

Reference:	20/00026/UNAU_B	
Report Type:	Authority for Enforcement Action	
Ward:	Shoeburyness	
Breach of Planning Control:	Without planning permission, the installation of radio antennae to the property.	
Address:	79 The Drakes, Shoeburyness, Essex, SS3 9NY	
Case opened:	24 January 2020	
Case Officer:	Mark Broad	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	



1 Site and Surroundings

- 1.1 The property is a dwelling forming part of a low rise, high density residential development comprising terraced houses and flats located to the west of Eagle Way. No. 79 lies to the southern end of The Drakes and has an archway below which provides access to a parking court at the rear. No site-specific planning policy designations affect the site.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a dwelling within Class C3 of the Town and Country Planning (Use Class Order) 1987 (as amended).

3 Relevant Planning History

- 3.1 The most relevant planning history for the determination of this case is shown on Table 1 below:

Table 1: Relevant Planning History of the Application Site

Reference	Description	Outcome [Date]
02/00611/FUL	Retain existing amateur radio aerial (Retrospective) Reasons for refusal. The masts appear intrusive, alien and out of character in this area of high-density residential development and detract from the appearance of the building on which they are situated. They are therefore detrimental to the visual and residential amenities of the area, particularly insofar as the properties to the rear in Heron Close are concerned, and the development is therefore contrary to Policies H5 and C11 of the Borough Local Plan.	Refused [24 July 2002]
14/00178/UNAU_B	Enforcement case for radio antennae	Enforcement Notice issued 12.11.2014
	Historic enforcement case from 2002	No Further Action (2005)

4 Planning Policy Summary

- 4.1 The National Planning Policy Framework (NPPF) (2021)
- 4.2 Planning Practice Guidance (PPG) – National Design Guide (NDG) (2021)
- 4.3 Core Strategy (2007): Policies KP2 (Development Principles), CP4 (Environment and Urban Renaissance)
- 4.4 Development Management Document (2015): Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land)
- 4.5 Southend-on-Sea Design and Townscape Guide (2009)

5 The alleged planning breach, harm caused and efforts to resolve breach to date

5.1 The identified breach of planning control is:

Without planning permission, the installation of seven antennae on site; two free-standing circular antennae, three mounted to the side elevation of the building and two to its rear elevation.

5.2 In January 2020 a complaint was received by the Council alleging radio antennae having been installed at the property without planning permission.

5.3 The property has also been subject to earlier enforcement investigations in 2002 and 2014. In both instances enforcement notices were issued. In more detail for the case under reference 14/00178/UNAU-B the enforcement notice served in December 2014 required the following;

Remove the 3 unauthorised developments as follows:

- a. The large antenna located towards the centre of the building (to the rear) which requires supporting cables.
- b. The pole with devices attached located to the front of the property and attached to the wall adjacent to the ridge of the oriel window.
- c. The antenna located towards the rear, south easterly corner of the building.

5.4 During a recent site visit the case officer ascertained in relation to the above enforcement notice that the antennae located towards the centre of the building (to the rear) which required supporting cables and the antenna located towards the rear, south easterly corner of the building have been removed. However the pole mounted on the front elevation required to be removed by the 2014 Enforcement Notice remains in situ. In addition to the above antennae, three antennae have been installed to the flank gable of the property, two taller, antennae have been installed to the rear elevation, one towards the centre and one towards the western part of the rear elevation, and two free-standing circular antennae have been installed in the rear part of the site. Whilst historically, a wall mounted antenna was installed on the flank gable of the property, the currently installed antennae are materially larger.

5.5 It has been found through the determination of a planning application in 2002, the subsequent service of an enforcement notice and the service of the 2014 Enforcement Notice that the installation of an array of antennae in this location is unacceptable and contrary to planning policies and guidance. The antennae on site do not benefit from permitted development provisions and with the service of the 2014 Notice any potential permitted development rights have been lost. There is therefore no fall-back position to be considered.

5.6 The antennae are considered to result in demonstrable and significant harm to the visual amenity of the area and, as such, it is reasonable, expedient and in the public interest to pursue enforcement action to secure the removal of the antennae on the grounds that they appear intrusive, alien and out of character in this area of high-density residential development and detract from the appearance of the building and site on which they are located. The antennae are contrary to National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007), Policy DM1 of the Development Management Document (2015) and the advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the National Design Guide (2021).

5.7 Staff consider that it is proportionate and justified in the circumstances of the case that an enforcement notice should be served as this will bring further focus to the need for the breach to cease and the identified harm to be remedied. Service of an enforcement

notice carries its own right of appeal and also does not fetter the owner in seeking to gain planning permission for a different proposal which remedies the identified harm.

- 5.8 Taking enforcement action in this case may amount to an interference with the owner/occupier's human rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area.

6 Equality and Diversity Issues

- 6.1 The Equality Act 2010 (as amended) imposes important duties on public authorities in the exercise of their functions and specifically introduced a Public Sector Equality Duty. Under this duty, public organisations are required to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and must advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. Officers have, in considering this enforcement case and preparing this report, had careful regard to the requirements of the Equalities Act 2010 (as amended). They have concluded that the recommended enforcement action will not conflict with the Council's statutory duties under this legislation

7 Recommendation

7.1 Members are recommended to AUTHORISE ENFORCEMENT ACTION to:

- a) Remove the three (3) poles and antennae attached to the north flank wall of the building; and
- b) Remove the two (2) poles and antennae attached to the rear elevation of the building; and
- c) Remove the two free-standing poles and antennae from the rear part of the site; and
- d) Remove from site all materials and debris resulting from compliance with requirement (a), (b) and (c) above.

- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice. Whilst proceedings could be brought in isolation against the sole remaining antenna at the site subject of the 2014 enforcement notice, it is considered that it would be sensible for any prosecution in that regard to take account of the enforcement action against the wider collection of antennae now on site including whether compliance is achieved through those means.

- 7.3 When serving an Enforcement Notice the Local Planning Authority must ensure a reasonable time for compliance. In this case a compliance period of 28 days is considered reasonable for the above works.