

GROUND OF APPEAL (Application Ref. 2005/2044)

APPEAL AGAINST REFUSAL OF APPLICATION FOR PRIOR APPROVAL

1. The Appellant, Orange Personal Communications Services Ltd, operates a public electronic communications network as authorised under the provisions of the Communications Act 2003. Under the terms of the Act the appellant is required to set up a personal telecommunications system known as a Personal Communications Network (PCN) throughout the UK. In addition, in April 2000, the appellant secured the right under the Wireless Telegraphy Act to set up a personal telecommunications system known as a Universal Mobile Telecommunications System (UMTS) throughout the UK, providing third generation communication services.
2. To meet its licence requirements, the Appellant must establish a national network, which provides good quality coverage for mobile communications and for the use of equipment within buildings. In addition, the capacity of the system must be able to meet the reasonable demands likely to be placed upon it. At present, the network is incomplete; requiring further installations to meet the Appellant's licence obligations and ensure a full and effective service is provided to its subscribers.
3. The cellular technology used by the Appellant to form its network requires sites at regular intervals and often in high positions to allow its equipment to work effectively. This proposal is for a microcell, which will, in addition to a number of existing and proposed microcells, address deficient coverage within the De Beauvoirtown area and thus form an integral part of the evolving network. The proposal is required principally to provide both 2G and 3G coverage and capacity to the area surrounding Downham Road, including the surrounding residential areas, and tributary roads where the existing coverage and capacity is deficient.
4. The need for this proposed installation in this location, at the proposed height, has been well justified in terms of the wider network and the poor levels of coverage that exist over this area. Furthermore, we consider the Appellant, through its agents, has sought to demonstrate there are no existing masts or suitable structures in the area to support this base station in the vicinity it is seeking to cover.
5. The prior approval application was submitted to the London Borough of Hackney on 31 August 2005 and was determined under delegated authority and subsequently refused. In the decision notice, dated 21 October 2005, the Council gives the following reason for refusal:-

“The proposed mast and ancillary telecommunications equipment by reason of its prominent location, height and discordant appearance is considered to have a significantly detrimental effect on the appearance of the local streetscene. The proposed development would also detract from the outlook of the neighbouring residential properties. The proposal is therefore contrary to Policies ST1 ‘Strategic Policy – New Development’, ST15 ‘Strategic Policy – Telecommunications’, EQ1 ‘New Development’, EQ38 ‘Satellite and Telecommunications Equipment’ and EQ39 ‘Street Furniture’ of the Hackney Unitary Development Plan.”

6. The siting of the pole has been chosen in the proposed location following significant exploration to find alternative sites, and to minimise, as far as possible, the level of visual impact that would be caused, within the technical constraints the Appellant faces in bringing forward this type of development. The proposed antenna will be situated upon a telecommunications pole that has been designed so as to mimic the siting and design characteristics of a lamppost. It will have an overall height of 9.025m and a design that attempts to minimise visual impact whilst providing the required network coverage.
7. It is contended that the proposed 9.025m pole will have very little, if any, additional impact upon the surrounding area and that the Council have given insufficient weight to the proven need for the proposal in this location; the support offered to telecommunications related development by national planning policy; and, the particular circumstances that apply in this case, including the investigation of alternatives.
8. The height at which the proposal will be sited is the lowest possible to ensure local clearance and full cell coverage, and has been chosen so as to cause the least damage to the streetscene and visual quality of this location. It is considered that any likely damage to the amenity of the area and the level of visual intrusion will be minimised by the slim nature of the design of the proposal, and certainly not be as great as perceived by the Council.
9. It is to be emphasised that the technology of telecommunications requires the antenna to be clear of all obstacles and clutter. This means that the top part of the pole must be clear obstructions in order to operate effectively.
10. Revised PPG8 (published 22 August 2001) encourages the development of networks by code system operators because of the considerable benefits of modern telecommunications. Its primary purpose is to facilitate the development of competing

networks. As such, the significance of the proposed development as part of a national network is considered to be a strong material consideration.

11. In addition, the revised PPG8 recognises that telecommunications development is constrained by technical requirements, which sometimes requires installations in sensitive areas of usual planning restraint.
12. The Appellant is aware of the considerable public concern that proposals for this form of development raise. In response, the Appellant has confirmed that the power outputs from the equipment will comply with ICNIRP guidelines. Whilst the Appellant accepts that this does not alter the public concern of such issues, it is the Government's view that if the proposed development meets the ICNIRP guidelines, it should not be necessary for an authority, in processing an application, to consider health effects further.
13. In summary, we consider the Council has placed insignificant weight on the guidance contained in PPG8, supplementary Government guidance and the particular circumstances that have led to this proposal. A balanced view has not been taken. Whilst the proposal may be visible from certain viewpoints, the impact will be minimised by the sensitive choice of design, location and height of the equipment, which clearly outweigh any likely impact upon the surrounding environment.
14. In essence, the Appellant has demonstrated, through the exploration of alternative sites and a design, that no more suitable option exists that provides coverage to the subject area.
15. A comprehensive Statement, with further supporting information will be submitted in support of this appeal within the relevant timescale.

King Sturge LLP
April 2006