statement or in the delegated report itself. The appellants would however wish to comment briefly on the main concern expressed by third parties in their representations, which is related to health issues.
- 9.3 At paragraph 1.9 of the delegated report it is stated: *'1.9 A significant number of objections have been received to the proposed telecommunications equipment on health grounds. Many of these objections highlight that the site is located in a residential area which also contains many children and vulnerable people. Although, there is some sympathy with these objections, the NPPF does not give scope for the LPA to determine health safeguards beyond compliance with ICNIRP and proximity to schools'.*
- 9.4 As is stated in the delegated report an ICNIRP declaration and clarification was included with the planning application, which is

determinative in this matter. However, it is not clear why the LPA states it has some sympathy with these objections. These are objections that are based on unfounded fears, for which there has never been any serious scientific basis. Fears fanned in certain newspapers and by anti-mast groups, which have resulted in people continuing to oppose operators' development proposals for no legitimate reason, delaying the deployment of demonstrably necessary development in the public interest.

- 9.5 Most importantly, for this appeal, as is stated in the delegated report and in accordance with settled law '*the NPPF does not give scope for the LPA to determine health safeguards beyond compliance with ICNIRP*' unless exceptional circumstances are demonstrated and none are claimed here (see *T-Mobile and Others v First Secretary of State and Another*, Court of Appeal, 12 November 2004, the '*Harrogate*' judgment, Appendix M). Though some third parties refer to sensitivity to EMF and acute health and ongoing chronic conditions, amongst other health matters in their representations, these are not exceptional circumstances – they are encompassed by the ICNIRP guidelines and Government planning policy (see *Harris v First Secretary of State*, QBD, 31 July 2007, Appendix N).
- 9.6 Indeed, the LPA is incorrect in adding '*and proximity to schools*' at the end of paragraph 1.9 of the delegated report. In a high court challenge by O2 to an appeal decision in Littlehampton, where the only reasons discernible for dismissing the appeal were the proximity of a school and the failure to consult with the school prior to submitting the application, the Secretary of State consented to judgment (Appendix O). On re-hearing before a new Inspector the appeal was allowed.

10. CONCLUSION

- 10.1 There is a demonstrable need for a rooftop radio base station at the appeal site to provide shared single-grid 4G LTE mobile electronic communications services together with 2G GSM and 3G UMTS RF coverage for O2 and Vodafone to this part of the council's area, with the necessary capacity to meet the needs of residents, businesses, shoppers and visitors, living and working in this part of Camden, together with commuters and passengers on foot and in vehicles passing through the area.
- 10.2 Following pre-application consultations with the LPA and other stakeholders fully in accordance with the NPPF and Code of Best Practice, a planning application for a rooftop radio base station with 6 half-height multiband antennas, fully screened behind a bespoke colour-coded GRP screen and ancillary development was made to the council. The shrouded antennas are at the minimum height necessary to provide the required RF coverage to the target area for the cell; the apparatus with the exception of a ground based AC meter cabinet is enclosed in the plantroom – the proposed radio base station as

proposed consists of the minimum amount of development at the minimum height to provide shared, multiband RF coverage to the surrounding area.

- 10.3 Despite the demonstrable need for the rooftop radio base station and its trivial or at worst 'less than substantial' visual impact on the conservation area, the council refused planning permission for this now appeal proposal, even though there is no available alternative site for the development.
- 10.4 In respect of the planning merits of the current appeal proposal: as demonstrated in this statement, it is fully in accordance with the Mayor's and council's planning policies, so far as they are relevant. Similarly, it meets fully Government advice in the NPPF and the Code of Best Practice for Mobile Network Development in England. By way of comparison, as is also demonstrated in this statement, the council's delegated report is deficient. It grossly exaggerates the visual impact of the appeal proposal on heritage assets and Troyes House, and fails to take account of Inspectors' appeal decisions elsewhere, where the use of colour-coded GRP screening has been found acceptable in similar rooftop locations in conservation areas.
- 10.5 It is also clear the council failed to carry out correctly either of the two balancing exercises that are required in respect of this proposal, which are: (a) the telecoms balancing exercise of need, technical requirements and the availability of a suitable alternative site to be balanced against any visual impact, and (b) the NPPF assessment and weighing of any identified harm to heritage assets against the public benefits of the proposal, resulting in a wholly incorrect assessment of the impact of the proposal, which as demonstrated is in accordance with long established Government policy for the sharing of sites and use of existing buildings to avoid the necessity for new ground based masts.
- 10.6 The importance of the appeal proposal to O2 and Vodafone's shared single-grid 4G network and the operators' 2G and 3G networks, and thereby its role in meeting national policy objectives established by the operators' Ofcom issued spectrum licences and the NPPF are such that planning permission should have been granted. As demonstrated, the proposed radio base station is appropriately sited and designed. The analysis set out in this statement demonstrates that the council's reason for refusing the development is unreasonable and unsustainable.
- 10.7 To conclude, the proposed radio radio base station at the appeal site is wholly acceptable, and this view is supported by the decisions of other Inspectors at appeals for similar GRP screened rooftop installations in conservation areas elsewhere.

10.8 The Inspector is requested to allow the appeal and grant planning permission for:

‘Installation of 6 no. antennas behind a GRP screen and ancillary works’ at Troyes House, Lawn Road, London NW3 2XT (NGR: 527575, 185042)’ in accordance with planning application LPA reference 2016/4803/P.

However, if as described in section 3 of this statement, the Inspector considers GRP screening designed to replicate the plantroom on which the antennas are to be sited (shown in drawings 200 and 301 Issue D, Appendix B) is preferable to the GRP screening shown in the submitted application drawings, designed to reflect the chimneys on the surrounding buildings, the appellants have no objection to a planning condition requiring the screening to be erected in accordance with these revised drawings.

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Waldon Telecom Ltd
For CTIL and Telefónica UK Ltd
28 April 2017