

Statement of Case

of the Appellant, Westgrove Management Limited

Re: Second and third floors, 39 Belsize Square, LONDON, NW3 4HL

APP/X5210/C/24/3340116

- 1.** The Grounds of Appeal included (b) and (c), on the basis that there have been two flats across the second and third floors (of 39 Belsize Square) for over 50 years.
- 2.** The Council acknowledges (see Statement of Common Ground) that prior to 1994 the second and third floors were two flats.
- 3.** Following the Appellant's purchase (in 2021) of the long leasehold interest in the second and third floors, the Appellant wished to re-furbish the property and its architect prepared drawings which included considerable structural works. The Appellant then discovered that elements of the works were significant more expensive than anticipated and so the architect withdrew that planning application.
- 4.** A further planning application was submitted and accorded Council reference 2022/1601/P; the external works comprised in that application were modest, comprising alterations to fenestration to side elevation and side roof slope.
- 5.** The lawful use of the second and third floors (whether one flat or two) had been queried, and - as the Appellant's architect (Mr Will Moses of CSM+ Architects) had understood (from discussions with Council Planners) that an application to sub-divide premises such as this would anyway be uncontroversial - a mention of "Creation of additional flat" was included in the description of the Proposed Development.
- 6.** It will be noted though that the Existing Drawings submitted for application 2022/1601/P showed two flats, one occupying half of the Second Floor and the other occupying the remainder of the Second Floor and also the Third Floor. Each flat was shown with its own kitchen and "main" bathroom. Furthermore, the Planning & Heritage Statement (prepared by the Appellant's architect), relates the presence of two electric meters, and two gas meters, there being service charge bills addressed to Flat 4 and Flat 5 etc ...
- 7.** Following on from submission of application 2022/1601/P, it came to light that the Council would require a Section 106 Agreement to be entered into before planning permission would be granted. The S.106 proposed would remove the rights of occupiers (unless a Blue Badge holder) of each flat to Residents Parking Permits.
- 8.** Correspondence between the Appellant and the Council Planners ensued, the Appellant seeking to convince the officers that notwithstanding the fact of the planning application mentioning "Creation of an additional flat" (this error not being corrected prior to submission is much regretted, but at the time of submitting the application the Appellant's architect had thought this was of no

consequence), planning permission was not actually required due to the historic usage of the Second and Third Floors as two flats.

9. As the Appellant would not sign the proposed S.106 Agreement, in January 2024 the Council served the Enforcement Notice which is the subject of this Appeal.
10. The Council acknowledges (see Statement of Common Ground) that prior to 1994 the second and third floors were two flats. Indeed, the fact that the Second and Third Floors had been used as two flats for many years before that is evidenced by documents on the Council's own website, such as planning application documents from 1971 and the 1990s, as well as the two having separate postal addresses.
11. The evidence available is clear, on the balance of probability, that the Second and Third Floors had been arranged as two flats for a period well in excess of four years. The Immunity period, for Ground (d), has therefore been substantiated. No evidence has been put forward to show that the Second and Third Floor was re-arranged as one flat - or occupied as one flat - between 1994 and 2021. The Council accepts that the Second and Third Floors were two flats until at least 1994 and the Existing Drawings of 2022 show those two floors arranged as two flats.
12. A lawful right had accrued to occupy the Second and Third Floors as two flats. The continued existence to exercise that right does not depend upon that right continuing to be exercised. Once immunity had been gained, the right can be lost only via abandonment or a supervening event. (R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin) [2021] EWHC 1509 (Admin) 7 June 2021)
13. With regard to the Ground (a) (and Ground (f)) appeal -

The Council agrees that planning permission ought to be granted for the alleged breach, that is clearly set out in the Council's Delegated Report in relation to this Enforcement action.

If the Council wishes to restrict occupiers of certain residential units from being able to obtain Residents Parking permits for on-street parking, it has powers under the Road Traffic Regulation Act 1984. It is not dependent upon the planning process to achieve that aim.

It is noted that the Council has not put forward any evidence of on-street parking issues in the vicinity of the Appeal Site so as to justify the necessity for a Deed (under Section 106 of the 1990 Act or Section 16 of the 1974 Act) which restricts rights to Residents Parking Permits.

In discussion and email exchanges between the Appellant's solicitor and Council officers over recent months, neither has the Council demonstrated how its Policy position justifies a removal of Residents Parking Permit rights from both flats, rather than just one of the flats (i.e. the "uplift" in the number of residential units) if the appeals on Grounds (b), (c) and (d) were to fail). That correspondence has highlighted the lack of Policy basis for the Council to seek that both flats be restricted by a Deed under S.106/16.

Furthermore -

As mooted (on a strictly without prejudice to the Appellant's position that such a restriction is not a justifiable requirement) in its Grounds of Appeal, the Appellant has been open to entering a Deed (under S.106 T&CPA 1990 and S.16 of the 1974

Act) in relation to one of the two flats, to restrict the rights of occupiers to Residents Parking permits.

The Appellant's solicitor has been in close liaison with the Council's lawyer over recent months, in an attempt to settle (on the basis related above) a Deed under Sections 106 and S.16. However, the outstanding issue between the parties remained, whether the Deed should bind one flat or both.

The ongoing impasse is particularly unfortunate given that there remains a "live" planning application. Therefore, if the S.106 Agreement could be finalised between the parties and be executed and completed, the Council could issue planning permission 2022/1601/P and withdraw the Enforcement Notice.

For the LPA to seek removal of Residents Parking rights for both flats, although it accepts occupation as one flat to be Lawful, is unreasonable and without a rational basis.

It is submitted on behalf of the Appellant that the Ground (a) appeal should succeed and planning permission be granted for the alleged breach", either on the basis of no Deed under S.106/S.16 being required or with Residents Parking Rights being restricted for one of the flats only. (The draft Deed submitted on behalf of the Appellant with this Statement of Case provides for both options, at the Inspector's discretion.)

14. Ground (f)

The Council's objection to the alleged breach are (as evidenced in its Delegated Report in relation to this Enforcement action) is limited to parking, specifically the additional demand for on-street parking which might arise due to an additional flat having been created.

The "steps required", at section 5 of the Enforcement Notice, do not even mention parking or highways.

As noted under Ground a (above) the Council has other powers to ensure that parking concerns are addressed.

Commenting in turn upon the steps in section 5 of the Enforcement Notice –

" 5.1 Cease the use of the second and third floors as two residential units"

The Council agrees that use of the second and third floors as two flats is acceptable, that is clearly set out in the Council's Delegated Report in relation to this Enforcement action. Therefore, for the Council to require that those floors cease to be used as more than one flat (which is understood to be the intention of 5.1) is not justified.

" 5.2 Reinstate one residential unit as per the 'existing' drawings in "Existing & Proposed Floor Plans, Elevations & Site Location Plan" (2022/1601/P)"

The carrying out of internal works within no. 39 does not of itself require planning permission.

The Council has not objected to the limited external changes that have been carried out and as were proposed by application 2022/1601/P. Indeed, the Council confirmed those works to be acceptable and it is presumed that the Council remains content to grant planning permission for those works.

The requirements at 5.2 are excessive; they go beyond the scope of an Enforcement Notice and are also unjustified. If the Notice were to be upheld, it is the Appellant's submission that 5.2 should be deleted.

" 5.3 Make good on any damage caused as a result of the works. "

The alleged breach cited in the Notice relates to the two top floors of a building. There is no reason for persons other than a long-leaseholder, occupier or person authorised by either to enter such floor-space. 5.3 is therefore excessive.

Furthermore –

The Appellant may be open to entering a Deed (under S.106 T&CPA 1990 and S.16 of the 1974 Act). An elaboration of this issue is in paragraph 13 above.

15. Ground (g)

Each of the flats is rented out to tenants who occupy their flat as their home. The ASTs run until 2nd July 2025 and 4th July 2025 respectively.

If the Enforcement Notice were to be upheld, a corresponding extension of the Compliance Period is sought.

There is no harm arising from the “alleged breach”.

Documents that may be referred to / relied upon: -

Email correspondence exchanged between the Appellant / its advisers and the Council’s officers, including attachments thereto.

Application documents for 2022/1601/P

Planning History – Documents for applications which relate to this property.

The Council’s Delegated Report behind the Enforcement Notice.

Conveyancing documents and documents (as held at Companies House) for the freehold company.

Statutory Declaration of Andrew Bloom (encapsulating the above).

Draft Deed by way of Unilateral Undertaking pursuant to (Section 106 of the 1990 Act and) Section 16 of the 1974 Act.