TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 174

WRITTEN REPRESENTATIONS

APPEAL BY: WELBY LONDON LTD

APPEAL STATEMENT

SITE: Flats 13a and 13b, 19 Lancaster Grove, London, NW3 4EX

30/10/2023

LPA REFERENCE: EN23/0007

PINS REF- APP/X5210/C/23/3329544

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INTRODUCTION AND RELEVANT BACKGROUND

This Appeal is against an Enforcement Notice (EN) served by the London Borough of Camden (LBC) the alleged breach of Planning Control being:

"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 flats referred to in the EN are situated within a semi-detached 4 storey property known as 19 Lancaster Grove which lies within the Belsize Park Conservation Area but is not Listed.

The Appeal Site consists of an area which was occupied by Flat 12 and is now occupied by Flats 13a and 13b.

The only relevant planning history is that in 2015 the Council granted a Certificate of Lawful Use for use of the above property as 20 self-contained flats. The property has since then continued to be occupied as 20 self-contained flats, with the number of flats having increased to 21 at the start of 2023.

The EN was appealed on the following grounds:

(a), (c), (e), (f) and (g), each of which is considered in turn below in this Statement.

The Appellant has confirmed that it had no intention to carry out unauthorised development.

1. GROUND (a) – Deemed Application

1.1 Looking at the LPA's first reason for issuing the EN (para 4(b) of the EN) -

" *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."*

It is accepted that the Appeal Site (which was Flat 12 and is now Flats 13a and 13b) does not meet the space standards for two studio flats. However, this issue needs to be considered within

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the context of both the planning history of 19 Lancaster Grove and the Unilateral Undertaking which forms part of this Appeal.

The Lawful use of 19 Lancaster Grove is as 20 self-contained residential flats. None of those flats meet the space standards. However, the Council's Environmental Health Department has granted a HMO Licence(under the Housing Acts) for the use of 20 as 20 flats; some of those flats are almost identical to Flats 13a / 13b – they have the same floor area and mezzanine kitchen facilities.

Given the limited floorspace of the Appeal Site (36 sq m when it was Flat 12), the vast majority of Policy H6 is not pertinent to the current EN appeal.

The creation of a mezzanine floor in 13a and in 13b means that a greater amount of floorspace is provided for occupation by each person resident within the Appeal Site.

Just like Flat 12 (and all the other flats within 19 Lancaster Grove), 13a and 13b are housing products in the market sector which meet the needs across the individuals on a modest income (an aim of Policy H6) - individuals who need to live within easy reach of central London and who do not wish to share cooking/bathroom facilities with strangers.

There is very little material difference between the occupation of 19 Lancaster Grove as 21 self-contained flats instead of as 20 self-contained studio flats.

Turning to Policy H7, given the very limited floorspace withing the Appeal Site the vast majority of H7 is not pertinent to the EN or this Appeal. The Appeal Site provided a "small home" (as described in H7) when it was Flat 12. As Flats 13a and 13b, the Appeal Site (with its increased floorspace) provides two "small homes". The Appeal Site is not capable of providing anything other than a "small home(s)" and therefore is making its contribution to diverse housing supply.

In summary, in settling its first reason for issue of its EN the Council has not given due consideration to the Lawful use of no. 19 as a whole nor of the very limited floorspace to which the EN and this Appeal relate.

1.2 Looking at the Council's second reason for issuing the EN (para 4(c) of the EN) –

"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). "

The Council cites the additional demand for parking that could arise due to the creation of an additional unit. In line with its Policy, Camden would usually seek a restriction on the right to Residents Parking Permits (for on-street parking) when granting planning permission for an extra residential unit (so that occupiers would not be entitled to a Permit unless they are a Disabled Badge holder).

The Transport issues raised by the Council have little merit, in our submission, given that (even ignoring the UU proposed, which is discussed below) acceptance of the conversion would result in only one additional unit of accommodation; namely 21 units overall as opposed to the lawful 20 units which exist.

It should be noted there is no off-street parking or cycle space provision for the existing 20 Lawful units, all of which are eligible for parking permits.

Notwithstanding the above submissions, the Appellant's case ensures that the second reason for service of this EN is fully addressed by the Unilateral Undertaking ("UU") - under Section 16 (of the 1974 Act) and Section 106 (of the 1990 Act) - which the Appellant has submitted in draft as part of its Appeal and which will be completed during this Appeal process.

Furthermore, the proposed UU would remove the right to Residents Parking Permits not only from either 13a of 13b, but for **both** of those units – and also for flat 15.

This means that there would be a net benefit in terms of potential parking stress if the EN is quashed and planning permission issued.

In addition, the Appellant is open to extending this effect of the UU so as to remove "Res-Park" rights from other flats within 19 Lancaster Grove (each of which 20 Lawful flats currently has full rights to Residents Parking permits to park on-street).

Furthermore, with regard to wider Transportation objectives the Appellant has included in the UU an obligation regards cycle parking/storage.

It is therefore submitted that the second reason for service of the EN is more than overcome by the UU.

1.3 The Unilateral Undertaking

The Appellant has submitted a Unilateral Undertaking ("UU"), under Section 16 (of the 1974 Act) and Section 106 (of the 1990 Act), in draft as part of its Appeal and the UU will be completed during this Appeal process.

The UU provides for, inter alia, a "use swap" between the Lawful units 15 and 15a with 13a and 13b.

In exchange for 13a and 13b being allowed to remain, 15 and 15a would be amalgamated into one unit. The UU would therefore ensure there being no increase in the number of units within 19 Lancaster Grove arising from upholding of the Ground (a) appeal.

The Section 106 Planning Obligation in the UU states that if the appeal is upheld -

> *" No later than three months from the date of the Decision Letter to remove one of the two sets of kitchen facilities from the Shaded Area [units 15 and 15a], remove the dividing wall and not to Occupy (or permit the Occupation of) the Shaded Area [units 15 and 15a], as more than one self-contained unit of residential accommodation within Use Class C3"*

There would therefore be no increase overall in the number of units within 19 Lancaster Grove, it would remain 20.

Furthermore, the size and quality of accommodation provided within 13a and 13b is better than that within 15 and 15a. Also, the amalgamated 15 will benefit from modernisation and refurbishment as part of the use swap

The benefits of the UU in terms of parking stress, cycle-storage and the Council's second reason for issue of the EN have already been set out in detail at section 1.2 above of this Statement.

The Appellant's solicitor sent the draft UU to the Council on 20th October, the cover-email, draft UU and the Council's email response are at Appendix 1 to this Statement.

The Council is urged to review its approach to the UU proposal, to apply the "planning balance" by considering the overall improvements that the UU would secure (as are outlined within this Appeal Statement).

The Appellant would welcome further discussions with the Council about the wording of the UU; the Appellant is happy to consider revisions.

In conclusion while the breach cited in the EN conflicts with certain Policies of the Development Plan, when the Appeal proposal is looked at overall (i.e. including the UU under Sections 106 and 16) there is a "net benefit" in planning terms. That is the case in terms of the Policies cited in the Council's first and second reasons for issue of the EN. we submit there are Other Material Consideration which, on balance, justify the grant of retrospective permission.

2. **GROUND (c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").**

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)."*

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.

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.

The only works that have been carried out do not constitute development which requires planning permission – see section 55(2) of the Town & Country Planning Act 1990.

" (2)The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i)affect only the interior of the building, or

(ii)do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground; "

The breach which is cited in the EN does not comprise any element which constitutes development (within the terms of Section 55) and so the EN should be quashed under Ground (c).

3. **GROUND (e) The notice was not properly served on everyone with an interest in the land.**

Having now been able to investigate the matter, this Ground is not being pursued.

4. **GROUND (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections**

The steps required in the Enforcement Notice are -

" 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 facilities 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. "

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.

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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 comment

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.

6. Appears excessive. It is only when new occupants are due to move in that the need to make good the internal decoration and clear the Appeal site of debris would arise.

5. GROUND (g) The time given to comply with the notice is too short.

Having now been able to investigate the matter, this Ground is not being pursued.

Appendices

Appendix 1-

Draft Unilateral Undertaking and covering email sent to LPA for comment,
and LPA's response to Draft Unilateral Undertaking

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