

## Appeal Decision

Site visit made on 21 August 2019

**by John Whalley**

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

**Decision date: 28 August 2019**

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**Appeal ref: APP/X5210/C/18/3219021**

**379 Kentish Town Road, London NW5 2TJ**

- The appeal is made by CTIL and Telephonica UK Ltd under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Camden Council.
- The notice was issued on 15 November 2018; reference No. EN18/0231.
- The breach of planning control was: Without planning permission: mobile phone antennae erected at roof level.
- The requirements of the notice are:
  1. Totally remove the 6 x antennas and equipment housing located on the roof of the building, 1x electrical meter cabinet located at ground floor level, and all associated development; and
  2. Make good any damage caused as a result of the above works.
- The period for compliance with the requirements is 2 months.
- The appeal was made on grounds (a), (e), (f) and (g). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of decision: The enforcement notice is varied and upheld**

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### Appeal development

1. The appeal concerns the retention of rooftop radio base station antennas and equipment fixed to the roof of the 5 storey end of terrace building, No 379, at the northern end of Kentish Town Road. There is a retail shop on the ground floor. The residential accommodation above is set back from the shop façade. There is a large advertising hoarding immediately to the south of No. 379, largely screening a car wash operation. The southern side of No. 379 had a painted sign, "Welcome To KENTISH TOWN" covering the upper half of the building's flank wall. There was some graffiti below the 'Welcome' sign.
2. The appeal antennae consist, according to the Council, of roof mounted tripods, 6 antennae and associated radio equipment cabinets on the flat roof of No. 379. All 3 pairs of antennae on the roof at No. 379 are clearly visible from various points at street level. They are most especially seen from the south and south-east along Kentish Town Road, but also from the north at the southern ends of Highgate Road and Fortress Road. The cabinets are

fixed at the rear of the roof and are far less visible from the street, being only evident from over the railway on Regis Road.

### **The appeal on ground (e)**

3. An appeal on ground (e) says that the enforcement notice was not properly served on everyone with an interest in the land.
4. s.172(2) of the Act says a copy of an enforcement notice shall be served —
  - (a) on the owner and on the occupier of the land to which it relates; and
  - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. The Council said the enforcement notice was served on 12 individuals as having an interest in the land. They included the owner, occupier, freeholder, mortgagee, and all other interested parties who were registered as having an interest in the land. The Council could only act on the information held on the Land Registry which contained a list of names and addresses with an interest in the land.
6. In my view, the Council did all that was required of them to find the persons and parties with an interest in the land prior to issuing the enforcement notice. They were entitled to rely upon a Land Registry search to identify those parties. The Appellants produced no evidence of any person or party that had an interest in the land and who had not been served with the enforcement notice nor, if so, how they might have been disadvantaged by any omission in service of the notice. CTIL and Telephonica UK Ltd appealed against the notice, submitting relevant grounds of appeal and an appeal statement. No evidence was brought forward to show that any injustice had been caused to any person or party by any possible failure to serve the enforcement notice correctly.
7. The appeal on ground (e) fails.

### **The appeal on ground (a)**

8. The appeal on ground (a) asks that planning permission is granted to retain the works enforced against.
9. It appears the antennae were installed on an emergency basis by virtue of the permitted development concessions in Part 16 Communications, at Class A.(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 – as amended by the (Amendment) (No. 2) Order 2016. Under the amended legislation, the equipment was required to be removed within 18 months. The Council said they wrote to the owners of the building as a reminder of the requirement to remove the equipment. The response was an application to retain the equipment. The Council resolved to refuse the application on design grounds.
10. The three pairs of 2m high antenna are fixed to 2.4m tripods on the flat roof of No. 379. The unhappy prominence of the antennae is exacerbated by the local dominance of the 5 storey No. 379 building. I consider the Council were right to conclude that the appeal installation is detrimental to the appearance of the immediate area and that it unacceptably blights the existing skyline. The Council's Local Plan policy D1 says they will require all development to be of the highest standard of design. It further states that development should not

detract from the panorama as a whole and should fit in with the prevailing pattern of buildings and spaces. Development will not generally be acceptable if it obstructs important views or skylines. I consider that the three pairs of antennae do not comply with those policy guidelines.

11. The Council noted that No. 379 is not a listed building, nor is it in a Conservation Area. But Local Plan policy D2 says that the Council will resist development outside of a conservation area that causes harm to the character or appearance of the conservation area. The Kentish Town Conservation Area covers property at the corner of Leighton Road and Kentish Town Road and includes Leverton Place close to the appeal property, No. 379. That proximity suggests the application of the restrictions of policy D2 is appropriate.
12. The 3 radio equipment cabinets stand just under 2m high on the roof of No. 379. They have been installed on the roof at the rear of the building and are not intrusive in most views from Kentish Town Road. They can be seen more clearly from the south in the vicinity of the Regis Road and Layton Road junction. From these more distant viewpoints the intrusion in the skyline to the north caused by the antennae and the radio equipment cabinets is less. But nevertheless they produce an incongruous element into the views. I conclude that the appearance of the radio communications equipment on the roof of No. 379 Kentish Town Road is unacceptable.
13. The Appellants said there was a need for the development carried out to meet operators' license obligations. The installation which the operators wished to retain permanently would allow them to continue to provide necessary replacement, 2G, 3G and 4G and, in the future, 5G mobile electronic communications services to this part of the London Borough of Camden. That was in the public interest. The Council said no technical justification had been submitted by the Appellants to provide evidence as to why existing equipment on nearby sites could not be upgraded to enhance coverage over the required area.
14. The Appellants said they were willing to fully screen the installation with colour-coded GRP cladding round the radio base station on the roof of No. 379. But, as the Council pointed out, an enclosure sufficient to cover the entire installation on the roof of No. 379 would appear tantamount to adding another floor height to the building. In my view, it would not usefully diminish the unacceptable intrusiveness of the roof installations.
15. In concluding that the appeal on ground (a) should fail, I am also mindful of advice contained in Paragraph 113 of the National Planning Policy Framework 2019. That states the number of radio and electronic communications masts should be kept to a minimum consistent with the needs of consumers, efficient operation of the network providing reasonable capacity for future expansion. It goes on to say that where new sites are required, such as for new 5G networks, equipment should be sympathetically designed and camouflaged where appropriate. In my view, the appeal installation does not meet that test.
16. The appeal on ground (a) fails. Planning permission is not granted for the permanent retention of the radio equipment on the roof of No. 379 Kentish Town Road.

### **The appeal on ground (f)**

17. An appeal on ground (f) asserts that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. This appeal effectivity asserts that the requirements of the enforcement notice are too onerous and that something less should be substituted.
18. All that was suggested by the Appellants was that the installation on the roof of No. 379 could be screened as set out in para. 14 above. Where, as here, there is also an appeal on ground (a), that is a matter for considering whether the imposition of planning conditions would suffice to grant a planning permission. The ground (f) appeal does not directly address the possibility of applying lesser requirements.
19. The Council's enforcement notice and its requirements show they were seeking to remedy what they saw as injury to amenity. Where it is not appropriate to grant a conditional planning permission, the requirement to remove the radio communications equipment from the roof of No. 379 is apposite and proportionate. No lesser requirement was suggested. The appeal on ground (f) fails.

### **The appeal on ground (g)**

20. The appeal on ground (g) asks that more time should be given to comply with the requirements of the enforcement notice. The Appellants said that a minimum period of 12 months was required in order to identify a suitable alternative replacement site. That was, to provide electronic communications services to this busy part of Camden Borough that may be of benefit to the public interest. The Council said they would not object if a longer period than the 2 month period for compliance was justified.
21. I agree with the view that the notice's 2 months compliance period is insufficient. Although extending the period to 12 months may be seen as tantamount to the grant of a temporary planning permission, I accept there is a public interest demand for adequate and up to date radio communication provision and that either upgrading other existing facilities or providing suitable alternative installation sites may take time. I increase the period for compliance to 12 months. To that extent the appeal on ground (g) succeeds.

### **FORMAL DECISION**

22. The enforcement notice is varied by the deletion of the words "2 months" in line 2 of para. 5 on page 2 of the notice and the substitution therefor of the words "twelve months". Subject to that, the varied enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made for the permanent retention of the radio equipment on the roof of No. 379 Kentish Town Road, London NW5 2TJ.

*John Whalley*

INSPECTOR