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# Appeal Decision

Site visit made on 10 January 2024

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25<sup>th</sup> January 2024**

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**Appeal Ref: APP/X5210/C/23/3315503**

**Land at 122A Finchley Road, London NW3 5HT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Amir Shirafkan against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 15 December 2022.
- The breach of planning control as alleged in the notice is without planning permission: the change of use of the mezzanine floor from beauty clinic (Use Class E) to 3 x residential units (Use Class C3) and removal of part of the front façade to create recessed balconies.
- The requirements of the notice are: 1. Cease the use of the mezzanine floor as 3 residential units (Use Class C3); 2. Remove all kitchens, bathrooms and return the mezzanine floor to its former layout; and 3. Completely remove the recessed balconies by reinstating the front elevation to match the position, materials, design and proportions of the pre-existing façade.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), and (f) of the Act. 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 appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out in the Formal Decision.**

## Preliminary Matter

1. The Government published a revised National Planning Policy Framework (the Framework) after appeal submissions had been made. I have not considered it necessary to consult parties on those revisions, but have taken the Framework, as revised, into account when reaching my decision.

## The Notice

2. It is incumbent on me to get the notice in order. Section 55 of the Act provides the meaning of development requiring planning permission, which includes the material change in the use of any buildings<sup>1</sup>. The change of use of a mezzanine floor therefore only comprises development requiring planning permission if it is a material change of use. It is not disputed that the change of use stated in the notice comprises development requiring planning permission. I shall therefore correct the notice without causing injustice to any parties by inserting the word 'material' within the description of the breach of planning control<sup>2</sup>.

## Ground (e)

3. To succeed under this ground of appeal the appellant would need to demonstrate that copies of the enforcement notice were not served as required

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<sup>1</sup> Section 336 of the Act confirms 'building' includes any part of a building.

<sup>2</sup> In accordance with section 176(1) of the Act.

by section 172 of the Act. Subsection (2) of that section states that a copy of the notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land. Subsection (3) states that the service of the notice shall take place not more than 28 days after its date of issue and not less than 28 days before the date specified as the date on which it is to take effect.

4. The notice was issued on 15 December 2022 and served on a number of persons at various addresses on the same day, not less than 28 days before it would have come into effect. The persons served with a copy of the notice included the Owners and Occupiers of: 122A-122B Finchley Road; First and Second Floors 122 Finchley Road; and Flats 1, 2, 3, and 4 at 122 and 122B Finchley Road. By serving the notice on these parties and others, the Council ensured compliance with section 172 of the Act.
5. It is claimed that the correct address of the land was First Floor 122A Finchley Road at the time the notice was issued. However, there is no evidence before me which indicates that the Owner or Occupier of the land did not receive a copy of the notice. The appellant received a copy of the notice served on him at 122 Finchley Road and has been able to lodge this appeal. No parties appear to have been substantially prejudiced by the notice not being served on any persons at First Floor 122A Finchley Road. For these reasons, even if I found that a person required to be served with a copy of the notice was not served, I may disregard that under the provisions of section 176(5) of the Act.
6. The appeal under ground (e) therefore fails.

### **Ground (a) and the deemed application for planning permission**

7. The main issues are:
  - Whether the development provides acceptable living conditions, with particular regard to size, outlook, and daylight;
  - Whether the development could be 'car-free';
  - Whether a financial contribution towards the provision of affordable housing would be necessary to make the development acceptable in planning terms; and
  - The effect on the character and appearance of the area.

#### *Living Conditions*

8. I shall refer to the flats as they were labelled during my site visit: Suite A, Suite B, and Suite C. To clarify, the Council has referred to Suite A as 'Flat 2', Suite B as 'Flat 1', and Suite C as 'Flat 3'.
9. Suite A is a single aspect flat with a shower room and a combined kitchen/lounge/dining area. The appellant has described it as a 1-bedroom flat, and I noted there was only one bed present during my site visit, but it would be more accurate to refer to it as a 2-bedroom flat. This is on account of its layout, the sizes of rooms, and how it could reasonably be occupied, even if it is to be set up with a study room for students or other people working from home. Doors/windows open out from what I consider to be the bedrooms onto a flat roof area at the rear of the property to provide access to outside space. The combined kitchen/lounge/dining area is not served directly by any

- windows. It is not disputed that Suite A has an internal floor area of 51.5 square metres ('sqm').
10. Notwithstanding its access to outside space on a flat roof, Suite A offers poor levels of outlook and access to daylight on account of its glazed windows/doors being restricted to a single elevation serving bedrooms and an exit. The combined kitchen/lounge/dining space is a dark and confined space with inadequate natural lighting. Suite A is a small flat with an internal floor area which falls significantly short of the minimal internal space standards for 2-bedroom flats set out in the London Plan (2021) (LP).
  11. Suite B is a dual aspect flat with a shower room, a combined kitchen/lounge/dining area, and a recessed balcony. The appellant has described it as a 1-bedroom flat, and I noted 2 single beds in one room and a table and chairs in the other. However, as with Suite A, it would be more accurate to refer to Suite B as a 2-bedroom flat on account of its layout, the sizes of rooms, and how it could reasonably be occupied, even if it is set up with a room for studying or working from home. Partially obscured glazed windows serve the bedrooms, and glazed doors separate the combined kitchen/lounge/dining area from the balcony. The recessed balcony is enclosed save for a thin aperture looking out over Finchley Road. It is not disputed that Suite B has an internal floor area of 52.5 sqm.
  12. Suite B offers very poor outlook on account of its bedroom windows needing to be obscure glazed to protect the privacy of occupiers. Those windows face onto a driveway used to access a number of properties. People walking along that driveway would be able to regularly see into the bedrooms in the absence of obscure glazing to those windows or constantly closed curtains/blinds. Although the obscure glazing protects privacy, it severely restricts outlook. The restricted aperture of the recessed balcony limits daylight to the main living space of the dwelling and provides the only outlook available to occupiers, over Finchley Road. As a small 2-bedroom flat with a cramped layout, the internal floor area of Suite B also falls significantly short of the minimal space standards referred to by the main parties.
  13. Suite C is a single aspect studio flat with shower room. It has glazed doors which open onto a recessed balcony to match that which serves Suite B. As a studio flat it exceeds the minimum internal space standards set out in the LP. The recessed balcony offers a poor outlook and limited access to daylight.
  14. Overall, Suites A, B, and C all provide unacceptable living conditions for their occupiers on account of poor outlook and limited access to daylight. Suite C provides an acceptable amount of internal space as a studio flat, but this does not overcome the lack of acceptable outlook and access to daylight. Suites A and B provide insufficient internal space to provide acceptable living conditions for occupiers.
  15. The development therefore fails to accord with Policy D1 of the Camden Local Plan (2017) (CLP) and the Camden Planning Guidance: Housing<sup>3</sup>. These seek to achieve, amongst other things, housing which provides a high standard of accommodation.

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<sup>3</sup> Supplementary Planning Document (2021)

16. The notice also refers to Policy H7 of the CLP, but this relates to securing a range of different sizes of homes as part of housing developments. I do not find any conflict with Policy H7 in this case.

#### *Car-free*

17. The site is located close to underground and overground train stations and bus stops. It has the best possible Public Transport Access Level (PTAL), 6b. Policy T2 of the CLP requires all new development to be 'car-free', which can be secured by a legal agreement.
18. The appellant has indicated a willingness to enter into a legal agreement which could prevent occupiers of the flats from obtaining parking permits for the local area and ensure they do not contribute towards existing parking stress and congestion. However, no legal agreement has been provided and it is not possible for one to be required by a condition which would meet the tests set out at paragraph 56 of the Framework. For the same reason, a condition could not prevent occupiers from obtaining parking permits.
19. Notwithstanding the very high PTAL of the site, in the absence of a legal agreement securing the development as car-free, occupiers of the flats would remain able to apply for local parking permits. This would exacerbate parking stress and congestion in the local area and conflict with Policy T2 of the CLP, which aims to reduce car ownership and use, and lead to reductions in air pollution and congestion, amongst other things.

#### *Affordable Housing*

20. Policy H4 of the CLP requires all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100 sqm to provide a contribution towards affordable housing. It states that where affordable housing cannot practically be provided on-site, provision of off-site affordable housing in the same area may be acceptable, or a payment-in-lieu in exceptional circumstances. In this case, the Council has suggested a payment-in-lieu of £35,000.00 should be secured by legal agreement towards the provision of off-site affordable housing.
21. No affordable housing has been put forward and a payment-in-lieu to contribute towards the provision of affordable housing has not been secured by a legal agreement. There is no evidence that either options would not be viable. For the same reasons explained above, although the appellant has indicated a willingness to enter into a legal agreement to secure a financial contribution towards the provision of off-site affordable housing, a legal agreement cannot be secured by condition in this case. The development therefore fails to accord with Policy H4 of the CLP.
22. The Council has also referred to Policies H6 and H7 of the LP. These relate to the split of affordable housing tenure to be secured on-site and the monitoring of affordable housing. The development is not in conflict with either policy.

#### *Character and Appearance*

23. The appeal building is a 3-storey block with rooms in its roof space. It has a tall, rendered façade at ground floor level, with brickwork above. Two commercial units occupy the ground floor, and a number of residential flats occupy the upper floors.

24. Alterations have been made to half of the façade at ground floor level to create recessed balconies on the front elevation, overlooking Finchley Road. The aperture for those balconies comprises a narrow strip above the fascia signage for the ground floor business. Historic documents<sup>4</sup> show this space was previously covered by large fascia signage.
25. The alterations relate poorly to the other half of the appeal building, which has a neatly detailed finish. In comparison, the balconies introduce an unconventional physical deviation from the otherwise more coherent design of the building. That said, historic documents show previous arrangements of this part of the façade also failed to replicate or align with the aesthetics of the rest of the building. The former arrangement of this part of the appeal building, which would need to be reinstated to comply with the notice, would offer little improvement to the overall design and appearance of the appeal building in the context of its mixed surroundings.
26. There are a broad range of building styles along Finchley Road and in its surrounding area. In general, although the recessed balconies are unexpected features on the appeal building, they are not notably out of place in views up and down Finchley Road. As such, they do not harm the character or appearance of the area or appear incongruous. In all views, the appeal building is seen as one of many buildings of varying architectural quality and mixed commercial character, especially at ground floor level.
27. Considering the former shopfront arrangement of this part of the appeal building, I do not consider the external alterations create an incongruous feature which negatively impacts on the host property or the wider street scene. The development does not therefore harm the character and appearance of the area and is not contrary to Policy D1 of the CLP in this regard. This policy requires development to respect local context and character, amongst other things.

#### *Other Matters*

28. The development provides 3 dwellings at the lower end of the rental market, in an area where I am advised such properties are in high demand. The dwellings are close to a range of good transport links and local services, and they replace retail storage space which is no longer needed. The development plan and the Framework seek to increase housing supply, but this should be achieved through the provision of high-quality homes which comply with the development plan as a whole.

#### *Conclusion on the appeal under ground (a) and the deemed application for planning permission*

29. All of the dwellings provide poor levels of outlook and access to daylight for occupiers, and Suites A and B comprise small, undersized dwellings. The development therefore fails to provide acceptable living conditions for its occupiers. In addition, the development has not been secured as car-free and no financial contribution towards the provision of off-site affordable housing has been secured. The development is contrary to the development plan taken as a whole and there are no material considerations, including the Framework, which indicate planning permission should be granted. For these reasons the

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<sup>4</sup> The Council's Figures 6 and 7; and the appellant's Figure 6 and documents labelled 'Old Shopfront Drawing 1970'

appeal under ground (a) should not succeed and the deemed application for planning permission should be refused.

### **Ground (f)**

30. To succeed under this ground of appeal the appellant would need to demonstrate 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 the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
31. The notice requires the residential use to cease, all kitchens and bathrooms to be removed, the mezzanine floor to be returned to its former layout, and the front elevation to be reinstated through the removal of the balconies. The purpose of the notice is therefore to remedy the breach of planning control, rather than any injury to amenity.
32. I have been invited to consider varying the notice to allow the property to be converted into a House in Multiple Occupation (HMO). Very limited details have been provided to convince me that this would be an appropriate solution which would address the above-mentioned conflict with the development plan. The existence of an HMO licence for the property does not convince me otherwise.
33. It is claimed that the steps required by the notice are excessive and would impose an unfair and disproportionate financial burden on the appellant. These claims have not been substantiated and no alternative measures to remedy the breach of planning control have been suggested.
34. It is claimed that the recessed balconies may have existed as part of the mezzanine behind fascia signage for many years. The notice requires them to be removed, but the evidence indicates it would only be necessary and reasonable to reinstate the front elevation to return this part of the building back to its former condition to remedy the breach of planning control. I shall therefore vary the third requirement of the notice accordingly. Aside from this, the steps required by the notice are reasonable to restore the building to its former condition and achieve the purpose of the notice.
35. The appeal under ground (f) therefore succeeds in part, insofar as I shall vary the third requirement of the notice.

### **Conclusion**

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

### **Formal Decision**

37. It is directed that the enforcement notice is corrected and varied by:
  - Deleting the text 'the change of use' at section 3 of the enforcement notice and the substitution of the text 'the material change of use'; and
  - Deleting the text 'Completely remove the recessed balconies by reinstating' at section 5 of the enforcement notice and the substitution of the text 'Reinstate'.

38. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

*L Douglas*

INSPECTOR