


Enforcement Delegated Report		Receipt date:	12/03/2023
Officer		Enforcement Case	
Miles Peterson		EN23/0192	
Breach Address		Photos & Other material	
Flat 4 39 Belsize Square London NW3 4HL		On File	
Authorised Officer Signature			
			
01/11/2023			
Alleged Breach			
Without planning permission, the change of use from one three-bedroom flat located on the second and third floors to two flats.			
Recommendation(s):		That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended requiring the use of the two flats to return to the use as one flat, and that officers be authorised in the event of non-compliance to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.	
Site Description			
<p>The site comprises a semi-detached, 3-storey plus lower ground and attic floors, residential property, currently in use as 5 (lawfully 4) flats and located on the north side of Belsize Square. It lies within a street of similar type properties that are all in residential use and predominantly converted into flats. The properties have stucco frontages at lower ground floor and ground floor levels, with yellow stock brickwork on the upper floors. Some of the property frontages have been altered over time.</p> <p>The building is not listed but lies within the Belsize Conservation Area and is identified as making a positive contribution to the character and appearance of the conservation area.</p>			
Investigation History			
12/03/2023- Enquiry created based on email from Officer determining planning application 2022/1601/P.			
Planning permission for 2022/1601/P had been recommended for approval subject to a S106 to secure the units as car free. This remains unsigned.			
09/05/2023- Case closed after it appeared that evidence provided by leaseholder showed use of two flats at this address.			
11/06/2023- After a further phonecall with complainant, the evidence provided by the leaseholder was re-examined and deemed insufficient in proving the lawful use of two flats for over four years. Leaseholder informed that the case is being reopened and that the Council is seeking further evidence to demonstrate lawful use of two flats to avoid serving Enforcement Notice.			
Leaseholder also informed that signing a Section 106 Agreement linked to 2022/1601/P would authorise this permission and thereby authorise the lawful use of two flats.			
20/09/2023- Site visit to view interior layout of front doors.			

17/10/2023- After further dialogue with complainant, leaseholder and leaseholders' agent, insufficient evidence was provided to demonstrate lawful use of two flats at this address. Leaseholder's agent expressed interest in applying for lawful development certificate but was informed that so long as leaseholder is not agreeable to signing the S106 Agreement or able to provide enough evidence to demonstrate use of two flats, an Enforcement Notice would be served.

19/10/2023- Case formally reopened on M3

Relevant policies / GPDO Category

National Planning Policy Framework 2023

London Plan 2021

Camden Local Plan 2017

A1 Managing the impact of development

D1 Design

D2 Heritage

H1 Maximising Housing Supply

H2 Maximising the supply of self-contained housing from mixed-use schemes

H3 Protecting existing homes

H4 Maximising the supply of affordable housing

H6 Housing choice and mix

H7 Large and small homes

T1 Prioritising walking, cycling and public transport

T2 Parking and car-free development

Camden Supplementary Planning Guidance

CPG Design 2021 Chapters 1 (Introduction), 2 (Design Excellence), 3 (Heritage), CPG Amenity and CPG Transport

Belsize Park Conservation Area Statement 2003

Assessment

Relevant Planning History:

2022/1601/P	Creation of an additional 2 bedroom flat on the 2nd and 3rd floors and alterations to fenestration to side elevation and side roofslope.	12- APR -22	NOT FINAL Granted Subject to a Section 106 Legal Agreement	30- JUN -22
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Assessment

The material considerations in assessing the unauthorised development are:

- Unit mix
- Quality of Accommodation
- Transport Considerations
- Neighbouring Amenity

Background

The site, the subject of this notice, is a semi-detached dwelling that is divided into flats. The flats concerned in this enforcement notice are on the 2nd and 3rd floors of the property. There is evidence in the form of historic planning applications and leaseholder details to suggest that historically there were two flats at this location.

Consequently, separate gas and electricity metres, along with separate rooms that were used as separate bathrooms and kitchens are visible on the “existing” floor plan from 2022/1601/P. However, after a single lease from 1994 was sold for the properties “formerly known as Flats 4 & 5”, the evidence suggests that the lawful use for the property has been one flat since 1994. Accordingly, there is only one record of Council tax from flat 4 only, one record of service charge and one lease for the property. Moreover, planning application 2022/1601/P acknowledged this use by seeking to re-establish a lawful use of two flats through the “creation of an additional flat at first on the 2nd and 3rd floors.”

Since making this application, the leaseholder for Flat 4 has maintained throughout that there has lawfully been two flats at this location. However, when asked to provide evidence of this lawful use for at least four years, they have been unable to do so.

Unit Mix

Local Plan policy H7 (Large and Small Homes) is aimed at maintaining a range of dwelling types and sizes that will contribute to the creation of mixed, inclusive and sustainable communities.

Table 1: Dwelling Size Priorities

	1-bedroom (or studio)	2-bedroom	3-bedroom	4-bedroom (or more)
Social-affordable rented	lower	high	high	medium
Intermediate affordable	high	medium	lower	lower
Market	lower	high	high	lower

The development has resulted in the creation of two units which are considered high priority.

Quality of Accommodation

The nationally described technical housing standards sets out minimum gross internal floor areas as illustrated in the table below.

Table 1. Minimum gross internal floor areas and storage (m²)

Number of bedrooms (b)	Number of bed spaces (persons)	1 storey dwellings	2 storey dwellings	3 storey dwellings	Built-in storage
1b	1p	39 (37) *			1.0
1b	2p	50	58		1.5
2b	3p	61	70		2.0
2b	4p	70	79		2.0

Proposed				
Flat 4	2p	55		1.5
Flat 5	4p	85		2.9
Minimum room sizes (m2)		Flat 4 proposed room sizes (m2)		Flat 5 proposed room sizes (m2)
Double bed 11.5		Double bed 11.6		Double bed 13.3
Single bed 7.5		Study 9.4		Single bed 11.1

The proposed size of the units (pictured above) meet the national standards for minimum gross internal floor areas and storage.

Transport considerations

Policy T1 of the Camden Local Plan promotes sustainable transport by prioritising walking, cycling and public transport, rather than private car use in the borough. Permitting another unit at this location where the resident could apply for a parking permit has the potential to add to the number of motor vehicles in this area and thereby deter sustainable transport use.

Policy T2 of the Camden Local Plan states that the Council will limit the availability of parking and require all new developments in the borough to be car-free. This includes limiting the availability of both off-street and on-street parking. The Council will not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits. It goes on to state in redevelopment schemes, the Council will consider retaining or re-providing existing parking provision where it can be demonstrated that the existing occupiers are to return to the address when the development is completed.

Whilst a planning application was recommended for approval subject to a S106 Legal Agreement to secure the development as car free, this has not been signed and the permission has not been implemented. Accordingly, 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).

Neighbouring Amenity

Policy A1 seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. Policy A1 seeks to ensure that development protects the quality of life of occupiers and neighbours by stating that the Council will only grant permission for development that would not harm the amenity of neighbouring residents. This includes privacy, noise, overlooking, outlook and implications on daylight and sunlight.

The internal nature of the alterations would not impact upon neighbouring amenity through loss of privacy, noise, overlooking, outlook or loss of daylight or sunlight. Therefore the proposal complies with policy A1 of the 2017 Camden Local Plan and the Amenity CPG.

Conclusion

The planning, legal, and other evidence assessed by Officers suggest that there has not been a lawful use of two flats at this location since at least 1994. The continued use of two flats at this location without planning permission is therefore unauthorised even if they are considered acceptable in terms of unit mix, quality of accommodation and impact on neighbouring amenity. The owner of the units has resisted signing the S106 agreement in association with planning application 2022/1601/P which would have regularised the breach.

In absence of a S106 legal agreement to secure the development as car free, there is clear planning harm in that 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).

As evidenced by the draft approval of 2022/1601/P subject to the Section 106 Agreement (Car Free), the Council is not averse to the existence of two flats at this location, however in order to mitigate the aforementioned planning harm this must be authorised by the S106 legal agreement.

Recommendation:

That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended requiring the use of unauthorised flats 4 and 5 to cease and one residential unit to be reinstated as it had been prior to the works being carried out and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Without planning permission: the change of use from one three-bedroom flat to two flats.

WHAT ARE YOU REQUIRED TO DO:

- 1. Cease the use of the two flats located on the second and third floor and reinstate one residential unit as per the 'existing' drawings in "Existing & Proposed Floor Plans, Elevations & Site Location Plan" (2022/1601/P).**

AND

- 2. Make good on any damage caused as a result of the works.**

PERIOD OF COMPLIANCE: 1 month

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

- a) The breaches outlined above have taken place within the last 4 years;
- b) 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).