



PLANNING SERVICES

TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

STATEMENT OF CASE London Borough of Camden

APPEAL SITE

Flat 4, 39 Belsize Square, London, NW3 4HL

APPELLANT

Westgrove Management Limited

SUBJECT OF APPEAL

Appeal Statement in support of the Council's decision to serve Enforcement Notice 23rd January 2024 for:

"Without planning permission: the change of use from one three-bedroom flat located on the second and third floor to two flats."

COUNCIL REFERENCE: EN23/0192

PLANNING INSPECTORATE REFERENCE: APP/X5210/C/24/3340116

The Council reserves the right to amend or supplement the Statement of Case.

CONTENTS PAGE

Section	Page
1. Site and Surroundings	3
2. The Appeal	3
3. Relevant Planning History	4
4. Legislative and Planning Policy Framework	4
5. Reasons for Serving Enforcement Notice	9
6. The Council's Case	9
7. Evidence	14
8. Planning Balance and Conclusion	15
9. Appendices	16

1. SITE AND SURROUNDINGS

- 1.1 The property comprises a semi-detached, 3-storey plus lower ground and attic floors, residential property, currently in use as 6 (lawfully 5) 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.
- 1.2 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.
- 1.3 The flats with which this Appeal is concerned are on the second and third floors of the property. Historically, there were two flats at this location (known as Flat 4 and Flat 5). These flats were converted into a single dwelling by 1994. The Council regards this as the lawful use.

2. THE APPEAL

- 2.1 The appeal relates to the unauthorised conversion of Flat 4 from one flat into two flats. The previous lawful use of Flat 4 was as a three bedroom property located on the second and third floors of no. 39 Belsize Square. The Appellant purchased Flat 4 in 2021. Between January 2022 and February 2023, the Appellant, without planning permission, converted the property into two flats.
- 2.2 A planning application (2022/1601/P) was submitted by the Appellant on the 12 April 2022 for the 'Creation of an additional 2 bedroom flat on the 2nd and 3rd floors and alterations to fenestration to side elevation and side roofslope' (See appendix 4). Whilst the Council recommended that planning permission be granted, this was subject to the provision of a section 106 agreement securing both of the flats, Flats 4 and 5, as car free (see appendix 3). The Appellant did not agree to the s.106 agreement and therefore no planning consent was granted.
- 2.3 An enforcement investigation was opened on the 13 March 2023 following a complaint that the material change of use had already taken place without planning permission.

2.4 On 23 January 2024, the Council served an Enforcement Notice alleging the material change of use from one three-bedroom flat located on the second and third floors, to two flats (see appendix 2).

2.5 On 5 March 2024, the Notice was appealed by Westgrove Management Ltd. The appeal APP/X5210/C/24/3340116 is made under Grounds A, B, C, D, F and G which are addressed below.

3. RELEVANT PLANNING HISTORY

- **CTP/G8/11/20/19138** – The extension of the existing balcony at the rear of 39 Belsize Square N.W.3. - **Granted 25/11/1971.**
- **CTP/G8/11/20/19138** – Flat 5, 39 Belsize Square, NW3 4HL. The installation of a new window at 2nd floor level on the flank wall. - **Granted 10/10/1974.**
- **9201367** – Flat 4, 39 Belsize Square, NW3 4HL. Erection of a dormer window to the front roof slope a dormer window and terrace to the rear roof slope in association with works of conversion to create an additional habitable room for the second floor flat as shown on drawings no (s) 29/0733/01 02-05B - **Granted 20/09/1993.**
- **9500258** – 39 Belsize Square, NW3 4HL. Erection of a railing and alterations of windows to doors to create a rear terrace at second floor level as shown on drawings nos. 105/W-01 02 and 03. - **Granted 22/06/1995.**
- **2022/1601/P** – Flat 4, 39 Belsize Square, NW3 4HL. Creation of an additional 2 bedroom flat on the 2nd and 3rd floors and alterations to fenestration to side elevation and side roofslope. **Not determined.**

4. LEGISLATIVE AND PLANNING POLICY FRAMEWORK

National Planning Policy Framework (NPPF) 2023

4.1 The NPPF was first published on 27 March 2012. It provides a national planning policy framework against which all planning applications and decisions must be made. The NPPF was most recently revised on 19 December 2023 and sets out the government's planning policies for England. The policies contained in the NPPF 2023 are material

considerations which should be taken into account in determining planning applications. The relevant policies are:

- Delivering a sufficient supply of homes (Para 60-84)
- Promoting sustainable transport (Para 108-117)

Development Plan

4.2 The current development plan in relation to the appeal site comprises the London Plan 2021 and the Camden Local Plan 2017.

London Plan 2021

4.3 The London Plan 2021 is a strategic planning document in London. The relevant policies and objectives are listed below:

Planning London's Future - Good Growth

- GG2 Making the best use of land
- GG4 Delivering the homes Londoners need

Design

- Policy D1 London's form, character and capacity for growth
- Policy D6 Housing quality standards

Housing

- Policy H1 Increasing housing supply
- Policy H4 Delivering affordable housing
- Policy H10 Housing size mix

Sustainable Infrastructure

- Policy SI 1 Improving air quality
- Policy SI 2 Minimising greenhouse gas emissions

Transport

- Policy T1 Strategic approach to transport
- Policy T2 Healthy Streets
- Policy T3 Transport capacity, connectivity and safeguarding
- Policy T4 Assessing and mitigating transport impacts

- Policy T5 Cycling
- Policy T6 Car parking

Funding the London Plan

- Policy DF1 Delivery of the Plan and planning obligations

Monitoring

- Policy M1 Monitoring

Camden Local Plan 2017

4.4 The Local Plan was adopted by the Council in July 2017 and replaced the Core Strategy and Camden Development Policies documents as the basis for planning decisions. The most relevant policies to be considered as part of the appeal process are listed below:

Meeting Housing Needs

- H1 Maximising housing supply
- H4 Maximising the supply of affordable housing

Protecting Amenity

- A1 Managing the impact of development

Sustainability and Climate Change

- CC1 Climate change mitigation

Transport

- T1 Prioritising walking, cycling and public transport
- T2 Parking and car-free development

Delivery and Monitoring

- DM1 Delivery and monitoring

Other Material Planning Considerations

Belsize Conservation Area Statement

4.5 The Belsize Conservation Area Statement was adopted in 2003. Its aim is to provide a clear indication of the Council's approach to the preservation and enhancement of the Belsize Conservation Area. The statement is a material consideration in the Council's planning decision-making for Belsize Square.

Camden Planning Guidance (CPG)

4.6 The Camden Local Plan 2017 is supported by the Council's CPGs. These documents were created following extensive public consultation. The relevant documents are listed below:

- CPG Air quality 2021
- CPG Amenity 2021
- CPG Design 2021
- CPG Transport 2021
- CPG Developer Contributions 2019

Draft new Camden Local Plan

4.7 In January 2024, the Council published a draft new Camden Local Plan. As an emerging plan, the draft new Local Plan is now a material consideration in planning decisions. At this early stage in the preparation process, the draft new Local Plan has limited weight in planning decisions, but as a statement of the Council's emerging approach, it demonstrates the direction of travel.

4.8 The draft new Local Plan has considered the most recent changes to the NPPF. The most recent version of the NPPF was released on 19 December 2023, the day before the draft Plan was approved by Cabinet (i.e. 20 December 2023). Cabinet also delegated the making of minor changes to the plan to the Director of Economy, Regeneration and Investment, in consultation with the Cabinet Member for New Homes, Jobs and Community Investment. Subsequently, minor changes to the Plan were signed off through a Non-Key Executive Decision on 26 January 2024. This provided the Council with an opportunity to make minor changes to the plan in response to the updated December 2023

version of the NPPF if necessary. No revisions were made as the draft Plan was considered to be consistent with that version of the Framework.

4.9 The Council will refer to parts of the evidence base for the emerging Plan. The relevant policies are:

Development Strategy

- DS1 Delivering healthy and sustainable development

Meeting Housing Needs

- H1 Maximising housing supply
- H3 Protecting existing homes
- H6 Housing choice and mix
- H7 Large and small homes

Protecting Amenity

- A1 Protecting amenity
- A3 Air quality

The Natural Environment

- NE2 Biodiversity

Responding to Climate Change

- CC1 Climate change mitigation

Safe, Healthy and Sustainable Transport

- T1 Safe, healthy and sustainable transport
- T2 Prioritising walking, wheeling and cycling
- T5 Parking and car-free development

Delivery and Monitoring

- DM1 Delivery and monitoring

London Plan Guidance (LPG)

4.10 London Plan Guidance (LPG) provides further information about how the London Plan should be implemented. Below is a list of the most relevant documents:

- Air Quality Neutral
- Sustainable Transport, Walking and Cycling
- Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy SPG

5 REASONS FOR SERVING ENFORCEMENT NOTICE

5.1 The Council established that a material change of use had occurred by the subdivision of one flat, known as Flat 4, located on the second and third floors into two flats. An Enforcement Notice was served on 23 January 2024 (see appendix 2). The Council's delegated report is attached as Appendix 1. The reasons for serving the Notice are:

1. The change of use has occurred within 4 years of the Notice being served.
2. 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).

6 THE COUNCIL'S CASE

6.1 There are two main issues in this case: first, whether the material change of use took place less than 4 years before the notice was issued and second, whether the Council's policies require both Flats 4 and 5 to be designated as car-free.

6.2 The Council resolved to grant planning permission subject to a Section 106 Agreement on 30th June 2022, however the owner failed to engage with the Council's legal team. A draft decision notice is attached at appendix 3.

6.3 It would be possible to overcome the Council's reason for serving the enforcement notice if the Appellant were prepared to enter into a Section 106 legal agreement securing both

flats as car free. The reason why these matters must be secured via legal agreement are set out below.

Change of use took place less than 4 years prior to enforcement action being taken (ground b and d)

6.4 The Council will demonstrate that the change of use took place following the purchase of the property by the Appellant, under four years before the enforcement notice was served.

The Council disputes the Appellant's case under:

- Ground B that the breach of control alleged in the enforcement notice has not occurred as a matter of fact;
- Ground C that the use does not constitute a breach of planning control; and
- Ground D, that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

6.5 The Council will demonstrate that the Appellant purchased the leasehold of one flat, known as Flat 4 on 01 July 2021. Prior to this, the flat was in the same ownership pursuant to a leasehold agreement to Ruth Marian Muffett which she held from 2 August 1994. The Council will provide evidence of the purchase of Flat 4 in 2021 and the Company House records of the freehold company known as 39 Belsize Square Limited, which comprise the freeholders for the four properties in the building. The Council will provide evidence to show there is no leasehold or freehold relating to the separate unit known as Flat 5.

6.6 The Council will provide evidence that Ruth Marian Muffett remained the leaseholder of Flat 4 from 1994 until 2021. The Council will provide a copy of a lease for Flat 4 dated 2 August 1994 and signed by Ruth Marian Muffett. The lease makes reference to the "Property formerly known as Flat 4 and Flat 5". There is no evidence to suggest any other leaseholder or occupant besides Ms Muffett lived in the combined Flat 4 from 1994 until 2021.

6.7 The Council will demonstrate that, whilst historically there were two flats on the second and third floors, the lawful use of these floors was as a one 3-bedroom flat since at least 1994.

6.8 The Council's evidence will show that whilst there are separate gas and electricity metres for Flats 4 and 5, this was simply due to the fact that the energy supply was not combined after the flats were converted from two flats into a single flat in the early 1990s. Whilst

existing plans submitted as part of the planning application ref 2022/1601/P seek to suggest that there were two kitchens and bathrooms, the Council will argue and provide evidence that this is not evidence of two separate dwellings.

6.9 The Council will provide council tax records which demonstrate that council tax was only paid for Flat 4 prior to 4 April 2023, when a change of use was registered.

6.10 The Council will provide an independent surveyor's report dated 27 July 2023 produced as a result of internal works to the second and third floors in order to create two separate units.

6.11 The Council will show that the only evidence provided by the Appellant consisted of a service charge demand for Flats 4 & 5 from 2022, historic energy metre readings, photos of the separate energy metres for Flat 4 & 5, screenshots of Royal Mail searches for Flats 4 & 5 (no date for either the photos of energy metres or the Royal Mail screenshots were provided so the Council assumes they were taken around the time that they were sent attached in an email on 05/05/2023), and historic planning applications from Flats 4 & 5. None of the above demonstrated four years' lawful use as two flats.

6.12 The Council will provide a copy of an asbestos report dated 30 May 2022 which does not show the property was in use as two flats.

6.13 The Council will demonstrate that the Appellant's own planning application submitted on 12 April 2022 (Ref: 2022/1601/P) was for a proposed change of use from one flat into two. No mention was made in that application that the works were retrospective. The application submitted was for the "*Creation of additional Flat, insertion of an additional roof window, removal of 2 metal side windows, build up one opening, fit a timber replacement window in the other, alterations (tidying up) to soil and waste pipes*". The Council will demonstrate that the Appellant provided a signed application form confirming that the development had not yet taken place (see appendix 4). A statement by an architect was also submitted which confirmed the use of the property as one flat (see appendix 6). The information submitted as part of the planning application confirms the use of the property at the time of submission was as a single flat.

6.14 The Council will also rely on a building control notification of works submitted by the Appellant. The works were said to have commenced on 27 September 2021 and give a site address of Flat 4, 39 Belsize Square with no mention of flat 5. That is consistent with

the subdivision having been carried out to enable the unauthorised use less than four years prior to serving the enforcement notice.

Requirement for car free development (grounds a, c)

6.15 The second reason for taking enforcement action relates to the lack of S106 Legal Agreement to secure the flats as car free. A copy of the draft decision notice with the Council's reasons for recommending the grant of planning permission for the creation of a second flat subject to securing both Flats 4 and 5 as car free is attached (appendix 3).

6.16 The provision of additional housing is welcomed. The residential amenity of the units was considered acceptable. However, planning harm is caused by the lack of a Section 106 legal Agreement to designate both units as car free. Whilst the Council has sought to work with the appellant to sign the S106 Legal Agreement to obviate the need for any appeal, the Appellant has only agreed to one unit being secured as car free.

6.17 The Council considers that the whole development – both units – are required to be car free. The Council will argue that Policy T1 seeks to promote sustainable transport by prioritising walking, cycling and public transport in the borough, and that Policy T2 states (as relevant):

6.18 *'Limiting the opportunities for parking within the borough can reduce car ownership and use and therefore lead to reductions in air pollution and congestion and improve the attractiveness of an area for local walking and cycling.'*

Car-free in new developments

6.19 *Car-free development means that no car parking spaces are provided within the site other than those reserved for disabled people and businesses and services reliant upon parking, where this is integral to their nature, operational and/or servicing requirements (e.g. emergency services, storage and distribution uses). In addition, current and future occupiers are not issued with on-street parking permits.*

6.20 *All new residential developments in the borough should be car-free. Parking will only be considered for new non-residential developments where it can be demonstrated that the parking provided is essential to the use or operation of the development.*

Redevelopments

6.21 *Land is an important resource, particularly within a densely populated area such as Camden. The Council will therefore support the development of parking space for alternative uses. In redevelopment schemes, the Council will consider retaining or reproviding existing parking provision where it can be demonstrated that the existing occupiers are to return to the address when the development is completed. If a development is to have new occupiers, this should be car-free.'*

6.22 This means that the Council will not issue on-street or on-site parking permits in connection with new developments, whether those developments are new builds or the product of redevelopment or a change of use. The aim of the Council's policies is not only to ensure that future developments are car free but where possible to reduce the parking stress within the borough by removing parking rights and car use from redeveloped properties. Car-free developments are secured by Section 106 agreements combined with Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 and Section 1(1) of the Localism Act 2011. The Council uses these Acts in addition to Section 106 of the Town and Country Planning Act (rather than instead of it).

6.23 CPG Transport states that:

'Therefore all homes in new developments must be car-free, not just additional dwellings. Exceptionally, where existing occupiers are to return to a property after it has been redeveloped, we will consider allowing the reprovion of the parking available to them (so the redevelopment does not cause people to lose parking already available on that site prior to its redevelopment), where it is demonstrated to the Council's satisfaction that the existing occupier will return to the property as their principal home.'

6.24 The Council will show that this exemption does not apply in the Appellant's case and that both units are required to be car free.

6.25 The Council will provide evidence to show that the site is located in an area of parking stress and within a Controlled Parking Zone operating at capacity, with very few spare spaces available to residents (see Appendix 8). The Council will demonstrate the detrimental impact of failing to secure the two flats as car free would have on parking stress, further reducing the number of spaces available to existing residents. The Council will show that currently there are no parking permits issued to the occupants of Flats 4 and 5 which demonstrates that it is perfectly possible for people to live in this area without

parking provision. No parking rights will be lost to the existing or any future tenants as a result of the operation of the Enforcement Notice.

- 6.26 The Council will provide evidence of past appeal decisions which support the Council's construction and application of Policy T2 of the Camden Local Plan.

CIL Compliance

- 6.27 The Council considers that securing the car free provisions are necessary, directly related, and fairly and reasonably related in scale and kind to the development and can only be dealt by way of a planning obligation. A full CIL note will be provided.

Ground F- that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

- 6.28 The Appellant argues that the requirement in the Notice to reinstate one flat is not justified, as the Council does not object to the use of the second and third floors as two flats. The Council will demonstrate that steps required are considered necessary to address the harm from the unauthorised use and are not excessive.

Ground G- that the time given to comply with the notice is too short.

- 6.29 The Council has reviewed the Appellant's submission on this point and does not object to extending the compliance period to six months if the Appeal is dismissed.

7. EVIDENCE

- 7.1 The Council will be supporting its case with evidence from the following witnesses:

- Miles Peterson – Planning Enforcement Officer, Development Management
- Joze Stivan – Senior Transport Planner, Transport and Travel Planning Team

- 7.2 The Council will make reference to the following documents as part of its evidence:

- Delegated Report, Enforcement Case EN23/0192
- Enforcement Notice (EN23/0192)
- Draft Decision Notice (2022/1601/P)
- Planning Application Form for 2022/1601/P
- Existing and Proposed Floor Plans 2022/1601/P
- 2022/1601/P Design and Access Statement

- Internal Council Tax Checks (27 June 2023/08 May 2024), 39 Belsize Square, NW3
- Copy of Lease between Belsize Square Limited and Ruth Muffett, 2 August 1994
- Asbestos Survey, 39 Belsize Square, undertaken May 2022
- Independent Surveyor's Report, 39 Belsize Square, undertaken July 2023
- Email Communication with Freeholder
- Building Control Application 21/2/07662 (IN ABEYANCE Internal alterations and refurbishment (Flat 4 & 5))
- Official Copy of Register of Title NGL692928 (Freehold 39 Belsize Square, London NW3 4HL)
- Official Copy of Register of Title NGL722865 (Leasehold 39 Belsize Square, London NW3 4HL)
- Companies House Record, 39 Belsize Square Limited
- Companies House Record (Appointment of Director, 39 Belsize Square Limited)
- Companies House Record (Termination of a Director Appointment, 39 Belsize Square Limited)
- Controlled Parking Zones, Camden
- Inspectors Report on the Examination of the Camden Local Plan
- Mayor's Transport Strategy, March 2018
- Camden's Transport Strategy, 2019-2041

8. CONCLUSION AND PLANNING BALANCE

- 8.1 The Appellant has failed to provide any evidence to support their case that the use of the property as two flats is lawful. The Council has sufficient evidence that the current lawful use of the second and third floors is as one residential unit.
- 8.2 The unauthorised use as two flats conflicts with a number of national, regional and local policies and planning guidance. There are benefits in relation to the provision of residential accommodation. However, any such benefit would not outweigh the harm caused by the failure to comply with policies T1 and T2 which seek to ensure all new development, including redevelopment schemes, are made car free to facilitate sustainability and to help promote alternative, more sustainable methods of transport. The unauthorised use does not accord with the development plan and there are no other material planning considerations sufficient to indicate that the appeal should be allowed.

9. APPENDICES

Appendix 1 – Delegated Report (EN23/0192)

Appendix 2 – Enforcement Notice (EN23/0192)

Appendix 3 – Draft Decision Notice (2022/1601/P)

Appendix 4 – Planning Application Form for 2022/1601/P

Appendix 5 - Existing and Proposed Floor Plans 2022/1601/P

Appendix 6 - 2022/1601/P Planning and Heritage Statement

Appendix 8 - Controlled Parking Zones in Camden

Appendix 9 – Inspectors Report on the Examination of the Camden Local Plan

Appendix 10 – Mayor’s Transport Strategy, March 2018

Appendix 11 – Camden Transport Strategy 2019-2041