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## Appeal Decisions

Site visit made on 20 May 2025

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 15 July 2025

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### **Appeal A Ref: APP/C5690/W/24/3354310**

**100 Horniman Museum, The Horniman Museum & Gardens, London Road, Lewisham, London SE23 3PQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Tim Hopkins (Horniman Museum and Gardens) against the decision of the Council of the London Borough of Lewisham.
  - The application Ref is DC/24/135045.
  - The development proposed is the installation of 3 four-metre high Wi-Fi posts along the western boundary of the Horniman Gardens, 100 London Road SE2
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### **Appeal B Ref: APP/C5690/W/24/3358109**

**100 Horniman Museum, The Horniman Museum & Gardens, London Road, Lewisham, London SE23 3PQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Tim Hopkins (Horniman Museum and Gardens) against the decision of the Council of the London Borough of Lewisham.
  - The application Ref is DC/24/137890.
  - The development proposed is the installation of 3, four metre high wifi posts along the western boundary of the Horniman Gardens, 100 London Road SE23. Revised application.
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### **Decision**

1. For Appeal A, the appeal is dismissed.
2. For Appeal B, the appeal is dismissed.

### **Preliminary Matters**

3. In relation to appeal A, for clarity, I have used the description referred to by the appellant in the appeal form and statements in the banner heading, as the wording used in the application form included references which did not relate to acts of development.
4. There are two appeals before me. Appeal A relates to the Council's refusal of planning permission, while Appeal B relates to failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice for Appeal B. However, the Council has submitted a written statement confirming that, had it determined the application, it would have refused permission on the same grounds as Appeal A. I have had regard to the Council's Statement and their recommendation, insofar that

it provides clarity in terms of the reasons the Council would have considered had it been able to do so.

5. The planning considerations and the Council's reasons for refusal are largely identical in both appeals. The substantive differences are that, for Appeal B, there is consensus between the parties that additional documents have been submitted, specifically the Arboricultural Method Statement and Tree Protection Plan, alongside a further justification regarding 'very special circumstances'. Against these limited differences, I have considered the two appeals together to avoid unnecessary duplication.
6. Since the application was submitted, the National Planning Policy Framework (the Framework) has been revised (December 2024). There were, in particular, changes to Green Belt policy. The parties have had adequate opportunity to make submissions, based on the revised Framework.

## **Main Issues**

7. The appeal sites fall within Metropolitan Open Land (MOL) as defined in policy G3 of the London Plan 2021 (LP). This policy states that MOL is afforded the same status and protection as Green Belt. I have, therefore, in accordance with this policy requirement, applied the Framework Green Belt policies to this scheme.
8. In this context, the main issues for both appeals are:
  - whether the development would be inappropriate development in the MOL having regard to the Framework and any relevant development plan policies;
  - the effect of the development on the openness of the MOL;
  - the effect of the proposal on designated heritage assets, including: the Grade II listed Coombe Cliffe Conservatory; the Terraces in front of the Horniman Museum; the forecourt railings, walls and piers to the Horniman Museum; the Horniman Gardens; the Grade II\* listed Horniman Museum; and the Forest Hill Conservation Area ('the CA');
  - the effect of the proposed development upon the natural environment, with particular regard to the protection of trees; and
  - whether or not the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## **Reasons**

### **MOL**

#### *Whether or not inappropriate development in the MOL*

9. The Framework identifies that the fundamental aim of Green Belt policy (in this case applied to the MOL) is to prevent urban sprawl by keeping land permanently open. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

10. The application relates to the proposed installation of 3 Wi-Fi posts along the boundary of the Horniman Gardens. This boundary is lined with trees and adjoined by a pathway running along the perimeter planting. The proposed posts would be positioned to the side of this perimeter pathway, adjacent to the existing trees, but remaining within the boundary fence line. The posts will be distanced from nearby residential properties by a broad band of dense, mature planting on either side of the Nature Trail footpath which runs parallel to the boundary of the Gardens. There is no evidence before me that this area should be considered Previously Developed Land. The gardens are open to the public and include open areas of lawn, footpaths, groups of mature trees, and a former boating pond.
11. Development in the Green Belt is considered inappropriate, subject to a number of exceptions set out in paragraph 154 of the Framework. One of the potential exceptions, criterion h) ii. relates to engineering operations, where they preserve its openness and do not conflict with the purposes of including land within it. However, the appellant has not explicitly put forward any supporting documentation to substantiate this exception. In any event, regardless of whether this exception would apply, whether the proposal would constitute inappropriate development will largely depend on whether or not it would cause harm to the openness of the Green Belt.

### *Openness*

12. The Planning Practice Guidance (PPG) states that assessing the impact of a proposal on the openness of the Green Belt requires a judgement based on the circumstances of the case. It outlines several matters that may need to be taken into account when making this assessment, including - but is not limited to - the spatial and visual aspects of the proposed development. Other relevant considerations may include the duration of the development, its remediability and the degree of activity likely to be generated, such as traffic generation.
13. The plans indicate that the three posts would be located in different locations between the perimeter pathway and the Nature Trail footpath. They would be set back from the paths within the lower shrub landscape and would be painted dark green. Each post would be 4m high and positioned among trees of moderate to high quality and value (categories B and A). Although the posts would be partially screened by existing mature vegetation, they would still result in a limited, but dispersed increase in built form. Given the proximity of the paths, it is likely that they would remain visible to pedestrians. In my judgment, each post would result in minor spatial and visual harm to the openness of the Green Belt.
14. Notwithstanding that a permanent permission is sought, the appellant has confirmed that the posts would be fully reversible, should their removal or relocation be required. In terms of the level of activity, the posts would not themselves generate any additional activity, as their stated purpose is to provide Wi-Fi connectivity. Any future interaction with other initiatives, such as the augmented reality educational programme associated with the *Nature and Love* trail, would need to be assessed at the appropriate time. Nonetheless, these factors would not significantly mitigate the effect of the proposal on openness.
15. I conclude that the proposed development would cause minor harm to the openness of the MOL, contrary to paragraph 154 of the Framework. Consequently, the development would represent inappropriate development, which by definition is

harmful to the MOL. In this regard, it would also fail to comply with Policy 12 of the Lewisham Core Strategy (2011) ('LCS') and Policy G3 of the London Plan (2021) ('LP').

## **Heritage Assets**

### *Background*

16. As the proposed development is in a conservation area and relates to listed buildings, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). In accordance with the Act, I have had special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest. I have also paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. Paragraph 202 of the Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.
17. There are a number of designated heritage assets which could be affected by the proposal, including the Grade II listed Coombe Cliffe Conservatory; the Grade II listed Terraces in front of the Horniman Museum; the Grade II listed forecourt railings, walls and piers to the Horniman Museum; and the Grade II listed Horniman Gardens. It would also affect the Grade II\* listed Horniman Museum. The appeal sites are also located within the CA.

### *Significance of the listed buildings and parks*

18. In terms of the significance of the various buildings in relation to the issues in these appeals, Coombe Cliff Conservatory is a fine example of a Victorian cast-iron conservatory. Although built in 1894, it was moved to its current location next to the Horniman Museum in 1988. Key elements of its special interest relate to its form, layout and materials. It was previously listed as a building of special or architectural or historic interest in the London Borough of Croydon.
19. The Terraces in front of Horniman Museum date from 1902. The key elements of their special interest relate to its design, which features stone paved terraces arranged over 5 levels, decorative wrought iron lamp holders and a fountain.
20. Horniman Gardens is a public park of approximately 5 hectares, which were originally part of the grounds of Surrey Mount. The gardens, along with the Horniman Museum, were gifted in perpetuity to the London County Council in 1901 by Frederick Horniman. The largest and most significant area of the park, formerly Surrey Mount's grounds, contains key features such as the bandstand, terrace, and paddling pool. The gardens were expanded following the demolition of neighbouring houses. Situated on steeply sloping ground, the gardens provide expansive views across London. Despite being enclosed by tree belts, occasional mature boundary trees remain, contributing to the gardens' verdant, secluded character and screening them from surrounding development.
21. Horniman Museum was designed in 1902 by Harrison Townsend. It has heritage significance due to its distinctive art nouveau architectural form, including the wide segmental gable and glazed barrel roof. The upper storey features a row of pilasters, with leafy capitals, resting on cornice of lower floor; and hooded niches, with wrought iron screens, at ends. Initially it stood next to a row of houses,

however, these were gradually removed over the next fifty years to create the museum's and park's current frontage on London Road.

*Effect of the proposals on the significance of the listed buildings and parks*

22. The proposed development would introduce modern built form into the gardens. Although partially screened by vegetation, the posts would remain visible to the public and pedestrians, particularly along the footpath. While the gardens include various historic structures, such as the bandstand and terrace, they remain largely free of significant levels of modern development. The posts, though relatively minor in scale, would represent a noticeable and visually intrusive addition, particularly within a secluded edge of the gardens, detracting from their predominantly historic character.
23. Due to the distance and sloping topography, the three appeal sites would have very limited visibility from the Horniman Museum, the Terraces in front of Horniman Museum, the forecourt railings, walls and piers to the Horniman Museum and the Coombe Cliff Conservatory. However, these listed buildings are experienced in association with the gardens, and the introduction of modern built form in the proposed locations would still erode the historic relationship between them. This link and association are a component of their significance, and the introduction of the proposed development would result in some very limited heritage harm, given the existing layout and separation.
24. In conclusion, there would be a very low level of less than substantial harm resulting from the proposed development to these listed buildings and parks. I will consider any public benefits against this harm in the overall heritage balance.

*Significance and character of the Conservation Area*

25. Another important designated heritage asset is the CA, which encompasses suburban residential streets, the commercial centre around the railway station, and the gardens and open land associated with the Horniman Museum. Notable features of the garden are the undulating topography and the numerous mature trees, which together with the open green spaces, give parts of the CA a pleasant, almost rural quality, which is unusual in this part of London. The gardens also provide outstanding views over Dulwich and towards the city centre. In contrast to the intensely man-made environment of much of the CA, the gardens provide habitats for wildlife, supporting varied ecosystems, through their water features, plants and trees. Given such, I find the significance of the CA, insofar as it relates to these appeals, to be primarily associated with the balance between the rural quality of the garden and the man-made environment.
26. The appeal sites are located within a key section of the gardens, which serves as a continuous green backdrop for important vantage points, such as the bandstand. While the posts may not be clearly visible from all such vantage points, they would still be noticeable from the footpath. Although limited to three masts, the insertion of modern infrastructure into this historically sensitive area would still erode the visual and spatial heritage significance of the CA, particularly in one of the few remaining open green spaces that are otherwise surrounded by modern development.
27. I conclude that the proposed development would fail to preserve the character and appearance of the CA, when considered as a whole. The level of harm is less than



substantial. As a consequence, the scheme would not preserve or enhance the character or appearance of the Conservation Area and the duty under section 72(1) of the Act would not be met. The significance of these heritage assets would be harmed and there are no public benefits which would fully justify the proposal, contrary to Policy DM36 of the Lewisham Development Management Local Plan (2014) (the 'MLP') and Policy 16 of the LCS. It would not conserve their significance, contrary to Policy HC1 of the LP.

#### *Conclusion on heritage impacts*

28. I have very carefully considered all the heritage evidence that has been presented as part of these appeals. In summary, there would be a very low level of less than substantial harm to the significance of these designated heritage assets. I will weigh this harm against the public benefits of the proposal, in the heritage balance later in this decision.

#### *Natural environment – root protection areas*

29. The submitted plans indicate that the masts would be positioned within the root protection areas of six trees of moderate to high quality value. This includes T064, a mature, Category A English Oak, which has a substantial environmental and wildlife value. Accordingly, the proposed locations raise concerns regarding the long-term protection and retention of these trees.
30. The appellant's Arboricultural Method Statement and Tree Protection Plan state that the mass concrete footings would be no more than 0.5m x 0.5m wide and less than 1m deep. Groundworks would be carried out using hand tools, with cable routes using an existing conduit to avoid further excavation. Roots within the excavation zones may be pruned back. The posts are designed to be removable, with the potential for future landscape restoration. However, their installation would still have an immediate effect on the health of the trees. Even with manual excavation, the introduction of concrete footings within or near the root protection areas is likely to sever structural and fine roots essential for water and nutrient uptake. Root pruning also increases the risk of tree destabilisation and long-term decline. While the appellant's Arboricultural Method Statement and Tree Protection Plan does suggest various mitigation methods, the extent of harm, particularly for mature trees remains uncertain. Accordingly, there remains a significant risk of harm to the root protection areas of several trees, as the precise effect on their health remains unclear.
31. I have considered the use of a planning condition to require the approval of a tree protection plan, noting that the appellant has expressed a willingness to make local adjustments to the exact locations of the footings if any large roots sit within the footing zones.
32. However, while certain technical details have been provided, no detailed information has been provided to demonstrate that the proposed mitigation measures would effectively reduce the risk of harm to the surrounding trees and their root protection areas. Without such detail, it is unclear whether these proposed minor adjustments would sufficiently mitigate the risk of harm. Furthermore, the relocation of the posts could also potentially result in material layout changes, which may potentially prejudice interested parties who have not had the opportunity to provide comments. As such, the use of such a condition

would be contrary to the approach of the Procedural Guide<sup>1</sup>, which states that the appeal process should not be used to evolve a scheme. Therefore, I am not persuaded that such a condition would be suitably precise or that it would make the development acceptable in planning terms.

33. In conclusion, the proposal does not provide sufficient evidence to demonstrate that the scheme would not unduly harm the natural environment, with particular regard to the protection of trees. This would be contrary to Core Strategy Policy 12 of the Lewisham Core Strategy (2011) (the 'LCS') and Policy G7 of the London Plan (2021) (the 'LP').

#### *Other Considerations*

34. The appellant considers that the posts are moderate in scale, slim and designed to have a minimal impact on openness. However, as discussed above, I have concluded that the proposed development would still cause minor harm to the openness of the Green Belt. As such, this carries very limited weight in favour of approval.
35. The posts are also designed to be fully reversible, meaning the posts could be easily removed or relocated in the future with no lasting effect on the land. However, this does not mitigate the visual harm while they are in place, nor the potential harm to the root protection areas of the surrounding trees. Consequently, the reversibility of the proposal carries only limited weight in favour of approval.
36. The appellant states that the posts would support educational programmes by enabling access to digital resources, including mobile content, audio descriptions, and the *Nature + Love* Augmented Reality trail. This interactive content is intended to deepen public understanding of nature and biodiversity, enhance appreciation of the gardens' natural and cultural heritage, and promote inclusivity and accessibility. The appellant further considers that such features would benefit younger visitors and those who rely on digital media, helping to connect a wider and more diverse audience with the site. These benefits are said to carry social value and align with the museum's charitable objectives, including improving representation among ethnically diverse visitors and ensuring equitable access to educational resources.
37. However, there is limited evidence before me to demonstrate why the augmented reality trails would require a continuous internet connection. If bespoke units are to be used, it is unclear why the content could not be preloaded onto these devices. Alternatively, if the trail and other educational programmes are intended to be accessed on visitors' own personal devices, there is no clear evidence that the area suffers from poor mobile data coverage that would prevent public access. While the potential to improve accessibility remains a relevant consideration, this lack of evidence to justify the necessity of the masts limits the weight that can be given to the educational and inclusion benefits.
38. Nevertheless, the proposed development would likely draw more visitors to the gardens, which would positively impact local business and the economy. It could also support wider audience engagement, by encouraging them to experience nature directly, while supporting their digital experiences. Accordingly, a moderate level of weight is attributed in favour of the proposal.

<sup>1</sup> Paragraph 16: Procedural Guide – Planning Appeals – England

## **Other Matters**

39. The appellants consider that the Council's statement contains factual inaccuracies, omissions and misstatements, particularly regarding the submission of key technical documents. While I acknowledge the concerns raised, I have assessed each appeal in accordance with the relevant procedural requirements, and so this does not have any material effect on my decision.
40. The description of development as set out above refers to 'Wi-Fi posts', which are identified on the submitted plans by notations. However, these notations also indicate a proposed CCTV use for the posts. No further information regarding the intended CCTV use has been provided by the appellant in the submitted documents. The Council has highlighted this lack of clarity in its submissions. Nonetheless, while the Council has indicated it might accept the inclusion of CCTV cameras subject to a condition requiring further details, this element of the proposal is not before me and does not form part of my assessment.

## **Heritage, MOL and Planning Balances**

### *Heritage Balance*

41. The proposed development would harm the setting and related heritage significance of listed buildings and parks. This harm would be at a very low level of less than substantial harm. It would also not preserve or enhance the character or appearance of the CA, when considered as a whole. This harm would be at a very low level of less than substantial harm. The result is that the duties under the Act would not be met, and this is a matter of considerable importance and weight.
42. Overall, I assess that the combined harm to the significance of heritage assets would be to a low level of less than substantial harm. Paragraph 212 of the Framework requires that great weight should be attached to the asset's conservation, and this is irrespective of the level of harm. Paragraph 215 of the Framework, states that the harm to the significance of these designated heritage assets should be weighed against the public benefits of the proposal.
43. I have outlined above a series of benefits that the scheme would deliver, which I consider to be public benefits. These include the design and size of the posts (very limited weight), the reversibility of their installation (limited weight) and the economic and social benefits of the Wi-Fi posts (moderate weight). Collectively, the benefits should be attributed moderate weight in favour of approval.
44. Nonetheless, great weight should be attached to the conservation of the designated heritage assets. In this case, the public benefits of the proposal would not outweigh the harm identified. Accordingly, the heritage balance falls against the scheme.

### *MOL Balance*

45. I found that the proposal would cause minor harm to the openness of the MOL. Accordingly, it would constitute inappropriate development, which by definition is harmful and should merit substantial weight against the scheme. These are matters to which I give substantial weight as required by paragraph 153 of the Framework.



46. I have outlined a range of benefits of the scheme in the other considerations section above. These are worthwhile and understood, and it is clear that considerable thought and effort has gone into the proposal. As such, significant weight is given to the objective of supporting economic growth and productivity, as outlined in paragraph 85 of the Framework. Furthermore, paragraph 96 states that planning decisions should aim to achieve healthy, inclusive and safe places which, promotes social interaction and enables and supports healthy lives. It is acknowledged that the proposal would assist the operation of education programmes, generating associated economic and social benefits. As such, moderate weight is attached to the benefits of the scheme.
47. Nonetheless, these identified benefits do not outweigh the harm to the MOL by way of inappropriate development and the effect on openness, to which I attach substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist.
48. The proposed development conflicts with Policy 12 of the LCS and Policy G3 of the LP, which states that metropolitan open land should be protected from inappropriate built development. As such, the proposed development would be contrary to the Framework, insofar as these policy tests also apply to the MOL.

#### *Planning Balance*

49. As set out above, the proposal would result in harm to both designated heritage assets and the MOL. In the context of the Framework, great weight is given to the conservation of heritage assets, and substantial weight to any harm to the MOL. I have found that the public benefits, primarily relating to educational, economic, and social opportunities, do not clearly outweigh the identified heritage harm. Very special circumstances do not exist to justify inappropriate development within the MOL.
50. I have also identified further harm to the natural environment, particularly concerning the likely impact on protected trees and the lack of certainty around their long-term retention. These environmental impacts add further weight against the proposal in the overall planning balance. The combined harm and related policy conflicts are attributed substantial weight against the scheme, and this is not outweighed by the benefits, to which I afford moderate weight.

#### **Conclusion**

51. The proposals conflict with the development plan taken as a whole and material considerations do not indicate that these appeals should be determined other than in accordance with it. Therefore, for the reasons set out above, I conclude that these appeals should be dismissed.

*S Lo*

INSPECTOR