


<b>Enforcement Delegated Report</b>		<b>Receipt date:</b>	<b>May 2023</b>
<b>Officer</b>		<b>Enforcement Case</b>	
Katrina Lamont		EN23/0396	
<b>Breach Address</b>		<b>Photos &amp; Other material</b>	
254-256 Belsize Road and 258 Belsize Road London NW6 4BT		On file	
<b>Authorised Officer Signature</b>			
 <div>29/04/2024</div>			
<b>Alleged Breach</b>			
<ol style="list-style-type: none"> <li>Without planning permission the material change of use from 2 x office blocks to serviced apartments for short term lets (Sui Generis); and</li> <li>External extensions and alterations at roof level above nos. 254 - 256 Belsize Road</li> </ol>			
<b>Recommendation(s):</b>		<p>That -</p> <p>(1) the Borough Solicitor be instructed to:</p> <p>(i) issue an enforcement notice pursuant to section 172 of the Town &amp; Country Planning Act 1990 ("<b>TCPA 1990</b>") requiring the cessation of the use of the Site (as defined below) as short term let serviced apartments and return the use of 254-256 Belsize Road and 258 Belsize Road to office accommodation ; and</p> <p>(ii) to pursue any legal action necessary to secure compliance; and</p> <p>(2) officers be authorised in the event of non-compliance, to:</p> <p>(i) prosecute under section 179 TCPA 1990</p> <p>(ii) take direct action under 178 TCPA 1990 in order to secure the cessation of the breach of planning control and</p> <p>(iii) injunction proceedings to secure the cessation of the breach of planning control</p>	
<b>Site Description and background</b>			
<b>1.0 <u>Overview</u></b>			
1.1	The site comprises nos. 254-256 and 258 Belsize Road which were originally separate buildings but are now internally connected (together " <b>the Site</b> ").		
1.2	The two buildings within the Site are three to four storeys in height and are located on the northern side of Belsize Road and opposite railway tracks close to Kilburn High Road Station. The surrounding area is a mixture of office, commercial and residential uses.		
1.3	Castle Trading Limited trading as Sanctum Serviced Apartments uses both buildings together for the purposes of its business, namely the letting of luxury serviced apartments.		

1.4 Figures 1 and 2 below illustrate the Site.



Figure 1: Aerial view of 258 Belsize Road on right and aerial view of 254-256 Belsize Road on the left.



Figure 2. Site photo of front elevation of 254-256 and 258 Belsize Road.

## 2.0 Planning Designations

- 2.1 254-256 Belsize Road is not statutorily listed. However, it is locally listed as a non-designated heritage asset. 258 Belsize Road is not statutorily or locally listed. The Site is not within a conservation area.
- 2.2 The Site is within the designated Kilburn Town Centre.



2.3 The buildings are now subject to an Article 4 Direction which has removed permitted development rights for a change of use from office to residential use.

### **3.0 Identification of the planning unit**

3.1 Each site has its own separate planning history. This is described below.

3.2 Notwithstanding the separate planning histories described below, it is considered that the Site is now one planning unit because the two buildings are in the same occupation for the same use and are internally connected (such that there is no physical separation between the two buildings).

### **4.0 The current use of the Site**

4.1 The Site is occupied by Sanctum Serviced Apartments (trading name of Castle Trading Limited) for the purpose of its business, namely the letting of luxury serviced apartments for short term lets.

4.2 Sanctum's website contains details about the use of the Site. See:

[Luxury Serviced Apartments In London | 5 Star Apartments \(sanctum.london\)](https://sanctum.london)

4.3 Sanctum Serviced Apartments describes its business as follows:

4.4 *"Sanctum London - London's Home For Luxury Serviced Apartments.  
Created for discerning travellers who demand the very best, Sanctum London offers all the perks of a top-quality hotel with the added benefit of having spacious, luxury short stay serviced apartments. In addition to standard hotel reservations, our 5 star apartments offer the additional benefit of providing you with an idyllic haven from which to experience all that London has to offer.*

4.5 *Sanctum London Serviced Apartments are located in North West London, we have three 5-star locations – Sanctum Maida Vale, Sanctum Belsize Road and Sanctum Regent's Park. From there, all of London is within easy reach. Sanctum London opened in December 2006 and offers the perfect base for exploring the exciting, vibrant and cosmopolitan city of London."*

4.6 There are three Sanctum Serviced Apartment sites within London, two which fall within the Borough of Camden, namely 254-258 Belsize Road (i.e the Site) and 1 Greville Road, London.

4.7 The following matters from Sanctum Serviced Apartment's website (see Appendix 1) are particularly material to the consideration of the issues in this case.

4.8 First, Sanctum describe the apartments as '*holiday apartments*' which are said to be '*great for holidays in London*'. In particular, the Site is described '*Belsize Road Holiday Apartments*' which are '*ideally located for holidaymakers in London*' and also marketed at '*discerning travelers (sic)*'. The supporting text also seeks to sell the location of the Site as being suitable for holidaymakers, including by reference to different attractions that holidaymakers might visit, for example Wembley Stadium and Portobello Road Market. Consistently with this, some of the FAQs are headed '*London Holiday Trips FAQ*'. There are also reviews from holidaymakers who appear to have stayed at the Site.

4.9 Secondly, the apartments at the Site are also said to be suitable '*for extended stays, whether you are relocating, studying or having medical treatment*'.

4.10 Thirdly, it is said that there is '*a complimentary maid service*', '*a 24-hour concierge service*' and laundry facilities. In respect of the maid service it is also said: '*we provided towels in the*

*apartment and our house-keeping team will change these for you when conducting maid service in your apartment'. The 'seating area on the ground floor' is also described as somewhere to 'take a seat, catch up on the news and relax' in comfort.*

- 4.11 Fourthly, Sanctum Serviced Apartments say that their properties offer *'all the perks of a top-quality hotel with the added benefit of having spacious, luxury short stay serviced apartments. In addition to standard hotel reservations, our 5 star apartments offer the additional benefit of providing you with an idyllic haven from which to experience all that London has to offer.'*
- 4.12 Fifthly, in the FAQs Sanctum Serviced Apartments states that there is no limit to how long one can book to stay and typically a minimum length of stay is 2 nights rising to 7 nights in the summer months.
- 4.13 Sixthly, in the terms and conditions, residents are referred to as *'guests'*; there is a cancellation policy on similar terms to that which would be expected of a hotel; check in and check out times are specified; a performance deposit for *'any incidental/accidental damages to the apartment'* is described; restrictions are imposed on visitors (with a 10 pm curfew) for the purpose of ensuring *'all our guests can enjoy a pleasant and relaxing stay'* and to respect *'the maximum occupancy of the apartment booked'*.
- 4.14 There is no reason to consider that Sanctum Serviced Apartment would describe its business or the use of the Site inaccurately.

## **5.0 Availability of the serviced apartments on Booking.com and other websites**

- 5.1 In addition to being able to book the apartments for nightly stays directly on the Sauntum Serviced Apartment's website, the units are available to book on booking.com, Expedia, TripAdvisor and hotels.com.
- 5.2 Booking.com contains 562 guest reviews for the property from 2021 to March 2024. Booking.com asserts the reviews are verified. See Appendix 2.

## **Investigation History**

### **6.0 2017-2019**

- 6.1 Planning Enforcement first investigated the building 258 Belsize Road (Reference: EN17/0375) from 18<sup>th</sup> April 2017 – 25<sup>th</sup> October 2019 for an alleged use as short term lets. This case was eventually closed due to lack of evidence.
- 6.2 A Planning Contravention Notice ("**PCN**") was served on 16<sup>th</sup> August 2017 which alleged: *'Change of use from permanent residential (C3) to service apartments (C1) and short-term lets (Sui Generis)'*. A completed PCN was returned to the Council on 29<sup>th</sup> August 2017. Although, there was evidence of short term letting at the site, it was difficult to collate enough evidence to substantiate a breach of planning control. It should be noted that in 2017, after the PCN was served, it was identified that only 5 out of the 34 units were subject to tenancy agreements. Further, in 2019 tenancy agreements were provided for only 8 of the 34 units. However, in the absence of sufficient evidence to demonstrate a breach of planning control, the case was closed with a view to reopening it should further evidence be obtained.
- 6.3 In addition to the above, an enforcement investigation (Reference: EN17/0376) was opened into the alleged failure to provide cycle storage. This case was closed on 4<sup>th</sup> August 2017 as the breach was remedied.

### **6.4 2023- present**

- 6.5 Officers made an unannounced site visit on 24<sup>th</sup> May 2023 as part of the Short Term Letting taskforce which identified a number of properties in the Borough that may be operating in breach

of planning control. Officers observed a number of guests with luggage coming and going from the Site. Two luggage trollies were noted in the reception area. Officers spoke with the Manager who advised we make an appointment.

- 6.6 A new enforcement case was opened on 25<sup>th</sup> May 2023 (Reference: EN23/0396) into the alleged change of use of the two buildings within the Site from office to serviced apartments.
- 6.7 An arranged site inspection took place on 13<sup>th</sup> June 2023 with Officers meeting the agent who represents Sanctum Serviced Apartments and the General Manager for Sanctum Serviced Apartments. Officers were shown inside two vacant units (no.211 and no.215). Both units had the same furniture, bedding and décor with white towels in the bathrooms for guests. It was confirmed verbally that the Site is occupied on the basis of a mix of residential tenancies and short term lets. The Site has also been used to house Grenfell Tower residents for a period of time following the fire on an emergency basis. The Site was also closed for a period of time due to flooding.
- 6.8 It was observed on site that nos. 254-256 is internally linked to no. 258 Belsize Road. The General Manager said only staff could move between the internal accesses of the buildings. However, there did not appear to be any restrictions in place. In addition, nos. 254-256 Belsize Road have a separate entrance which is sometimes closed with a shutter, in which case the only access for occupiers would be through no. 258, making use of the internal link between the buildings.
- 6.9 PCN's were served on the freeholders of the buildings - Empire Communications Limited for building 254-256 Belsize Road and Oakenfield Enterprises Limited for building 258 Belsize Road via their agent on 14<sup>th</sup> December 2023. The PCN's included a spreadsheet to be completed requesting details of Assured Hold Tenancies ("**ASTs**") and short term stays from 2017 to 2023 for each unit. Completed PCN's was returned on 21<sup>st</sup> December 2023 which included a completed spreadsheet, copies of ASTs, floor plans and the sale listing for the property.
- 6.10 The evidence provided was collated by Officers with information previously provided during the course of the earlier investigation in 2017.
- 6.11 Through this process, a number of concerns were identified regarding the validity of some of the ASTs provided and also non-compliance with the tenancy deposit scheme.

## **Planning History**

Each site has its own planning history as follows.

### **254-256 Belsize Road planning history**

**2022/3717/P** - Retention of existing extension at 4th floor at no. 256 and two storey extension to front section; retention of existing 4th floor level extension at no. 254; all to create 3 new residential flats and retain and extend 5 existing ones – **Not yet determined**

**2015/5064/P** - Change of use from office (Class B1(a)) to residential flats consisting of 4 x 1 bed, 11 x 2 bed, 3 x 3 bed and 2 x 4 bed units, a bike store for 26 cycle spaces for residential and 3 additional visitor spaces – **Prior approval granted on 22/10/2015**

**2015/2348/P** - Change of use from office (Class B1(a)) to residential flats consisting of 8 x 1 bed, 9 x 2 bed, 2 x 3 bed and 1 x 4 bed units, a bike store for 23 cycle spaces for residential and 3 additional visitor spaces – **Prior approval granted on 17/06/2015**

**2014/1417/P** - Change of use from office (Class B1(a)) to residential flats consisting of 13 x 1beds and 5 x 2 beds (Class C3) - **Prior approval granted on 11/04/2014**

**2013/6819/P** - Change of use from office (Class B1(a)) to residential flats consisting of 13 x 1beds and 5 x 2 beds (Class C3) – **Prior approval refused on 20/12/2013**

### **258 Belsize Road planning history**

**2017/3731/P** - Details of cycle storage, as required by condition 1 of prior approval ref. 2014/7511/P (change of use from B1 to C3) dated 29/01/15. – **Approval of details granted on,03/08/2017**

**2016/6703/P** - Change of use from residential flats (C3 use class) to flexible use as either permanent residential accommodation (C3 use class) or serviced apartments (occupation for less than 90 days) (Sui Generis use class); and regularisation of the internal layout. - **Refused on 22/03/2017** for the following reasons:

1. The proposed development would result in the loss of permanent residential accommodation, causing harm to the supply of permanent housing in the Borough, contrary to policy CS6 of the London Borough of Camden LDF Core Strategy and DP2 of the London Borough of Camden LDF Core Strategy.
2. The proposed development would fail to provide adequate cycle storage facilities for occupants of the new residential units, contrary to policies DP17, DP18 of the London Borough of Camden LDF Development Policies, and CS11 of the London Borough of Camden LDF Core Strategy.
3. The proposed development, in the absence of a legal agreement to secure the development as 'car-free', would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden LDF Development Policies.

**2016/1419/P**- Change of use from offices (Class B1) to residential (Class C3) to create 34 self-contained flats (25x 1-bedroom, 9x 2-bedrooms) - **Certificate of Lawfulness (Proposed) Prior Approval refused on 19/04/2016** for the following reason:

1. The application site is covered by an Article 4 direction which withdraws permitted development rights for a change of use from office to residential use. The proposal cannot therefore benefit from permitted development as defined by Class O of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), as these rights have been removed and planning permission would have been required for the proposal.

**2015/1136/P** - Approval of Details of condition 1 (cycle storage specifications) granted under reference 2014/7511/P dated 29/01/15. – **Granted on 07/05/2015**

**2014/7511/P** - Change of use from offices (Class B1) to 34 flats (16 x studios, 9 x 1-bed and 9x2-beds) – **Prior approval Granted on 29/01/2015**

**2014/5880/P** - Change of use from office to 32 residential units (21 studio, 9 x 1 bed & 2 x 2 bed - **Prior Approval Granted on 27/10/2014**

**2014/3843/P** - Change of use from office to 32 residential units (21 studio, 9 x 1 bed & 2 x 2 bed) - **Prior Approval Refused on 04/08/2014**

### **Relevant policies**

**National Planning Policy Framework (2023):**  
**Paragraphs 15, 59, 60.**

- 2.Achieving sustainable development - Paragraph 8, 11
- 3.Plan-making - Paragraph 15
- 4.Decision-making - Paragraph 55, 59
- 5.Delivering a sufficient supply of homes – Paragraph 60
- 6.Building a strong, competitive economy – Paragraph 85
- 7.Ensuring the vitality of town centres – Paragraph 90
- 8.Promoting healthy and safe communities – Paragraph 97
- 9.Promoting sustainable transport – Paragraph 108
- 14.Meeting the challenge of climate change, flooding and coastal change – Paragraph 157
- 16.Conserving and enhancing the historic environment – Paragraph 195

#### **The London Plan (2021):**

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

#### **Camden Local Plan (2017)**

E1 Economic development  
E2 Employment premises and sites  
E3 Tourism  
H1 Maximising housing supply  
H2 Maximising the supply of self-contained housing from mixed-use schemes  
H3 Protecting existing homes  
H6 Housing choice and mix  
H7 Large and small homes  
A1 Managing the impact of development  
A4 Noise and vibration  
D1 Design  
D2 Heritage  
T1 Prioritising walking, cycling and public transport  
T2 Parking and car-free development

#### **Camden Planning Guidance**

Employment Sites and Business Premises 2021  
Housing 2021

#### **London Plan Guidance**

Housing Design Standards 2023

#### **Draft New Camden Local Plan – in consultation until March 2024**

DS1 Delivering Healthy and Sustainable Development  
H1 Maximising housing supply  
H2 Maximising the supply of self-contained housing from mixed-use schemes  
H3 Protecting existing homes  
H6 Housing choice and mix  
H7 Large and small homes  
CC2 Repurposing, refurbishment and re-use of existing buildings

IE1 Growing a successful and inclusive economy  
IE2 Offices  
IE5 Hotel and visitor accommodation  
IE6 Supporting town centres and high streets  
A1 Protecting Amenity  
A4 Noise and vibration  
T1 Safe, Healthy and Sustainable Transport  
T2 Prioritising walking, wheeling and cycling  
T3 Public Transport  
T4 Shared transport infrastructure and services  
T5 Parking and car-free development  
T6 Sustainable movement of goods, services and materials

## **Assessment**

### **7.0 ISSUES:**

7.1 There are two overarching issues to consider:

- (1) whether there has been a breach of planning control at the Site; and
- (2) if so, whether it is expedient to take enforcement action in the public interest, having particular regard to the following matters:

1. Land use, in particular: the loss of employment space; and the loss of potential permanent housing.
2. Design
3. Amenity
4. Transport

### **7.2 ISSUE 1 - WHETHER THERE HAS BEEN A BREACH OF PLANNING CONTROL AT THE SITE**

7.3 The owners claim that they lawfully implemented the prior approval change of use from office to residential in respect of both buildings on the Site. They claim that the current use remains as residential.

7.4 This claim is not accepted for the following reasons.

### **7.5 Reason 1 - Article 3(5) GPDO**

7.6 First, during the course of the conversion of no. 254-256 Belsize Road, external alterations were undertaken, namely a roof extension and additional storey to create a 4th floor where made at the time the building was being converted from office accommodation. This is shown on the figures below. This extension created 1 additional unit, known as unit 407. These external alterations required planning permission. However, planning permission was not granted for these alterations. Accordingly, they were a breach of planning control. In these circumstances, art. 3(5) of the GPDO prevented the conversion of the building in reliance on the prior approval (2015/5064/P).





Figure 3. Aerial view of the site in 2014

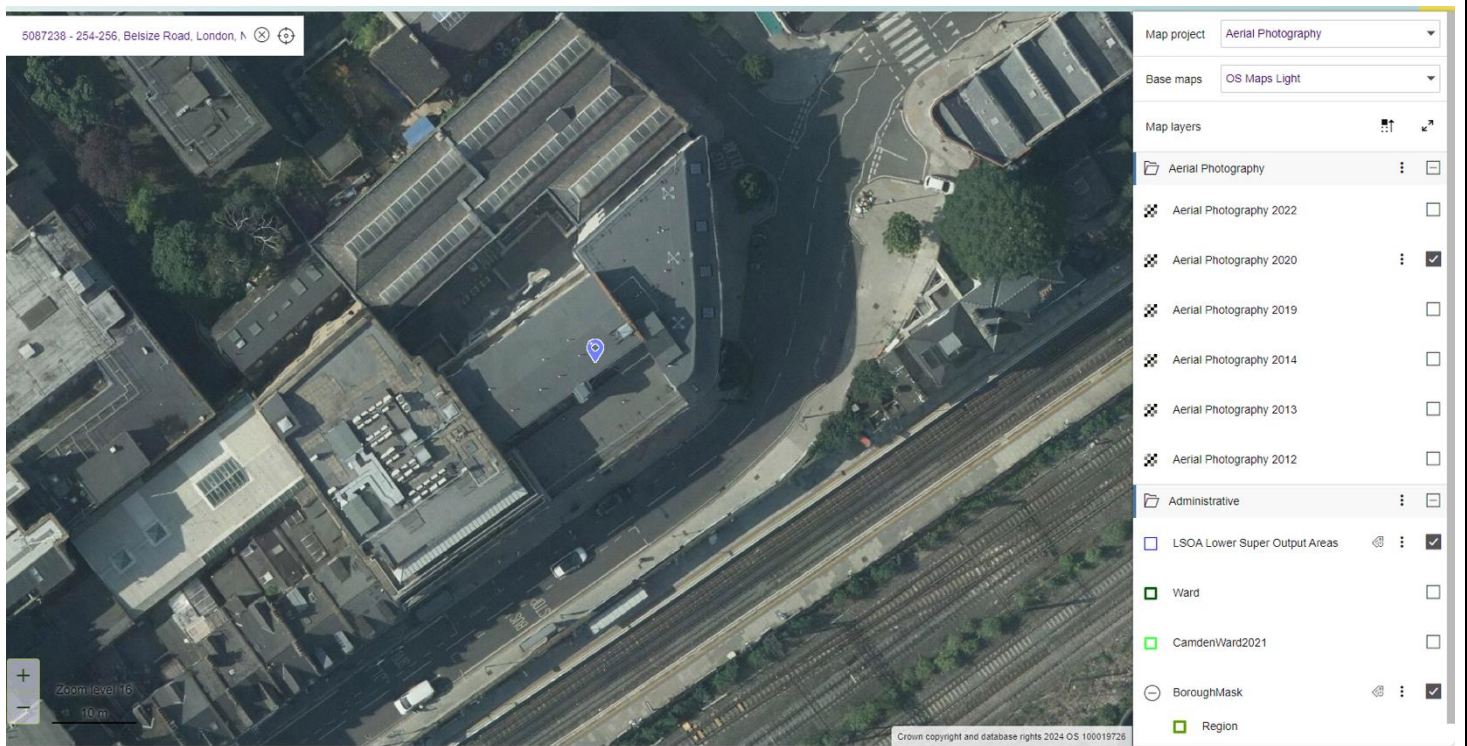


Figure 4. Aerial view of the site in 2020



Figure 5. Google maps image of the site with the additional extensions highlighted.

#### **7.7 Reason 2 - claimed use outside of Class C3**

7.8 Secondly and in any event, after their conversion, neither of the buildings within the Site was used within Class C3. Accordingly, there has been non-compliance with the terms of the prior approvals. This conclusion is reached for the following reasons.

#### **7.9 Analysis of claimed occupation data**

The General Manager of Sanctum Serviced Apartments on behalf of the freeholder has provided evidence from 2017 to 2023 in their PCN response for 258 Belsize Road and 2018-2023 for 254-256 Belsize Road to seek to establish that the use of the building since the change from office use has been as Use Class C3 residential. This included a completed PCN, copies of ASTs, nightly stay figures, floor plans, estate agent details for the renting of the units and the sale listing for the property (for sale since June 2023). Appendix 3 contains the spreadsheet with the consolidated evidence.



### 254-256 Belsize Road and 258 Belsize Road

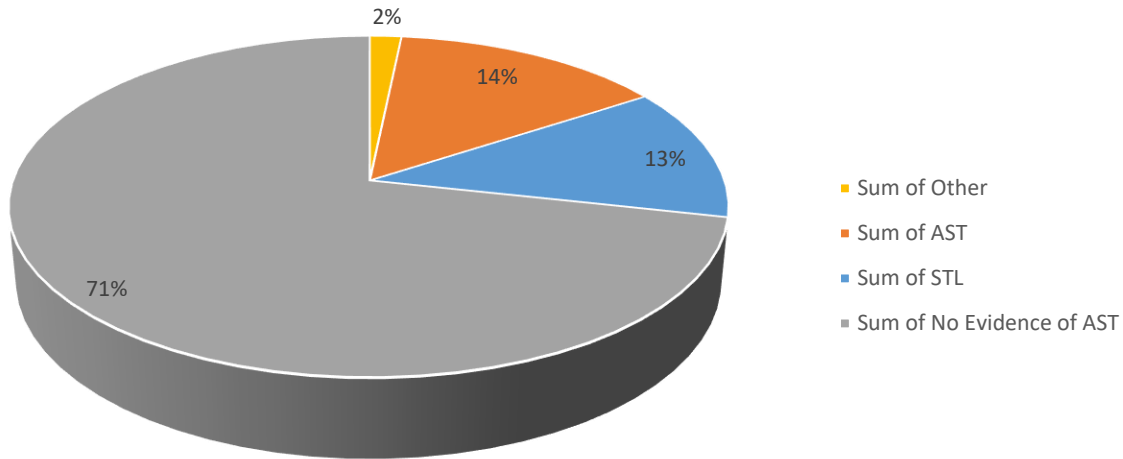


Figure 6: Pie chart for the period 2017-2023 with data for sum of STL use, sum of AST use, sum of no evidence of AST use and sum of other (Grenfell and Camden temporary residents).

- 7.10 As summarised in the pie chart above, the evidence provided between 2017 to December 2023 illustrates that the residential use the owner claims took place amounts to just 14% of this 7 year period (assuming that the ASTs are all credible evidence of actual use, which is not accepted). It should be noted that Sum of AST use encompasses the length of actual stay by a tenant, and not the contractual length, for example a 90 days AST with actual length of stay of 110 days. Approximately 52% of the ASTs (by number) were for tenancies of 90 days or less and 11% for tenancies of 12 months or longer. Furthermore, 39.48% of the ASTs provided to the Council do not appear to have been signed by any individual/s but by an agency or not signed at all.
- 7.11 The General Manager for Sanctum Serviced Apartments claims they have availed of the 90 nights per calendar year rule allowed under the Deregulation Act 2015 for short term letting and that they have not exceeded 90 nights per unit per any given calendar year and as such the short term letting use amounts to 13% of the last 7 years. If this was the case, 254-256 Belsize Road and 258 Belsize Road have been vacant for 71% of the time between 2017- 2023. For some units the vacancy periods have been significant. No credible explanation consistent with these facts has been provided.

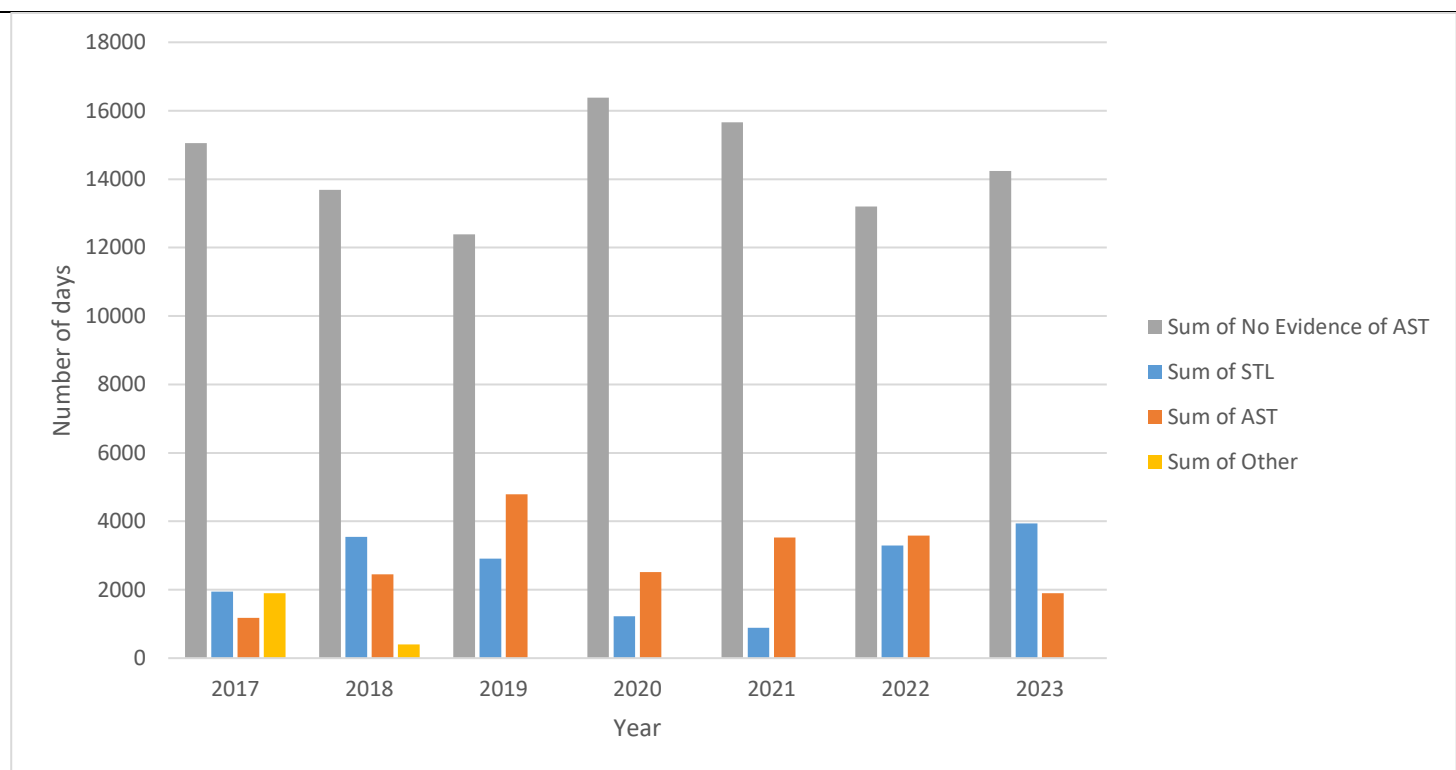


Figure 7. Bar chart showing breakdown per year of sum of AST, sum of STL, sum of no evidence of AST and sum of other.

- 7.12 The bar chart above breaks down the figures for AST, STL, no evidence of AST and other (Grenfell and Camden temporary residents) per year.
- 7.13 The following units have never had an AST: G01, G02, G03, G11, 104, 114, 213, 214 and 407.
- 7.14 13 out of 21 units within building 254-256 Belsize Road had less than 365 days total AST over the period (total days of 2190 per property), and totalling 1,565 days in aggregate out of a possible 28,470 days.
- 7.15 21 of the 34 flats within building 258 Belsize Road had less than 365 days of AST over the entire 7 year period (3,725 days out of a possible 53,655 days).
- 7.16 This analysis is considered significant given the owner claims to predominately focus on AST and fill the gaps between tenancies with Short Term Let use. The analysis is inconsistent with the owner's claims.
- 7.17 While the Council does not expect a completely linear pattern, it seems an unusual business model to have a significant number of residential units remain empty for vast periods of time each year, ASTs which are not signed by the individual/s intending to rent the unit and only 11 instances of authorised tenancy deposits. By Sanctum Serviced Apartments' own assertions on their website, the property offers luxury serviced apartments for short- term nightly stays which the Council contends on the balance of probability is the main and primary use of the property. This is supported by the following matters
- 7.18 The tenancy agreements
- 7.19 The above analysis proceeds on the basis that all of the ASTs are credible evidence of actual use within Class C3. This is not a robust basis for considering the evidence (although it is the basis adopted above in order to give the owner the maximum latitude). ASTs are, at best, evidence of a right to occupy, not evidence of actual occupation. In any event, a number of concerns about the ASTs have been identified which cast doubt on their credibility and the weight that can be afforded to them in the assessment of the evidence.

- 7.20 Approximately 39.48% of the ASTs provided to the Council do not appear to have been signed by any individual/s but by an agency or not signed at all. This is unusual, especially as the agents normally act on the landlord's behalf, not the tenants. Further, no evidence has been provided to show that those agents had authority from the purported tenant to sign on their behalf.
- 7.21 In addition, the most recent PCN asked for evidence of each of the tenancy deposits paid in respect of every AST. A landlord must place a tenant's deposit in a tenancy deposit protection scheme if they rent a home on an AST that started after 6 April 2007. The following schemes are authorised by the Department of Levelling Up, Housing and Communities (England and Wales):
- Deposit Protection Service;  
MyDeposits; and  
Tenancy Deposit Scheme.
- 7.22 Evidence provided by the owner suggests only 11 instances in which a tenancy deposit was placed in an authorised scheme. The other deposits are listed as 'Performance deposits' which is the same deposit scheme for nightly guests. It is not considered credible that a tenant and guest would be subject to the same deposit scheme. The failure to properly protect all the deposits is inconsistent with claimed use and undermines the credibility of the ASTs. This in turn reduces the weight to be afforded to this evidence.
- 7.23 Other inconsistencies in the evidence provided
- 7.24 In an email dated 14<sup>th</sup> June 2023 (attached at Appendix 4 the General Manager for Sanctum Serviced Apartments asserted the building was closed due to floods which damaged the plant room from July 2021 to May 2022. However AST and STL evidence provided by the General Manager of Sanctum Serviced Apartments via their PCN response claims that the building was in use with AST and STL stays during this period, in addition there are also 42 reviews for the property on booking.com for this time period. While the Council does not contest a flood occurred, the assertion that the building was closed when it appears to have been open and in use cast doubt on whether the STL use really amounts to just 14% for the last 7 years.
- 7.25 The General Manager asserted that prior to July 2021 the building was "*mostly operating as accommodation for Grenfell and Swiss cottage fire survivors [...] and in the interim we also did a few of our own ASTs and short lets within the 90 day regulations*". However, the PCN response shows Grenfell/Swiss Cottage residents stayed at the property in 2017 with only 5 flats occupied for this use in 2018.
- 7.26 For the avoidance of doubt, the transient nature of this arrangement for temporarily displaced residents is not considered to have been a residential use of the property with Class C3. Rather, it is consistent with the provision of accommodation outside of that class, for example in a similar manner to the use of hotels to provide short term accommodation for the homeless or asylum seekers.
- 7.27 Other contrary evidence
- 7.28 The evidence gathered by the Council from Sanctum's own website and other websites (as explained above) is inconsistent with a use within Class C3.
- 8.0 Conclusion on Issue 1**
- 8.1 For the reasons above, the following conclusions are reached:
- (1) Neither of the prior approvals have been implemented lawfully. Both prior approvals have now lapsed.



- (2) There has been a material change in the use of the Site from the lawful use as offices to use as serviced apartments. The use as serviced apartments does not fall within Class C3. In this regard a key factor, given the evidence set out above, is the transitory nature of the occupation of the Site which is inconsistent with a Class C3 use. The units are let and advertised as a hotel might be and, most importantly had been let for many 1- or 2-night stays. The character of the units and the building is significantly materially different to the more permanent residential character of residential flats subject to the Assured Shorthold Tenancy Agreements. These differences are materially different from the permitted C3 use and therefore there has been a contravention of planning control.
- (3) Further, although there are elements of the use which are consistent with a use within Class C1 (which would still be an unauthorised material change of use), on balance it is considered that the use is sui generis.
- (4) This material change of use required planning permission. No planning permission existed for that change of use. Accordingly, there has been a breach of planning control within s. 171A(1)(a) TCPA 1990.
- (5) In addition, the external alterations to no. 254-256 Belsize Road mentioned in paragraph 7.6 above have been carried out without planning permission and therefore are also considered to be a breach of planning control within s.171A(1)(a) TCPA 1990.

8.2 The Council must therefore consider the acceptability of the unauthorised material change of use. This is Issue 2, below.

## **9.0 ISSUE 2 – WHETHER IT IS EXPEDIENT AND IN THE PUBLIC INTEREST TO TAKE ENFORCEMENT ACTION**

### **9.1 Land Use**

### **9.2 Loss of employment space**

- 9.3 As discussed above, the lawful use of the Site is considered to be office (formally B1(a), now use Class E). The Site is located within the Kilburn Town Centre and has a PTAL rating of 5, which indicates a very good level of accessibility and public transport links. The Site is also subject to an Article 4 Direction (adopted 5 November 2015) which removes permitted development rights for the change of use from office to residential use. The Site and surrounding office uses were specifically included within the Article 4 Direction after it was demonstrated that there were a high number of businesses which compose a crucial element of Camden's economy. Furthermore, The Camden Employment Land Review 2008 identifies Kilburn Town Centre as having an important role for businesses that provide local services (Policy CS8 para. 8.9).
- 9.4 Policy E1 of the Camden Local Plan 2017 seeks to secure a successful and inclusive economy in Camden by creating the conditions for economic growth and harnessing the benefits for local residents and businesses. The Council aims to support Camden's industries by safeguarding existing employment sites and premises in the borough that meet the needs of industry and other employers.
- 9.5 The supporting text of Policy E1 highlights that although the majority of Camden's office stock is in Central London, most of the secondary local office provision is located in Camden Town, Kentish Town and Kilburn. These locations also provide a substantial amount of workshop space, which supports the needs of digital technology, communication, media and consultancy businesses.

- 9.6 Policy E2 seeks to encourage the provision of employment premises and sites in the borough. We will protect premises or sites that are suitable for continued business use, in particular premises for small businesses, businesses and services.
- 9.7 The supporting text of Policy E2 sets out that when assessing proposals that involve the loss of a business use to a non- business use we will consider whether there is potential for that use to continue.
- 9.8 The Council will take into account various factors including: the suitability of the location for any business use; whether the premises are in a reasonable condition to allow the use to continue; the range of unit sizes it provides, particularly suitability for small businesses; and whether the business use is well related to nearby land uses.
- 9.9 In addition to the considerations above, where a change of use to a non-business use is proposed, the applicant must demonstrate to the Council's satisfaction that there is no realistic prospect of demand to use the site for an employment use. There is no evidence before the Council to suggest the business use of the property is no longer viable and that the property cannot be returned to its lawful use as office.
- 9.10 The unauthorised development has resulted in the loss of approximately 2968.28sqm in building 254-256 Belsize Road and 3367.94sqm in building 258 Belsize Road of office floorspace which in the Council's opinion could accommodate a large business or several smaller businesses.
- 9.11 It is considered that this office space has the potential for office use to continue for the following reasons:
- This pre-existing office is located in an area identified by the Council as providing secondary local office provision which supports its suitability for business use
  - The pre-existing office space has the ability to accommodate one large business or several smaller business owing to its size and layout.
- 9.12 This loss of office space is therefore contrary to Policies E1 and E2 of the Camden Local Plan.
- 9.13 It should be noted that the two 2014 planning applications cited above (see planning history section) where prior approvals were granted for change of use from office to residential, were approved prior to the Article 4 direction prohibiting this type of development in the location being adopted. Had the residential use been implemented prior to 2015, then residential use would have been accepted in the location. However, as evidence points to the prior approvals not being implemented lawfully, a change of use from office to residential in this location is now considered to be unacceptable in principle, unless it can be robustly justified that the building no longer lends itself to continued office use.
- 9.14 Loss of potential housing**
- 9.15 Policy H1 of the Local Plan identifies housing as the priority land use in the borough. Therefore, in the event that the Council accepted the proposed loss of office, the preference would be for residential accommodation.
- 9.16 Policy E2 states that where premises or sites are suitable for continued business use, the Council will consider higher intensity redevelopment schemes which improve functional efficiency, maintain or, preferably, increase the amount of employment floorspace and number of jobs and provide other priority uses, such as housing (and, in particular, affordable housing), community facilities and open space, where this would not prejudice the continued operation of businesses on the site. Tourism accommodation is not considered to be a priority land use.
- 9.17 Policy E3 outlines the Council's approach to supporting tourism and providing accommodation for those visiting the borough. Policy E3 states that visitor accommodation includes hotels, bed

and breakfast premises, youth hostels, backpacker accommodation, aparthotels, serviced apartments and most other short-stay accommodation that is intended for occupation for periods of less than 90 days. Whilst the Council recognises the importance of the visitor economy in Camden and in certain circumstances will support tourism development and visitor accommodation. This includes the following:

- a. expect new, large-scale tourism development and visitor accommodation to be located in Central London, particularly the growth areas of King's Cross, Euston, Tottenham Court Road and Holborn;
- b. allow smaller-scale visitor accommodation in the town centres of Camden Town, Kilburn, West Hampstead, Kentish Town and Finchley Road/Swiss Cottage;
- c. consider tourism development outside of the areas listed above where it would have a local or specialist focus and would attract limited numbers of visitors from outside the borough;

- 9.18 The provision of 55 units is considered to be large-scale tourist accommodation and is not located within a suitable area. The provision of a large scale tourism accommodation is considered to harm the balance and mix of uses in the area, local character and residential amenity. It states that all tourism development and visitor accommodation must not lead to the loss of permanent residential accommodation.
- 9.19 The London Plan (H9) advises that given the level of need, existing housing should be retained where possible and appropriate, except where there are acceptable plans for its replacement. It states
- 9.20 'Boroughs should take account of the impact on housing stock and local housing need when considering applications for a change of use from housing to short stay holiday rental accommodation to be used for more than 90 days a year'.
- 9.21 Policy H3 'Protecting Existing Homes' in Camden's Local Plan 2017 seeks to protect 'housing from permanent conversion to short-stay accommodation intended for occupation for periods of less than 90 days'.
- 9.22 The unauthorised development's primary use is as serviced apartments and has resulted in the potential loss of 55 permanent residential units.

## **10.0 Design**

- 10.1 Policy D1 aims to ensure the highest design standards for developments. Policy D1 states that the Council will require all developments to be of the highest standard of design and to respect the character, setting, form and scale of neighbouring buildings, and the character and proportions of the existing building.
- 10.2 This section will deal with the additional roof extensions and alterations to building 254-256 Belsize Road. The extensions involve an increase in height and addition of rooflights to the 254 building labelled 1 below and an additional storey to the 256 building labelled 2 below.



Figure 8. Google maps image of the site with the additional extensions highlighted.



Figure 9. Front elevation as shown in a google streetview image in July 2014



Figure 10. Front elevation as shown in a google streetview image in September 2022

10.3 The additional storey to the 256 building is set back from the front elevation of the building by approximately 9 metres and is not visible to the street. It is considered a modest extension to the building. The roof extension to the 256 building involves a modest uplift in height. Overall, the extensions and alterations are considered subordinate the host property.

## 11.0 Amenity

11.1 There are 55 units in the property and as such the property has the ability to provide accommodation to hundreds of guests at any given time. The turnover of guests is likely more significant than for permanent residents.

11.2 The transient nature of serviced apartments for short term letting means the comings and goings of guests to the property is likely to give rise to an associated increase in overall noise and disturbance, as guests are more likely to come and go at different hours compared to permanent residents. This has the potential for creating noise nuisance at unsociable hours, to the detriment of existing residential amenity.

11.3 Policy E3 Tourism states that we will expect new, large-scale tourism development and visitor accommodation to be located in Central London, particularly the growth areas of King's Cross, Euston, Tottenham Court Road and Holborn. It states that all tourism development and visitor accommodation must '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'. Visitor attractions and accommodation can generate significant vehicle movements, particularly by taxi, private hire cars and coach.

11.4 Whilst we acknowledge that this use has been operating at the site with limited complaints, without the correct conditions and obligations in place the Council has limited controls to manage these issues.

## 12.0 Transport



12.1 The site lies within a controlled parking zone and is also in close proximity to a bus stop. Policy E3 states that 'all tourism development and visitor accommodation must:  
f. be easily reached by public transport;  
g. provide any necessary pickup and set down points for private hire cars and coaches and provide taxi ranks and coach parking where necessary.

12.2 There are no loading points outside the development and had an application been submitted the Council is likely to have sought to secure a Service Management Plan. In absence of a S106 legal agreement to secure the development as car free, the development has the potential to contribute unacceptably to parking stress and congestion in the surrounding area, and also has the potential to interfere with the free flow of traffic by virtue of the clientele arriving by private transportation methods and is 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).

### **13.0 Expediency:**

13.1 As the evidence has established, a breach of planning control in respect of change of use has occurred. We not consider that the prior approvals approved in 2015 (2015/5064/P for building 254-256 Belsize Road and 2014/7511/P for building 258 Belsize Road) were implemented. This has resulted in the loss of office space within the designated Kilburn Town Centre. There is no evidence that office use is not viable at this location (following reasonable adjustments to the floor plates to accommodate this use).

13.2 The Council's current housing target is 1038 homes per year, under the most recent Housing Delivery Test we achieved 69% of supply from 19/20-21/22 with 1981 homes built from a combined target of 2891 homes. This means the presumption in favour of sustainable development applies. As a result of the continuing housing supply challenge Camden's new Local Plan aims to deliver 11,550 additional homes over the period to 2041 (equivalent to 770 homes per year).

13.3 In a time of acute housing shortage, had the use for residential been implemented, then the primary use at the site for serviced apartments/short term letting would have resulted in the loss of permanent residential floorspace, which is a priority use in the borough, had the change of use to residential been acceptable in all other respects. Furthermore, had the loss of office accommodation been justified, the priority land use would have been residential accommodation.

13.4 Sanctum Serviced Apartments, have claimed that the current use of the building is residential accommodation, which if it was the case would be adding to our housing stock. The Council is has not been provided with adequate evidence to substantiate Sanctum Serviced Apartments claim. The site is in fact providing tourist accommodation in the form of serviced apartments for short term lets.

13.5 It appears, given the applicant remains the same, that the prior approval process was used to seek to change the use of the property from office accommodation under the guise that it would be used as residential accommodation. The Council's investigation has demonstrated that in fact the building has not been used as such since it ceased being in office use. The Council considers that there is ongoing planning related harm that is contrary to the public interest to take action.

13.6 It is considered expedient and in the public interest to take action to resolve the current breach from the unauthorised use as serviced apartments for short term letting and loss of office accommodation to also ensure that such breaches cease and that a permanent unauthorised use as serviced apartments for short term letting does not become lawful over the passage of time.

13.7 In light of the nature/scale/design of the operational development and having regard to the development plan, it is not considered to be expedient in the public interest to enforce against the operational development mentioned in paragraph 7.6 of the report.

**Recommendation:**

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended requiring, to cease the use as short term let serviced apartments and return the use of 254-256 Belsize Road and 258 Belsize Road to office accommodation 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:**

1. Without planning permission the material change of use from 2 x office blocks to serviced apartments for short term lets (Sui Generis)

**WHAT ARE YOU REQUIRED TO DO:**

- a. Permanently cease the use of the buildings for short-term let serviced apartments;
- b. Return the use of 254-256 Belsize Road and 258 Belsize Road to office accommodation

**PERIOD OF COMPLIANCE: 3 Months**

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

1. The unauthorised use has occurred within 10 years
2. The unauthorised loss of office accommodation, in the absence of sufficient justification demonstrating that the premises is no longer suitable for continued business use fails to support economic activity in Camden and result in the loss of employment opportunities within the Borough contrary to policies E1 and E2 of the Camden Local Plan (2017).
3. The unauthorised use of the building as tourist accommodation, which is a non-priority use, harms the balance and mix of uses in the area, local character, residential amenity, services for the local community, the environment and transport systems contrary to policies E3 (Tourism) of the Camden Local Plan (2017).
4. In absence of a S106 legal agreement to secure the development as car free and a service management plan, the development contributes unacceptably to parking stress and congestion in the surrounding area, and has the potential to interfere with the free flow of traffic 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).