



Appeal Decision

Inquiry held and site visit made on 21 November 2006

by **Paul Taylor** BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date

05 Dec 2006

Appeal Ref: APP/X5210/C/06/2006168

2 Rondou Road, London NW2 3HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms M Ogunleye against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN04/0618.
- The notice was issued on 28 November 2005.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of five satellite dishes on the front and side elevation of the premises.
- The requirements of the notice are :- (1) The 5 satellite dishes shall be completely and permanently removed, and (2) All damage caused to the fabric of the building by the removal of the satellite dishes shall be made good to an appropriate and proper standard to match the original work in terms of materials, colour, texture and profile.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- The evidence was given on oath

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The scope of the enforcement notice and the appeal

1. The enforcement notice alleges "the installation of five satellite dishes on the front and side elevation of the premises". It is agreed that when the enforcement notice was issued it was directed at the five satellite dishes then on the property, a semi-detached house divided into five flats. Those five satellite dishes are shown in a photograph taken by the Council on 17 February 2005 and they consist of (1) a plain white dish on the chimney stack, (2) a white 'Triax' dish at the front of the building at first-floor level, (3) a plain white dish immediately beneath the Triax dish, and (4) and (5) two black dishes on the side elevation of the property.
2. Since the notice was issued the Council's photographic records show that three of these dishes have been permanently removed. These are the plain white dish on the front elevation (3) and the two black dishes (4) and (5). Two new dishes have been added; these are (6) a 'Cyfra' dish on the front of the building and (7) an 'ISS' dish on the side elevation.

3. The Council suggested that the notice could be corrected so as to cover the four dishes now on the building, especially as the enforcement notice did not describe the five originally enforced against in any detail. This course of action was not agreed by the appellant.
4. I consider that this transference of the enforcement notice from one set of satellite dishes to another cannot properly take place. The notice is not incorrect. When the notice was issued there were five satellite dishes on the building. The four dishes now on the building together have a different impact on the appearance of the building than the five that were enforced against. There is no evidence from the residents who have recently installed the Cyfra dish and the ISS dish so their interests might be prejudiced if the enforcement notice is simply transferred to the new development without them knowing. The current enforcement action does not therefore relate to the Cyfra dish or the ISS dish.
5. The notice applies to the five dishes that were in place at the date the notice was issued. As three of these have been permanently removed there has been partial compliance with the requirements of the notice. In practice the appeal now relates to the dish on the chimney stack (1) and the Triax dish on the front elevation at first-floor level (2). It does not relate to the Cyfra dish or the ISS dish.

The appeal on ground (d)

6. Ms Ogunleye's case is that there have been five satellite dishes, including dishes (1) and (2), on the building since at least 1999. Her own evidence is that no dishes have been installed since then. As landlord and owner of the premises, she regularly visits the flats and speaks to the tenants. From her own experience, and from what she has been told, she says that she knows that there have been five satellite dishes on the building since 1999. In support of her case she produced a letter and written affidavit from one of the former tenants, Mr Zahzah, who explained that he installed a satellite dish on the roof in 1999 and left it there when he moved in 2005. He noticed that there were other satellite dishes there at the time. There is also support from Mr Akeju who is responsible for managing the property. His written evidence is that there have always been satellite aerials on the property since the mid-1990s. At one time there were, he says, up to five dishes on the property. Ms Ogunleye's architect and agent, Mr Sobowale said that from his personal knowledge there have been satellite dishes on the property since 2002, including dishes (1) and (2). He says that one defective satellite dish was replaced in 2004, and that two were stolen in 2006, one of which has been replaced.
7. The appellant criticises the Council's case because it relies in part on a complaint by a local resident that has been kept confidential and that, therefore, cannot be validated. Council officers have frequently visited the property and been aware of the presence of the dishes since 1999 but have only taken action more recently. The Council have no records to show that the dishes were not on the building in 2001.

My conclusions on ground (d)

8. Circular 10/97, Enforcing Planning Control, makes it clear that in an enforcement appeal on ground (d) the burden of proof is on the appellant. It is for Ms Ogunleye to show, on the balance of probability, that satellite dishes (1) and (2) have been in situ since 28 November 2001 (ie. four years before the enforcement notice was issued).

9. The appellant's own evidence is that they have been and there is some support for this. However, the Council have evidence to the contrary and in these circumstances the appellant's evidence needs to be sufficiently precise and unambiguous. The Council were alerted to satellite dishes being put on the premises by a complaint made in July 2004. The complaint was, specifically, that six satellite dishes had been erected on the appeal premises, with three of them being located at the front. The Council served a Planning Contravention Notice on the occupier of each of the five flats in August 2004. There was one reply stating that an unspecified satellite dish was installed in 2003.
10. The appellant's own oral evidence was not specific. Ms Ogunleye is only able to say that satellite dishes have been on the premises. She does not know which satellite dish relates to which flat or when each satellite dish was actually erected. She cannot say when satellite dish (1) or (2) were actually installed. She has no documentation relating to the installation of the dishes. Her own evidence is contradictory because she claims in her affidavit that no satellite dishes have been erected since 1999. That is clearly not true as the Council's photographic record shows. At the Inquiry she conceded that dishes have changed from time to time.
11. Mr Zahzah's written evidence and that of Mr Akeju is untested by cross-examination. It does not accurately describe the type or location of satellite dishes involved. There may have been one or more satellite dishes on the premises prior to 2001 but there is no evidence to demonstrate that they were the same ones, in terms of size, colour and position, that were there when the enforcement notice was issued. Mr Sobowale's personal evidence does not cover the relevant four-year period.
12. I conclude that the appellant has not demonstrated, sufficiently precisely and unambiguously, that the five particular satellite dishes referred to in the enforcement notice, were installed more than four years prior to the date that the notice was issued. The appeal on ground (d) therefore fails.

The deemed planning application

13. The Council maintain that the satellite dishes are detrimental to the appearance of the building and to the street scene and that they conflict with policies B1, General Design Principles and B5, Telecommunications, of the Camden Replacement Unitary Development Plan 2006. The appellant puts forward no evidence at all on the visual impact of, or on need for the dishes, or on the lack of alternative ways of providing the service.
14. I consider that the two satellite dishes covered by the enforcement notice that are still on the premises, the chimney stack dish (1) and the Triax dish (2), being solid white and relatively large (110cm diameter), and very prominently located high up at the front of the premises do detract from the appearance of the building and the street scene. I do not know whether they minimise harm to visual amenity, the objective of policy B5, but I do consider that the dishes do not respect their site and setting, do not improve the attractiveness of the area and do harm its appearance and amenity. I consider, therefore, that the development does conflict with policy B1 of the UDP and as, there are no material considerations to indicate otherwise, I conclude that planning permission should be refused.

Formal Decision

15. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Taylor

APPEARANCES

FOR THE APPELLANT:

Mr A Sobowale	Ayo and Ayo Architects
He gave evidence and called	
Ms M Ogunleye	

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson, of Counsel	Instructed by Camden LBC
He called	
Ms S Bermingham	Camden LBC