DATE: 23 SEPTEMBER 2021

POSITION STATEMENT
CENTRAL SAINT GILES PARTNER LIMITED
APP/X5210/W/21/21/3272448
2020/2015/P

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1. INTRODUCTION

1.1 We act for Central Saint Giles General Partner Limited (the **Owner**), the freeholder owner of the Matilda Apartments, 1 Saint Giles High Street, London, WC2H 8AG Property (the **Property**). We are submitting this written representation on behalf of the Owner in relation to the appeal with reference APP/X5210/W/21/21/3272448 (the **Appeal**) submitted by Cornerstone, Telefonica UK Limited & Vodafone Limited (the **Appellant**) against the refusal of planning permission with reference 2020/2015/P (the **Application**) by the London Borough of Camden (the **Council**) pursuant to the Application.

1.2 The Appeal relates to development comprising of the installation of 10 antennas, 2 transmission dishes, equipment cabinets and ancillary development thereto (the **Development**).

1.3 The Owner submitted an objection to the Application. The Owner's objection is enclosed at Appendix A.

1.4 The Appellant and the Council have not provided copies of the appeal documentation, save for the Appellant's Statement of Case and Appeal Form which are publicly available. We requested these materials from:

1.4.1 the Appellant on 10 May 2021 and again on 31 August 2021. The Appellant has not provided them;

1.4.2 the Council 24 August 2021 and again on 1 September 2021. The Council has not provided them; and

1.4.3 the Planning Inspectorate on 24 August 2021. The Planning Inspectorate referred us to the Council.

1.5 We reserve our right to make further submissions if and when we are provided with copies of the appeal documentation.

2. EXECUTIVE SUMMARY

2.1 The Development is contrary to the development plan. The Appeal must be determined in accordance with the development plan, and the Appeal must be refused unless material considerations indicate otherwise. There are no material considerations which indicate otherwise in this case.

2.2 As will be demonstrated in this statement, the Appellant has not engaged with or applied the relevant development plan policies in the Appeal or in the Appellant's Statement of Case and has instead engaged solely with the NPPF. The NPPF is a material consideration to be weighed against the development plan in the decision-making process, but it is not the development plan which has primacy for the decision.

2.3 The Development is also contrary to planning conditions attached to the planning permission which authorises the host building and which were imposed to prevent precisely the kind of harm that the Development causes: please see section 3 for further detail. The Development is incompatible with the Planning Permission.

2.4 The Development causes harm to heritage assets.

2.5 The needs case is confused, and this feeds into a fundamental flaw in the assessment of alternatives which has led to an unduly restricted site search. The Property has purportedly been

chosen:

2.5.1 as part of a three-site solution to replace infrastructure lost on one site, although there is no justification provided as to why three sites are required to replace one lost site and this is contrary to Paragraph 113 of the NNPF which obliges the Appellant to minimise sites; and

2.5.2 to replace lost 2G, 3G and 4G infrastructure, although the Development includes 5G infrastructure and a significant amount of the Appellant's Statement of Case is taken up by reference to the benefits of 5G infrastructure.

2.6 Without a convincing case as to why a three-site solution is required, the conclusion must be reached that there are two other sites that can deliver the infrastructure required and that the Development is contrary to Paragraph 113 of the NPPF. The fact that the Appellant has not yet entered the planning process for one of these sites (and has had its planning application for the other of these sites refused) demonstrates that a three-site solution is not required and is not deliverable, and there is no evidence to demonstrate that the Development is deliverable in isolation.

2.7 There are alternatives to the Development that provide improvements to network coverage: this is confirmed in the Appellant's own application materials. There are also alternatives that have been irrationally discounted and, in some cases, not explored at all. This is a material consideration which weighs against the grant of the Appeal.

2.8 The existence of alternatives is significant in the weight that may be attached to any benefits of the Development. Great weight has to be afforded to the harm caused to the heritage assets, and by virtue of the development plan the benefits of the Development must convincingly outweigh such harm. A key element of this weight exercise, as explained by the Appellant and demonstrated by all of the appeal decisions on which it seeks to rely, is that in light of this harm there must be an absence of alternatives. There is no such absence of alternatives.

2.9 The benefits that the Appellant seeks to rely on are largely focussed on 5G infrastructure, which is not required to meet the need required by the Development of replacing lost 2G, 3G and 4G infrastructure. The needs case does not support the grant of the Appeal.

3. PLANNING CONDITIONS AND DESIGN

3.1 The Property is of architectural merit, and the Development will cause harm to the Property. We enclose a further, accompanying objection prepared by Renzo Piano Building Workshop (**RPBW**) together with an impact study (the **RPBW Study**) detailing the negative impact of the Proposed Development on the Property. RPBW are a world leading architectural firm and were the architects who designed and worked with the Council to secure the Planning Permission for the Property. These documents are included at Appendix B.

3.2 The Property was constructed pursuant to planning permission reference 2005/0259/P dated 4 October 2006 for redevelopment of the site for mixed use development comprising offices (Class B1), retail (class A1), food and drink (class A3), community (class D1) and residential (class C3) uses, new public courtyard and new pedestrian routes across the site (the **Planning Permission**). The Planning Permission is attached at Appendix C.

3.3 Conditions 8 and 10 of the Planning Permission, which provide ongoing safeguards for the Property and the surrounding area, provide the following:

3.3.1 Condition 8: No meter boxes, flues, vents, pipes, satellite dishes or other attachments not shown on the approved drawings shall be fixed or installed on the external faces of the building without the prior written consent of the local planning authority; and

3.3.2 Condition 10: No plant, ventilation, air conditioning, extraction or other such equipment

shall be provided other than where specified on the plans without the prior written consent of the local planning authority.

3.4 The Development is inconsistent with, and therefore in conflict with, the Planning Permission, as it is not shown on the approved drawings or plans. The Development has not been approved by the local planning authority pursuant to conditions 8 or 10. The Development is contrary to, and incompatible with, the conditions attached to the Planning Permission.

3.5 These planning conditions demonstrate the importance that the Council attached to preserving the roofscape of the Property in the design and approval of the Property. This was key to the design and approval of the Property.

3.6 Determination of the Appeal by the Secretary of State will not constitute the prior written consent of the local planning authority required by Condition 8 or Condition 10 of the Planning Permission.

3.7 The grant of planning permission pursuant to the Appeal will lead to a planning permission which is incompatible with the Planning Permission and which undermines the design aspect of the roofscape.

3.8 The design importance of the roofscape in the grant of the Planning Permission and the planning conditions which preserve the roofscape, are material considerations which weighs against the grant of planning permission for the Development. The PRBW Study demonstrates the adverse impact that the Development will have on the Property. These issues are not considered at all by the Appellant in their Statement of Case, and the Development would be incompatible with the Planning Permission.

4. DETERMINATION OF THE APPEAL

4.1 The Statement of Case misapplies the law and policy for determination of the Appeal. At section 4.30, it states that: "*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*". This error in approach is restated at section 5.20, where it states that "*Section 70 of the Town and Country Planning Act 1990 requires planning applications and appeals to be determined having regard to the provisions of the Development Plan and other material considerations*".

4.2 That is not correct. The Appeal must be determined in accordance with the development plan unless there are material considerations that indicate otherwise. This is a legislative requirement by virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004. The Appellant has not identified material considerations that indicate otherwise.

4.3 The Appellant's failure to engage with the development plan and local planning policy, which applies a different test to the national planning policy, is fatal to their case. See section 5 below for more detail.

5. HERITAGE HARM

5.1 The Appellant and the Council have not provided the heritage statement and so we have not been able to review the methodology employed or the assessment undertaken in the heritage statement.

5.2 The Appellant's Statement of Case is inconsistent on the harm that the Development causes to designated heritage assets. It attributes, at various places, the following degrees of harm to be

caused by the Development: no harm[1], very limited harm[2], perceived harm[3], less than substantial harm[4], avoid unacceptable acceptable harm[5], no significant adverse impact[6] and no more harmful (as part of a comparison)[7]. What is clear from this is that there is harm caused to the designated heritage assets by the Development and that the Appellant accepts this.

5.3 What is not clear is whether the Appellant's position is that the harm is substantial or less than substantial, or where on the scale of harm such harm sits.

5.4 **The Law**

5.4.1 In respect of listed buildings, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the **Listed Buildings Act**) provides that: "*in considering whether to grant planning permission…for development which affects a listed building or its setting,…. the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*."

5.4.2 In respect of conservation areas, section 72(1) of the Listed Buildings Act provides that: "*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*"

5.5 **Application of the Law**

5.5.1 The Development does not preserve or enhance the listed buildings which it affects, and does not preserve or enhance conservation areas. It causes harm to such assets.

5.6 **The Development Plan**

5.6.1 The development plan is up to date. Under the development plan, Policy D2 of the Local Plan provides that the Council will: "*not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal* ***convincingly outweigh that harm***".

5.6.2 Policy D2 further provides, in relation to conservation areas, that the Council will: "*e. require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area; f. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area; g.* ***resist development outside of a conservation area that causes harm to the character or appearance of that conservation area***".

5.6.3 The London Plan 2021 also forms part of the development plan. Policy HC1.C provides that: "*Development proposals affecting heritage assets, and their settings, should* ***conserve their significance****, by being sympathetic to the assets' significance and appreciation within their surroundings. The cumulative impacts of incremental change from development on heritage assets and their settings should also be actively managed. Development proposals* ***should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process***."

[1] Section 1.12 of the Statement of Case
[2] Sections 1.11 and 6.17 of the Statement of Case
[3] Sections 4.92, 6.61, 6.95, 6.130 and 7.1 of the Statement of Case
[4] Sections 6.89, 6.95, 6.97 and 1.12 of the Statement of Case
[5] Sections 6.62, 6.30 and 6.37 of the Statement of Case
[6] Section 6.95 of the Statement of Case
[7] Section 6.89 of the Statement of Case

5.7 **Application of the Development Plan**

5.7.1 The Appellant has not engaged with these policy tests or properly applied Policy D2 in its Statement of Case. Sections 5.69 and 5.70 of the Statement of Case demonstrate this, as does Section 6.113. Policy D2 places a higher burden on the need for public benefits to outweigh harm than Paragraph 196 of the NPPF. The Appellant's Statement of Case does not identify this requirement within Policy D2 and does not apply this test to the Development or the tests set out in the Listed Buildings Act. The Council did assess this harm by reference to the development plan, and found that the benefits of the Development did not outweigh the harm.

5.7.2 As has been demonstrated, the Appellant's Statement of Case acknowledges that the Development causes harm. Therefore, the Appellant's statements that the Development is in compliance with Policy D2 is manifestly incorrect. Importantly, not once in their statement of case does the Appellant attempt to state that the public benefits convincingly outweigh the harm.

5.7.3 The result of the Appellant's approach is that the Appellant has sought to weigh the harm against the public benefits as required by Paragraph 196 of the NPPF. However, it has not engaged with the development plan and Policy D2, and has not sought to demonstrate (and has not in fact demonstrated) that the public benefits ***convincingly outweigh*** that harm. There is a material difference in weighing matters against each other as opposed to demonstrating that one matter convincingly outweighs another.

5.7.4 The Appellant has not engaged with Policy HC1 in the Statement of Case, save for one reference to Policy HC1 where they ignore the policy requirement for the Development to conserve the significance of heritage assets and the policy requirement to avoid harm and to integrate heritage considerations early on in the design process. These policies set a high threshold for the Development.

5.7.5 As the Appellant recognises at section 5.96 of the Statement of Case: "*An expectation that all development affecting heritage assets 'avoids harm' **is a high threshold** and not reflective of the requirement to provide connectivity to all areas, including heritage areas, via suitably designed and functional infrastructure which is simply not addressed by these policies*". First, that is the high threshold that the development plan does apply to the Development through both the local plan and the London Plan. Secondly, there is no exception from this policy for telecommunication development and none should be read into the development plan. The argument that because functional infrastructure is not addressed by these policies it should be excepted from the requirement to accord with these policies has no merit and carries no weight.

5.7.6 The Appellant then states that; "*When considering the appropriateness of telecommunications development proposals, it is imperative that Decision Makers give precedence to telecommunications specific policy where it exists. If it does not exist at a local level, or if the policy is out of date, then the NPPF must prevail. One must also appreciate that it is extremely unreasonable to expect niche infrastructural development to strictly adhere to more general policy criteria*.". First, there is no basis in law or policy to give precedent to telecommunications specific policy where it exists. Secondly, there is no policy within the development plan that could take precedence over Policies D2 and HC1. Thirdly, the development plan is not out of date (nor does the Appellant suggest it is out of date) and so the NPPF does not prevail. Fourthly, if

development such as the Development were to be carved out from this policy then this would need to be through an exception in the policy. There is no exception from this policy for telecommunication development and none should be read into the development plan. Finally, the development plan post-dates the relevant NPPF policies upon which the Appellant bases its case.

5.7.7 In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the determination of the Appeal must be made in accordance with the plan unless material considerations indicate otherwise.

5.7.8 The starting point is that the Development is development outside of a conservation area that causes harm to the character and appearance of that conservation area. The Development does not conserve significance of the conservation area and does not avoid harm to the conservation area. Accordingly, the Development is contrary to Policy D2 (f) and Policy HC1C of the London Plan. Following on from that, the Appellant has not demonstrated that the public benefits convincingly outweigh this harm as is required by Policy D2. Furthermore, the Appellant has not integrated heritage considerations early on in the design process as required by Policy HC1C and has not identified enhancement opportunities to the conservation area.

5.7.9 Therefore, the Development is contrary to the development plan and should be refused in accordance with section 38(6) of the 2004 Act.

5.7.10 The Appellant asserts in numerous sections of its Statement of Case that the Development is compliant with Policy D2. This is plainly incorrect, as it does not engage with the relevant planning policies and it does not engage with the London Plan.

5.7.11 The development plan is not absent, silent or out of date. Camden's local plan and the London Plan both post-date the NPPF policies that relate to heritage assets, and provide for stronger protection of such heritage assets. Therefore, Paragraph 11(d) of the NPPF is not engaged.

5.8 **The NPPF**

5.8.1 Paragraph 193 of the NPPF provides that great weight should be given to the assets conservation;

5.8.2 Paragraph 194 of the NPPF provides that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification;

5.8.3 Paragraph 196 of the NPPF requires that 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.

5.9 **Application of the NPPF**

5.9.1 Paragraphs 193 to 196 of the NPPF are all material considerations but they do not form part of the development plan. The Appellant's case rests on the balancing test under Paragraph 196 of the NPPF, which is only applied where there is harm and where (by the very definition of that harm) the Development is contrary to the development plan.

5.9.2 Importantly, Paragraph 194 of the NPPF requires a clear and convincing justification for any harm to a designated heritage asset. The Appellant has provided no such clear

and convincing justification for the Development, but instead focusses on the broader benefits of telecommunications infrastructure. Please see section 6 for more detail.

5.9.3 It would be perverse to find that the Development is contrary to the development plan, specifically Policy D2, and then apply a lesser test of the same balancing exercise pursuant to the NPPF and subsequently grant consent for the Development.

5.10 **Conclusion**

5.10.1 The Council's approach in determining the Planning Application was correct. The Development is contrary to the development plan. The Development is also contrary to key tests within the NPPF, notably that under Paragraph 113.

6. NEED FOR THE DEVELOPMENT

6.1 The Appellant states that the need for the Development was set out in Section 3 and 4 of the Supplementary Document.

6.2 Whilst we recognise that the need for infrastructure cannot be questioned by virtue of Paragraph 118 of the NPPF, need is a critical consideration in this Appeal given the purported benefits case (which is expressed as being the replacement of lost infrastructure), the amount of infrastructure and the number of sites that the Appellant is promoting (in the context of paragraph 113 of the NNPF). The Appellant has not promoted a like for like replacement. This is critical for the site selection process, which the Appellant does not justify, and the assessment of alternatives given the harm caused by the Development.

6.3 The need for the Development, and the need for the Development at the Property, is identified as being to replace lost infrastructure (comprising 2G, 3G and 4G that has been removed to facilitate the redevelopment of Castlewood House). However, the Development includes additional infrastructure in relation to a 5G network which is not replacement for the infrastructure lost as part of the development of Castlewood House. The need for this additional infrastructure at the Property has not been justified.

6.4 This is particularly important given the narrow site selection process undertaken for the Development, which is purportedly based on the need for replacement infrastructure to be close to Castlewood House. There is no such need for the 5G network to be expanded in such a narrow geographic region, and no justification is provided for this in the Appellant's Statement of Case. This demonstrates a failure in the alternative assessment (addressed below) but also the location of the Development.

6.5 This is fundamental to this Appeal, because the needs case, and the benefits of the Development to be weighed against the heritage harm, set out in the Statement of Case is fundamentally based on the delivery of 5G infrastructure. This is set out in sections 4.19 to 4.28 of the Statement of Case, which are focussed on the delivery of 5G.

6.6 The need for the Development is also based on a three-site solution. However, there is **no explanation** within the Statement of Case as to why there is a need for three-sites (or even two-sites). At no point does the Appellant demonstrate or justify why three sites are required, and at no point does the Appellant demonstrate or justify why the infrastructure could not be wholly located on Albion House or 100 New Oxford Street, both of which are acknowledged as being appropriate alternatives.

6.7 This is particularly important because there is a requirement in Paragraph 113 of the NPPF which provides that: "*the number of radio and electronic communications masts, and the sites for such installations, **should be kept to a minimum***". The Appellant does not demonstrate that its

proposals comply with this requirement and acknowledges that its proposals do not comply with Paragraph 113 of the NPPF (see section 6.33 of the Statement of Case). In fact, it has actively pursued a three-site split cell strategy (which it has not demonstrated is the only solution) and against which it has assessed all alternatives.

6.8 The Appellant alleges that the Council have not weighed the benefits against the harm. That is not the case, and the Council have undertaken the balancing exercise required having established the harm that the Development causes. The Appellant has failed to demonstrate the need for the Development or that the benefits of the Development convincingly outweigh such harm.

6.9 The Appellant's enhanced needs case has artificially sought to conclude that there are no alternatives, when in fact there are even on this enhanced need case. The lack of justification for this needs case and the lack of assessment by the Appellant fundamentally undermines the site selection process.

7. ALTERNATIVE SITES

7.1 The Courts have confirmed that the evaluation of alternative sites is a material consideration when determining a planning application[8]. Where a proposed development is in conflict with planning policy (as is the case for the Development) and/or planning harm exists (as is the case for the Development)), then it is necessary to consider whether there is a more appropriate site elsewhere or an alternative form of development. Again, this is particularly the case when the Development forms part of a three-site solution against a national planning policy which requires such sites to be minimised.

7.2 There are four fundamental failures in the Appellant's approach to the assessment of alternatives. When properly assessed, it is clear that there are alternative sites which could accommodate the Development. These four failures are set out below.

7.3 First, nowhere has the Appellant considered an alternative to a three-site split cell solution. The justification for the selection of the Property is based on a three-site solution. However, there is no explanation within the Statement of Case as to why there is an operational need for three-sites in order to replace the 2G, 3G and 4G coverage on one lost site.

7.4 The three-site split cell solution was pre-determined by the Appellant. All alternatives are subsequently assessed as part of the three-site split cell solution, rather than the Appellant undertaking a proper alternatives assessment (for instance for a single site solution or a two-site split cell solution). This is particularly material given Paragraph 113 of the NPPF and the national policy requirement for the sites for such installations to be kept to a minimum.

7.5 This has led to a number of alternative sites being discounted, in part, on the basis that they will not meet requirements for the Appellant's split cell strategy.

7.6 This is also important given that the Appellant's own assessment is that there are single alternative sites which can deliver a significant improvement on network coverage. Please see section 7.7 for more detail.

7.7 Secondly, there are alternative sites for the Development both as part of a three-site solution or, when properly assessed, as an alternative to siting the Development at the Property.

7.8 The alternatives assessment submitted with the Planning Application identifies the following sites which would provide significant improvements but which are then discounted for no apparent reason (see Page 17 of Cornerstone Industry Site Specific Supplementary Information England). These sites are 55 New Oxford Street and 64 to 76 New Oxford Street, where the Appellant concluded that these alternative sites would provide improvements to the coverage of the network

[8] See, for example, *Trusthouse Forte Hotels Ltd v Secretary of State for Environment (1987) 53 PCR 293 at p. 299.*

but then discount those alternatives on an apparently irrational basis.

7.8.1 55 New Oxford Street: A site in this location ***would provide significant improvement in coverage due to the operators existing network configuration***. As such, it would not provide the necessary coverage to the target coverage area for Telefonica and Vodafone. It has therefore been discounted for this reason.

7.8.2 64 to 76 New Oxford Street. A site in this location ***would provide significant improvement in coverage due to the operators existing network configuration***. As such, it would not provide the necessary coverage to the target coverage area for Telefonica and Vodafone. It has therefore been discounted for this reason.

7.9 These sites are not analysed in the Appellant's Statement of Case.

7.10 The Appellant identified that another operator (MBNL) also has infrastructure affected by the redevelopment of Castlewood House and that they are adopting a split site approach including the siting of apparatus at Centre Cross (which we believe may be reference to Central Cross). MBNL have not sought to site apparatus at the Property, which further demonstrates that the Property is not an appropriate location for the Development.

7.11 The Appellant has not assessed Centre Cross as an alternative on the basis that MBNL had submitted a planning application[9] and there was insufficient room to accommodate both MBNL and the Appellant's apparatus. MBNL's planning application was refused before the Appeal was submitted. Therefore, Centre Cross is available to the Appellant and should be assessed. It is a further viable alternative.

7.12 Thirdly, the Appellant's approach to heritage appears to have been that if a host building is a listed building or is within a conservation area then that alone is sufficient to discount it, without considering the impacts on, or the impacts on the setting of, such listed buildings or conservation areas.

7.13 The Appellant's state that it was not possible to identify a site which doesn't have some heritage impact. However, this does not follow through to its assessment. See section 6.12 of the Appellant's Statement of Case.

7.14 The Appellant has failed to undertake a comparative assessment of the impacts of the Development at the Property as opposed to siting the development on the alternatives considered and discounted. In relation to the alternatives assessment, the Appellant's approach to heritage appears to have been that if a host building is a listed building or is within a conservation area then that alone is sufficient to discount it, without considering the impacts on the setting of such listed buildings or conservation areas. This is a fundamental flaw to the Appellant's assessment of alternatives.

7.15 Fourthly, the Appellant did not follow the Code of Best Practice or a sequential process. The failures in respect of the Code of Best Practice are identified in our objection at Appendix A.

7.16 These are all material considerations, because of the harm caused by the Development and because the Appellant's justification for the Development is underpinned by its position that there is an absence of alternatives. The requirement, clearly set out in the appeal decisions relied upon by the Appellant, is for there to be an absence of alternatives.

7.17 To summarise, there are numerous alternatives to the Development and so it cannot be determined

[9] Section 6.16 of the Statement of Case

that there is an absence of alternatives.

8. ALTERNATIVE DESIGN

8.1 In addition to alternative sites, the Appellant has not demonstrated that there are no alternative designs that could deliver the benefits without causing the same harm.

8.2 In relation to alternative designs and the Stub Mast, the Appellant states that: "***no investigation into the structural soundness of the flying carpet to accommodate a stub mast of any kind has been undertaken***". This is particularly relevant given that the Council advised that this design should be considered.

8.3 The Appellant goes on to state that it has not considered such options because it has not been provided with documentation by the Owner. This is incorrect, and this does not justify the Appellant's failure to undertaker a full analysis of the Property or the ability to deliver alternative designs that may cause less harm to designated heritage assets than the Development.

8.4 The following summarises the timeframe for such requests and demonstrates that the Owner has afforded the Appellant the opportunity to undertake alternative designs (which the Appellant has not undertaken):

8.4.1 26 July 2019: the Owner received an initial request for structural documentation from the Appellant regarding design drawings, structural calculations and drawings in relation to the roof slab and steel grillage.

8.4.2 4 September 2019: the Owner confirmed that it had no objection to provide information.

8.4.3 20 September 2019: a further clarification of request for structural documentation received from the Appellant.

8.4.4 19 November 2019: non-reliance agreement sent to the Appellant in relation to such documentation.

8.4.5 22 November 2019: non-reliance agreement signed by the Appellant.

8.4.6 30 December 2019: the requested structural documentation was sent by the Owner to the Appellant.

8.4.7 16 January 2020: the Appellant raised queries regarding window cleaning cradle, maintenance of steel canopy and structural integrity of canopy.

8.4.8 3 March 2020: the queries on window cleaning cradle and canopy answered were answered by the Owner.

8.5 In spite of this engagement, the Appellant made no further requests for information to the Owner in order to allow it to undertake any further assessment of the Property.

8.6 The Appellant has decided not to consider alternative designs which may cause less harm to the Property.

8.7 This is a material consideration, because the Appellant's case is not that there is no better alternative design but that it has not undertaken any alternative assessment of that (potentially) better alternative design. The Appellant's justification for the Development is underpinned by its position that there is an absence of alternatives. The requirement, clearly set out in the appeal decisions relied upon by the Appellant, is for there to be an absence of alternatives. The Appellant's failure to consider alternative designs demonstrates that there is not an absence of

alternatives.

8.8 To summarise, there will be alternative designs to the Development which the Appellant has simply chosen not to explore and so it cannot be determined that there is an absence of alternatives.

9. ALTERNATIVES - PREVIOUS DECISIONS

9.1 The Statement of Case refers to a number of decisions. Each appeal is fact and case specific and does not act as a precedent for the Appeal: they simply demonstrate the balancing exercise that must be undertaken in planning.

9.2 What is important to note is that in every appeal decision against the refusal of an application for planning permission (as opposed to a prior approval refusal) that the Appellant[10] has referred to in its Statement of Case, the lack of an alternative is a determining factor in the grant of the appeal. See:

9.2.1 Paragraph 13 of Appeal Decision APP/K2610/W/17/3176890 which identifies: "the lack of alternative sites";

9.2.2 Paragraph 23 of Appeal Decision APP/V5570/W/20/3246770 which identifies that "other sites can be discounted";

9.2.3 Paragraph 15 of Appeal Decision APP/V5570/W/20/3251047 which identifies the: "lack of suitable alternative sites"; and

9.2.4 Paragraph 21 of Appeal Decision APP/J4423/W/20/3252355 which identifies: "the absence of any alternative options".

9.3 In the current Appeal, there are:

9.3.1 two alternatives (Albion House and 100 New Street Oxford) which the Appellant acknowledges can deliver improvements and for which there is no justification as to why this is only achievable as part of a three-site split cell solution;

9.3.2 additional alternatives (55 New Oxford Street and 64 to 76 New Oxford Street) which have been discounted without justification in spite of the Appellant's confirmation that they could both achieve "***significant improvement in coverage***" but which have subsequently been discounted for no reason;

9.3.3 additional alternatives which have not been properly considered, such as Centre Cross, despite this being identified as an appropriate alternative location; and

9.3.4 additional alternative designs at the Property which have not been considered by the Appellant.

9.4 In respect of 55 New Oxford Street and 64 to 76 New Oxford Street, it is particularly important to note that the evidence submitted as part of the Appeal demonstrates that these sites provide "***significant improvement in coverage***"[11]. This is particularly material, because the need case for the Development and the Appellant's justification for the Development is based on a need to replace lost infrastructure (not a need for an improvement). An alternative site that can achieve a significant improvement in coverage achieves, and betters, the need for the Development.

[10] Section 4.89, Section 6.28, Section 6.29, Section 6.31,
[11] Please see page 17 of Appendix D

9.5 Therefore, it is impossible to conclude that there is an absence of alternative sites. In fact, there is evidence of appropriate alternative sites. This is another material consideration which requires the refusal of the Appeal.

9.6 The appeal decision referred to in Section 6.31 relates to an appeal under the GPDO (not an appeal for refusal of an application for planning permission) where planning considerations are limited. In any event, the Inspector's statement was that there is no requirement within the NPPF or the GPDO for developers to select the best feasible siting "where a site as proposed is considered to be acceptable". The Property is not acceptable for the Development, which is why alternatives must be considered.

10. SPLIT SOLUTION – DELIVERABILITY AND PREMATURITY

10.1 There is no evidence to demonstrate that the three-site split cell solution is deliverable, or that the Development will be delivered if the other two sites in this three-site split cell solution are not consented.

10.2 If a three-site solution were required, then appeals and applications should have been progressed together in order for the Council or the Planning Inspectorate to determine that such a solution was deliverable.

10.3 The Appellant does not have planning permission for either of the two additional sites. In respect of:

10.3.1 **Albion House**: A planning application has been submitted but that planning application has been refused, and no appeal has been submitted; and

10.3.2 **100 New Oxford Street**: No application has been submitted.

10.4 The Appellant has not provided any evidence to demonstrate that a three-site split cell solution is deliverable. This is a further material consideration which weighs against the grant of planning permission for the Development.

11. MATERIAL CONSIDERATIONS

11.1 The Development is contrary to the development plan, and so must be refused unless material considerations indicate otherwise.

11.2 The Development is contrary to paragraph 113 of the NPPF. This is a material consideration, particularly given the Appellant's reliance on a three-site solution to replace one current site (leading to an increase in sites to deliver the same coverage). This weighs against the grant of planning permission pursuant to the Appeal.

11.3 The Appellant identifies a number of material considerations which weigh against the Development. For example:

11.3.1 Camden Planning Guidance Design (identified as a material consideration at section 5.95 of the Statement of Case). The Statement of Case identifies this as being in draft, but it was adopted by the Council in January 2021 (prior to submission of the Appeal); and

11.3.2 Camden Planning Guidance Amenity (identified as a material consideration at section 5.97 of the Statement of Case). The Statement of Case identifies this as being in draft, but again it was adopted by the Council in January 2021 (prior to submission of the Appeal).

11.4 These are adopted planning guidance documents which the Appellant has failed to have sufficient regard to in designing the Development and preparing the Appeal. These weigh against the grant of planning permission pursuant to the Appeal.

11.5 The Appellant has drawn attention to the fact that significant weight is to be attached to the availability of alternative options. We agree that the weight to be attached to alternatives is significant, and our position is that there are a number of suitable alternatives which attract significant weight and which weigh against the grant of planning permission pursuant to the Appeal.

11.6 The Development is contrary to, and incompatible with, the Planning Permission and in particular is incompatible with conditions 8 and 10 of the Planning Permission which were imposed to protect the design of the Property and protect the roofscape of the Property. This weighs against the grant of planning permission pursuant to the Appeal.

11.7 The need for the Development has not been established, particularly given that it is based on an unjustified three-site solution. In addition, there is no evidence to demonstrate that the other two sites identified as part of the three-site solution are deliverable or that the Development will be delivered if the other two sites identified as part of the three-site solution do not come forward. These are material considerations which weigh against the Development.

11.8 The Appellant's position is that the benefits of the Development attract significant weight. We do not dispute this as a general statement of the benefits of the infrastructure being promoted; however, the justification for the Development at the Property has not been made out. In particular:

11.8.1 The Appellant identifies benefits which relate to 5G infrastructure as material considerations (see section 4.2). The Development is only required to replace 2G, 3G and 4G infrastructure and so considerations relating to 5G infrastructure do not meet the objectives of the Development.

11.8.2 In the absence of justification for a three-site solution, and given the existence of alternatives, limited weight can be afforded to the sole material considerations which the Appellant identifies (being the social and economic benefits of the Development). The fact that there is generic national planning policy supporting the delivery of such infrastructure, and recognition of the benefits of such infrastructure, is not a trump card over the development plan.

12. CONCLUSIONS

12.1 The Development is contrary to the development plan. The Appeal must be determined in accordance with the development plan, and the Appeal must be refused unless material considerations indicate otherwise.

12.2 There are no material considerations which indicate otherwise in this case, and numerous material considerations which weigh against the grant of permission pursuant to the Appeal.