Date: 31st January 2024

PINS ref APP/X5210/C/23/3331656

**LPA ref**: EN23/0010

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building-development

Dear Craig Maxwell,

Town and Country Planning Act 1990 as amended Planning Appeal Statement (Local Planning Authority)

Site: 26-28 Whitfield Street, London, W1T 2RG

Appeal by: SICAN LTD

**Enforcement Notice dated 7th September 2023** 

I write in connection with the above Enforcement Notice appeal regarding the unauthorised change of use of the property (First, Second, Third, and Fourth floor flats) from residential use to use as a temporary sleeping accommodation.

The Council's case is primarily set out in the Enforcement Officer's Delegated Report, which has been sent alongside this statement as 'Appendix A – Officer's Delegated Report (26-28WS)'. It is to be relied on as the principal statement of the case. Copies of the relevant policies and accompanying guidance were sent with the appeal questionnaire.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, relevant planning history/appeal decisions, and comments on the appellant's ground of appeal, which the Council respectfully requests be considered without prejudice before deciding the appeal.

#### 1. Summary

- 1.1 The site is a five-storey mid terrace property that lies within the Charlotte Street Conservation Area. The basement and ground floors are in commercial use as restaurant/bar ("Sican"), whilst the first, second, third, and fourth floors are in use as residential flats.
- 1.2 After an extensive investigation, initially prompted by an enforcement complaint dated 9th January 2023, the Council has found substantial evidence that demonstrates the unauthorised change of use of the First, Second, Third and Fourth floor residential flats of the appeal site, into a

single temporary sleep accommodation. Please see Appendix A (Officer's Delegated Report) which provides this evidence, thus demonstrates this allegation.

1.3 As such, an enforcement notice was served under the LPA reference EN23/0010 on the 7<sup>th</sup> September 2023 alleging:

Without planning permission: the change of use of the property from residential use to use as temporary sleeping accommodation.

And requires within one (1) month of it taking effect:

1. Cease the use of the property for temporary sleep accommodation.

#### 2. Status of policies and guidance framework

2.1 In arriving at its current position, Camden Council has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The development subject to this appeal was considered in the light of the following policies:-

#### National Planning Policy Framework (2023):

Paragraph 59 Enforcement
Paragraphs 60-62 Delivering a sufficient supply of homes

#### The London Plan (2021):

H8 Loss of existing housing and estate redevelopment H9 Ensuring the best use of stock

#### Camden Local Plan (2017)

H1 Maximising housing supply

H3 Protecting existing homes

H6 Housing choice and mix

H7 Large and small homes

A1 Managing the impact of development

A4 Noise and vibration

#### **Camden Planning Guidance (2021)**

CPG - Housing CPG - Amenity

#### Fitzrovia Area Action Plan 2014

#### 3. Grounds of appeal

3.1 The appellant has appealed against the Enforcement Notice under ground A only, and has sent an appeal statement which sets out their case. The appellant therefore only seeks to acquire permission for the unauthorised change of use.

#### 4. Preliminary matter:

- 4.1 Paragraphs 6.17 6.19 of the appellant's statement stipulates that the prior use of the four flats were "short term lets, ancillary office and storage accommodation and temporary accommodation for staff" to which "no single use has existed within any unit on the site for a continuous period of over 10 years (thus, the conversion of the four flats into a temporary sleep accommodation has not contributed to the loss of permanent residential)".
- 4.2 The appellant has failed to provide evidence to demonstrate that the use of the upper floors as a temporary sleeping accommodation has obtained immunity by the passage of time. It is considered that for this reason that the appellant has not appealed on grounds B, C or D. The Council considers that the last lawful use of the property was as Class C3 residential use as demonstrated below.

#### **Planning History of the Appeal Site**

- 4.3 An application was submitted by the previous owners of the property in 2007. This application was for the 'Retention of a change of use <u>from residential use (Class C3)</u> to office use (Class B1)(a))' of the second floor flat'. This application remained invalid and an enforcement notice was served (EN05/0646). Crazy Bear Group LTD appealed against this notice under Grounds A and G.
- 4.4 On the 12<sup>th</sup> November 2007, the appeal was dismissed and notice upheld in respect to the unauthorised change of use of the second floor flat <u>from C3</u> to B1. PINS reference: APP/X5210/C/07 2036940. The Inspector visited the site and confirmed that the upper floors of the building was as four residential flats. They attributed great material weight to Camden's local policies to protect existing residential, thus found the loss of the one Class C3 residential flat as unacceptable. Upon a site visit in October 2010, the officer was satisfied that the enforcement notice had been complied with at that the use of the second floor flat was C3 residential use. This appeal decision is below as Appendix B.
- 4.5 On the 28<sup>th</sup> February 2018, Crazy Bear Group LTD submitted an application for the 'Change of use of existing accommodation at first, second, third and fourth floor level <u>to</u> four serviced apartments (<u>C1 use</u>)'. Reference: 2018/1113/P. On the 21<sup>st</sup> August 2018, following the applicant's 'refusal' to provide supporting evidence of the existing lawful use, they withdrew their application.
- As part of the enforcement investigation ref: EN18/0658, on the 27<sup>th</sup> September 2018, Crazy Bear Group LTD returned a completed Planning Contravention Notice, dated 10<sup>th</sup> September 2023, claiming that the four flats have been used as "Temporary Staff Accommodation" since 2004, contrary to all the above. At this time insufficient evidence was provided to support these claims. Case closed as we considered the units were used as 4 flats.

#### **The Council's Contention**

4.7 The previous occupants were not able to acquire permission, nor demonstrate the prior existing use of the four flats as "Temporary Staff Accommodation (C1)". There was no evidence that the flats were used by staff or that this was not as their main dwelling. The prior appeal demonstrates that the only unit not in C3 use was Flat 2, which an officer confirmed to be back to residential use.

- 4.8 The four flats each have their own hallway and entrances with relevant facilities, as broadly depicted by the 'existing' plans of the 2018/1113/P application (see below attached Appendix C), and the VOA shows Council Tax is being paid for Flats 1, 3 & 4.
- 4.9 All the above is indicative that the four flats of the appeal site were in lawful C3 use prior to the unauthorised change of use into a temporary sleep accommodation the subject of this appeal it is the appellant's onus to evidence the contrary, this has not been done.
- 4.10 We would note, retrospectively applying information questions its reliability. In this case, the information comprises appellant's claims that the last lawful use of the four flats was not C3, as well as their primary evidence (Knightfrank Article screenshot & Zoopla screenshots) for their arguments.
- 4.11 Accordingly, in the absence of a sufficient scheme, it is the Council's contention, in response to this Ground A only appeal, that the resulting unacceptable and unauthorised loss of four residential units cannot and has not been sufficiently justified against its harm. The appellants case has been summarised in a few notable points, and addressed beneath.

#### 5. Ground A: that planning permission should be given for what is alleged in the notice;

- 5.1 **Appellant:** Firstly, the appellant contends that the Camden Local Plan 2017 and its policies are out of date.
- Response: It is explicitly stated within our Local Plan that it covers the period between 2016-2031. Our current policies, which conform with the NPPF, have therefore considered what development within Camden should and should not embody until at least 2031. Nonetheless, we are currently in the consultation period for our draft new local plan, and having looked at the relevant emerging policies, particularly the 'protection of existing homes', I am of the opinion that there is no material difference that would alter the Council's decision. In fact, emerging Policy H3 reiterates that we will not support unacceptable losses of residential moreso than the existing see figure 1.

#### Policy H3 Protecting existing homes

The Council will aim to ensure that existing housing continues to meet the needs of existing and future households by:

- resisting development that would involve a net loss of residential floorspace, including any residential floorspace provided;
  - within hostels or other housing with shared facilities; or
  - as an ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use;
- protecting housing from permanent conversion to short-stay accommodation intended for occupation for periods of less than 90 days; and
- c. resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals), unless they:
  - create large homes in a part of the borough with a relatively low proportion of large dwellings;
  - enable existing affordable homes to be adapted to provide the affordable dwelling-sizes that are most needed; or
  - enable sub-standard units to be enlarged to meet residential space standards.

Exceptionally, the Council may support development that involves a limited loss of residential floorspace where this provides for the expansion of existing health premises to meet local needs.

#### Policy H3 - Protecting existing homes

- A. The Council will aim to ensure that existing housing continues to meet the needs of existing and future households by resisting the net loss of all residential floorspace, resisting the permanent conversion of residential floorspace to shortstay accommodation, and resisting conversion of existing housing which would involve the net loss of homes.
- B. The Council will resist development that would involve a net loss of residential floorspace, including any residential floorspace that is provided:
  - i. within hostels or other housing with shared facilities; or
  - ii. as an ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use.
- The Council will resist the permanent conversion of residential floorspace to short-stay accommodation intended for occupation for periods of less than 90 days.
- The Council will resist development involving conversion of existing housing that would result in the net loss of homes, unless the development:

   creates one larger home through the net loss of one home (taking into account)
  - extant permissions and cumulative change since June 2006);
    ii. creates large homes in a ward with a relatively low proportion of large
  - dwellings, currently Bloomsbury, Holborn and Covent Garden, Kilburn and King's Cross;

    iii. adapts existing affordable homes for low-cost rent to provide the affordable
  - dwelling-sizes that are most needed; or
     iv. enlarges homes to meet the nationally described space standard where they are currently 20% or more below it and the loss of homes is the minimum necessary to meet the relevant standard.

Figure 1 – Current (left) and emerging (right) Local Plan Policy H3 (Protecting existing homes)

- 5.3 Of course, the emerging policies have not yet been adopted, but our existing local plan policies, which conform with the NPPF and intended for until 2031, continue to reflect the need to protect existing homes and must hold weight in this appeal.
- On this note, we would raise the appellant has explicitly understood their proposal's inconformity with Policy H3 (Protecting existing homes) of the Local Plan (see paragraphs 5.12 and 8.1 of the appellant's statement), which holds significant weight in this appeal.
- 5.5 **Appellant:** The appellant has instead only argued the benefits under tourism and economy policies, citing Paragraphs 81 and 86 (Building a strong, competitive economy) of the NPPF and London Plan Policies E10 (Visitor Infrastructure). To which, the primary argument under these policies is that the restaurant/business relies on short term letting as part of their business strategy.
- Response: Insofar that the business does 'rely' on short term letting, this is not justification for the loss of four residential units. In fact, this would be indicative that the benefits of this scheme are primarily private. Nonethless, the Council will aim where possible to support proposals that support tourism and our local economy. Developers will put forward sufficient and substantiated schemes so that the LPA can dispense good judgement and secure mutual benefits which will outweigh any harm. Again, good judgement is achieved through the provision of high level schemes, which the Council, in light of the appellant's statement and supporting appendices, considers we are still in the absence of. As such, we will resist proposals where the benefits have not convincingly outweighed/justified any outstanding harm.
- 5.7 The appellant has only applied a Knightfrank Article screenshot, Zoopla screenshots, and some data regarding Camden's short term let issue to support the cited 'tourism' and 'economic growth' benefits. No other supporting data has been submitted to demonstrate how their unauthorised proposal incites "job creation" or "economic growth". Whilst it is expected, no other housing policies or guidance have been used to argued their Ground A case a notable element in housing-based planning applications.

#### The Short Term Letting & Housing Data

- 5.8 There is an issue with the data the appellant has cited. It does not account for:
  - Unreported Short Term Let properties;
  - Unreported Council Tax;
  - Multiple listings from a single host;
  - Whether the host is an individual or an enterprise/managing agent; and
  - For its calander year, cannot take into account properties that were under 90 days but then became unlawful, particularly if the data was not taken at the very end of the calander year.

In reality, the percentage of housing stock lost to unauthorised and permanent changes of use to temporary sleep accommodation will be much higher and more complex in nature than what is depicted by the appellant. Whereby, in light of the housing crisis, the Council has had to form a Short Term Letting Taskforce to scour the borough for these unauthorised changes of use - a matter of public record. Accordingly, we also take all related alleged subdivision and changes of use seriously – much like the Inspector of the EN05/0646 Appeal has done for the loss of this appeal site's Flat 2.

- The appellant has attempted to undermine Camden's current situation in order to demonstrate that the impact of the loss of the four residential units is 'less than substantial', drawing attention away from the unequivocal cumulative impact (commercialisation) this unauthorised change of use inflicts onto the entire borough. Even within the appellant's inaccurate and simplistic circumstance, this is not justification to lose out on precious housing stock and it is very much arguable that the "loss of 1% of our housing stock as unacceptable".
- 5.10 The use of this data within this part of the appellant's argument paints a false representation of the current situation nor reflective of the existing local or London-wide policy to protect existing homes and should be allocated little/no material weight.

#### Knightfrank and Zoopla Evidence

- 5.11 With reference to the Knightfrank and Zoopla screenshots, the appellant has cited: "What London needs is more affordable housing." "These [appeal] units will only ever be rented by wealthy individuals or offshore companies. The market has already placed the appeal flats well beyond the reach of the average Londoner." "The Council is seeking to protect homes that today only a select few can ever afford to live in."
- It is common ground that London needs more affordable housing. Therefore, in a time of a housing shortage, we (in a collective effort with other boroughs) resist proposals that will result in a net loss of our <u>available</u> housing stock and seek the restoration of residential units where unacceptably and unjustly lost. The appellant's claims that only wealthy individuals will be able to afford the appeal units is not justification to undertake an unauthorised change of use and should not bear any weight in this appeal.
- 5.13 Given the demand and supply ideology, the cumulative loss of homes in London, which this unauthorised change of use contributes toward, will exacerbate the housing crisis by pushing up rents.
- 5.14 The Knightfrank and Zoopla screenshots cannot be regarded as sufficient evidence to support the 'tourism' and 'economic growth/"job creation" benefits, as they are informal and unreliable pieces of information, and do not materially relate to these topics.
- 5.15 If the Inspector is minded to consider the Zoopla screenshots, the Council would draw attention to Appendix D below, which shows that many property owners within (and a 1 mile radius) the Fitzrovia Area for flats, flat shares, and studios (C3) offer rent at or below £2,500 per month (AST). Over 400 results are supplied, therefore does not account for the thousands of occupied properties in the area, nor the many other listings on other property websites. Whilst along Whitfield Street, the appellant has only shown one rental listing which cannot be considered to represent "the market". This is a biased, thus unreliable piece of evidence.
- 5.16 We would reiterate that the appellant needs to demonstrate with <u>sufficient</u> evidence that the proposal is in accordance with the development plan. It is the Council's contention that the benefits outlined by the appellant are broad where the evidence to support these arguments are also insufficient and unreliable. Accordingly, we the outstanding harm will not outweigh these benefits in their Ground A appeal.

#### The Outstanding Harm and Policy Inconformity

- 5.17 Local Plan Policies H1, H3, H6 & H7, CPG Housing Guidance, and The Fitzrovia Area Action Plan, in aggregate, requires that the Council regards self-contained housing as the priority land-use of the Local Plan, where we will aim to ensure that existing housing continues to meet the needs of existing and future households by resisting development that would involve a net loss of residential floorspace (correspondingly aim to maximise existing); a diverse range of housing products in the market and affordable sectors to meet the needs across the spectrum of household incomes; provision suitable for families with children, older people, people with disabilities, service families, people wishing to build their own homes and Camden's traveller community.
- 5.18 This is supported by London Plan Policies H8 and H9, which states: loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.
- 5.19 This is also supported by Paragraphs 60-62 of the NPPF which state: it is important that a sufficient amount and variety of land can come forward where it is needed taking into account the needs of different groups in the community and their specific needs.
- The appellant, though claiming our Local Plan is out of date, has used Policy E3 (Tourism) to support their broad 'tourism' argument. Policy E3 Tourism states that the Council recognises the importance of the visitor economy in Camden and will support tourism development and visitor accommodation. However, the appellant fails to consider that it also states that all visitor accommodation must (h) not harm the balance and mix of uses in the area, local character, residential amenity, services for the local community, the environment or transport systems and (i) not lead to the loss of permanent residential accommodation.
- 5.21 26-28 Whitfield Street is a mixed-use property with four self-contained residential properties, which is a priority use we seek to protect or enhance. The establishment of visitor accommodation in this part of the borough with residential and commercial/business uses poses a detrimental impact on the mix of uses in the area. The development's orientation towards tourist accommodation, as evident through its association with platforms like booking.com, runs counter to the diverse and balanced usage envisaged for the locality. This departure from the intended mix of functions threatens the harmonious blend of residential, commercial, and community spaces that contribute to the overall character and vitality of the area.
- Moreover, the completion of this development has resulted in the unacceptable loss of permanent residential accommodation. This depletion of permanent accommodation further exacerbates the negative consequences of the development, contributing not only to a disruption in the mix of uses but also to the local community's stability. The shift towards short-term, transient occupancy compromises the area's ability to sustain a stable and cohesive residential population, which is vital for fostering a sense of community and maintaining the social fabric of the neighbourhood. The proposal cannot be considered to respond to the housing needs of the borough. The proposal does not meet any of the specific conditions that supports the appellant's case for the loss of residential space.
- 5.23 In relation to amenity, given the transient nature of short-term letting tenure, it is recognised that occupiers tend not to be invested in their local community and in my opinion the high turnover of the occupiers harms community cohesion, and reduces the sense of community.

- It is not uncommon for housing accommodation located in inner London to be above or around commercial/retail units. Therefore, the amenity issues the appellant has highlighted are not unusual and cannot justify for unauthorised unacceptable development. As such, the Council is of the opinion that if the cumulative impact of this 'already noisy location', coupled with the constant comings and goings at any time of the day from customers using the appeal site has the potential to exacerbate noise nuisance rather than mitigate against it.
- 5.25 Therefore, the Council refutes the notion that the use would not be harmful to adjoining residential occupiers, and the development is contrary to Local Plan Policies A1 (amenity) and A4 (noise), and CPG Amenity Guidance.

#### 6. Conclusion

- 6.1 All the evidence the Council holds shows the prior uses of the four flats were in C3 residential use. The burden of proof has not been discharged the appellant has not shown ten years of continuous "Temporary Accommodation" use. Therefore, the correct assessment the Inspector is recommended to take is through the Housing and Amentity Policy and Guidance Framework.
- 6.2 The Council is sympathetic to the challenges of the service sector, however, in light of the broad benefit(s), which have been insufficiently backed by equally insufficient and unreliable evidence, the unauthorised change of use of the property from residential use to use as a temporary sleep accommodation results in an unjustified net loss of four residential units and will cause amenity issues, contrary to the development plan.
- 6.3 The appellant has explicitly conceded this appeal case's most significant and relevant policy of our Local Plan (Policy H3).
- The loss of these four residential flats contributes to the cumulative loss of available housing stock throughout the borough and wider London, thus exacerbates the housis crisis. It cannot be considered the outlined benefits convincingly outweigh the harm of this proposal. On this basis, Ground A must fail.
- This is supported by the EN05/0646 appeal decision, which directly relates to the site.
- 6.6 Again, we would note retrospectively applying information questions its reliability, and that this is considered for any forthcoming documents/information provided to the Inspector.

The Council kindly invites the inspector to dismiss this appeal and uphold the enforcement notice.

Yours sincerely,

Joshua Cheung

Planning Enforcement Officer Supporting Communities Directorate London Borough of Camden

#### APPENDIX A - OFFICER'S DELEGATED REPORT:

(SENT AS SEPARATE DOCUMENT ALONGSIDE THIS STATEMENT)

**APPENDIX B** – EN05/0646 APPEAL DISMISSAL DECISION (RE UNAUTHORISED CHANGE OF USE OF FLAT 2, 26-28 WHITFIELD STREET FROM C3 TO B1):



# Appeal Decision

Site visit made on 12 November 2007

by Neil Roberts BA DIPTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate 4/11 Eagle Wing Temple Quay House 2 The Square Temple Quay Bristol BS1 6PN

Decision date: 16 November 2007

#### Appeal Ref: APP/X5210/C/07 2036940 Flat 2, 26-28 Whitfield Street, London W1T 2RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Hunt against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN05/0646.
- The notice was issued on 7 December 2006.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of Flat 2 from Class C3 (Dwellinghouses) to Class B1 (Business Use – offices).
- The requirements of the notice are that the unauthorised use of the second floor flat [Flat 2] for office purposes (Class B1) shall permanently and completely cease, and all furniture and equipment associated with that use shall be permanently and completely removed from the premises.
- · The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

#### Decision

I direct that the enforcement notice be varied by deleting at paragraph 5 "3
months" as the period for compliance and substituting therefore "6 months".
Subject to these variations I dismiss the appeal, uphold the enforcement
notice, and refuse to grant planning permission on the application deemed to
have been made under section 177(5) of the 1990 Act as amended.

#### The Ground (a) Appeal

#### Reasons

- The main issue is whether the loss of residential accommodation to a Class B1 use is acceptable.
- 3. I have been referred to a number of policies in the London Borough of Camden Replacement Unitary Development Plan (RUDP). Strategic policies S4, S5 and S6 generally seek to secure and protect the provision of a range of housing including affordable housing. In similar vein policy H3 seeks to protect existing housing, except where loss is to provide small scale local health facilities; and H4 seeks to protect affordable housing. Policy SD3 encourages mixed development to minimise the need to travel. Policy E1 supports office development in locations accessible by a choice of means of transport.

- 4. The appeal property is already in a mixed use, with restaurant use on the ground and basement floors and four residential flats on the upper floors. Flat 2 has been converted to office use and is subject of this appeal. The flat retains kitchen and bathroom facilities, other rooms being used for office purposes. There can be no doubt that the flat is capable of being easily returned to residential purposes.
- 5. Whilst I accept that the site's location is well suited to office use, and that the current office use of Flat 2 makes a useful contribution to the local economy, I attach most weight to the RUDP objective of protecting the housing stock. I say that because of the clear statement in policy S4 that "Housing is the priority use of the UDP." Indeed that fundamental objective is repeated at paragraph 1.22 of the supporting text to policy SD3, upon which policy the appellant appears to rely heavily. In my judgement allowing the office use to continue would undermine the RUDP primary objective of protecting the housing stock, and is thus unacceptable.

#### The Ground (g) Appeal

6. It is submitted that a period of 12 months is required to enable alternative premises to be found for the office use. Whilst I agree that the specified period of three months is unreasonably short, I consider 12 months to be excessive. I shall, therefore, extend the period for compliance to six months. To that extent the ground (q) appeal succeeds, and I shall vary the notice accordingly.

#### Conclusion

For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

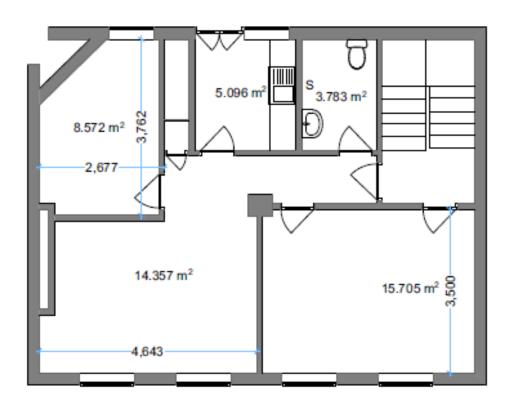
Neil Roberts

Inspector

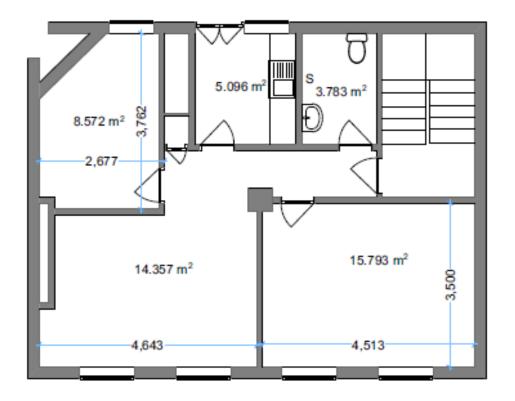
# APPENDIX C - EXISTING PLANS OF ALL FOUR FLATS (PER THE 2018/1113/P APP):

CRAZY BEAR 26/28 WHITFIELD STREET LONDON W1T 2RG

1/100@A4

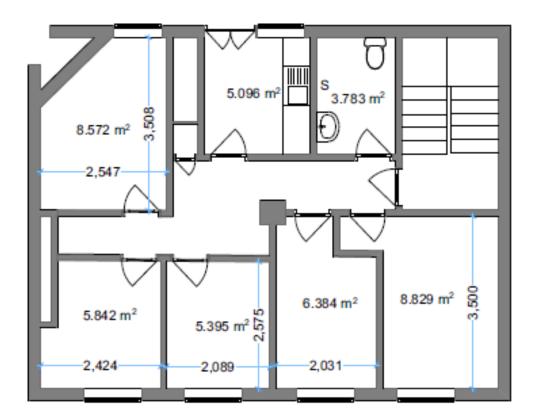


2nd FLOOR GIA 65sq m/699 sq ft

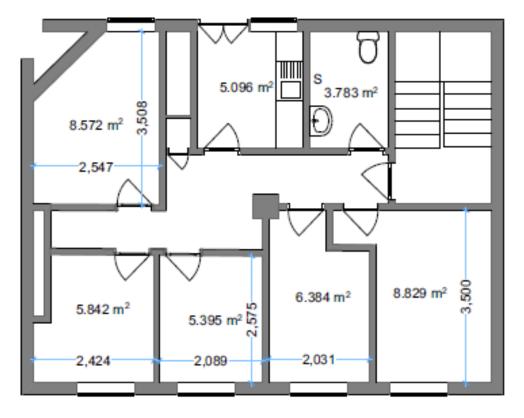


1st FLOOR GIA 65sq m/699 sq ft

# 1/100@A4



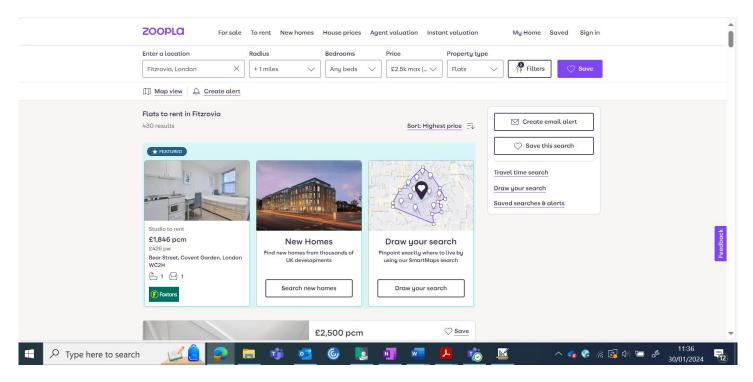
4th FLOOR GIA 65sq m/699 sq ft



3rd FLOOR GIA 65sq m/699 sq ft

# **APPENDIX D:** ZOOPLA SCREENSHOTS OF FLATS WITHIN (AND A 1 MILE RADIUS) COSTING AT OR UNDER £2,500 PER MONTH (NO MIN OR MAX BEDS, FLATS ONLY):

### Flats and apartments to rent in Fitzrovia - Zoopla



Over 400 results. Note, this is just shows available flats, thus indicating that there will be many occupied flats/flat shares/studios (C3) that are pursuant to the above constraints. Zoopla Only.

