Camden

Date: 11/07/2024
Your Ref: APP/X5210/C/24/3340116
Our Ref: EN23/0192

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Dear Mr Paul Dignan,

Town and Country Planning Act 1990
Appeal by Westgrove Management Ltd
Site Address: Flat 4, 39 Belsize Square Camden, LONDON, NW3 4HL

I write in connection with the above appeal against the Enforcement Notice (Ref. EN23/0192) for the **change of use from one three-bedroom flat located on the second and third floors, to two flats.**

FINAL COMMENTS ON APPELLANT'S STATEMENT

The Appellant has failed to provide any evidence that the property was in use as two flats for 4 years prior to the service of the Enforcement Notice on 23 January 2024. At Paragraphs 14 and 26 of their statement, the Appellant seeks to allude to evidence of two occupiers, asserting that application 9500258 indicates there were two flats in use at the time that Ruth Muffet was in occupation (from 1994 onwards). The basis of this claim is the planning application made by Miss C Hirschfield in February 1995. However, as the Inspector will evidence from the application form 9500258, annexed hereto as Annex 1, it clearly states that Miss Hirschfield occupied Flat 2, which is on the first floor of the property, not the second and third floors. This is further confirmed by the record on the Council's website showing the decision notice for Flat 2 (Annex 2).

The Appellant cites (Paras 17 and 28) the judgement of Mr Justice Holgate in *R (on the application of Ocado Retail Ltd) v Islington London Borough Council* [2021] EWHC 1509 (Admin) [2021] EWHC 1509 (Admin) 7 June 2021(Appellant's Appendix E) to assert that rights to use the second and third floors as two flats should not have been lost. The Council has examined the judgment and believes that the Appellant has misconstrued its application to the facts of this particular appeal.

The Inspector is referred to paragraph 162 of the judgment, which the Appellant helpfully highlighted for ease of reference, and which the Council understands forms the basis for their submission at Paragraph 28 of their statement. The Council is in agreement with the views

expressed by Mr Justice Holgate at 162 that *"The correct legal position is that a lawful planning right which has accrued upon the expiry of a time limit in s.171B is not lost merely because subsequently that right is not exercised for a period of time."* Applying this rationale to the facts in this matter, the Council submits that on the basis of the evidence submitted by the Council, the flat was used as one flat between 1994 and 2021. Therefore, it follows that its use became lawful upon the expiry of the time limit (4 years) within which the Council could have taken enforcement action. Since no such action was taken, the property accrued a lawful planning right of being used as one dwelling (Flat 4, being a one three-bedroom flat located on the second and third floors).

The use of the property as one dwelling would not be lost merely because the current owner begun to occupy it as two separate flats because there was no supervening event that would terminate the present use of the property, such as the two flats accruing their own immunity through the operation of a "4 years rule".

Consequently, it follows that the current lawful use of the property remains as one flat and planning consent is required for a change-of-use to two flats on these floors, as was applied for in 2022/1601/P.

In response to the Appellant's comments on parking provision (beginning at Para 34), the Council's Statement has clearly provided justification for the need of a S106 legal agreement to secure both flats as car-free and make the development (being a change of use) policy compliant. From the Council's statement, the Inspector will note that the Council further relies on a past appeal decision which demonstrates that the Inspector agreed/approved of this approach, an approach that has been consistently applied by the Council for a number of years.

Accordingly, the Council respectfully requests that the Inspector dismiss the Appeal.

Yours sincerely

Miles Peterson

Planning Enforcement Officer

Supporting Communities Directorate