

LONDON BOROUGH OF HARROW

Meeting:	Development Control Committee
Date:	7th September 2004
Subject:	102, 104, 106 High Street, Harrow on the Hill
Key Decision:	No
Responsible Chief Officer:	Joint Report of the Chief Planning Officer and of the Borough Solicitor
Relevant Portfolio Holder:	Planning, Development, Housing and Best Value
Status:	Part 1
Ward:	Harrow on the Hill
Enclosures:	Appendix A - Site Plan Appendix B – Photographs Appendix C - report from ECS Ltd Appendix D - Copy of Appeal Decision Letter Ref: P/1017/03/CFU

1. Summary / Reason for Urgency (if applicable)

- 1.1 The report advises on an unauthorised telecommunications micro-system comprising an equipment cabin to the rear of 104 High Street, and two wall mounted microcell antennae on the front wall of 102 and the flank wall of 106 High Street, Harrow on the Hill.

2. Recommendation (for decision by the Development Control Committee)

- 2.1 The Committee agree that the two 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, or the street scene in general;
- 2.2 The Committee agree that, having weighed up the representations regarding health and perception of health effects, having regard to the consultant's survey carried out in March 2004, having regard to their previous decision in respect of 102 High Street, and taking into account the policy guidance in PPG8 and PPG15, it would not be appropriate to undertake formal enforcement action on these grounds, in this case;
- 2.3 No further action to be taken with regard to this matter;
- 2.4 The complainants be notified accordingly.

FOR DECISION

REASON:

To enable the Committee to consider fully the circumstances surrounding the unauthorised installation.

3. Consultation with Ward Councillors

3.1 All Ward Councillors were sent a copy of this report.

4. Policy Context (including Relevant Previous Decisions)

4.1 On 17th March 2004 this Committee resolved to make a Discontinuance Order in respect of a Hutchison 3G Mobile Phone Base Station installed on the roof of 102 High Street (planning application 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.

4.2 Planning application reference P/1017/03/CFU for the "installation of microcell antenna 110mm x 320mm at a height of 6m on the front elevation of No.44, with feeder cables and equipment cabinet at side of No.42" was refused on 16th September 2003.

4.3 The reason for refusal was:

"The proposed development, in particular the equipment cabin, would be visually obtrusive by reason of unsatisfactory size and siting, and be detrimental to the character and appearance of this part of the Conservation Area and the amenity of local residents.

4.4 The applicants appealed this refusal, and in a letter dated 16th August 2004 Mr P Graham, the Planning Inspector, for the First Secretary of State, upheld the appeal and granted planning permission for the development, subject to conditions.

5. Relevance to Corporate Priorities

5.1 This report addresses the Council's stated priority of enhancing the environment of the borough.

6. Background Information and Options Considered**6.1 Investigation**

6.1.1 The Council 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.

6.1.2 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 have been received in respect of the two microcell antennae installed on the street frontages.

6.2 The Need for Planning Consent

6.2 The equipment cabinet and the two antennae are sited within a Conservation Area (article 1(5) land). The cabin 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 or a determination for prior approval is required.

6.2.2 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. As the equipment cabinet was erected as part of the same development as the two antennae, it is likely that the whole development requires planning consent.

6.2.3 In October 2003 Orange published a "roll-out" plan which indicates 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 no such permission has ever been sought or obtained from the Local Planning Authority.

6.3 Consultation

6.3.1 In the absence of any planning application, no consultation of Harrow School or of local residents has been undertaken, either by the developer or the Local Planning Authority.

6.3.2 However, since the original complaint about the equipment cabinet, four letters of objection have been received, including The Harrow Hill Trust and a joint letter from 10 nearby residents.

6.3.3 The Harrow Hill Trust object 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
- that the (similar) development at 42-44 High Street was not considered to be de minimus so this development should not be considered de minimus.

6.3.4 The other objections have been 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 Local Planning Authority'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 of 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 no 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
- failure to instigate enforcement action could set a precedent, sending a message that where mobile phone antenna are erected the Council will not insist on public consultation and their approval.

6.3.5 Additionally, one local resident indicates that no-one was aware that the additional masts (the microstation antenna) existed until the Council's technical expert picked up their signal.

6.4 Formal Advice and Policies

6.4.1 PPG sets out the position in relation to the determination of planning applications: **40.** The Government is committed to a plan-led system of development control. This is given statutory force by section 54A of the 1990 Act. Where an adopted or approved development plan contains relevant policies, section 54A requires that an application for planning permission or an appeal shall be determined in accordance with the plan, unless material considerations indicate otherwise. Conversely, applications which are not in accordance with relevant policies in the plan should not be allowed unless material considerations justify granting a planning permission. Those deciding such planning applications or appeals should always taken into account whether the proposed development would cause demonstrable harm to interests of acknowledged importance. In all cases where the development plan is relevant, it will be necessary to decide whether the proposal is in accordance with the plan and then to take into account other material considerations.

- 6.4.2 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
- 6.4.3 Relevant material considerations with regard to development in Conservation Areas need to be considered. Advice regarding the preservation or enhancement of Conservation Areas is provided in PPG15.
- 6.4.4 Advice on the appropriateness of the instigation of formal planning enforcement action is given in PPG18.
- 6.4.5 The relevant development plan policies in relation to this application are set out in Harrow Unitary Development Plan (adopted 30 July 2004) (the UDP):

EP31 Areas of Special Character
D16 Conservation Areas Priority
D24 Telecommunications Development

Additionally, the Harrow on the Hill Village Conservation Area Policy Statement covers these properties.

6.5 **General Advice**

- 6.5.1 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.

6.6 **Health Issues and Alternative Sites**

- 6.6.1 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.

- 6.6.2 In the absence of a planning application no information has been provided about compliance with ICNIRP or otherwise.

A survey of emissions was carried out by ECS Ltd on behalf of the Council on 4th March 2004. It is believed that this installation was operational at that time. As the readings of the survey equipment are cumulative of all emissions the reading noted in the report would include this installation. A copy of the ECS Ltd report is attached.

- 6.6.3 The typical output of a microcell antenna is substantially lower than that of a macrocell antenna such as the one on the roof of 102 High Street. Microcell antenna invariably fall well within the Government's safety guidelines.

- 6.6.4 PPG advises on this issue – see Appendix ***. 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.

- 6.6.5 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.

- 6.6.6 Details of alternative locations would normally be submitted as part of the planning application process. As a planning application has not been submitted on this occasion the usual details from the developer relating to alternative sites and need are not available.

- 6.6.7 Sections of UDP Policy D24 are relevant in the decision making process:

D24 PROPOSALS FOR TELECOMMUNICATIONS DEVELOPMENT WILL BE CONSIDERED FAVOURABLY PROVIDED:

- A) **NO SATISFACTORY ALTERNATIVE, AND LESS HARMFUL, MEANS OF MEETING THE NETWORK COVERAGE DEFICIENCY IDENTIFIED BY THE PROSPECTIVE OPERATOR IS AVAILABLE;**
- B) **CONSIDERATION HAS BEEN GIVEN TO SITING EQUIPMENT ON AN EXISTING BUILDING OR STRUCTURE OR TO SHARING FACILITIES (EITHER USING EXISTING FACILITIES OR REPLACING EXISTING FACILITIES WITH SHARED FACILITIES);**
- E) **THE PROPOSED SITE AND ANY EMISSIONS ASSOCIATED WITH IT DO NOT PRESENT ANY HEALTH HAZARDS.**

6.7 Development within the Historic Environment

6.7.1 Account should be taken of advice given in Planning Policy Guidance Note 15, Planning and the Historic Environment (PPG15), when considering development in a conservation area. PPG15 advises:

4.14 Section 72 of the Act requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area. This requirement extends to all powers under the Planning Acts, not only those which relate directly to historic buildings.

4.16 Many conservation areas include the commercial centres of the towns and villages of which they form part. While conservation (whether by preservation or enhancement) of their character or appearance must be a major consideration, this cannot realistically take the form of preventing all new development: the emphasis will generally need to be on controlled and positive management of change. Policies will need to be designed to allow the area to remain alive and prosperous, and to avoid unnecessarily detailed controls over businesses and householders, but at the same time to ensure that any new development accords with the area's special architectural and historic interest.

4.19 The Courts have recently confirmed that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest.

4.20 As to the precise interpretation of 'preserve or enhance' the Courts have held (*South Lakeland DC v Secretary of State for the Environment*, [1992] 2 WLR204) that there is no requirement in the legislation that conservation areas should be protected from all development which does not enhance or positively preserve. Whilst the character and appearance of conservation areas should always be given full weight in planning decisions, the objective of preservation can be achieved either by development which makes a positive contribution to an area's character or appearance, or by development which leaves character and appearance unharmed.

6.7.2 Sections of several UDP policies relate to this issue:

D24 PROPOSALS FOR TELECOMMUNICATIONS DEVELOPMENT WILL BE CONSIDERED FAVOURABLY PROVIDED:

- C) **THERE WOULD BE NO DETRIMENTAL IMPACT ON CONSERVATION AREAS, LISTED BUILDINGS, IMPORTANT LOCAL VIEWS AND LANDMARKS OR OTHER STRUCTURAL**

FEATURES IDENTIFIED IN POLICY SEP5, AND, HAVING REGARD TO OPERATIONAL NEED, THERE WOULD BE NO SERIOUS RISK TO AMENITY IN RESIDENTIAL AREAS;

- D) THE PROPOSED INSTALLATION WOULD BE SITED AND DESIGNED TO MINIMISE VISUAL IMPACT, AND, WHERE PRACTICABLE, TO ACCOMMODATE FUTURE SHARED USE. CAREFUL CONSIDERATION SHOULD BE GIVEN TO SCREENING AND PLANTING; AND**

EP31 WITHIN THE AREAS OF SPECIAL CHARACTER, AS SHOWN ON THE PROPOSALS MAP, THE COUNCIL WILL:-

- A) RESIST THE LOSS OF, OR DAMAGE TO, FEATURES WHICH CONTRIBUTE TO THE AREA OF SPECIAL CHARACTER;**
- B) PRESERVE ARCHITECTURAL AND HISTORIC FEATURES WHICH CONTRIBUTE TO THE CHARACTER OF THE AREA;**

D16 THE PRESERVATION OF THE CHARACTER OR APPEARANCE OF CONSERVATION AREAS MAY BE CONSIDERED TO OVERRIDE OTHER PLAN POLICIES AND BUILDING CONTROL STANDARDS IN APPROPRIATE CASES.

- 6.7.3 The Harrow on the Hill Village Conservation Area Policy Statement was agreed as a Non-Statutory Policy Statement by the Development Services Committee on 27th August 12002. Policy (4) relates to this development:

PROPOSALS FOR ALTERATIONS AND EXTENSIONS SHOULD RESPECT THE ARCHITECTURAL STYLE AND CHARACTER OF THE EXISTING BUILDING IN TERMS OF BULK, SITING, DETAILED DESIGN AND MATERIALS. IN SOME INSTANCES THE OVERALL CHARACTER OF A GROUP OF BUILDINGS WILL NEED TO BE RESPECTED AND MAINTAINED.

- 6.7.4 PPG8 gives some general advice on small telecommunications developments such as this:

Some minor operations or changes of use of land may not consistent development which requires planning permission. For example, many of the smallest antenna systems may be covered by the normal principle of *de minimus*; 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 pole have long been treated 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.

- 6.7.5 Whilst a great deal of this conservation areas character has been retained. However, the area has evolved over a period of time, and some more modern features now exist, such as traffic calming, television and satellite antenna, street furniture, alarm boxes and advertising.

- 6.7.6 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.
- 6.7.7 Whilst 102 and 106 High Street are locally listed buildings, it is considered that whilst the antennae are on this occasion not *de minimus*, they are nevertheless small and unobtrusive and do not detract from the character and appearance of the Conservation Area.
- 6.7.8 The equipment box is situated in a service area to the rear of 104 High Street. It is located at the end of a concrete apron used for storing large wheeled refuse bins. In this location it is not readily visible from a public area. As it is located in such a utilitarian service area it does not have a detrimental impact on visual amenity from private areas.
- 6.7.9 The cabling runs from the equipment box, up the rear elevation of 104 High Street and across the roof of 102 High Street. Here it fits directly into the small antenna on the front elevation of 102 High Street and runs along the guttering to the antenna at 106 High Street. This cabling is not immediately visible to passers by in High Street, and does not form a prominent feature along the building frontages.

6.8 Residential Amenity

- 6.8.1 That a mast would be detrimental to the amenities of a residential area may be an argument that prevails especially where strong local opposition is a feature of the objections.
- 6.8.2 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.
- 6.8.3 In the present case the microcell antennae are small in size, are sited unobtrusively, and resemble burglar alarms in general appearance, as such they do not constitute incongruous features in a residential or town centre area.

6.9 Proposed Microcell Development at 42-44 High Street

- 6.9.1 Planning application reference P/1017/03/CFU was submitted for the installation of a telecommunications microcell development including an equipment box, cabling and a small antenna.

- 6.9.2 The application was considered by the Development Control Committee at its meeting of 30th July 2003, where the matter was deferred for a site visit. The matter was placed before the Development Control Committee again at its meeting of 10th September 2003. At this meeting the Committee refused the application.
- 6.9.3 The formal decision was issued on 16th September 2003 gave the following reason for refusal:
The proposed development, in particular the equipment cabin, would be visually obtrusive by reason of unsatisfactory size and siting, and be detrimental to the character and appearance of this part of the Conservation Area and the amenity of local residents.
- 6.9.4 The applicant's appealed this refusal, and in a letter dated 16th August 2004, Mr P Graham, the Planning Inspector, for the First Secretary of State, upheld the appeal and granted planning permission for the development, subject to conditions.
- 6.9.5 In his letter the Inspector considers issues of visual amenity, impact on an adjoining listed building, public health matters and human rights issues. A copy of this letter is attached.

6.10 **Advice on the Appropriateness of Planning Enforcement Action**

- 6.10.1 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.

7. **The Breach of Planning Control**

- 7.1 Without planning permission, the erection of a telecommunications micro system including an equipment box, two antenna and associated cabling.

8. **Consultation**

- 8.1 Not applicable

9. **Finance Observations**

- 9.1 None

10. Legal Observations

10.1 Included in the report.

11. Conclusion

11.1 Whilst a planning application for this development has not been submitted, it is unlikely that the instigation of formal planning enforcement action would be successful, as the antenna do not appear to be detrimental to the character or appearance of the Harrow on the Hill Village Conservation Area, or the Locally Listed Building to which they are fixed.

12. Background Papers

12.1 None

13. Author

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