

LONDON BOROUGH OF HARROW

Agenda item:

Page no:

Meeting:	Development Control Committee
Date:	Tuesday 11 October 2005
Subject:	102, 104, 106 High Street, Harrow on the Hill
Responsible Officer:	Group Manager Planning & Development and Director of Legal Services
Portfolio Holder:	Planning, Development and Housing
Enclosures:	Appendix 1 – Report to DC Committee 7 September 2004 Appendix 2 – ECS survey March 2004 Appendix 3 – ECS survey November 2004 Appendix 4 – Counsel’s Opinion. Status: Part II The Opinion is exempt by virtue of paragraph 12b of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) in that it is legal advice in connection with the determination of a matter affecting the authority Appeal decision on 42-44 High Street, Harrow on the Hill Site Plan Photographs
Key Decision:	No
Status:	Part 1
Ward:	Harrow on the Hill

Section 1: Summary

- 1.1 This report advises on an unauthorised telecommunications micro-system comprising two wall mounted microcell antennae on the front wall of 102 and the flank wall of 106 High Street, and an equipment cabin to the rear of 104 High Street, Harrow-on-the-Hill.
- 1.2 A report on this item was originally submitted to this Committee on 7 September 2004, and is attached as Appendix 1 to this report that now supplements the earlier item.

Decision Required

Recommended (for decision by the Development Control Committee)

- 1) The two wall-mounted microcell antennae are neither prominent nor visually obtrusive in the street scene, and have no detrimental impact either on the character or appearance of the Conservation Area, the Listed Buildings at Nos. 104 and 106 High Street, or the street scene in general;
- 2) Having regard to:
 - i) the representations regarding health and perception of health effects;
 - ii) the two surveys carried out by the consultant in March and November 2004;
 - iii) Counsel's Opinion in respect of the microcell installation at 102 High Street;
 - iv) the advice from the Council's Conservation Officer;
 - v) policy guidance in PPG8, and the Council's Unitary Development Plan the appeal decision in respect of the microcell installation at 42-44 High Street, and;
 - vi) the data in relation to appeal decisions in respect of telecommunications development between January and September 2005

it would not be appropriate to undertake enforcement action in this case;
- 3) Orange plc be advised of the Council's views in respect of the need for planning permission and Listed Building Consent in relation to this unauthorised development and be urged to regularise the position; and
- 4) The complainants be notified accordingly.

Reason for report:

To provide further information following the previous report.

Benefits:

To enhance the environment of the Borough.

Cost of Proposals:

None.

Risks:

Any enforcement notice may be the subject of an appeal to the Planning Inspectorate.

Implications if recommendation rejected:

There could be an award of costs against the Council in the event of an appeal against an enforcement notice.

Section 2: Report:

Brief History, Policy Context (Including Previous Decisions)

- 2.1 A detailed report on this matter was submitted to the Development Control Committee on 7 September 2004 (see **Appendix 1** attached to this report) with similar recommendations to those now stated. Members heard a deputation from a neighbouring resident. Members noted that no consultation of the local community on the microcells had taken place as the operator had not submitted a planning application for the equipment, but commented that operators were also required to undertake such consultation by the relevant code of practice issued by the Government and under the provisions of PPG8. They queried whether action could be taken to ensure that operators met their responsibilities under these.
- 2.2 They also noted the depute's comments regarding the validity of the readings taken in March and agreed that current readings from the microcell and information regarding the potential highest emissions of the microcell should be obtained.
- 2.3 They agreed that the cumulative effect of emissions of telecommunications equipment in the area also be investigated and further legal advice then be sought. Following representations from a Ward Member queries were also raised whether, if a number of masts were located in the vicinity, this constituted a base station.
- 2.4 The Committee resolved:

That a decision on this matter be deferred to allow officers to investigate the points raised above (and submit a further report on this matter to a future meeting of the Committee.
- 2.5 A second survey was carried out by the same consultant (ECS Limited) on 16 November 2004, taking a series of readings from the same points as those taken in the first survey in March. Both surveys are attached to this report as **Appendices 2** and **3**.
- 2.6 Following the receipt of the second survey legal advice was sought.

Relevance to Corporate Priorities

- 2.7 This report addresses the Council's stated priority of enhancing the environment of the Borough.

Background Information and Options Considered

- 2.8 The September 2004 report considered the following range of issues in respect of this development and it is not intended to repeat those in this report:

investigation;
the need for planning consent;
consultation;
formal advice and policies;
general advice;
health issues and alternative sites;
development within the historic environment;
residential amenity;
proposed microcell development at 42-44 High Street; and
advice on the appropriateness of planning enforcement action

- 2.9 Members are urged to refer back to section 6 of that report for details of those issues.
- 2.10 The purpose of this report is to update members in respect of the further information requested when the previous item was deferred.

The Survey by ECS Ltd, November 2004

- 2.10 The second survey (see **Appendix 3**) was carried out 8 months after the first survey and took measurements from the same reference points. As before, the survey was carried out using equipment that measures the combined effect of all electromagnetic fields within the given frequency range. In other words the survey does not differentiate between sources, but simply measures all electromagnetic fields in use at the time of survey. The survey therefore covers the frequencies used by all the mobile phone networks as well as the frequencies used by a great many other radio systems.
- 2.11 The second survey includes a summary table, on pages 7 and 8, of the readings for each site on both survey dates. The introduction to the second survey explains that:

“...In all cases, the changes are small and are of the order that would be expected for surveys done at different times in a location where the overall electromagnetic radiation levels have remained fairly constant. The small differences measured may be accounted for by:

- *differing transmitter power levels from the base stations*
- *minor differences in measurement locations*
- *different contributions from other transmitters (mobile phones, taxi cab radios, etc.)*

The key point to observe is that exposure levels in all cases are well within the international guideline levels.

One further observation is that, although the levels vary from place to place and time to time, it would be wrong to assume that the varying levels of exposure rates relate in some way to varying risks. I am aware of no widely-accepted risks to health at the levels we have measured (i.e. levels below the relevant international guidelines).....”

2.12 The comparative tables indicate that the highest levels of the total electromagnetic power densities are not materially different between the two surveys and are, dependent on the specific locations, many 1,000s of times below the ICNIRP maximum permitted public guideline set for the telecom operators 3 (the flagpole installations), and Orange (the microcell installation).

2.13 The survey concludes:

“...The ICNIRP guidelines are designed to provide for the full protection of everyone at the maximum permitted public values and these guidelines are endorsed by the national Radiological protection Board and the WQorld Health organisation. Therefore, when considering the much lower measured values, then no harm should be expected to result to anyone living in these buildings or nearby...”

2.14 Counsel’s Opinion was sought in July, following the second survey and after the public inquiry into the Discontinuance Order.

Advice from the Conservation Officer

2.15 Counsel’s opinion stresses the need to consider the advice of the Council’s Conservation Officer in respect of Listed Building and Conservation Area impact issues. Nos. 104 and 106 High Street are Grade II Listed Buildings, and the whole site is within the Harrow on the Hill Conservation Area.

2.16 The Conservation Officer has offered the following comments:

Impact on character and setting of the listed buildings:

The works can be split into 4 main categories – the microcells on the front / side elevations of 102 and 106, the equipment cabin at the rear, associated cabling, and any internal works to 104 -106 to facilitate the system.

“... In terms of the microcells, PPG15 advises at para C68 that minor additions to listed buildings such as burglar alarms will require listed building consent if they affect the special architectural or historic character of the building. The document advises that only visually unobtrusive positions for such fixtures should be agreed.

The one on 102 High Street is obvious, being on the front elevation but this building is not listed so Listed Building Consent would not be required. The one on 106 is much less obvious because it is on the side elevation, tucked in with the rainwater hopper head and against a rendered wall which it blends into. It does have an impact and does in a small way affect the character and thus Listed Building Consent would, in my opinion, be required but I would not object to the proposal as I do not think it is in any way detrimental to the character of the Listed Building. It is a modern feature, much like an alarm box, and as such is inconsequential in terms of how the building is seen and appreciated.

The equipment cabin is not physically attached to the listed building and therefore does not require listed building consent. It does, however, affect the setting of the listed building. In my opinion, however, the cabin does not detrimentally affect the setting as it is in the service yard area at the rear of the Listed Building and is seen in association with all sorts of clutter such as wheelie bins, sheds etc., and this metal compartment is actually neater and less obtrusive than these other features. It is tucked up against railings and painted a dark colour and is therefore relatively unobtrusive.

The cabling on the rear external face of 104 is hidden amongst a mass of rainwater goods and so whilst again I think this probably does require Listed Building Consent ... it is relatively unobtrusive when seen in association with all the existing clutter. I did not particularly notice cabling from 106, which I think is hidden behind the parapet, which makes it so unobtrusive as to not cause a problem.

Other works – it appears to me that there may well be internal cabling which I cannot see and I also note that a basement room in 104 is being used to house electrical equipment. It certainly appears as if a new rear door to the basement has been installed. All these works are likely to require Listed Building Consent and without proper inspection I can't tell if they are acceptable or not. It would also depend what the earlier door looked like and how much alteration has taken place to any rooms. If the cabling is similarly hidden and the basement has just had freestanding equipment inserted in it, I do not see a major problem although we still need to resolve the basement door, which is not that attractive.

In summary therefore on Listed Building issues, consent is likely to be required but I would recommend that consent be granted, although I need to see inside the building to form a full view.

Impact on character of conservation area

The alarm boxes on both elevations are no more obtrusive than that allowed at 42-44 High Street (to which the Conservation Group had no objections). The cabling on the front elevation is arguably better hidden than that of 42-44 High Street and the equipment cabin is hidden at the rear in a service yard where one might expect to see sheds / storage in any event. Therefore in my opinion the entire system would not detrimentally affect the character of the area and would have less of an impact than the system allowed at appeal at 42-44 High Street. .

Telecommunications Appeal Decisions

2.17 Reference has been made in the previous report to health concerns and fear of health risk in relation to telecommunications installations. To supplement this an analysis has been carried out of recent telecommunications appeal decisions.

2.18 Since January 2005 there have been 394 appeals in respect of telecommunications development where health and / or fear of risk to health were raised as issues – these are examined below (**Table 1**):

Table 1: Telecommunication Appeal Decisions between January and September 2005

Total Decisions	Allowed		Dismissed		Compliance with ICNIRP public exposure guidelines		Fear of Risk to Health	
393	262	67%	131	33%	393	100%	6	1.5%

2.19 The 1.5% of the 393 appeal decisions where the Inspector accepted the perception or fear of risk to health all related to Dismissed appeals. The decision details are summarised below (**Table 2**):

Proposal	LPA	Summary of Issues
12.5m imitation telegraph pole in residential area	Eastbourne	<ul style="list-style-type: none"> ▪ Wide grass verge at backs of houses – existing trees about 6 to 7m high, streetlamps about 8m high ▪ Pole sited in a conspicuous position, against rear garden boundaries some 30m from rear of nearest dwelling ▪ Would be out of keeping in streetscene and cause substantial harm to character / appearance of area ▪ No health risk but weight given to perception of risk as equipment would be particularly conspicuous from a neighbouring dwelling and would be a constant reminder of health fears

10m pole in residential area	Sheffield	<ul style="list-style-type: none"> ▪ Sited on grass verge ▪ Harm to character / appearance of area due to overly dominant structure with little opportunity for landscaping ▪ Harm to residential amenity due to loss of outlook and perceived health risks
15m pole on roundabout in residential area	Bromley	<ul style="list-style-type: none"> ▪ No harm to character / appearance of area ▪ Concern about residential / visual amenity & outlook are more to do with effects on health
12m and 15 m poles on 2 roadside sites in residential area	Tamworth	<ul style="list-style-type: none"> ▪ No harm to residential amenity / loss of outlook ▪ Possible health implications if both masts are erected, although the Inspector seems to ignore
8m imitation telegraph pole in residential area	Reigate & Banstead	<ul style="list-style-type: none"> ▪ Sited 2m from garden fence ▪ Would appear dominant & intrusive in outlook from dwelling ▪ Prominent in skyline views ▪ Weight to perceived health fear
15m pole in residential area	Rushmoor	<ul style="list-style-type: none"> ▪ Harm to character / appearance of area ▪ Harm to residential / visual amenity due to scale / mass / perceived health risks at this exposed position

2.20 These appeal decisions all relate to street poles and are substantially bigger developments than the microcell installation at Nos 102 to 106 High Street. In the Officers' view this installation is not comparable with these cases. Additionally, there have been 2 electromagnetic surveys which confirm the low level of emissions in this locality.

Appeal Decision on Microcell Installation at 42-44 High Street, Harrow on the Hill

2.21 The Inspector in this appeal gave careful consideration in July 2004 to a similar installation further along High Street. The principal differences were that only one microcell was to be installed on the front wall, and the equipment cabinet was to be sited at the side of a well-used public footpath, rather than at the rear of a building in a private yard.

2.22 The Inspector gave due weight to the impact of the proposal on the character and appearance of the Conservation Area, and on the health issues.

2.23 The Inspector likened the microcell antenna to a burglar alarm, and the cabinet to a telephone or traffic light switch cabinet – a regular feature of our streets for many years.

2.24 The Inspector then considered health issues and the perception of risk to health. He acknowledged these as material planning considerations, but concluded by giving these very little weight, based on Government advice, compliance with ICNIRP and the lack of any substantive technical evidence of harm arising from the proposed installation.

2.25 Finally, the Inspector addressed the issues of a possible breach of human rights and concluded that there would be no breach of such rights.

Consultation with Ward Councillors

2.26 None

Financial Implications

2.27 None

Legal Observations

2.28 Included in the report

Conclusion

2.29 It is the officers' view that the microcell installation (taken as a whole and comprising the equipment cabinet at the rear and the two wall-mounted antenna) amount to development. This is not permitted development as the site is within a conservation area, and planning permission is therefore required. The telecom operator Orange disagrees with this view and considers the installation is *de minimis* (so small as to be of no account).

2.30 However, whilst a planning application (or Listed Building Consent) for this development has not been submitted, it is considered unlikely that the instigation of formal planning enforcement action would be successful. The equipment cabin at the rear of 104 High Street is sited unobtrusively against the rear of the building and is not visible from any public part of the Conservation Area, and has no detrimental impact on the character or setting of the listed building or this part of the Conservation Area.

2.31 It is considered that the two microcell antenna, on the front elevation of 102 High Street and on the flank elevation of 106 High Street, are unobtrusive and not detrimental to the character or appearance of the listed buildings to which they are attached or to this part of the Harrow on the Hill Village Conservation Area. The microcells were not noticed by any local residents following their unauthorised installation in 2004.

2.32 Government guidance in PPG 18 on enforcement advises at paragraph 7:

"7. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought... As paragraph 14 of DOE Circular 2/87 (W) 5/87 points out, it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal."

2.33 In the Officers' view, in all the circumstances it would be inappropriate to undertake enforcement action in respect of this installation.

Section 3: Supporting Information / Background Documents

Application file WEST/456/02/FUL