

## **REPORT TO MINISTER FOR THE ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by Mr Stephen Bougourd and Mrs Marianne Bougourd against an approval of planning permission.

Reference Number: P/2018/0950.

Site at: 5 Edward Place (St Elmo) and 2-4 Kensington Place, St Helier

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### **Introduction**

1. I held a hearing into this appeal on 6 February 2019 and carried out a site inspection on the same day.
2. The appeal is against the decision to approve planning permission for development described in the application as: "Demolish 2-4 Kensington Place and construct Jersey Electricity electrical sub-station, switch room and ancillary store".
3. The application for planning permission, dated by the applicant's agent 20 June 2018, was made by the Department for Infrastructure. The proposal was approved by the planning committee in a decision notice dated 15 November 2018. The reason for approval was stated as:

"Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received."
4. The permission as approved was subject to four conditions. Conditions A and B covered standard matters relating to commencement of the development and application plans. The other conditions were:
  1. Prior to the commencement of the development details shall be submitted to and approved in writing by the Department of the Environment, showing the final form and materials of the ground floor façade (to be in timber), all windows and all service door louvres.
  2. All work at the site shall be undertaken in accordance with the Species Protection Plan within the approved Preliminary Roost Inspection document.
5. In this report a description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellants, for the planning authority, for the applicant, and for other parties. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine to the extent you consider necessary.
6. The written material submitted for this appeal contains various technical terms and abbreviations. For convenience I list here the main abbreviations which appear in the evidence or in this report.

EMF                      Electromagnetic field.

ICNIRP                International Commission on Non-Ionising Radiation Protection.

JEC	Jersey Electricity plc - in some documents this is abbreviated to JE.
Microtesla	In some documents this is written as Micro Tesla. The symbol for it is $\mu\text{T}$ . The Tesla (symbol T) is a unit of magnetic field strength. One Tesla is equivalent to 10,000 (or $10^4$ ) Gauss. 1 Gauss = $10^{-4}$ T or 100 $\mu\text{T}$ .
NIR	Non-Ionising Radiation - this refers to electromagnetic radiation such as ultraviolet light, infrared, radio waves and ultrasound.

### **Procedural Matters**

7. After the hearing I received three emails, sent to me through the Judicial Greffe: one from the appellants, one from the Department of Growth, Housing and Environment ("DGHE") and one from the applicant. These messages were about points which had arisen during the hearing, mostly about possible conditions. I arranged for the messages to be copied between all three main parties so that they could all comment on each other's emails if they wished. I also invited all three main parties to respond to two questions. The text of my questions to the parties is reproduced in the Appendix to this report. I have taken account of the responses in my assessment.

### **Site and Surroundings**

8. The position of the application site can be seen on the applicant's site location plan (Drawing 5461-001A). The site is located at the northeast end of Kensington Place in St Helier, on the south-east side of this road close to the junction where it meets other roads next to the north-west corner of Parade Gardens. The site is occupied by a building which is vacant and unused. It is divided into rooms of various sizes, some of which contained items of old office furniture at the time of my inspection. Although not immediately obvious from the outside, the building is in a generally poor condition. Internally, some plasterwork is missing and partly rotten timbers are visible.
9. The appellants' property at 4 Edward Place is immediately adjacent to the application site, to the south-east. It fronts on to Edward Place, which appears to be in effect a north-westward extension of The Parade. The building at 4 Edward Place has a shop-type ground floor window and two doorways at the front. Signs indicate that the building has been or is being used by the "Future Hospital Team". There were some computers and other office equipment in the front room at the time of my inspection. The ground and first floors of the building extend rearwards for a considerable length, as far as a service yard where there is a garage in the rearmost part of the building.
10. Part of the premises at 4 Edward Place consist of an area covered by a lean-to sloping roof along the south-eastern side of the building. Inside the main part of the building, there are rooms at various levels and several staircases. The front upper floors of the building are used as a dwelling, which has a kitchen and living room on the first floor and bedrooms and bathrooms on the second and third floors. One of the first floor rooms nearby appears to be used as a consulting room by Mrs Bougourd's counselling business. Some rooms further to the rear are laid out as meeting rooms or offices but did not appear to be in active use when I saw them; other rooms were unfurnished and vacant.
11. The part of the rear service yard immediately south-east of 4 Edward Place is mostly occupied by a large item of fixed plant, which I understand is linked with the General Hospital. The main part of the hospital is a little further to the south-east (this is edged blue on the applicant's site location plan, showing that it is within the ownership of the Department for Infrastructure as applicant).

12. The buildings on the north-west side of Kensington Place are partly two and partly three storey in height. There is a mixture of uses in this area, including residential, guest house and restaurants. There are two hotels in Kensington Place (the Stafford and the Revere). One of the buildings in Kensington Place south-west of the application site has louvered doors in its street frontage and houses an electricity sub-station. Another apparently smaller sub-station is housed at first floor level in a structure which appears to be part of, or adjoins, the Stafford Hotel and bridges across a vehicular-width opening on the south-east side of the street. Access to this sub-station from outside is evidently by means of a small rear door at first floor level which would only be reachable using equipment such as a ladder or hoist.<sup>1</sup>

### **Case for Appellants**

13. The appellants state that their property is a Victorian house, shop and alternative health centre, part having temporary planning permission for office use. The property has a long history since being built in 1838 as a house with stables at the rear, and a long association with health treatment. Currently part of the building is residential, part is leased to Headway Jersey for use as a treatment centre for people with brain injury, part is used by Mrs Bougourd for her counselling business, and part is let to Future Hospital as temporary offices.
14. Mr and Mrs Bougourd have long intended that once their mortgage is paid off, they would revert to operating the shop and rear of the premises as part of a centre for health, providing services including counselling, massage and other alternative or complementary medical services. It is not acceptable to have an electricity sub-station on the other side of a thin brick wall to someone receiving treatment, not just because of electromagnetic interference but also because the perception to potential clients and tenants would adversely affect the appellants' business and finances.
15. The other main points made by the appellants are summarised as follows:
- Number 4 Edward Place is a Grade 3 Listed Building. The location of the sub-station is wholly unsuitable next to a listed building. The proposed replacement of St Elmo with an industrial building is out of keeping with the street scene and neighbourhood.
  - It is not sufficient to say that the electromagnetic radiation would be safe or within normal limits as mentioned by JEC. In the past, asbestos, DDT and smoking were considered to be not damaging to people's health. Mr Bougourd has personally experienced headaches from mobile phones and microwave-based broadband internet ("WiAX").
  - No measurements of EMF effects at different distances have been supplied and no independent survey has been carried out. The safe levels should not exceed 20 Nano Teslas or 0.2 Mille Gause within the appellants' property.
  - The application was premature before the outcome of the hospital inquiry is known. The planning committee's decision was based on misinformation about the immediate need for the sub-station on this site.
  - The proposal would adversely affect the appellants' property visually and financially. It may knock £100,000 off its value overnight.

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<sup>1</sup> The photographs on the application drawing 5461\_02A show views from the street of the features mentioned in this paragraph (labelled as "transformer rooms").

- The proposed phasing could result in only a ground floor concrete shell being completed, with the rest dependent on whether the new hospital is built on the current site.
16. For those reasons and as set out in their written representations, the appellants consider that the application should be rejected.

### **Case for Planning Authority**

17. The case for the DGHE is summarised below. The supporting documents include the planning officer's report to committee, an "Update Report for Planning Committee" and notes submitted to the planning committee by Jersey Electricity plc and Waddington Architects. The main points made by the Department are:
- The development would involve replacing a building with a similar-sized structure which would be suitably designed for its environment and appropriate in land use terms. The proposal would meet policy requirements relating to the amenities of neighbours and the setting of listed buildings.
  - The proposed sub-station is needed to provide continuity of supply to the hospital and local residential and business properties.
  - The Environmental Health Department have no objection. Historic Environment considered the window louvres and blank windows were unfortunate; these are not now proposed.
  - Policy GD1(3c) requires that new developments do not adversely affect the health, safety and environment of users of buildings. The proposal would not conflict with this policy. No adverse impacts relating to privacy or loss of light would be caused.
  - The proposal would be in keeping with the street scene and would meet design quality criteria in policy GD7.

### **Case for Applicant**

18. The applicant contends that the decision to approve the application was correct and should be upheld. The main points made on the applicant's behalf, in addition to supporting the case for the DGHE are:
- The site is in the built-up area where planning policies do not contain any presumption against the development. Electricity sub-stations are common in St Helier and the planning officer's report confirmed the suitability of this site.
  - The site is technically the ideal location for a sub-station, which is needed for the existing hospital and surrounding area, irrespective of whether the proposed new hospital is built nearby. The project is intended to replace three transformers (one in the Stafford and Revere hotels, two in the hospital engineering block) which are 40 years old and near the end of their operational lives.
  - The development would be phased and completion of the upper level would depend on how the future hospital project proceeds.
  - The proposed installation would comply with ICNIRP guidelines on protecting people from NIR. EMF levels would be well within recognised safety levels.

## Representations by Other Parties

19. The States planning applications website lists 24 documents as "public comments" on the application now subject to this appeal, but some 18 of those were submitted by the same person (Mr C McCarthy) and some of them are also parts of one larger document. One of the other public comments documents was submitted by Mr Bougourd and his comments are covered in the summary of the appellants' case.
20. Several of the other representations on the application maintain that the proposal is part of the future hospital project and a decision should be put on hold until the hospital project is approved. Two objectors say that the proposal would be alien to the historic character of the area. One objector points out that the appeal property is a listed building, and comments are also made about the sub-station at West Park - the objector argues that there is no need for another sub-station as well as West Park, which is described as obtrusive and the construction of which caused disruption.
21. The written submissions by Mr McCarthy<sup>2</sup> at application stage make numerous wide-ranging comments on the application and other matters. Mr McCarthy alleges that the planning process of the new government structure is unlawful and unfair. He draws comparisons with other public bodies including the City of Westminster and London Borough of Lambeth and makes various allegations of corruption. I cannot report these points for legal reasons.<sup>3</sup> He makes a number of statements about the architect responsible for the future hospital project and about the inspector who took the public inquiries into that project. Copies of numerous email exchanges between him and planning officers are included in his representation. He suggests among other things that if sea levels rise by 2.5-3 metres by the end of the century the proposed sub-station would by then be under water.
22. Most of Mr McCarthy's representations are not relevant to the present appeal, but in essence, he apparently objects to the proposed development on the grounds that the public have been deliberately misled by false information, and he describes the application as unlawful. In his view patients would be put at risk by the development; the application should be withdrawn and re-submitted when the existing hospital is fit for purpose.
23. Following the appeal, further written representations have been submitted by three of the objectors (Ms A Howell, Ms J Elliott and Mr D Moon), making similar points or expanding on those raised at application stage.<sup>4</sup> The objectors say that the St Elmo site was within the hospital application site. Ms Howell suggests that there is alternative space elsewhere for a sub-station and that the St Elmo site could provide residential accommodation for doctors or nurses. The design of the proposal is also criticised, with particular reference to the flat roof and uniform windows being out of keeping with the two-storey homes opposite. Ms Lelliott says that a full health impact assessment is need, as the site is in close proximity to sick people, and nothing should happen until a final decision is made about the future hospital development.

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<sup>2</sup> Mr McCarthy describes himself as a chartered engineer (I do not know which engineering discipline this refers to) and former JAC Commissioner (2014-17).

<sup>3</sup> Parts of Mr McCarthy's submissions are in my judgment potentially libellous, and any persons who repeat a libel could themselves be accused of libel.

<sup>4</sup> These interested persons spoke at the hearing, as also did Senator Ms Sarah Ferguson.

24. Mr Moon contends that because the proposal is part and parcel of the future hospital scheme, the approval by the planning committee was *ultra vires*. The approval was based on inconsistent and contradictory information submitted by the applicant and JEC. In particular:
- The application was made by the Future Hospital Team. JEC's letter in support of the application said that the existing sub-station has provided flawless service for many years and there is no reason to believe that this would change in the foreseeable future. JEC had also stated that the increased electrical load would arise from requirements for the future hospital.
  - Other possible locations include the Stafford Hotel, the Patriotic Street car park, Parade Gardens and People's Park which would be well away from dwellings.
  - The proposed building would be inconsistent with and detrimental to the local streetscape and buildings which are typical of mid-nineteenth century architecture.

### **Assessment and Conclusions**

25. The relationship between the proposal subject to this appeal and the future hospital project has become a significant complicating and controversial factor in this case, so I comment first on this matter.
26. One of the causes of complication and controversy is that statements have been made by JEC which in my view are contradictory, although JEC evidently do not believe that is so. In a letter dated 1 November 2018, sent to DGHE in support of the application, JEC stated:
- "The existing Stafford Hotel substation 273 and Kensington Place substation 459 have been in operation....for a great many years and have provided flawless service to date, and JE has no reason to believe this will change in the foreseeable future".
27. Later in the same letter, JEC stated that whether or not the new hospital is developed on the existing site there is likely to be a need to relocate the Kensington Place substation to provide increased capacity for the existing hospital operation, and added:
- "In addition the Stafford Hotel substation is approaching its operational end of life....and will need to be replace[d] in the near future".
28. It is difficult to reconcile the statement that there is no reason to believe that the flawless service provided by the Stafford Hotel substation will change in the foreseeable future with the statement that this substation will need to be replaced in the near future. The latter statement is made "in addition" to the need to relocate the Kensington Place substation to provide increased capacity for the existing hospital. I am not the only one to perceive this evidence as conflicting - others have perceived it similarly and Mr Moon draws attention to it in his written submission.
29. Thus the applicant's claimed need for the proposed development does not get off to a good start and I can understand why some people believe that the planning committee was given "false" information. On the other hand, other evidence indicates that there are reasons why increased sub-station capacity is needed whatever happens to the future hospital proposal, and that it would be sensible and cost-effective to combine existing substations into one at the same time. The first-floor level location of the Stafford Hotel substation (which evidently

- supplies 121 properties) makes maintenance more difficult than for a ground-level substation. The Kensington Place substation evidently supplies 36 properties and - importantly - four substations within the hospital site. The available evidence indicates that increased capacity is required for the existing hospital, and that this is likely to be the case for at least about ten years irrespective of the location of a new or redeveloped hospital.
30. Moreover, the issue of whether the proposal subject to this appeal should be implemented on cost, efficiency or other such grounds is different from the issue of whether planning permission should be granted, since a grant of planning permission does not necessarily mean that the development will be carried out. What has to be decided for planning purposes is whether the objections override the *planning* arguments in support of the proposal.
  31. Harm to human health and well-being is clearly a planning consideration. A person or persons' fear of such harm can be a proper planning consideration, provided there is some rational basis for the fear. Harm to residential amenity is also a planning consideration; but the possible implications of proposed development on the value of a property is not. In any case, the appellants' estimate that the value of their property might be reduced by £100,000 is not supported by any evidence of the sort which could be expected from, for example, a professional surveyor or valuer.
  32. It would not normally be appropriate to publicise matters relating to an individual's health, but it is impossible to avoid doing so in this instance since part of the appellants' case is that Mr Bougourd suffers from headaches, which he believes are caused by using items such as mobile phones or a microwave based internet router. He says he is especially sensitive to magnetic fields and that his headaches would be made worse if the proposed development were carried out.
  33. The available technical evidence about the electro-magnetic effects of the proposed development indicates that any EMF impact would be very far below the threshold set out by ICNIRP as the recommended maximum level for the general public. A survey immediately outside the Kensington Place substation evidently recorded less than 1  $\mu\text{T}$  with an average of 0.4  $\mu\text{T}$ , that is to say a fraction of 1% of the 100  $\mu\text{T}$  limit set out in the ICNIRP guidelines.
  34. According to the application drawings what the appellants call the "thin brick wall" dividing the St Elmo building from 4 Edward Place is about 0.6 metre (or about 2 feet) thick, and from the limited checks I was able to make during the site inspection this wall appears to be made up of a mixture of stone, blockwork and brick. Given the age of these buildings it is almost certainly a solid (not cavity) wall. As far as I could establish during the hearing, nobody is sure of the exact thickness of the existing dividing wall. Whatever the precise thickness, the proposed development would include constructing a new cavity wall next to 4 Edward place, in addition to the existing wall.<sup>5</sup> Thus the appellants' reference to a thin brick wall is inaccurate.
  35. Personal circumstances can sometimes be relevant to a planning decision. Nevertheless it is difficult to give significant weight to Mr Bougourd's medical problems without any supporting evidence. I asked Mr Bougourd if he had any medical evidence such as written certification by a doctor, but he had none. There is no evidence that he sought medical advice or treatment after suffering headaches when close to a microwave-based internet router. Given the absence of any supporting medical evidence, combined with the technical evidence

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<sup>5</sup> This is shown on the Proposed Section Drawing 5461-019A.

indicating that any EMF effects would be far less than standard accepted limits, I do not find any good reason to think that Mr Bougourd's health would be affected by the proposed development. Similarly, there is no reason why the development should have any impact on the counselling business or any other business run from 4 Edward Place.

36. Mr Bougourd mentions in his appeal statement that he has researched information from a body which has carried out EMF surveys in England. Such information may not be directly relevant to Jersey because of differences in transmission voltage levels.<sup>6</sup> I appreciate that there could be a psychological effect based on fear; but as explained above, it would not be right to accord weight to fear which is irrational or unjustified. The appellants' reference to the way asbestos, DDT and smoking were regarded in the past is understandable, but the decision on this appeal has to be made on the available evidence, not on unfounded hypothesis about what might or might not be discovered in the future.
37. There is no evidence that either of the existing sub-stations in Kensington Place emits audible noise or vibration. I did not hear any hum or other noise during my inspection, although of course that was not a detailed test or precise survey, and there were numerous other noise and vibration sources nearby such as local traffic. The States Environmental Health Officer has not objected to the proposal on either noise or EMF grounds.
38. As regards the effect of the proposal on the street scene or neighbouring listed buildings, the existing building at the application site has no special architectural merit, and the proposal appears to have been designed to fit reasonably well into the local scene. The louvred openings would have a "blank" appearance and would detract from the character of the area, but they appear to be a necessary feature, no worse than the louvres nearby in Kensington Place, and the general scale and form of the building would not be out of place. On balance, I judge that - subject to some finishing details such as window glazing being subject to approval - the design and appearance of the proposal would be acceptable.
39. During the hearing I tried to find out what the existing Kensington Place sub-station was likely to be used for if it were replaced by the proposed development. No clear intention appears to exist, except for what seems to be a vague idea of use for storage. That may or may not be suitable, and in any event would probably depend on whether planning permission for a change of use and/or operational development would be granted.
40. Any possibility of the proposed building left half-completed could be prevented by requiring, as part of a condition, that the development be completed in accordance with the submitted plans. To be enforceable, a time period would have to be specified; two years after commencement would seem to be a reasonable period, bearing in mind that the planning authority would have powers to extend this if there were a good case for doing so.
41. Planning policies have not featured as a major issue in this appeal. Policy GD1 of the Island Plan provides (in part) that new developments do not adversely affect the health and safety of users of buildings, by virtue of factors which include electromagnetic fields. For the reasons explained above, I consider that the proposal would comply with this policy. Policy GD7 sets out tests relating to design quality. The functional facade of the ground floor of the proposed building would not be ideal in its setting but the overall design would satisfy the

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<sup>6</sup> One difference is mentioned in the letter dated 21 August 2018 from JEC to Mr D Ahier.



requirements of Policy GD7. The same applies to the provisions of Policy HE1 referring to the impact of development on the historic environment including listed buildings; and I note that subject to some detailed changes being made, the Historic Environment Team considered the proposal acceptable. Species protection and waste management are also covered by policies on matters which are uncontroversial in this instance.

42. Several objectors contend that a decision on this application should have been deferred, or the application refused, until the future of the hospital development project is decided. This view is understandable, bearing in mind that the application site formed part of the site for the proposed hospital, and that the application was made by the Department for Infrastructure, which was also the applicant for the proposed hospital. But the application now subject to this appeal is a separate proposal and has to be treated as such. Some objectors say that the application should be withdrawn, but the planning authority cannot "withdraw" an application- the application has been made, the planning authority had a duty to decide it, an appeal has been lodged and now has to be decided.
43. The decision on the application was evidently taken by the planning committee after a site inspection and a meeting held in public in October 2018, where representations were heard for and against the proposal; then the committee considered additional information at a meeting in November 2018 before deciding to grant planning permission. It seems to me that this process would have enabled the Committee to give full consideration to the issues raised. The committee's decision was not outside the law (or *ultra vires* as claimed by Mr Moon).
44. Some objectors - notably Mr McCarthy in his written representations - criticize what is perceived to be a lack of independence of your Department as planning authority, particularly when making decisions or recommendations on applications by other government departments. I refrain from expressing a view on this matter as I do not think it would be appropriate for me to comment here on how the States has decided to organize its government.
45. My overall conclusion is that there is no good reason to overturn the decision to grant planning permission, and that the appeal should not succeed.

### Conditions

46. I do not of course know whether you will wish to allow the appeal and refuse planning permission, or to dismiss the appeal and confirm planning permission subject to the same conditions as would have been originally imposed, or to dismiss the appeal but modify the conditions which would have been imposed if there had not been any appeal. The provisional permission was issued subject to four conditions as reported in paragraph 4 above. If you are minded to grant planning permission, it would be appropriate to impose these four conditions.<sup>7</sup> The words "and completed within 2 years of commencement" could usefully be inserted after "carried out" in Condition B to prevent any possibility of the adverse impact which could arise from a part-built development.
47. Other possible conditions were discussed at the hearing, and supplementary points have been made about conditions in the written responses to my email after the hearing. Mr and Mrs Bougourd's suggestion that there should be a condition aimed at ensuring the access to their garage is kept clear during construction work would appear to be not necessary, since a restrictive covenant

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<sup>7</sup> On a minor point of wording, I believe Condition 1 should now refer to the Department of Growth, Housing and Environment, or alternatively "the planning authority".

already covers this point by requiring a 12 foot wide strip to be kept clear at all times for access to the rear of all adjacent properties. Conditions should not be imposed unless (among other things) they are necessary; and enforcement action by means of the covenant would probably be quicker than by means of planning enforcement proceedings. So I am not recommending such a condition.

48. On the issue of EMF effects the planning authority has suggested that a condition similar to one imposed on mobile phone mast developments could be imposed, and the applicant has stated that this would be acceptable. The wording put forward by the planning authority is:

*The development hereby permitted is temporary and shall be removed on or before 3 months following substantial completion of the development and the land restored to its former condition, unless a post commissioning test indicating actual electromagnetic levels is completed, submitted to and approved in writing by Department of the Environment.*

*REASON: To protect the interests of the general public and to accord with Policy NR10 of the Island Plan 2011.*

49. Such a condition would present a risk to the developer, since the considerable cost of the development would be wasted if for any reason a post-commissioning test were not approved by the Department. However, it seems that the applicant is willing to accept this risk, and having a condition of this type might help to provide some reassurance for the appellants.
50. In my view the wording suggested by DGHE and agreed by the applicant is flawed for three reasons. First, the requirement specifying removal on or before 3 months following substantial completion of the development might be impossible to carry out, and therefore unreasonable, if "commissioning" (ie bringing the development into use) only occurs some time after substantial completion of the actual development, or if the planning authority take a long time to decide whether or not to issue approval. Second, it is not just "the test" which needs to be approved, but details such as the method of survey or testing and its results which need to be found acceptable and approved.
51. Third, the specification that "the development hereby permitted is temporary and shall be removed...etc" goes beyond what is necessary in that it would require not just the sub-station equipment but also the whole building structure to be removed. The requirement to "restore the land to its former condition" would also mean rebuilding a replica of the existing run-down building. That would not be reasonable or sensible. A requirement to cease the use of all the equipment should be sufficient, and should impose enough discipline on the developer to ensure, before carrying out the development, that the EMF effects would be well within acceptable limits. Normal market forces on this town centre site should be enough to ensure that if the use of valuable equipment has to be permanently prevented, it would get modified or removed; if removed, whether the building structure could be re-used or converted to a different use, or demolished, would almost certainly have to be the subject of an application for planning permission.
52. With those points in mind it seems to me that a condition like the one previously used on mobile phone masts would not be suitable in this case.<sup>8</sup> Nevertheless, modified wording could be suitable and I suggest a condition using the following wording.

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<sup>8</sup> See also Footnote 7 on page 9 - the same point about the current name of the Department applies to this condition. My suggested wording uses the term "planning authority".

Within 3 months of the development hereby permitted being brought into active use, a survey shall be carried out to detect and record actual electromagnetic field effects of the operation of all the installed equipment, and the survey results shall be submitted to the planning authority for its written approval or agreement that the EMF effects of the development when in use are acceptable. Details of the location of the survey points, method of survey and identity and qualifications of the persons responsible for the survey shall be agreed beforehand with the planning authority. If no agreement is reached on those matters or if the survey is not carried out (either at all, or not carried out in accordance with the details agreed beforehand), or if the planning authority does not approve the survey results within 3 months of their submission, the use of all the equipment installed as an integral part of the development shall permanently cease within a further period of one month.

53. The wording above would still mean that one of the "trigger points" for a breach of condition - the 3 month time period for approving the survey results - would be outside the applicant's control, and in some cases this would make this aspect of the condition unreasonable; but that would not be so here, since the applicant and the planning authority are both government Departments.

### **Recommendation**

54. I recommend that the appeal be dismissed, and that planning permission be confirmed subject to conditions, with modifications and additions to the original conditions as discussed above.

*G F Self*

Inspector

22 February 2019

### Appendix: Text of Inspector's Questions to Main Parties after the Hearing.

The extent to which the application site for the proposed future hospital site surrounds No 4 Edward Place became clear to me as a result of the site inspection. I do not have any involvement with the hospital proposal but I am aware of the Minister's refusal of planning permission. I also understand that one of the problems of the proposal to redevelop the existing hospital site has been the restricted nature of the site and the resultant difficulty of accommodating the proposed development. It therefore seems odd to me that the site for the hospital application excluded No 4 Edward Place, resulting in what would appear to be an awkwardly-shaped site with a "hole" inside it, which on the face of it would be likely to restrict the space available and cause design or feasibility problems for that project.

I therefore invite responses to the following questions. Why was 4 Edward Place not included in the hospital application site? Are there any proposals which can be made publicly known for any revised hospital scheme incorporating 4 Edward Place?