



Date: 22 April 2020  
Your Ref: APP/X5210/C/20/3244837  
Our Refs: EN18/0080  
Contact: John Sheehy  
Direct Line: 020 7974 5649  
John.Sheehy@camden.gov.uk

Mr Roger Thomas  
The Planning Inspectorate  
Room 3B  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Dear Mr Thomas,

**Appeal against Enforcement Notice dated 4<sup>th</sup> of December 2019**

**Address: Southfleet, Malden Road London NW5 4DD**

**Appeal by Cornerstone against Enforcement Notice requiring removal of communications antennae along with associated fixings and cabling on the flat roof of the residential building.**

Summary

Southfleet is a 6-storey building located on the western side of Malden Road.

The block dates from the 1970s and is set back from the street behind a narrow planted buffer. It has a lengthy frontage onto Malden Road measuring 120 metres.

The roof of Southfleet is flat but the roofline is not straight: projections and recesses on the front elevation create a rhythmic parapet line.

The equipment that has been installed is prominently located at roof level and is harmful to the appearance of the property and the surrounding area. A photograph and plans of the antennae are included in pages 7 and 8 below.

The Council's case is largely set out in the officer's delegated report, a copy of which was sent with the questionnaire. In addition to the information already sent I would be pleased if the Inspector could take into account the comments below before deciding the appeal.

### **Status of the development plan**

The Council's policies are set out in the Camden Local Plan which was adopted in 2017.

The key policies in relation to this appeal are:

- D1 Design which requires development to be of the highest architectural and urban design quality and to respect local context and character; and
- A1 Managing the Impact of Development is aimed at protecting the amenity of residents and preventing unreasonable disturbance arising from noise, overlooking, artificial light, vibration and other potentially harmful impacts of development.

The Council's policies have therefore been adopted recently and are up to date. There are no material differences between these policies and the NPPF. The Council's policies should be given substantial weight in accordance with the NPPF.

### **Enforcement action**

The Council issued an Enforcement Notice under Delegated Powers on 4<sup>th</sup> of December 2019 against the following breach of planning control:

*Installation of communications antennae along with associated fixings and cabling on the flat roof of the residential building as shown on Plan 1 attached to this Notice.*

The reasons for issuing the notice was as follows:

1. *The unauthorised development has occurred within the last 4 years;*
2. *The unauthorised antennae along with associated fixings and cabling installed at roof level (as shown on Plan 1), by reason of its location, design and obtrusive appearance, is harmful to the character and appearance of the property and the surrounding area. The development is therefore contrary to Policy D1 (Design) of the Camden Local Plan.*

The requirements of the Notice were:

*Within TWO (2) months:*

- 1 *Completely remove the communications antennae from the roof of the building;*
2. *Completely remove from the roof all poles, fixings and cabling associated with the communications antennae;*
3. *Make good the roof following the completion of the above works.*

The Notice was due to take effect on 16<sup>th</sup> of January 2020 should an appeal not be submitted.

### **Appellant's grounds of appeal and Council response**

The Appellant has appealed under Ground A, B, C, F and G. Officer comments on the Grounds are offered below.

#### **Ground A: that planning permission should be granted for what is alleged in the notice**

- *In terms of the apparatus installed on the roof of Southfleet, the limited number of antennas installed and their very limited height when read against the highest point of the building combine to ensure that the visual impacts of the antennas are limited – this is compared to the height and number that could be installed under permitted development rights.*

- *Most importantly, in terms of perceived wisdom expressed through national policy (see more below) and numerous development plans, regarding the siting of new telecommunications apparatus, siting on buildings and siting by sharing existing apparatus and infrastructure are considered to be by far the best options for minimising impacts. That is not to say there will not be localised impacts, but that the overall impacts over the area where coverage is given are minimised...*
  - *Looking at the above main policy considerations for the development, the apparatus installed (and proposed) can be seen to be in compliance. On that basis the appellant considers that the appeal should be allowed, planning permission granted and the installed apparatus should remain in situ and the proposed apparatus should be installed.*
- Officer Response: Local Plan Policy D1 Design requires development to be of the highest architectural and urban design quality and to respect local context and character. The communication equipment that has been installed is large, obtrusive and unsightly. In terms of scale, form, location and materials, the works are not sympathetic to the appearance of the property and do not integrate with its character or that of its neighbours. The works rupture the carefully composed roofline of Southfleet, one of its more important architectural features. The works are also inconsistent with the guidance contained in CPG1 chapters 2 and 5 which seek to ensure that roof additions are sympathetic to the age, character and architecture of buildings.
  - Given the dominant and obtrusive nature of the equipment, the Council approached the operator following the unauthorised installation to secure changes to the layout and appearance including:
    - reducing the height of the antennae;
    - mounting the antennae horizontally;
    - setting the equipment back from the front edge of the roof;
    - tilting the antennae away from the front elevation;
    - spacing the equipment evenly along the roof of the building;
    - moving the antennae down to the front elevation of the building and painting them to match the colour of the adjoining areas of wall.

- The agent was not able to agree to implement any elements from the above list to a meaningful degree, although a minor reduction in height of the antennae was proposed.
- The Council notes the appeal decision at the 265-7 Kentish Town Road which is appended (refs. APP/X5210/C/18/3199851 and APP/X5210/C/18/3201008). This case involved installation of prominent and obtrusive antennae to a hitherto clean roofline at a nearby site, also not located in a Conservation Area. The following is a photograph of the antennae in question:



- In that appeal Ground A was also argued in relation to the Ground A case the Inspector found in paragraph 14 that:

*“The structure projects significantly above the height of the roof and the cumulative visual effect of the poles and antennae is significant. The galvanised poles and light coloured antennae stand out against the dark brick of the host building. I appreciate that such structures, by their nature, are unlikely to blend seamlessly with an existing building but in this instance the effect is particularly incongruous as a result of the clean, uncluttered, lines of the host property”.*

- This is a recent decision, dating from September 2018. It was taken under the same policies and legislation that applies today. The Council submits that significant weight should be given to this decision as a material consideration

given the similarity of issues, in particular the introduction of obtrusive antennae to a prominent and hitherto clean roofline.

- Officers consider that the breach at Southfleet is visually more harmful than that dismissed at 265-7 Kentish Town Road. This is because of the higher quality of the host building with its carefully composed 120 metre front elevation along Malden Road with projections and recesses which create a rhythmic parapet line, and which the antennae ruptures incongruously and in breach of Policy D1;
- As a result of the serious harm to the visual appearance of the fine host building, the Council submits that the Ground A case has not been demonstrated by the appellant.

\*\*\*

**Ground B: that the breach of control alleged in the enforcement notice has not occurred as a matter of fact**

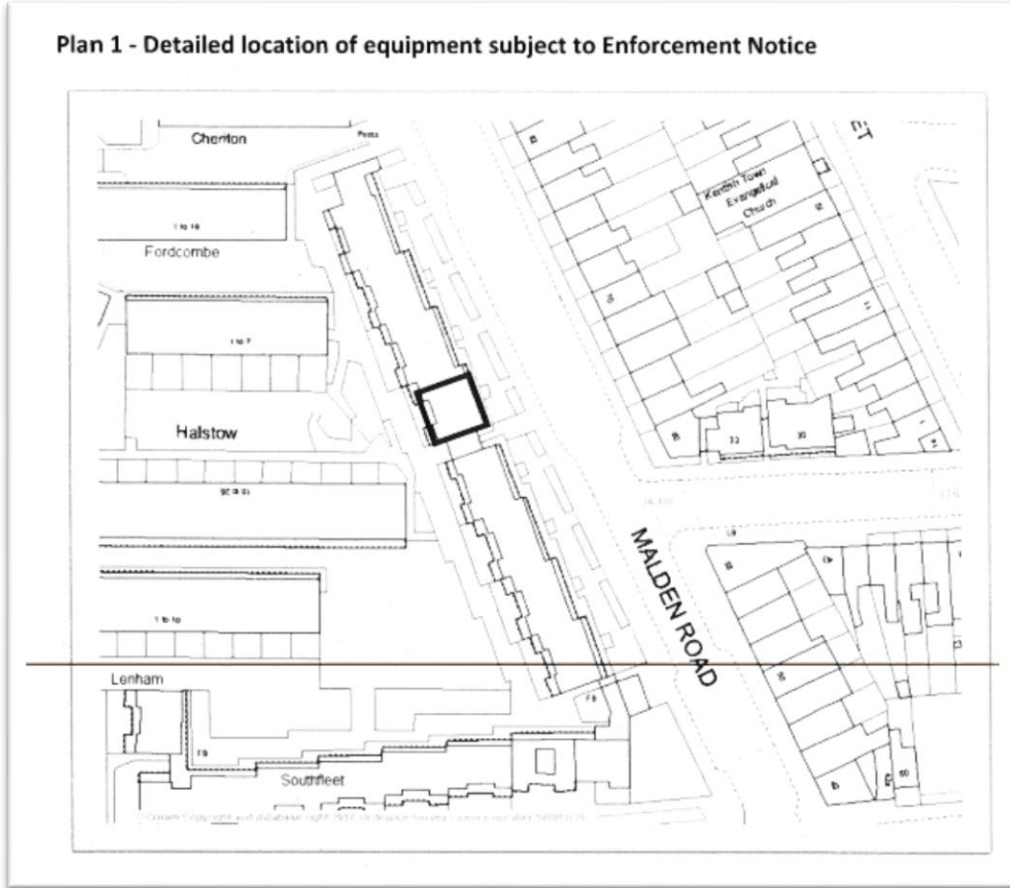
- *The LPA have not stated what the specific matters are which constitute the breach of planning control. If this is subsequently set out by the LPA, the appellant may be able to provide an elaboration on these matters i.e. a breach in the limitations of Part 16 of the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2016 – subsequently known as the GPDO. We have appended this legislation.*
- *However, the basis of the Notice is the installation of apparatus “without planning permission”. As set out in ground (c) below, the GPDO is however, a general grant of planning permission. The apparatus has therefore been installed with planning permission and as such the matters have not occurred.*

**Officer Response**

- In order to succeed on the Ground B case the appellant needs to prove, as a matter of fact, that the breach of planning control alleged in the notice has not taken place.
- The acceptability or otherwise of the works as well as their GDPO status is not relevant to the Ground B case. Only factual matters are relevant.
- The notice alleged the “Installation of communications antennae along with associated fixings and cabling on the flat roof of the residential building as shown on Plan 1 attached to this Notice”.

- To succeed on Ground B the appellant needs to demonstrate that, as a matter of fact, antennae and equipment were not installed in the identified location.

Plan 1:



- The following photograph dates from April 2018 shortly after installation. The antennae are clearly visible on the roof of the building in the location set out in Plan 1:



- Below is the Existing East Elevation as submitted by the appellant as part of this appeal. On the left of the drawing, rooftop antennae are represented:





- *Analysis of dimension requirements and limitations of Part 16 are set out.*

Officer Response:

- In addition to this permitted dimensions and limitations, Part 16 of the GPDO - in particular condition A.2 (1) - relates to visual appearance of works. This states that: "*Class A(a) and Class A(c) development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building in accordance with that permission is, so far as is practicable, sited so as to minimise its effect on the external appearance of the building*" (Officer underlining).
- The requirement to minimise the impact on the external appearance of the building also appears in Section A.3.(3) which sets out that: "*Before the beginning of the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development*".
- The clear intention of Part 16 of the GPDO is, while enabling appropriate development, to safeguard the appearance of properties and to prevent unsympathetic alterations and additions.
- As a result, dimensions and distance-related limitations are not the only criteria in terms of whether the development requires planning permission. Visual appearance and the impact on the existing building in terms of siting of equipment are also criteria. Should the conditions in relation to the visual appearance and the siting of the works not be satisfied, the works would not benefit from Permitted Development rights.
- Prior to proceeding with installation, the onus was on the owner to establish whether prior approval was required. A prior approval application was received for this site in June 2016, for "*Installation of 12no antennas, 1no 600mm dish, 2no 300mm dishes and 6no cabinets with ancillary works*" (2016/3547). The fee was not enclosed and was requested in June 2016 but not received. As the fee was not provided by March 2017 the Council withdrew the application as a significant amount of time had passed without a response.
- As set out above in relation to Ground A, the equipment at this site fails to comply with policy D1 due to its obtrusive and dominant appearance. It does not comply with condition A.2 (1) as it fails to minimise its impact on the external appearance

of the building so far as practicable. The failure to comply with condition A.2 (1) means that the scheme requires planning permission.

- As a result, the Inspector is respectfully requested to find that the appellant has not demonstrated the Ground C case.

**Ground F The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections**

- *We are attaching drawings which show a scheme which has just been submitted to the LPA which encloses the whole antenna array etc in GRP – this is briefly discussed on Grounds B and C. The appellant would argue that this would remedy any injury to amenity and would, should the appeal fail on grounds A, B and C, be the most pragmatic solution to ensuring continued coverage to the area whilst reducing visual impacts.*

**Officer Response**

- The application for the proposal with GRP covering ref. 2020/0147/P has been decided by the Council and permission has been refused for reasons of visual impact. The following is the reason for:

*The proposed development, by reason of its height, size, bulk, massing and prominence, would be detrimental to the appearance of the host building, the wider street scene, and the character and appearance of the adjacent West Kentish Town Conservation Area, contrary to Policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.*

- The case has been assessed in detail and subjected to public consultation. The officer report and decision notice are appended.
- As this alternative scheme is not in accordance with adopted policies, it is not an acceptable lesser step under a Ground F appeal;
- It is noted that in the drawings submitted for the Ground F appeal, the GRP shroud is not visible. The drawings also appear to show a minor reduction in height of the antennae, however this not to a degree that would make a material difference to their visual appearance or the level of obtrusiveness. As a result, from the Council's point of view, the implementation of the submitted drawings would not form an acceptable lesser step under Ground F.

**Ground G The time given to comply with the Notice is too short.**

- *Two months is not enough time for a Code Operator to secure a new site in this area of London. The appellant is aware of the Inspector's findings in APP/X5210/C/18/3199851 and APP/X5210/C/18/3201008 however consider that the situation is different. In this case the appellant has acted in good faith on the basis that the installed apparatus is permitted development. The appellant has not therefore sought a different site the installed apparatus falls within the limits of Part 16. The Notice practically has the effect for the appellant of restarting that clock. On that basis, the appellant would seek the time to comply with the Notice to be 18 months*

**Officer response**

- Should the Inspector find that the appeals on Grounds A, B, C and F have not been established, this will mean that a breach of planning control has taken place and that harm has been demonstrated.
- The Inspector must then consider how long the breach and the resulting harm should be allowed to continue until it is required to be rectified.
- This is a matter for the Inspector's judgement, however, in order to assist, the comments below are offered.
- The requirements of the Notice do not involve an obligation to construct any new features or accommodation. With regard to the action required in relation to the breach, the requirements are to remove the equipment and to make good the site.
- Planning permission would not be needed for any element of the rectification works so there is no reason why the carrying out of the requirements would be technically unfeasible within the two-month period set out in the Notice.
- In terms of setting a two-month compliance period, officers took account of the impact on the operator in the carrying out of the requirements. The impacts on the operator were balanced against the ongoing harmful visual impact.
- In the recent appeal at Crown House (refs. APP/X5210/C/18/3199851 and APP/X5210/C/18/3201008) the Inspector agreed with a compliance period of two months despite this being a restricted town centre site with multiple land ownerships and rights of way hindering access for rectification works. Notwithstanding these constraints, the Inspector found that the harm from the breach was serious and it was not reasonable to allow that harm to continue for longer than was strictly necessary.

The Council considers that the visual harm in this case is at least equally severe and that there is no justification for it to be allowed to continue for longer than is strictly necessary.

- In conclusion, given that the requirements relate solely to removal and making good rather than new development and that no further permissions are necessary for the rectification works the Council is of the view that two months is a reasonable and proportionate compliance period in this case. Any further continuation of the breach and the harm would not be reasonable or justified.

### **Conditions**

The Council would only be in a position to support an antennae proposal at this site if its visual obtrusiveness was significantly less than the proposal being considered as part of this appeal. The appeal proposal is unacceptable in principle and there are no conditions or legal agreement requirements that could be attached to any permission that would make it acceptable in planning terms.

### **Conclusion**

For the above reasons the Council respectfully requests that the Inspector upholds the Council's decision and dismisses this Appeal.

Yours sincerely,

John Sheehy  
Senior Planning Officer