

Date: 01/11/2023
Your Ref: APP/X5210/C/23/3329544
Our Ref: EN23/0007

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The Planning Inspectorate
Temple Quay House
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Dear Sir/Madam,

Town and Country Planning Acts 1990 (as amended)
Appeal by Welby London Ltd
Site at Flats 13a and 13b, 19 Lancaster Grove, London, NW3 4EX

I write in connection to the above appeal against enforcement notice (Ref: **EN23/0007**) for ***Without planning permission: the subdivision of a rear ground floor studio flat (Flat 12) to create two studio flats with mezzanine floors (Flats 13a and 13b).***

The Council's case for this appeal is largely set out in the Enforcement Notice and Officer's delegated report which was sent with the Questionnaire. The enforcement notice was issued on 4th August 2023 for the following reasons:

- a) The change of use has occurred within the last 4 years;
- b) The unauthorised flats provide a substandard quality of accommodation by reason of their significantly small size, reduced head height above and below mezzanine level, and cramped layouts to the detriment of residential amenity. The development is therefore contrary to policy H6 (Housing choice and mix) and H7 (Large and Small Homes) of the Camden Local Plan 2017.
- c) In absence of a S106 legal agreement to secure the development as car free, the development contributes unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking), A1 (Managing the impact of development) and DM1 (Delivery and monitoring)' of the Camden Local Plan (2017).

1.0 Summary

- 1.1 The site features a 4 storey semi-detached property on the northern side of Lancaster Grove. It is sited within the Belsize Park Conservation Area. The site is not statutorily or locally listed.
- 1.3 The enforcement notice served on the 4th August 2023, requires the following:
1. Cease the use of the 2x rear ground floor studio flats with mezzanine floors known as 13a and 13b as residential units;
 2. Remove the partition wall which facilitates the use as two residential units;
 3. Remove the mezzanine level;
 4. Remove one kitchen;
 5. Reinstate one residential unit as per the approved drawings for 2015/0268/P attached at appendix A;
 6. Make good on any damage caused as a result of the works and remove any resulting debris from the site.
- 1.4 In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

- 2.1 In determining the above mentioned application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The full text of the relevant policies was sent with the questionnaire documents.
- 2.2 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 3rd July 2017 and has replaced the Local Development Framework Core Strategy and Camden Development Policies documents as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reasons for issuing the enforcement notice:
- A1 Managing the impact of development
 - A4 Noise and vibration
 - D1 Design
 - D2 Heritage
 - DM1 Delivery and monitoring
 - G1 Delivery and location of growth
 - H1 Maximising housing supply
 - H6 Housing choice and mix

- H7 Large and small homes
- H8 Housing of older people, homeless people and vulnerable people
- T1 Prioritising walking, cycling and public transport
- T2 Car-free development and limiting the availability of parking.

The Council also refers to the following supporting guidance documents:

Amenity CPG (2021)
Design CPG (2021)
Housing CPG (2021)
Planning Obligations/Developer Contribution CPG (2019)
Transport CPG (2021)
Belsize Park Conservation Area Statement 2023

- 2.3 The Council also refers to the following legislation, policies and guidance within the body of the Officer's Report:

National Planning Policy Framework (2023)
London Plan (2021)

3.0 Planning history summary

- 3.1 **2015/0268/P** - Established use of the site as 20 self-contained residential units – **Certificate granted, 13/03/2015**. A copy of the plans and decision notice for this application is attached at Appendix A.

3.0 Comments on the Appellant's Grounds of Appeal

- 3.1 The appeal is made under Grounds A, C, E, F and G. The following defines these appeal grounds, then sets out the appellant's case pertaining to each ground in *italics* and the council's comments follow. Please note the appellants grounds of appeal are copied verbatim from the appellant's statement and have not been summarised. It is noted that some of the appellant's paragraphs are incomplete.

Ground A – “that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged”

- 3.2 *Appellant - There was no intention to carry out unauthorised work and please note an Application for Building Regs was made and approved. The fact the property has an HMO License may have “muddied the waters” regarding whether planning permission was required. Review of the Planning Register revealed the existence of the Lawful Development Certificate (LDC) granted in 2015 in respect of the property as 20 self-contained residential units.*

- 3.3 Council – It is irrelevant that a building regulation application was approved. This is separate to the planning permission that would have been required for the works.
- 3.4 Council - As set out in the Officer Delegated Report, the property is not considered a large House in Multiple Occupation (HMO). While the property holds a HMO licence this for the common parts of the building and includes the flats as they are under the same ownership. HMO licensing and planning are subject to different legislation. The Council remains of the opinion the building contains 21 self-contained flats with each unit having their own separate kitchen and bathroom behind their own locked door.
- 3.5 *Appellant - While acknowledging the conversion undertaken does not meet the Council's internal space standards a practical way forward would be to retain Units 13a and 13b (on the upper ground floor) as built and amalgamate Units 15 and 15a (on the lower ground floor) into a single Unit 15. The attached floor plans confirm the floor space involved is broadly similar and the solution suggested would maintain the status quo as per the LDC granted, namely as 20 Self-contained Residential Units .*
- 3.6 *The benefits of this approach would be:*
- 3.7
- *The conversion carried out could remain and not result in removal of the newly installed kitchenettes and bathrooms in order to reinstate the single unit.*
 - *The amalgamation of the two Units on the lower ground floor i.e. 15 and 15a would offer the opportunity to modernise and renovate the space in creating a single unit.*
 - *All the works proposed would be internal and not require planning permission and the overall Number of Units would remain as per the LDC granted.*
 - *The existing Tenancies will not have to be terminated and can continue as present.*
- 3.8 *A S106 Planning Obligation will be submitted in support of the ground (a) appeal to ensure the amalgamation of the two Units on the ground floor is carried within a specified time period should the appeal be allowed and planning permission granted for retention of the existing units 13a and 13b on the upper ground floor.*
- 3.9 Council – This matter was discussed with appellant during the course of the investigation and again recently via their Solicitor. As explained to the appellant, the Council would welcome the amalgamation of units within the building to improve the quality of accommodation but this would not negate the serious concerns that has been identified in respect to the substandard quality of accommodation that has been created by virtue of the sub-division of the rear studio flat formerly known as '12', into two very small narrow cramped self-contained units. The Council has a duty to ensure that current and future occupiers have access to accommodation that is well designed and fit for purpose and provides an adequate standard of residential amenity, all of which are considered to contribute to resident's health and wellbeing.

- 3.10 Council - While the Council appreciates the current tenants will have to be evicted in order to carry out the work to remedy the planning breach, this was duly considered when the Enforcement Notice was issued with a six month time frame for the works to be carried out and relevant notice given.
- 3.11 *Appellant - The Council's concern about parking impacts (Reason (c) for issuing the Enforcement Notice) would also be addressed by the S.106, as the Appellant is willing to give up Residents permit rights for some of the units. (Currently, all 20 units which are Lawful by virtue of the LDC) have the right to obtain Residents Parking permits. This limb of the S.106/S.16 Planning Obligation would therefore be a "net gain" for the Council in terms of Transportation matters.*
- 3.12 *Prior to commencing work it will be necessary to either provide alternative accommodation for the existing Tenants of Flats 15 & 15a which may take 4-8 weeks or serving section 21 notice to leave as they are both in periodic tenancies (versus tenants of Flats 13a & 13b which have 12 month tenancies which expire February and March 2024).*
- 3.13 Council – As discussed above, the Council does not consider a S106/S.16 agreement in respect of amalgamating Flats 15 and 15a is an appropriate solution to the breach. However should the Inspector be minded to allow the retention of Flats 13a and 13b then the Council would welcome a S106 agreement to secure the units as car-free.

Ground B – “that those matters have not occurred”

Ground C – “that those matters (if they occurred) do not constitute a breach of planning control”

- 3.14 *Appellant - The Enforcement Notice describes the alleged breach as “ Without planning permission: the subdivision of a rear ground floor studio flat (Flat 12) to create two studio flats with mezzanine floors (Flats 13a and 13b).”*
- 3.15 *However, the creation of the mezzanine floor/floors does not constitute development which requires planning permission. There has therefore not been a breach of planning control in this regard.*
- 3.16 *The remainder of the description of the alleged breach turns on “subdivision”, meaning works. The carrying out of internal works does not of itself constitute development which requires planning permission.*
- 3.17 Council – The mezzanine floor has facilitated the creation of two unauthorised flats and contributed to the cramped nature of the dwellings and restricted head room above and below it.

- 3.18 Council - The development has resulted in the creation of two new planning units through the subdivision of flat 12 into two flats. Section 55(3)(a) of the Act states that "... it is hereby declared that for the purposes of this section (the meaning of development) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part thereof which is so used." In practice, the wording is also applied to the further subdivision of an existing self-contained flat.

Ground D – “that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters”

- 3.19 *Appellant* – The appellant’s statement does not contain any text under this ground of appeal.
- 3.20 Council – The appellant’s statement does not contain any evidence to substantiate this claim. The development has occurred within the last 4 years and is therefore not immune from enforcement action.

Ground E – “that copies of the enforcement notice were not served as required by section 172”

- 3.21 *Appellant* – The appellant’s statement does not contain any text under this ground of appeal.

Council – The appellant’s statement does not contain any evidence to substantiate this claim. The notice was correctly served on all those identified as having an interest in the land.

Ground F – “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”

- 3.22 *Appellant* - *The above steps are excessive for, inter alia, the reasons set out below. Commenting in turn on the above –*

1. This contains elements which go beyond ceasing to use as two residential units. The wording would arguably prohibit use of any part of the area which is subject to the Enforcement Notice as a residential unit. Reference to the mezzanine floors should be deleted; they do not require planning permission (see Ground (c) above). The mezzanine floor(s) could anyway provide valuable additional usable space (e.g. as a sleeping / reading platform) and their retention is compatible with the Council’s rationale for the Enforcement Notice.

2. Retention of part of the partition wall is compatible with the Council's rationale for the Enforcement Notice. It would also likely be necessary in order to retain the mezzanine floor(s), whether in whole or in part.

3. See comments above on 1.

4. – (no text provided)

5. This would require internal works which are not necessary in order to address the "planning harm" which is understood to be behind the service of the Enforcement Notice, i.e. the use of the Appeal site as two studios.

Reference to "as per the approved drawings for 2015/0268/P" is an excessive requirement. The location of the bathroom/w.c. and kitchen facilities within the flat which was formerly known as no. 12) is not relevant to the Council's reasons for serving the Enforcement Notice; they are matters of internal arrangement, which do not require planning permission.

3.23 Council – The steps to remedy the breach are considered appropriate and proportionate. The breach has been clearly identified and harm evidenced in the Officer Delegated Report and Enforcement Notice. The internal works are considered to facilitate the breach resulting in substandard living conditions for current and future occupiers.

4.0 Council - Should the Inspector be minded to allow the appeal, the following S106 matters and conditions are recommended.

4.1 **S106**

4.2 The Council's legal officer is liaising with the appellants regarding a draft legal agreement and the Inspector will be updated at final comments stage. The three S106 matters that the appellants raise are as follows.

4.3 **Amalgamating flats 15 and 15a**

4.4 As noted above, the appellant seeks to offer this as remedy in lieu of complying with the requirements of the Enforcement Notice. The appellant seeks to secure this via a S106 agreement however this would require planning permission and it is the Council's view that a S106 agreement is not the appropriate method. It is the Council's view that this does not address the planning harm and only full compliance with the Enforcement Notice would resolve this matter.

4.5 **Cycle parking provision**

4.6 For studio flats the requirement is for 1 cycle space per unit, as such the development would require 2 cycle parking spaces in line with policy T1 and CPG Transport. If there is no scope to provide the cycle parking within the building or at the rear, the Council would seek a S106 contribution of (£4,320/6 x 2 =) £1,440 towards the provision of 2 spaces in a bike hanger to be provided in the vicinity of the site.

A planning obligation is considered the most appropriate mechanism for securing the financial contribution as this is not possible under planning conditions. Cycle storage provision also as it relates to provisions that are outside of the development site.

4.7 Car Free Development

4.8 Policy T2 requires all developments in the borough to be car-free. This means no car parking spaces should be provided within the site (other than essential spaces) and that occupiers are not issued with on-street parking permits. The Council requires this obligation to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Therefore, the development should be secured as car-free through via a covenant under s.16 of the Greater London Council (General Powers) Act 1974 and other local authority powers if the appeal were allowed.

4.9 A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car-Free" and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free".

4.10 Use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

4.11 CIL Compliance:

Both the car free and cycle storage requirements comply with the CIL Regulations as these ensure that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. These are also directly related to the development and fairly and reasonably related in scale and kind they relate to the parking and cycle storage provision for the site and impact on the surrounding highway network.

4.12 Conditions

4.13 The council does not consider that any conditions would mitigate the harm caused.

5.0 Conclusion

3.1 Having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.

3.2 If any further clarification of the appeal submissions are required, please do not hesitate to contact Katrina Lamont on the above direct dial number or email address.

Yours sincerely,

A handwritten signature in black ink that reads "Klamont". The signature is written in a cursive style with a large, prominent 'K' and 'L'.

Katrina Lamont
Senior Planning Officer – Enforcement Team
Supporting Communities Directorate
London Borough of Camden