254-256 Belsize Road and 258 Belsize Road, London NW6 4BT

Grounds of Appeal of Empire Communications Limited and Oakenfield Enterprises Limited

1. These Grounds of Appeal are against an enforcement notice dated 29th April 2024 in respect of '**Land at: 254-256 Belsize Road and 258 Belsize Road, London, NW6 4BT** as shown outlined in black on the attached plan ("the Property")'. Empire Communications Limited and Oakenfield Enterprises Limited were served with copies of the notice, it appears purportedly as owners.

The enforcement notice site

2. The site of the property is 'as shown outlined in black on the attached plan'. Outlined in black is 254-256 Belsize Road and only a small part of 258 Belsize Road. It omits the majority of the apartments in 258.

Ground (b) the matters alleged have not occurred

3. The appeal site is not, and never has been, in use for 'serviced apartments for short term lets (sui generis)', nor has there been a change of use from office use to that use. The allegation is that the initial (and subsequent) non-office use has been for a non-C3 form of short term lets.

4. As the Council have previously accepted, both buildings were converted from office use to C3 residential flats under permitted development rights and in accordance with prior approvals: 2014/7511/P for number 258 and 2015/5064/P for numbers 254-256.

258

5. The prior approval 'Change of use from offices (Class B1) to 34 flats (16 x studios, 9 x 1-bed and 9x2-beds)'was granted on 28th January 2015 under 2014/5880/P. It was subject to a planning agreement requiring the development to be car free and

providing for a highway contribution of £10,000 to be paid to the Council. The payment was made in early February 2015.

6. First occupation at 258 Belsize Road was on 12 December 2016.

254-256

7. Prior approval was first granted under reference 2014/1417/P, on 11 April 2014 and conversion works began in 2014 under that approval. A subsequent prior approval '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' was granted on 22nd October 2015 subject to a planning agreement requiring the development to be car free and providing for a construction management plan. Conversion continued under that prior approval.

8. The conversion was substantially completed by March 2018 .

9. Occupation of the units in 254-256 began on 17 June 2018.

10. Subsequent use of the buildings has been restricted by:

    (i) The Covid pandemic;

    (ii) A flood to the plant room in 254-256, which prevented that building from being occupied from 12 July 2021 to 1 May 2022. Residents were moved to 258;

    (iii) The owners' plans to sell, which has meant that ASTs are no longer being offered.

The change of use

11. The change of use from offices occurred when the conversion works took place. The conversion to C3 residential, as set out in the prior approvals, occurred at the latest when the new flats were nearing completion.

12. In *Impey v Secretary of State for the Environment*[1] the Divisional Court of the High Court concluded that a material change of use can be achieved by the physical conversion of a building for residential purposes without actual occupation having taken place. *Impey* suggests that the test may be whether the premises are usable for the new purpose. This assessment will, however, always be a matter of fact and degree.

13. In a 2014 Inspector's decision, *Ahmed v London Borough of Barking and Dagenham*[2] where the material change of use of a dwelling house to flats had taken place at some point during conversion works and before occupation.

14. So had the conversion been unauthorised an enforcement notice could have been issued against a change of use to C3 residential whilst the works were being carried out and before any occupation by residents had taken place.

15. The occupation of the buildings has been as C3 residential, within the Deregulation Act 2015.

16. Those occupants have been:

    (i) Residents under assured shorthold tenancies, some who have been in occupation for several years;

    (ii) Residents under shorter term licences. Those occupants have been for varying periods, but have occupied as single households within use class C3: see *Moore v Secretary of State for the Environment.*[3] Short term lets in any apartment have totalled less than 90 nights in a calendar year. By s 25A of the Greater London (General Powers) Act 1974, such use 'as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use'. In passing the 90 nights applies to any residential premises, not just C3 dwellinghouses;

[1] (1984) 47 P & CR 157, approved in *Welwyn Hatfield Council v Secretary of State for Communities and Local Government* [2011] UKSC 15, [2011] 2 AC 304.
[2] [2014] PAD 8.
[3] (1999) 77 P&CR 114.

(iii) Survivors of the Grenfell Tower fire. 13 apartments in 258 were occupied by Grenfell fire survivors for between 31 and 517 nights. It is shameful that Camden Council is seeking to enforce and inflict massive financial harm to the appellants for housing Grenfell survivors;

(iv) Camden Council residents relocated by the Council because of fire safety problems. The first wave of relocations occurred between June and August 2017 from the Chalcot Estates as a consequence of the Grenfell fire. 16 apartments in 258 were occupied for between 8 and 37 nights, mainly for four or five weeks. In July 2018 nine apartments across both buildings were occupied by displaced residents from the Camden fire. One occupation was for 30 nights, the others for between 1 and 3 nights. Again, it is shameful that Camden Council are enforcing against the appellants for housing its own residents.

The planning unit

17. The Council is wrong to describe the two buildings as a single planning unit (whether this is 254-256 and 258, or the 254-256 and part of 258 in the enforcement notice). The apartments are their own individual planning units, as is usual.

18. Each apartment is to be considered individually. Each created a new planning unit and changed from offices to C3 dwellinghouse use at the latest when they became usable for residential purposes. If the change of use was unlawful then the Council could have issued an enforcement notice at that point.

19. The C3 use continued as units were occupied under ASTs, by Grenfell and Camden residents, and under shorter lets. The manner of occupation of the shorter lets was as C3 dwellings. The shorter lettings kept within the 90 day total allowed for, within which no material change of use takes place.

The use of the buildings

20. The use of the buildings changed from offices to C3 dwellinghouses at the latest when the individual apartments were usable for residential purposes.

The agreed position with the Council and the Valuation Office

21. The Council conducted a lengthy enforcement investigation into the occupation of 258. On 25 January 2019 the Council's Senior Planner, Angela Ryan, said in an email:

> "Thank you for your emails and for the accompanying tenancy agreements … I would confirm that the Council can find no breach of the 90 day limit for short term letting being breached at the site."

22. The Valuation Office conducted a lengthy assessment at the same time and agreed that the apartments were domestic properties subject to Council Tax.

23. The evidence is no different from what it was in 2018/2019. The Council's new allegation of a breach from 2017 is entirely contradicted by their conclusion in 2019 and the Valuation Office's decision. Both buildings have been registered for Council Tax since occupation and that has been paid.

The Council's new assessment

24. The Council's assessment is incoherent. Indeed, it assesses the wrong location. The 24th May 2023 site visit referred to in the report, para 6.5, was at 1 Greville Road, London NW6 5HA, not Belsize Road.

25. Its essential premise is that that the first non-office use of the buildings was as non-C3 serviced apartments. That is simply wrong.

26. The Council ignores the marketing of the premises for ASTs and that the Sanctum marketing is across several sites in London. It also misunderstands the nature of high quality residential apartments in central London. Such blocks will often have 24 concierge and security services and seating areas at reception for residents. The Council had granted prior approval to drawings which showed these.

27. Maid services (here twice a week) are not unusual, and it is efficient and better for security for these to be arranged centrally. Providing bedlinen and welcome materials (such as washing up liquid) is a convenient touch, but consistent with letting out furnished apartments, as is the payment of utility bills.

28. There is though a lack of hotel style services, such as food, and of other facilities which are often available in apartment blocks, such as a residents' gym.

29. The Council describes the housing for Grenfell survivors and Camden Council residents as a 'hotel use' – which is simply wrong - whilst rightly recognising that other occupation is not as a hotel. It accepts that the short term lettings are within the 90 night limit.

30. The Council also asserts that the primary use of the buildings is as short term lettings, but since none of the apartments were ever used for short term lets for more than 90 nights, their principal use (and availability) was for longer term occupation that cannot be right. The Council also fails to deal with the other occupation, which would not be ancillary to a short term let use.

The previous acknowledgements by the Council and Valuation Office that the uses are C3 dwellinghouses

31. The Council carried out an extensive and burdensome investigation into the use of 258. This positively concluded that the use was C3 [quotes and references]. The Valuation Office also investigated and were satisfied that the use was C3.

32. The evidence in respect of that period is unchanged. There is no rational basis for the Council to change its position that the use of the converted 258 was as C3 dwellinghouses. The evidence is similar for the subsequent use of 258 and for 254-256. It follows that the use was and remains C3.

33. The draft decision for 2022/3717/P acknowledged the existing, lawful residential use of the buildings.

The extension works to 254-256

34. Extension works were carried out to 254-256. A planning application to regularise the works and to approve further new homes was submitted in 2022 (ref 2022/3717/P). The Council has failed to determine the application, despite having issued a draft decision.

35. Several matters follow:

a. The extension works are now lawful by the passage of the four year time limit (s 171B(1));

b. The Council accepted that the prior approval was implemented, hence their pursuit of subsequent compliance with the cycle storage condition on the prior approval;

c. The extension was not on 258. It therefore has no bearing on the 258 prior approval;

d. The Council rely on the GPDO, art 3(5) that:

> "The permission granted by Schedule 2 shall not apply if:
>
> (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;"

The ambit of the permitted development is set by the prior approval, since the conversion has to be in accordance with those approved details. The prior approval was in connection with the existing building, since that is required for the conversion to be permitted development. The building operations involved in the construction of the existing building were all lawful. So article 3(5) does not remove permitted development rights from the existing building. The permitted development rights do not, of course, apply to the extension;

e. If the residential conversion was not authorised by the 254-256 prior approval then it became lawful after four years as a change of use of a building to a dwellinghouse or dwellinghouses: s 171B(2). The Council's argument would therefore lead to the outcome that the cycle storage requirement would no longer apply;

f. The extension will remain since it is lawful under s 171B(1) (and indeed there is no objection by the Council to it).

Ground (f) the requirements of the notice exceed what is necessary to remedy the breach

36. The enforcement notice could have required the development to comply with the planning permissions described in the prior approvals: s 173(4). In the event of a breach, the appropriate response would be to require 254-256 and the enforced against part of 258 to be used as C3 residential in accordance with the prior approvals.

Ground (g)

37. There is no ground (a) appeal because the intention is always to use the apartments as C3 dwellinghouses. That use could not be included under ground (a). It follows that if planning permission were required, this could only be sought by a separate planning application. Time would be needed for such an application to be made and, if need be, appealed.

38. The three month period to convert the buildings back to offices is wholly unrealistic.