



<b>Meeting:</b>	Development Control Committee
<b>Date:</b>	Wednesday 6 September 2006
<b>Subject:</b>	102, 104, 106 High Street, Harrow on the Hill
<b>Responsible Officers:</b>	Andy Parsons, Head of Planning, and Hugh Peart, Director of Legal Services
<b>Portfolio Holder:</b>	Councillor Marilyn Ashton
<b>Enclosures:</b>	<ul style="list-style-type: none"><li>- Appendix 1 – ECS survey March 2004</li><li>- Appendix 2 – ECS survey November 2004</li><li>- Appendix 3 - Appeal decision on 42-44 High Street, Harrow on the Hill</li><li>- Site Plan</li><li>- Site Photographs</li></ul>
<b>Key Decision:</b>	No
<b>Status:</b>	Part 1 (with Part II report attached for Members' information only)
<b>Ward:</b>	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, and seeks agreement to take no action in respect of the installation.
- 1.2 Following receipt of a complaint a report on this item was originally submitted to this Committee in July 2004, to enable consultation with local residents and Harrow School. The report was re-submitted to Committee on 7 September when it was resolved that consideration be deferred to enable an electromagnetic survey to be carried out, with further legal advice based on that information.

- 1.3 This report was originally presented to the Committee on Tuesday 11 October 2005, when the Committee resolved to defer consideration to allow consultation with interested parties, to ensure that local residents would be aware of the new report.
- 1.4 The report was re-submitted to the Development Control Committee on Wednesday 16 November 2005. The Committee again resolved to defer consideration to await the outcome of the public inquiry into the Discontinuance Order on the macrocell flagpole installed on the roof of 102 High Street.
- 1.5 The report has now been updated to include the result of the public inquiry into the appeal against the Discontinuance Order.

### **Decision Required**

#### **Recommendation (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 independent 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;**
  - vi) **the appeal decision in respect of the microcell installation at 42-44 High Street;**
  - vii) **the data in relation to appeal decisions in respect of telecommunications development between January and September 2005; and**
  - viii) **the decision on the appeal against the Discontinuance Order in respect of the flagpole installation at 102 High Street**

**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 the Committee with further information following the previous report and secure its decision on how to proceed.

**Benefits:**

To resolve the uncertainty arising from this installation.

**Cost of Proposals:**

None in connection with the recommendation.

**Risks:**

Any enforcement notice authorised by the committee 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 authorised by the committee.

**Section 2: Report:**

**Brief History, Policy Context (Including Previous Decisions)**

2.1 See Section 2.3 et al.

**Relevance to Corporate Priorities**

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

**Background Information and Options Considered**

2.3 Members will be aware of the history of the "flagpole" installation on the roof of No. 102 High Street Harrow on the Hill. On 17 March 2004 this Committee considered a detailed report and resolved to make a Discontinuance Order in respect of a Hutchison 3G Mobile Phone Base Station (the flagpole installation), installed on the roof of 102 High Street under planning permission reference WEST/456/02/FUL, for the following reasons:

- (i) the development, by reason of its height and prominence, is unduly obtrusive and detrimental to the character and appearance of this part of the Conservation Area;
- (ii) the development, by reason of its height and prominence, is unduly obtrusive and detracts from the visual amenity of neighbouring residents and occupiers and of the street scene in general.

2.4 The Committee also resolved to agree that:

- (i) the development, by reason of the perception and / or fear of health effects would not be detrimental to the residential amenity of neighbouring residents and occupiers; and
- (ii) the decision to grant planning permission was not plainly wrong (in planning terms).

2.5 The outcome of this decision was that an appeal was lodged to be the subject of a public inquiry (subsequently heard in June 2005). Meanwhile the Council had received a complaint from a member of the public that telecommunications equipment, additional to that previously installed at 102 High Street, had been erected at the rear of 104 High Street (at some time in February 2004). An investigation of the site revealed a small telecommunications equipment cabinet (sited against the rear wall of 104 High Street) owned by Orange. Subsequent investigation revealed that the cabinet formed part of a telecommunications micro-system, with cabling to two small wall-mounted antennae on the front wall at 102 High Street and on the flank wall of 106 High Street. No complaints had been received in respect of the two microcell antennae installed on the street frontages.

2.6 The equipment cabinet and the two antennae are sited within a Conservation Area (article 1(5) land). The cabinet falls within the provisions of permitted development under Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 and neither planning permission nor a determination for prior approval is required.

2.7 However, the two microcell antennae are expressly excluded from permitted development by the provisions of Part 24 (h) of the 1995 Order and planning permission is required. Such permission was neither sought nor obtained by Orange, and they have since declined to submit an application to regularise the development. In October 2004 Orange published a "roll-out" plan, that indicated all of their current sites and proposals within Harrow. The document included reference to this site with a note that planning permission had been granted. However, it is confirmed that such permission has neither been sought nor obtained from the local planning authority.

2.8 Clearly, in the absence of a planning application no information has been provided about compliance with ICNIRP or otherwise. However, it should be noted that this installation was operational at the time that the Hutchison 3G installation was surveyed by ECS Limited, on behalf of the Council, on 4 March 2004. The readings noted in the report would therefore have included the emissions from both microcell antennae, as the readings do not differentiate between different

antennae, and readings were taken at points up and down High Street and London Road.

- 2.9 The Committee agreed on 17 March 2004 that, on the basis of the survey findings, it would be inappropriate to take any action on the basis of health and perception of health effects. The typical output from a microcell antenna is, in any event, substantially lower than that from a macrocell antenna, such as that on the roof of 102 High Street.
- 2.10 A detailed report on the Orange microcell installation was submitted to the Development Control Committee on 7 September 2004 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 provisions.
- 2.11 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.
- 2.12 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.
- 2.13 The Committee resolved on 7 September 2004:
- “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.”
- 2.14 A second independent electromagnetic 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 1 and 2**.
- 2.15 Following the receipt of the second survey legal advice was sought.
- 2.16 A further report on the microcell installation was not submitted until October 2005, after the completion of the public inquiry into the Discontinuance Order (in June 2005). The report included the results of the second survey and Members were advised of Counsel's advice. Following consideration of the report Committee resolved to defer consideration for consultation with local residents and Harrow School.

2.17 In the absence of any planning application no consultation of Harrow School or of local residents had originally been undertaken, either by the developer or the local planning authority. Nor was any undertaken after the deferral in September 2004. However, this position was rectified following the deferral in October. Four letters of objection were received, including The Harrow Hill Trust and a joint letter from 10 nearby residents.

2.18 The Harrow Hill Trust objected on the following grounds:

- the original proposal by Orange was made at 42/44 High Street, where planning permission was applied for and refused
- the development was then installed by Orange without permission at 102-106 High Street
- the developer was fully aware of the need for planning permission and should be made to apply
- the development creates a precedent

2.19 The other objections were made on the following grounds:

- the failure to apply for permission has meant that no public consultation has been carried out
- the issues are the same as those considered in respect of the flagpole mast when the Discontinuance Order was agreed
- the development is unauthorised and the developer should be required to submit a planning application
- the development detracts from the appearance of the Conservation Area
- the development creates a precedent
- the officers' report is one-sided as it ignores the Stewart Report on mobile phones and health
- the developer has totally ignored the consultation requirements set out in:
  - the ODPM's Code of Best Practice on Mobile Phone Network Development
  - Planning Policy Guidance Note 8 – Telecommunications
  - the Mobile Phone Operators Association's "10 Commitments"
  - the LPA's own guidelines
- taking no action would be wholly inconsistent with the Committee's September 2003 decision to refuse a similar development at 42/44 High Street
- the officers' report ignores the strength of local feelings about health dangers and visual impact
- the Courts have held that adequate weight should be given to health concerns and this development gives rise to a very significant degree of fear of health risk
- local residents should be able to make representations to the Committee before planning permission is determined
- the development is not de minimis because it affects locally listed buildings in a conservation area and because its emissions combine with those from the 3G mast and have a cumulative effect
- the microcell installation and the 3G mast should be looked at in the aggregate until such time as the Discontinuance Order appeal is determined

- 2.20 Having considered the further report to the 16 November 2005 meeting, Development Control Committee again resolved to defer consideration to await the outcome of the Discontinuance Order inquiry.
- 2.21 The outcome of this inquiry was that on 12<sup>th</sup> May 2006 the Secretary of State agreed with the Inspector's conclusions, accepted his overall recommendation, dismissed the appeal and upheld the Order made by the council.

The Relevant Provisions of the Development Plan and Other Material Considerations

- 2.22 102-106 High Street is within the Harrow on the Hill Conservation Area and in determining planning applications there is an additional statutory requirement that a local planning authority should have special regard to the desirability of preserving or enhancing the character or appearance of any conservation area in exercising their development control functions. PPG15 (Planning and the Historic Environment)(para 4.19) advises : "...if any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission..."
- 2.23 Following a series of court cases on the application of the conservation area test, the House of Lords in the South Lakeland case in 1992 defined what is now the accepted position, i.e. that the requirement is fulfilled if a development only preserves the character or appearance of a conservation area in the sense that it does not do harm to it.
- 2.24 The relevant development plan policies in relation to this application are set out in Harrow Unitary Development Plan (adopted 30 July 2004):

EP31 Areas of Special Character  
D16 Conservation Areas  
D18 Conservation Areas Priority  
D26 Telecommunications Development

- 2.25 Relevant material considerations need to be considered within the overall context of the advice in PPG8 and in this case include:
- character and appearance of the conservation area
  - visual and residential amenity
  - alternative sites and need
  - ICNIRP compliance
  - health concerns

Character and appearance of Conservation Area

- 2.26 The two microcell antennae are not prominent features in the street scene. No specific complaints were received in relation to the antennae. The two microcell antennae are white plastic boxes approximately 400mm long, 150mm wide and

120mm deep. In the case of 102 High Street the microcell is sited just below the flat roof parapet adjacent to the parapet at 104 High Street on the left hand edge of the front elevation. The microcell matches the colour of the front elevation of 102 which is white rendered. The microcell on the upper flank elevation of 106 High Street is sited directly above a black hopper and downpipe, and is seen against the backdrop of a rendered, buff-coloured flank wall.

- 2.27 It is argued that the two microcell antennae are small in size and barely visible, and do no material harm to the character or appearance of the conservation area. This is inevitably a subjective view, but whilst it may be argued that the development does not enhance the conservation area, it is suggested that the development at least preserves that character. Even if this view is not agreed it is argued that the development does not harm the character or appearance of the conservation area.

#### Visual and Residential Amenity

- 2.28 An examination of appeal decisions shows that a very strong visual amenity argument needs to be put forward to overcome the favourable policy presumption given by PPG8. In fact 70% of all telecommunications decisions where visual amenity has been an issue have been allowed. The fact that a mast would harm the amenities of a residential area may be an argument that prevails especially where strong local opposition is a feature of the objections.
- 2.29 PPG8 encourages the use of existing buildings and other structures, such as electricity pylons, to site new antennas. Applicants are expected to demonstrate that they have explored this possibility. PPG8 requires the use of sympathetic design and camouflage to minimise the impact of development on the environment. It encourages the telecommunications industry to continue to develop innovative design solutions, in terms not only of the structure of masts and antennas but also the materials and colouring.
- 2.30 In the present case the microcell antennae are small in size, are sited unobtrusively, and resemble burglar alarms in general appearance.

#### **Alternative Sites and Need**

- 2.31 When making decisions related to telecommunications installations, large or small, account has also to be taken of the advice in PPG8 Telecommunications relating to need. PPG8 advises:

*Modern telecommunications are an essential and beneficial element in the life of the local community and in the national economy. New communications technology is now spreading rapidly to meet the growing demand for better communications at work and at home, in business and in public services. Fast, reliable and cost effective communications can attract industry to an area and help firms remain competitive, thus contributing to other policy goals, including increased population opportunities".*

- 2.32 No information has been provided by the developer about alternative sites or need.

#### ICNIRP Compliance

- 2.33 Following the Stewart Inquiry the Government adopted some of the recommendations as part of their precautionary approach to telecommunications development. PPG8 requires that installations comply with ICNIRP public exposure guidelines. This guideline has a safety guide factor five times below the level recommended by the NRPB. In practice telecommunications installations operate at levels substantially below those levels, as does this development.

### Health Concerns

- 2.34 PPG8 advises on this issue. It is generally accepted that installations comply with ICNIRP guidelines by a very high factor. However, the "perception of harm" is, of course, whether telecommunications masts emit electromagnetic radiation fields that could be harmful to those living and working nearby.
- 2.35 Appeal inspectors have varied in dealing with this issue but have clearly accepted it as a material consideration. Perceived fears have been accepted as understandable and relevant concerns, whether based on distrust of scientific advice or other expert evidence, or simple gut feeling antipathy to a particular use. Nevertheless, Inspectors have been reluctant to recognise public opinion per se as an arbiter of a planning application, and have generally adopted the "precautionary principle" in decision-making in line with Government advice. There are a significant number of appeal decisions in relation to telecommunications development, but these are not analysed for this report – this would need to be the subject of a separate report if Members requested it.
- 2.36 When considering public concerns about health issues and telecommunications equipment the Government gives advice in PPG8 – Telecommunications:

*"Health considerations and public concern can in principle be material considerations in determining applications for planning permission and prior approval. Whether such matters are material in a particular case is ultimately a matter for the courts. It is for the decision-maker (usually the local planning authority) to determine what weight to attach to such considerations in any particular case.*

*However, it is the Government's firm view that the planning system is not the place for determining health safeguards. It remains central Government's responsibility to decide what measures are necessary to protect public health. In the Government's view, if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure it should not be necessary for a local planning authority, in processing an application for planning permission or prior approval, to consider further the health aspects and concerns about them.*

*All new mobile phone base stations are expected to meet the ICNIRP guidelines. However, all applicants should include with their applications, a statement that self-certifies to the effect that the mobile phone base station when operational will meet the guidelines. In line with the Group's recommendations the mobile phone network operator should also provide to the local authority a statement for each site indicating its location, the height of the antenna, the frequency and modulation characteristics, and details of power output. Where a mobile phone base station is added to an existing mast or site, the operator should confirm that the cumulative exposure will not exceed the ICNIRP guidelines.*

*Mobile phone operators already keep their RF power outputs to the lowest possible levels commensurate with effective service provision. They need to do this to ensure risk of interference within the network and with other radio networks is minimised. Whilst levels of power output are likely to go up and down during the day (depending on factors such as the number of people using their phones at any one time and the distance they are from the base station), the operators have confirmed that the base stations will, at all times, remain within the ICNIRP guidelines for public exposure."*

- 2.37 The site lies within the Harrow on the Hill Village Conservation Area. PPG8 gives some general advice on small telecommunications developments such as this:

*“Some minor operations or changes of use of land may not constitute development which requires planning permission. For example, many of the smallest antenna systems may be covered by the normal principle of de minimis; or they may not have a material effect on the external appearance of the building on which they may be installed, and therefore may not fall within the legal definition of development. Most conventional television aerials and their mountings or poles have long been treated in this way, and this approach should continue to be applied to small telecommunications apparatus in general (regardless of who installs it). The installation of some microcells, such as those similar in appearance to burglar alarms, may be treated in this way.”*

- 2.38 Whilst 102 and 106 High Street are locally listed buildings, it is considered that whilst the antennae are on this occasion not *de minimis*, they are nevertheless small and unobtrusive and do not detract from the character and appearance of the Conservation Area.

- 2.39 Planning Policy Guidance Note 18 – Enforcement, gives advice with regard to circumstances where development has been carried out without planning permission:

*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. In such circumstances, LPAs should consider using the new “planning contravention notice” to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land can be told that, without a specific planning permission, he may be at a disadvantage if he subsequently wishes to dispose of his interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation. 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.”*

*The Survey by ECS Ltd, November 2004*

- 2.40 The second survey (see **Appendix 2**) 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.

- 2.41 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).....”*

2.42 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 installation), and Orange (the microcell installation).

2.43 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 World 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...”*

2.43 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*

2.44 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.

2.45 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**

- 2.46 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.
- 2.47 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	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
393	262	67%	131	33%	393	100%	6	1.5%

2.48 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"> <li>▪ Wide grass verge at backs of houses – existing trees about 6 to 7m high, streetlamps about 8m high</li> <li>▪ Pole sited in a conspicuous position, against rear garden boundaries some 30m from rear of nearest dwelling</li> <li>▪ Would be out of keeping in streetscene and cause substantial harm to character / appearance of area</li> <li>▪ 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</li> </ul>
10m pole in residential area	Sheffield	<ul style="list-style-type: none"> <li>▪ Sited on grass verge</li> <li>▪ Harm to character / appearance of area due to overly dominant structure with little opportunity for landscaping</li> <li>▪ Harm to residential amenity due to loss of outlook and perceived health risks</li> </ul>
15m pole on roundabout in residential area	Bromley	<ul style="list-style-type: none"> <li>▪ No harm to character / appearance of area</li> <li>▪ Concern about residential / visual amenity &amp; outlook are more to do with effects on health</li> </ul>
12m and 15 m poles on 2 roadside sites in residential area	Tamworth	<ul style="list-style-type: none"> <li>▪ No harm to residential amenity / loss of outlook</li> <li>▪ Possible health implications if both masts are erected</li> </ul>
8m imitation telegraph pole in residential area	Reigate & Banstead	<ul style="list-style-type: none"> <li>▪ Sited 2m from garden fence</li> <li>▪ Would appear dominant &amp; intrusive in outlook from dwelling</li> <li>▪ Prominent in skyline views</li> <li>▪ Weight to perceived health fear</li> </ul>
15m pole in residential area	Rushmoor	<ul style="list-style-type: none"> <li>▪ Harm to character / appearance of area</li> <li>▪ Harm to residential / visual amenity due to scale / mass / perceived health risks at this exposed position</li> </ul>

2.49 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 none of these appeal decisions are comparable to the microcells at 102 and 106 High Street. Additionally, there have been 2 electromagnetic surveys that confirm the significantly low level of emissions in this locality.

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

2.50 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.

- 2.51 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.
- 2.52 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.
- 2.53 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.
- 2.54 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**

- 2.55 None

### **Financial Implications**

- 2.56 None

### **Legal Observations**

- 2.57 Included in the report.

### **Section 17 Crime and Disorder Act 1998 Considerations**

- 2.58 None.

### **Conclusion**

- 2.59 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).
- 2.60 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.
- 2.61 No complaint from any local residents has ever been received about the microcells following their unauthorised installation in 2004. 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, either 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.

2.62 Government guidance in PPG 18 on enforcement is clear (see para 2.41 of this report).

2.63 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**



#### **Counsel's Opinion. Status: Part II.**

The Opinion is exempt by virtue of paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) in that it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.