

PLANNING SERVICES

HEARING STATEMENT ON BEHALF OF THE LONDON BOROUGH OF CAMDEN

SUMMARY OF APPEALS

This is the Hearing Statement on behalf of the London Borough of Camden (“**the Council**”) in two appeals pursuant to section 174 of the Town and Country Planning Act 1990 (“**TCPA 1990**”) against an enforcement notice (“**the Notice**”) issued by the the Council on 29th April 2024.

The Notice relates to 254-256 Belsize Road, London, NW6 4BT (“**254/6 BR**”) and 258 Belsize Road, London, NW6 4BT (“**258 BR**”) (together “**the Site**”) and alleges the following breach of planning control: without planning permission the material change of use of the site from two office blocks to serviced apartments for short term lets (Sui Generis).

The first appeal is by Oakenfield Enterprises Ltd (reference APP/X5210/C/24/3345281).

The second appeal is by Empire Communications (reference APP/X5210/C/24/3345282).

Both Oakenfield Enterprises Ltd and Empire Communications (together “**the Appellants**”) pursue the same appeal on grounds (b), (f) and (g).

The Council resists both appeals and submits that both appeals should be dismissed.

THE CASE FOR THE COUNCIL

I. THE BACKGROUND TO THE APPEALS

1. The background to the appeals is set out in detail in the report (see **Appendix 26**) authorising the issue of the Notice (“**the OR**”). The following matters are highlighted given the Appellants’ Grounds of Appeal.

The Site

2. The Site comprises 254/6 BR and 258 BR. Before the breach of planning control occurred, 254/6 BR and 258 BR were separate buildings. The two buildings are now internally linked and used together by Castle Trading Limited (trading as Sanctum Serviced Apartments) (“**Castle Trading**”) for the purposes of its business.

Enforcement Investigation History before 2023

3. Between 18 April 2017 and 25 October 2018 the Council’s planning enforcement team investigated 258 BR regarding an alleged unauthorised short term letting use. This was part of the Council’s Short Term Letting Taskforce. The Taskforce undertakes a relatively light touch investigation of a great number of sites in the Borough.
4. As part of this investigation, a planning contravention notice was issued by the Council on 16 August 2017. A completed PCN was returned to the Council on 29 August 2017.
5. Although there was evidence of short term letting at 258 BR, the Council was unable to collate enough evidence to substantiate a breach of planning control. Accordingly the investigation was closed without formal enforcement action being pursued, given the limited evidence available to the Council at that time regarding the use of 258 BR.
6. Nevertheless, it is notable that at that time 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.
7. A separate enforcement investigation was opened into the alleged failure to provide cycle storage. This case was closed on 4 August 2017 as the alleged breach was remedied.

Enforcement Investigation History since 2023

8. On 24 May 2023 the Council's Short Term Letting Taskforce made an unannounced visit to the Site. In the Appellants' Grounds of Appeal it is alleged at paragraph 24 that the Council's officers did not visit the Site, but rather visited 1 Greville Road. This is incorrect. The Council's officers visited both the Site and 1 Greville Road on 24 May 2023, as evidenced by the photographs taken at that visit (see **Appendix 101**).
9. During the site visit on 24 May 2023, the Council's officers observed a number of guests with luggage coming and going from the Site. Two luggage trolleys were noted in the reception area. Officers spoke with the General Manager who advised that the Council's officers make an appointment and gave her business card.
10. On 25 May 2023 a new enforcement case was opened (reference: EN23/0396) into the alleged change of use of the Site from offices to serviced apartments. Given the history of the Site it was clear an indepth investigation would be necessary due to the ongoing concerns of short term let use.
11. On 13 June 2023 the Council's officers undertook an arranged site visit with the agent who the Council understood to represent Castle Trading and the General Manager of the Site. Notably:
 - 11.1. The Council's officers were shown inside two vacant units (nos. 211 and 215). Both units had the same furniture, bedding and décor, including white towels in the bathrooms for guests.
 - 11.2. The General Manager confirmed verbally that the Site is occupied on the basis of a mix of residential tenancies and short term lets. The General Manager also said that the Site has been used to house Grenfell Tower residents for a period of time following the fire on an emergency basis and that the Site was also closed for a period of time due to flooding.
 - 11.3. The Council's officers observed that 254/6 BR and 258 BR were interlinked. 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 to prevent guests from moving between the buildings. In addition, 254/6 BR has a separate entrance which the Council's officers have observed is sometimes closed with a shutter, in which case the only access for guests would be through 258 BR, thus making use of the internal link between the

buildings.

12. On 14 December 2023 the Council issued a planning contravention notice which was served on the Appellants. The notice included a spreadsheet to be completed requesting details of Assured Hold Tenancies (“**ASTs**”) and short term stays from 2017 to 2023 for each unit.
13. On 21 December 2023 the Appellants returned completed notices, including a completed spreadsheet, copies of ASTs, floor plans and a copy of the sale listing for the Site. (See **Appendices 24, 25 and 27-100**)
14. Having considered all of this material, the Council concluded that formal enforcement action was necessary and expedient. Accordingly, the Notice was issued on 29 April 2024.

Planning history of 254/6 BR

15. 254/6 BR has a separate planning history to 258 BR which is summarised as follows:
 - 15.1. 2013/6819/P – Application for prior approval - 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 December 2013 (Decision Notice and Officer Delegated Report attached at **Appendix 10 and 11**).
 - 15.2. 2014/1417/P – Application for prior approval - 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 April 2014 (**Decision Notice attached at Appendix 9**).
 - 15.3. 2015/2348/P – Application for prior approval - 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 June 2015 (Decision Notice attached at **Appendix 8**).
 - 15.4. 2015/5064/P – Application for 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 – Prior approval granted on 22 October 2015 (Decision Notice

attached at **Appendix 7**).

- 15.5. 2022/3717/P – Application for planning permission - 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.

Planning History for 258 BR

16. The planning history for 258 BR is summarized as follows:

- 16.1. 2014/3843/P - Application for prior approval - Change of use from office to 32 residential units (21 studio, 9 x 1 bed & 2 x 2 bed) - Prior approval refused on 04 August 2014 (Decision Notice and Officer Delegated Report attached at **Appendix 20 and 21**).
- 16.2. 2014/5880/P – Application for prior approval - Change of use from office to 32 residential units (21 studio, 9 x 1 bed & 2 x 2 bed - Prior approval granted on 27 October 2014 (Decision Notice attached at **Appendix 19**).
- 16.3. 2014/7511/P – Application for prior approval - 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 January 2015 (Decision Notice attached at **Appendix 18**).
- 16.4. 2015/1136/P – Application for approval of details under a condition - Approval of details under condition 1 (cycle storage specifications) of prior approval reference 2014/7511/P – Approved on 07 May 2015 (Decision Notice attached at **Appendix 17**).
- 16.5. 2016/1419/P- Application for prior approval - Change of use from offices (Class B1) to residential (Class C3) to create 34 self-contained flats (25x 1-bedroom, 9x 2-bedrooms) - Prior approval refused on 19 April 2016 (Decision Notice and Officer Delegated Report attached at **Appendix 15 and 16**).
- 16.6. 2016/6703/P – Application for planning permission - 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 March 2017 (Decision Notice and Officer Delegated Report

attached at **Appendix 13 and 14**).

- 16.7. 2017/3731/P - Application for approval of details under a condition - Details of cycle storage, as required by condition 1 of prior approval reference 2014/7511/P – Approved on 03 August 2017 (Decision Notice attached at **Appendix 12**).

II. PRELIMINARY MATTERS

17. The Appellants assert that the location plan attached to the Notice omits part of 258 BR: see the Appellants' Grounds of Appeal at paragraph 2. The location plan attached to the Notice was drawn from the title plans at HM Land Registry (see **Appendix 22 and 23**). However, if in fact part of 258 BR has been omitted from the location plan then the Council submits that the plan can and should be amended pursuant to section 176(1) TCPA 1990. This is a matter which should be capable of agreement with the Appellants in a Statement of Common Ground before the hearing.

III. GROUND B APPEAL

18. The Council resists the appeal on ground (b) and submits that the matters stated in the Notice have occurred.
19. The Council's position is that at the date of issue of the Notice the 55 units within the Site were used as serviced apartments for the purposes of providing temporary sleeping accommodation (*sui generis*), as alleged in the Notice. The units are not used as residential accommodation within Use Class C3.

Approach

20. The Council highlights the following matters of approach:
- 20.1. Whether or not the units within the Site are dwellinghouses (applying the ***Graveham*** approach) is not determinative of whether their use was within Use Class C3 because a dwellinghouse may remain as such while being put to a number of different uses, including those outside of Use Class C3: see ***London Borough of Brent v Secretary of State for Levelling Up, Housing and Communities*** [2022] EWHC 2051 (Admin) at [58].
- 20.2. When considering whether the occupation of a unit is outside Use Class C3 it is necessary to focus on the characteristics of the use – in this case the

characteristics of the lettings: see ***Moore v Secretary of state for Communities and Local Government*** [2021] EWCA Civ 1202 per Sullivan LJ at [36].

- 20.3. In so doing, a key consideration is the extent to which the occupation is transient: see ***Commercial and Residential Property Development Company Limited v Secretary of State for the Environment*** [1982] JPL 513 at 513 – 514.
- 20.4. Further, in order for the occupation of a unit to fall outside of Use Class C3, it is not necessary to show that meals are offered or porters (or similar staff) are present: ***Mayflower Cambridge Ltd v Secretary of State for the Environment*** (1975) 30 P. & C.R. 28 at 32.
- 20.5. It will also be relevant to consider whether the occupation is funded by the occupants or another person, such as the local authority: see ***Panayi v Secretary of State for the Environment*** (1985) 50 P. & C.R. 109 at 118.
21. Having regard to the foregoing matters, the Council submits that the character of the use of the Site indicates that it is for short term letting as serviced apartments, being a sui generis use outside of Use Class C3 (“**the Unauthorised Use**”). The Council submits that this is the proper conclusion for the following reasons.

Reason 1 – The layout of the Site and characteristics of the units

22. The layout of the Site and the characteristics of the units indicates the presence of the Unauthorised Use. The Site is laid out as serviced apartments for use as short term lets and has been from the outset. This was observed by the Council’s officers at the site visit on 13 June 2023 in which the units inspected were laid out and furnished in a uniform manner, consistently with the advertising on the Sanctum website, booking.com and other short term letting sites (see **Appendix 102** for site photographs and **Appendices 2 – 6** for photos advertising the Site as serviced apartments on Sanctums website and booking.com). In particular, each unit had the same furniture, bed linen, towels, welcome folder and telephone.

Reason 2 – The description of the use of the Site on the Sanctum Website

23. The Sanctum website (sanctum.london) (attached at **Appendix 2**) advertises the Site for short term letting. The Council highlights the following aspects of how the use of

the Site is described on the Sanctum website by Castle Trading:

- 23.1. The website describes the units as 'holiday apartments' which are said to be 'great for holidays in London'. In particular, the Site is described as 'Belsize Road Holiday Apartments' which are 'ideally located for holidaymakers in London' and also marketed at 'discerning travelers (sic)'. The website also states: 'When looking for accommodation for a trip away, your first thought may well be to book a hotel. Nowadays, though, that isn't the only option for a stay away from home. Many people, be it for leisure, business or something else, opt to stay in a serviced apartment.'
- 23.2. The supporting text on the website 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 on the website are headed 'London Holiday Trips FAQ'. There are also reviews from holidaymakers who appear to have stayed at the Site.
- 23.3. The apartments at the Site are also said on the website to be suitable 'for extended stays, whether you are relocating, studying or having medical treatment'.
- 23.4. The website states 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.
- 23.5. The website states that the properties run by Castle Trading, including the Site, 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.'
- 23.6. The FAQs on the website 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.

- 23.7. In the terms and conditions on the website, 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'.
24. All of these matters are consistent with the use of the Site for the Unauthorised Use and they are inconsistent with the Appellants' assertion that the use of the Site is within Use Class C3.
25. This submission is affirmed by consideration of the nightly rate tariffs for 2024 (see **Appendix 103**) which states that the rate includes:
- 25.1. Maid 'refresh service (twice a week, between 09:00 – 15:00);
 - 25.2. Towels and bed-linen changed twice a week;
 - 25.3. Toiletries on arrival (mini shampoo, conditioner and soap);
 - 25.4. Complimentary bottled water on arrival;
 - 25.5. All utility bills (except phone);
 - 25.6. Fully fitted kitchens with appliances;
 - 25.7. Tea towels, washing liquid and sponge on arrival;
 - 25.8. Air-conditioning and underfloor heating;
 - 25.9. Complementary high speed wireless internet ;
 - 25.10. 50" smart LED television;
 - 25.11. 24 hour reception and security; and
 - 25.12. Balcony (few apartments do not have this facility).
26. Again, this is consistent with the use of the Site for the Unauthorised Use and is inconsistent with the Appellants' assertion that the use of the Site is within Use Class C3.

27. Further, it is notable that the redevelopment of the Site was undertaken by or on behalf of Castle Trading, as shown by the advertisements on the scaffolding for Sanctum Serviced Apartments. Accordingly, it is clear that the intended use of the building was for the purposes of Castle Trading's business, namely the provision of temporary sleeping accommodation (Sui Generis), as explained above, and not a use within Use Class C3. This is also consistent with the later application for planning permission which included temporary sleeping accommodation (reference 2016/6703/P).¹

Reason 3 – Online booking for the Unauthorised Use

28. The units are available to book on booking.com (see **Appendix 3**), TripAdvisor (see **Appendix 4**), hotels.com (see **Appendix 5**) and Expedia (see **Appendix 6**) (in addition to direct bookings via sanctum.london). The advertising of the Site for booking on these websites, including the manner of the listings, is consistent with the use of the Site for the Unauthorised Use and is inconsistent with the Appellants' assertion that the use of the Site is within Use Class C3.
29. This submission is affirmed by the 606 (apparently verified) guest reviews for the Site on booking.com for the period 2021 – July 2024 (see **Appendix 2 and 3**).

Reason 4 – Analysis of the claimed occupation data

30. The General Manager of the Site on behalf of the Appellants has provided documents purportedly from 2017 to 2023 in the PCN response relating to 258 BR and purportedly for 2018-2023 for 254/6 BR. This included 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). The Council has collated the aspects of this evidence dealing with alleged letting and occupation into a single spreadsheet (see **Appendix 109**).
31. Without prejudice to the full analysis in that spreadsheet, the Council highlights the following matters.
32. As summarised in the pie chart below, the documents provided for the period between 2017 to December 2023 illustrates that the residential use the owner claims took place

¹ The Case Officer highlighted in their Officer Delegated Report that the units appeared to be for short term letting and so the initial enforcement case began and the application refused.

amounts to just 14% of this 7 year period (assuming that the ASTs are all credible evidence of actual use, which is not accepted for the reasons below).² Approximately 52% of the ASTs (by number) were for tenancies of 90 days or less and 11% for tenancies of 12 months or longer.

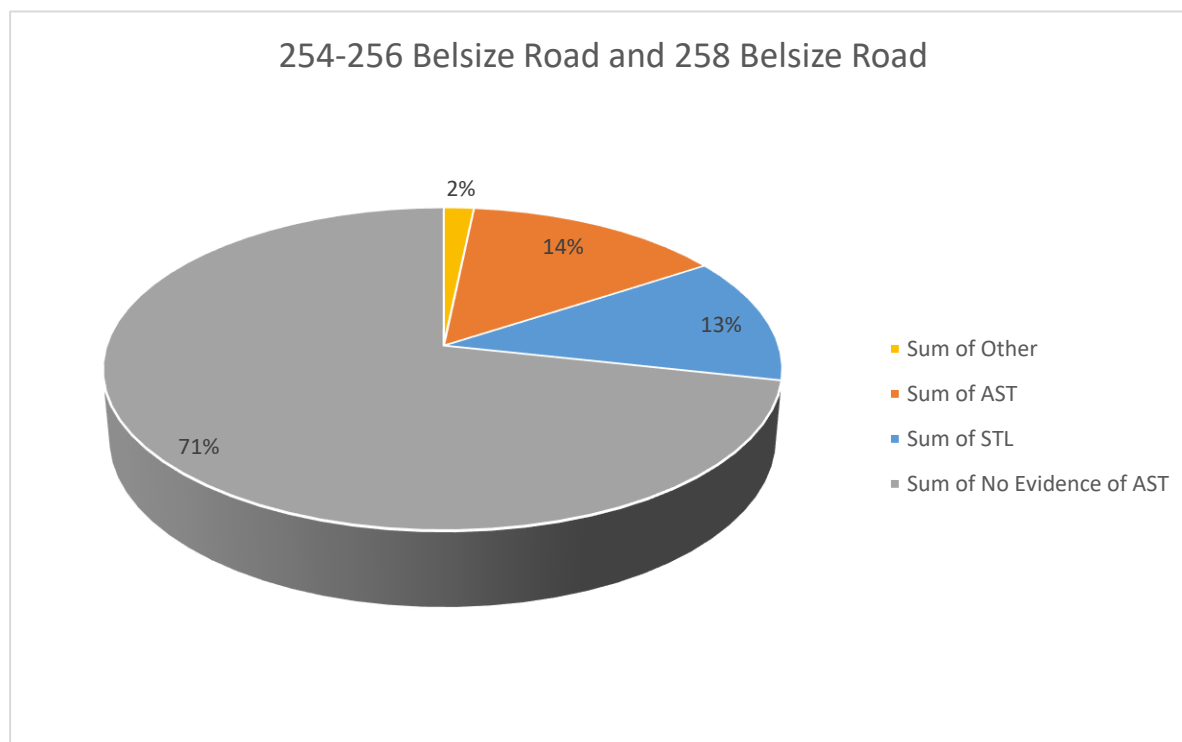


Figure 1 - Caption: Pie chart for the period 2017-2023 with data for sum of STL use, sum of AST use, sum of no evidence of AST use and sum of other (Grenfell and Camden temporary residents).

33. The bar chart below breaks down the figures for AST, STL, no evidence of AST and other (Grenfell and Camden temporary residents) per year.

² It should be noted that Sum of AST use in the pie chart encompasses the claimed length of actual stay by a tenant, and not the contractual length. For example a 90 day AST with actual length of stay of 110 days has been analysed as 110 days.

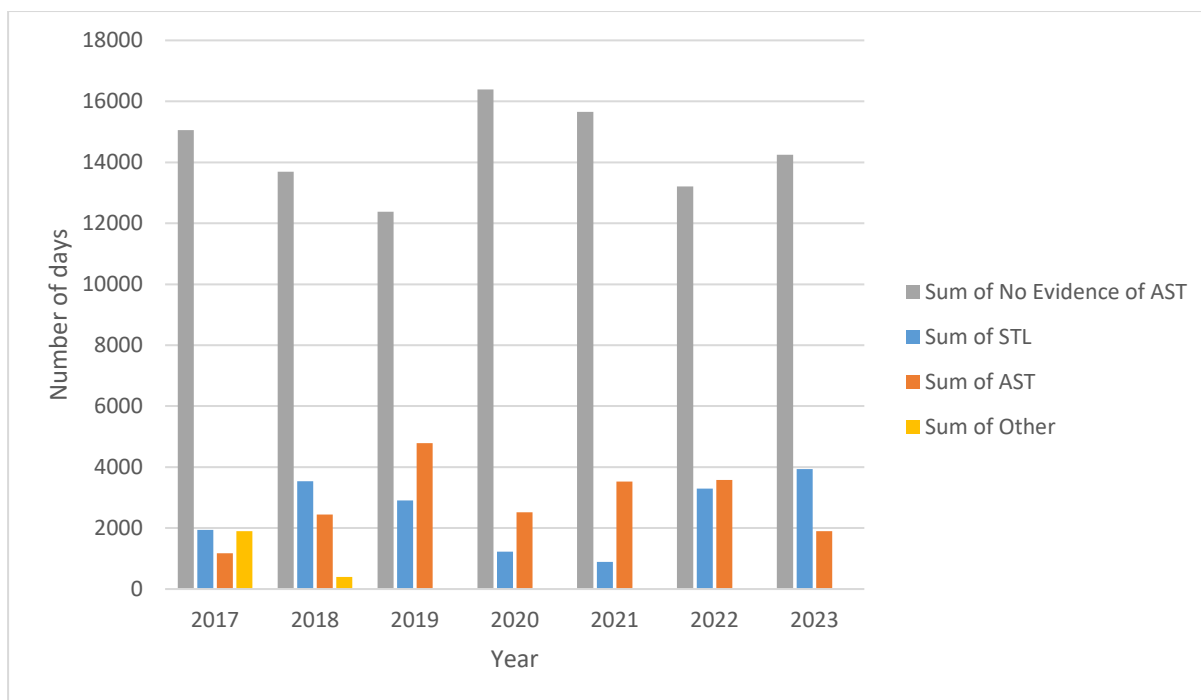


Figure 2 - Caption: Bar chart showing breakdown per year of sum of AST, sum of STL, sum of no evidence of AST and sum of other.

34. The Council highlights the following additional matters from the analysis:

34.1. The following units have never had an AST: G01, G02, G03, G11, 104, 114, 213, 214 and 407.

34.2. 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.

34.3. 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).

35. The analysis supports the Council's position that the Site is used for the Unauthorised Use. Further, this analysis is inconsistent with the Appellants' claimed use, for example:

35.1. The General Manager claims that they have relied on the Deregulation Act 2015 for short term letting not exceeding 90 nights per unit per in 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, the Site been vacant for 71% of the time between

2017- 2023. For some units the vacancy periods have been significant in duration. This is an odd position. No credible explanation consistent with these facts has been provided.

- 35.2. The Appellants' claim that the predominant focus was on ASTs with STL in the gaps between tenancies. The Council's analysis is inconsistent with this use, in particular the STLs are clearly not used to fill gaps between tenancies.

Reason 5 – The ASTs are not robust and credible evidence of actual use

36. The submissions above take the ASTs at face value as evidence of occupation and/or has accepted the Appellants' unevidenced claims of occupation. However, the Council disputes that approach. ASTs are, at best, evidence of a right to occupy, not evidence of actual occupation. The Appellants must produce (and have not produced) evidence to demonstrate actual occupation, i.e actual use. 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, in particular:

- 36.1. 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. When the signature is by an agency there is no evidence to confirm authority to sign. This is also a peculiar approach as the agency would normally be instructed by – and act on behalf of – the landlord. No credible explanation has been provided of this relationship. This undermines the credibility of the ASTs.
- 36.2. 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. The Council asked the Appellants for evidence that the deposits had been protected in this manner. The evidence provided by the Appellants indicates 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.

37. It follows that the ASTs are not credible evidence of actual use and must be afforded reduced weight.
38. The Appellants' position is also undermined by other inconsistencies in their evidence. In particular:
- 38.1. In an email dated 14th June 2023 (attached at **Appendix 110**) the General Manager asserted that the Site 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 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 Sites 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. The belated attempt to explain this in the Grounds of Appeal (on the basis that some guests were decanted into other units) is not consistent with these matters and in any event, such ad hoc decanting into other units is more consistent with the Unauthorised Use than a use within Use Class C3.
- 38.2. In addition, 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.

Reason 6 – The use of the Site is not authorised by any planning permission

39. The Appellants do not advance an appeal pursuant to ground (c). In addition, the reasons above are sufficient basis for dismissing the appeal on ground (b). Nevertheless, if regard is had to the planning history of the Site, the Council submits that the use of the Site is not authorised by any planning permission for two reasons.
40. First, during the course of the conversion of 254/6 BR, 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 iterations. 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 any grant of planning approval.

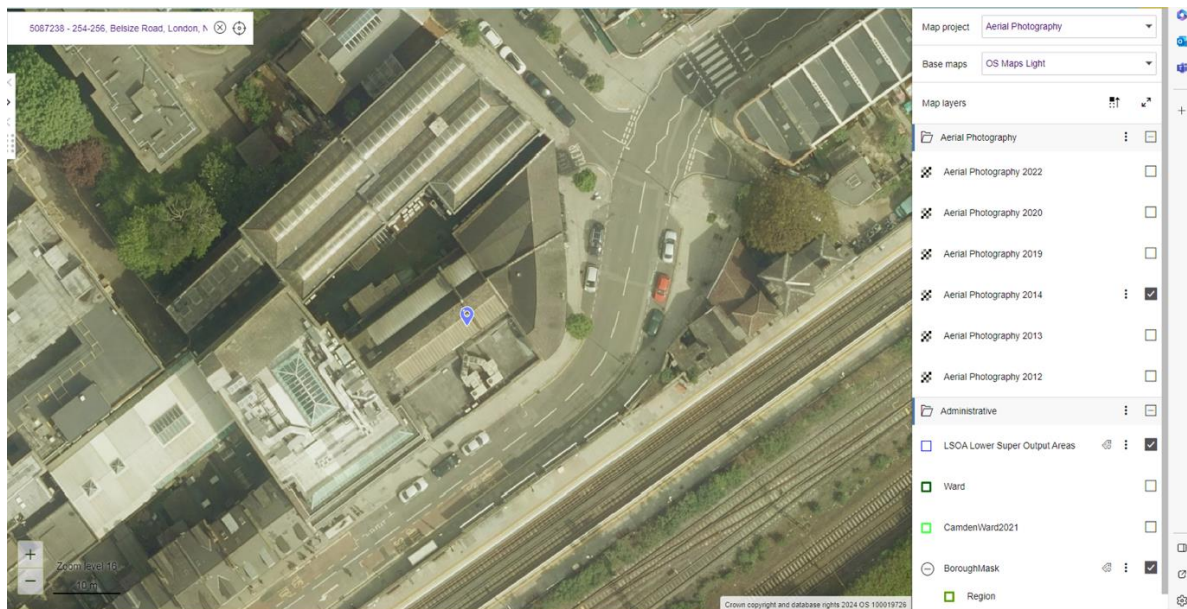


Figure 3 - Caption: Aerial view of the site in 2014

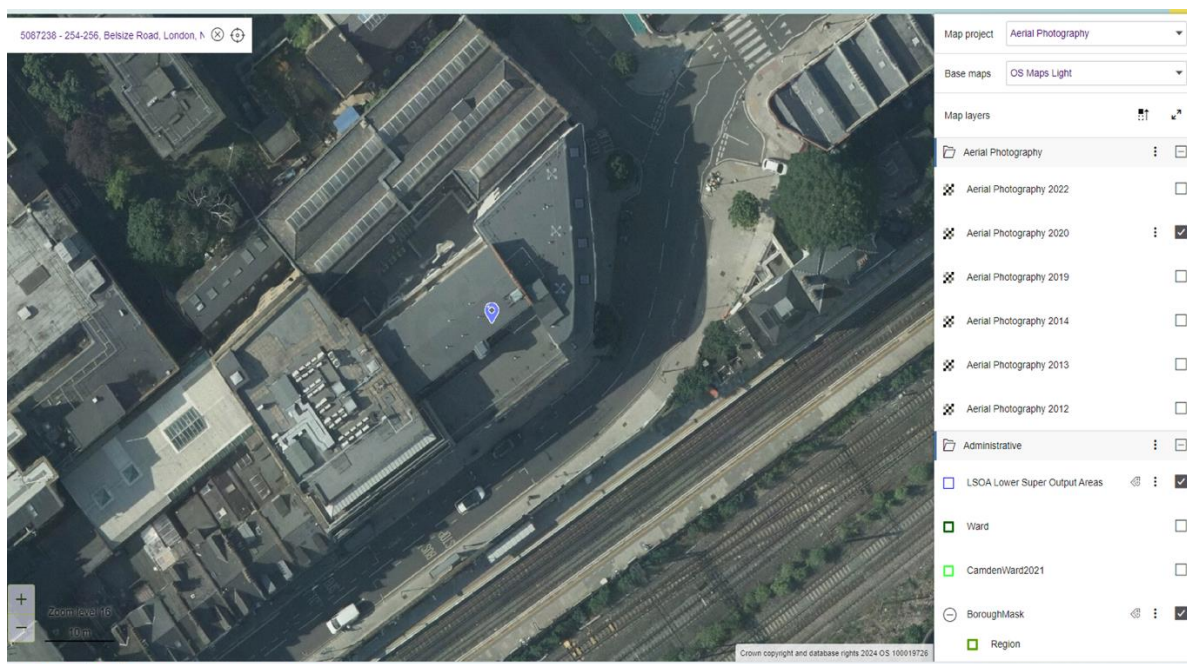


Figure 4 - Caption: Aerial view of the site in 2020



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

41. None of the Appellant's arguments in its Grounds of Appeal at paragraph 35 undermine this analysis, in particular:
 - 41.1. It is irrelevant whether the extension works are lawful by the passage of time. At the time of the purported reliance on the prior approvals, the works were unlawful and thus art. 3(5) GPDO was engaged.
 - 41.2. For the purposes of art. 3(5) the existing building is 254/6 BR at the time that the works of conversion occurred, not at an earlier point in time: see **RSBS Developments Ltd v Secretary of State for Housing, Communities and Local Government** [2020] EWHC 3077 (Admin) at [50] – [52]. Further, **RSBS** illustrates that art. 3(5) operates when an unauthorised extension is constructed at the same time as works of conversion: see [17] and [59].
 - 41.3. The argument about the cycle storage is a red-herring. Compliance with a condition on the prior approval does not negate the operation of art. 3(5) of the GPDO.

42. Secondly and in any event, as explained above, after their conversion neither of the buildings within the Site was used within Use Class C3. Accordingly, there has been non-compliance with the terms of the prior approvals.

Reason 7 – None of the matters relied on by the Appellants in the Grounds of Appeal indicate an alternative analysis.

43. Matter 1 – Restrictions on use. In paragraph 10 of the Grounds of Appeal the Appellants rely on the fact that there have been certain restrictions on the use of the Site. None of these matters undermine the submissions above. Considered individually and cumulatively, the restrictions on use account for only a limited period since 2016 (in respect of 258 BR) and 2018 (in respect of 254/6 BR). This is an inadequate explanation for the long periods during which there are no ASTs for the units. In any event, taken at its highest, the restrictions on use do not undermine or alter the analysis of the lettings that did in fact occur.
44. Matter 2 – Deregulation Act 2015. The Appellants purport to rely on section 25A of the Greater London (General Powers) Act 1974 (“**the 1974 Act**”). However, the Appellants have not demonstrated that their use falls within the scope of that provision, in particular the Appellants have not demonstrated that the Site is residential premises in Greater London, applying the definition in section 25(2)(b) of the 1974 Act. As set out above, the units were not constructed for or as permanent residences, but instead for short term letting. Further and in any event, the Appellants have not demonstrated that the two conditions in section 25A of the 1974 Act are met, in particular the second condition in section 25A(3)(a) of the 1974 Act. In the alternative, the effect of section 25A of the 1974 Act is simply to prevent a use falling within the scope of that provision from being a material change of use. Section 25A of the 1974 Act is of no application when the primary use of a building is for short term letting. Accordingly, in this case as the Unauthorised Use is the primary use of the Site, the exemption in section 25A of the 1974 Act is of no assistance to the Appellants.
45. Matter 3 – Decanting of residents from Grenfell/Chalcot Estates. In paragraph 16 of the Grounds of Appeal the Appellant relies on the occupation of residents from Grenfell and the Chalcot Estates. This occupation needs to be put in context: the temporary housing provided at the Site for Grenfell and Chalcot Estate residents accounts for just 2% of the 7 year period between 2016-2023. In any event, this temporary occupation is consistent with the Council’s position that the Site is used for the Unauthorised Use: the occupation was on a temporary basis, i.e. it was transient, and it was funded by the

relevant local authorities. This is not a use within Use Class C3.

46. Matter 4 – Council tax. The original investigation into Council Tax took place in 2018. Officers did not inspect all flats at that time. A new investigation has been opened into the Site on the issue of Council Tax. In any event, Council tax is currently paid by the two companies listed as the appellants on this appeal. There are only two units with individuals paying council tax. This is consistent with the Unauthorised Use and inconsistent with the Appellants' position.
47. Matter 5 – Previous enforcement investigations. The outcome of the 2017-2019 enforcement investigation does not preclude the Council from reaching a different conclusion when revisiting the issue. The information provided to the Council's officer at that time was limited and it was not possible to ascertain if a breach had occurred. The current enforcement investigation has been able to collate significant evidence over a longer period of time which has enabled the Council to be fully apprised of the available facts.
48. Matter 6 – Planning Unit. Notwithstanding the separate planning histories described above, the Council's position is 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).

Conclusion on Ground (b) appeal

49. For the reasons above, the Council submits that 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 Use Class C3 having regard to the character of that use, in particular to (1) the layout of the Site and characteristics of the units; (2) the manner in which Castle Trading describe and undertake its business of letting the units, especially the services provided as part of the nightly rate; (3) the previous reviews from guests which indicate a transient occupation outside of Use Class C3; (4) analysis of the evidence provided which demonstrates transient occupation; and (5) the absence of credible contrary evidence. Accordingly, the Ground (b) appeal should be dismissed.

IV. GROUND F APPEAL

50. The Appellants assert at paragraph 36 of the Grounds of Appeal that: '*the enforcement notice could have required the development to comply with the planning permission*

described in the prior approvals: S173(4)'. However, this is not possible. The ground (f) appeal arises once the ground (b) appeal has failed. Accordingly, as explained above, the relevant prior approvals were not implemented and have now lapsed. The lawful use of the Site is therefore as an office. As such, no reliance can be placed on section 173(4) TCPA 1990 in this case.

51. It follows that the ground (f) appeal should be dismissed.

V. GROUND G APPEAL

52. As no external works are likely to be required and the steps required by the Notice relate only to the internal areas of the Site, there is no reason to extend the period for compliance beyond 3 months.

VI. CONCLUSION

53. For the reasons above the Council submits that the appeals should be dismissed.

18 July 2024

APPENDICES and EVIDENCE

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