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

Response of Empire Communications Limited and Oakenfield Enterprises Limited to the Council's Statement of Case

1. This response deals with points arising out of the Council's statement of case (referring to their paragraph numbers), which it is useful to say more about. The Appellant's Statement of Case still stands.

The site (para 2)

2. The building is managed by Castle Trading for the business of the two owning companies.

Enforcement History (para 3-7)

3. The enforcement investigation ended no earlier than 25 January 2019, not 25 October 2018, when Angela Ryan wrote that no breach had been found. The enforcement report does though give a date of 25 October 2019. The Council should disclose its full enforcement file for this investigation because (a) its statements in the present proceedings are inconsistent and (b) the appeal needs to the have the full information on the use and the Council's consideration of it.

4. This was not a 'relatively light touch investigation' (para 3). It involved the Council's enforcement team leader and a senior planning officer. The appellants instructed counsel and planning consultant over a period of almost 2 years after which, the Council was satisfied that there was no breach of planning and closed the case.

5. The case was not closed 'with a view to reopening it should further evidence be obtained' as stated in the Enforcement delegated report 6.2.The case was closed because the Council could find no evidence of breach of planning and accepted the building was still in the C3 use which had previously accepted had been commenced.

6. The Council had considered there was sufficient information to issue a Planning Contravention Notice alleging '*Change of use from permanent residential (C3) to service apartments (C1) and short-term lets (Sui Generis)*'. A PCN may only be issued 'where it appears to the local planning authority that there may have been a breach of planning control': Town and Country Planning

Act 1990, s 171C. It is, of course, a criminal offence to fail to respond to a PCN or to provide false information.

7. The PCN acknowledged that the building had been converted to C3 use but raised an allegation that there was a subsequent change of use to service apartments in C1 and sui generis short term lets.

8. Council had the full evidence of use of 258 (which was the only building in use in 2017). There is no greater evidence now of what the use of 258 was following conversion. The Council accepted that there was no evidence of breach following their investigation. The Council's figures at paragraph 6 are wrong. In 2019 there were 21 ASTs for 258 and 10 for 254-256.

9. The cycle storage investigation (Council SoC, para 7) accepted that the use was as C3 residential dwellinghouses pursuant to the prior approvals: no obligation to install cycle storage arose otherwise.

Enforcement Investigation History since 2023 (para 8 to 14)

10. The Council has offered no explanation of why, after years of accepting the C3 use, the Council commenced the new enforcement investigation.

11. As to the May 2023 site visit, the enforcement report says at para 6.5: 'Two luggage trollies were noted in the reception area. Officers spoke with the Manager who advised we make an appointment.' The Manager was at Greville Road and met the Council's officers there, not at Belsize Road, so the report is, at best, misleading.

12. Since the Council are disputing the events on the site visit, they should have produced their notes of the site visit (and should do so now).

13. The trollies had been present since the building opened and were seen by the Council officers visiting in 2018 (cf para 9). Luggage trollies were very common in the reception areas of residential blocks. The General Manager did not say that only staff could move between the buildings: the 254-256 access has been kept shut due to staff storages and for security reasons. The Council should produce the officer notes of the site visit if it now has an issue with this.

14. The Council's evidence is entirely (a) evidence produced by the Appellants; or (b) evidence on public websites. The information available is the same, subject to time, in the 2017-2019 investigation

Planning History (para 15 to 16)

15. The planning history shows:

(i) The Appellants' determination to craft suitable C3 dwellinghouses under permitted development rights;

(ii) The Council's view that C3 dwellinghouses were proposed;

(iii) The Appellant's understanding of the difference between 'permanent residential accommodation (C3 use class) or serviced apartments (occupation for less than 90 days) (Sui Generis use class)' (2016/6703/P at para 16.6). As permission was refused, the mixed use was not commenced.

(iv) The latest application for 254-256 Belsize Road 2022/3717/P not yet determined but draft decision for approval issued on 21 March 2023 accepted the use of the building as C3.

Preliminary Matters (para 17)

16. The Council should have been able to tell from their knowledge of the site, the prior approval drawings and, for example, figure1 of the enforcement report that the enforcement notice plan does not cover all of the building referred to as 258 or 258-262 which contained the first set out apartments. This, along with many other points could have been cleared had the Council accepted one of the many requests by the Appellants for a meeting.

17. The enforcement notice cannot and should not be varied by the Inspector to extend the land subject to the notice. The notice is irrational and so invalid. Even if the notice was valid, a variation would cause injustice to the Appellants as (a) it would extend the apartments subject to the enforcement notice and so potential criminal sanctions; and (b) the Appellants' evidence (including analysis) is directed to the apartments which are in the enforcement notice land, not those outside it.

Ground B appeal (para 18 to 19)

18. The Council have to establish that the first planning use of the apartments following conversion of the offices was as 'serviced apartments (sui generis)' and that was the use when the enforcement notice was issued. If the post-conversion use was C3, then the requirement to change the use back to office cannot stand.

19. The notion that the units are not C3 dwellinghouses is advanced by the Council notwithstanding the prior approvals, the conversion works, the ASTs, the Grenfell residents, the careful compliance with the 90 day rule and the past decisions of the Council and Valuation Office that the use is C3 residential.

Approach (para 20 to 21)

20. The Council refer to various court judgments of limited relevance.

21. Their paragraph 20.1 is though important. The Council said 'Whether or not the units within the Site are dwellinghouses (applying the ***Gravehsam*** (sic) 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'. The Appellants had understood the Council to be contending that 'serviced apartments for short lets (sui generis)' in the enforcement notice were not dwellinghouses: the enforcement notice alleges that the 'the unauthorised use has occurred within the last 10 years'. The Council should clarify their position as a matter of urgency. If the alleged apartments are dwellinghouses then the notice would be quashed under ground (d) as more than four years have passed since the alleged unauthorised change of use.

22. The *Brent* case simply confirms that as C4 HMOs are, by definition, dwellinghouses, they have Part 1 householder permitted development rights.

23. In *Moore* case cited (which was 2012 rather than 2021) a large (9 bedroom) house was being let on weekend, midweek or full week terms to groups of up to 20 people who tended to have common interests (yoga or cycling groups) or for weekend parties. The Court of Appeal considered they were unlikely to be single households and the inspector was entitled to conclude that there had been a material change of use from a dwellinghouse. Conversely the first *Moore* case and *Blackpool* had legitimately considered that those holiday uses by households were within C3.

24. *Commercial and Residential Property Development* concerned the Minister's decision to vary a condition on a hostel permission which had required all lettings to be not less than 22 days to allow some to be for shorter periods. The developer unsuccessfully challenged the failure to completely lift the condition. The Court considered the meaning of hostel, considering that it was basic, inexpensive but encompassed both very short stay and long stay accommodation. The case was not concerned with the meaning of dwellinghouse, and any comments about that C3 dwellinghouses had to be permanently occupied are incorrect: see *Moore* (2012).

25. *Mayflower Cambridge* involved a building with bedsitting rooms. On the lower floors the bedsits were let out on a weekly basis (for a minimum of 8 weeks) and on the upper storeys on nightly lettings (which included the provision of breakfast). The local authority successfully contended that the nightly lettings were a bed and breakfast hotel use (but did not suggest the weekly lettings were).

26. In *Panayi* the question was whether a building with four flats had become a hostel. The judge commented 'It was relevant that the homeless families accommodated were paid for by the referring local authorities on a nightly basis, because that helped to show what these premises really were.' There are many more homes paid for by local authorities which are C3: council housing on full benefits; homeless placements in flats and houses; housing benefit in the private rented sector. Belsize Road has none of the characteristics of a hostel, and that use is not alleged by the Council.

27. So with the exception of *Moore* the cases cited by the Council were not about buildings which might be C3 dwellinghouses.

Reason 1 – layout of the units (para 22)

28. The units are laid out as flats. The layout of the units was set out and approved in the prior approvals. The uniform furniture is typical of the letting of furnished accommodation by a person with multiple units: it is easier and cheaper to buy the same items in bulk. Bed linen and towels are only provided for short stays (which do not exceed 90 days in total in a year) and are typical of a Deregulation Act s 25A operation. Telephones are common in short and long stays (and are also provided for security reasons), as are welcome packs (which also private purchasers of new builds in particular are also likely to receive). Some form of welcome pack is often required by planning obligations to deal with travel, for example.

29. This layout, the furniture, bed linen, towels, telephone, the link between the buildings was seen by the Council's officers in 2018 and has remained the same. Towels and linen are only provided for short lets, as ASTs tenants will have their own.

Reason 2 - the Sanctum Website (para 23)

30. The Sanctum website advertises long and short stay accommodation at Belsize Road. It also advertises Greville Road and Wellington Road which are specifically short stay accommodation. This is entirely consistent with the actual and lawful use of Belsize Road as C3 dwellinghouses which make use of the Deregulation Act. That is the use which has always been explained to the Council. The current website was launched in 2022.

31. Many C3 properties are advertised in the same way for long and short-term letting in air B&B, Booking.com and other sites.

32. The Council's submissions ignore the legislation, the long stay arrangements on the Sanctum website and the longer stay advertisements through other agents. Paragraph 23.3 of the Council's statement draws attention to the suitability of the three sites for extended stays

whether relocating, studying or medical treatment. Those are conventional C3 dwellinghouse occupation, and the majority of the longer stays were for those purposes.

33. As to facilities and services, these points have been addressed before, but fully fitted kitchens, air conditioning and heating, internet connections, 24 hour reception and security, seating areas in reception and balconies are pretty common in high quality London flats which are owner-occupied. The seating area was shown on the prior approval drawings. Televisions and the inclusion of bills are common in long term lettings. Towels, toiletries and the like are common for Deregulation Act short term lettings. Maid services occur on short and long lets (the latter being arranged by the concierge for longer lettings in flats).

34. All these facilities and services are as they were in the 2018 inspection by Council officers and have not changed.

35. The planning application for a change of use from C3 flats to a mix of C3 and temporary sleeping accommodation is expressly consistent with the post-conversion use being C3 and a change to include temporary sleeping accommodation outside C3 had not taken place. The Council's delegated report assessed the application on the basis that there was a loss of C3 residential (so the lawful use was C3) not office (see LPA appendix 14).

Reason 3 – online bookings (para 28 to 29)

36. The online advertising was for long (AST) and short lets, an aspect that the Council ignore. The short lets have all kept within the 90 night limit.

37. It is relevant that the first Tripadvisor comment was in July 2018, over a year after 258 opened. Tripadvisor shows a gap in reviews from December 2019 to April 2022, which backs up the Appellant's evidence on the effect of Covid and flooding as reducing the occupation of the building.

38. Appendices 2 and 3 do not show 606 guest reviews on booking.com or any other website, nor do they show reviews from 2021. Of the limited number of reviews, some are earlier.

Reason 4 – occupation data (para 30-35

39. The Appellants have provided details of all the occupation of the flats in the 2017-2019 and current enforcement investigations. The Council's insinuation that the information is not complete is entirely false.

40. It is notable that:

    (i) There is no evidence which contradicts or undermines the Appellants' data;

(ii) The Council proposed that the appeal be dealt with by written representations. They have not asked for an inquiry or for cross-examination of witnesses. It is elementary that written evidence has to be accepted as correct unless it is contradicted by other evidence or it so inherently implausible that it cannot be accepted. In the present case, finding that the occupation information is incomplete involves a finding that the very well organised Appellants and Castle Trading have concealed the number of nights the flats have been occupied and who by. There is, bluntly, no basis upon which a professional could properly make that allegation.

41. The spreadsheet at Appendix 109 omits the 254-256 ASTs and also the council-initiated occupations, including Grenfell. Due to those errors it does not provide an accurate picture of occupation. 64 ASTs are set out in Appendix 109, however there were 77 ASTs provided for 258, and more of course for 254-256.

42. The ASTs were entered into for 90 days or more, and many were occupied for longer than the agreed period.

43. The Council's pie and bar charts are incomprehensible without producing the calculations. They do seem to incorrectly count as available days 1.5 years before 254-256 opened; Covid; and the flooding of 254-256. They also include apartments outside the enforcement notice.

44. Paragraph 34.1 is wrong. All but G11, 114, 213 and 214 were occupied under ASTs.

45. The figures in para 34.2, 34.3 and 35.1 incorrectly calculate the number of days the building could have been available for ASTs, and adopt a strange approach of omitting the flats which had the longest periods of AST occupation. They also include apartments outside the enforcement notice. Without a breakdown of the calculations it is not possible to check the figures.

46. As the Council's Appendix 109 acknowledges, the short lets were for less than 90 nights per calendar year in each apartment. The Council's numerical analysis, such as it is, shows a use as C3 dwellinghouses which comply with the Deregulation Act.

Reason 5 – ASTs are not evidence of actual use (para 36-38)

47. The Council pursue a wholly ridiculous argument that people will take out ASTs and spend considerable amounts of money on rent but would then not occupy the flats. There is no evidence for the Council's claims.

48. The General Manager knew the ASTs residents and confirms they were living in their flats. An immense volume of material is available.

49. Building 254-256 was closed by floods, as shown by the damage and repairs correspondence. As the ASTs provided with the 21 June 2023 email showed, 258 was being let out in the period that 254-256 was closed. Moving AST residents to 258 is part of the C3 use. The Council was well aware from its 2017-2019 investigations of the mix of Grenfell, Camden, AST and short term letting of the units from the opening of the two buildings. It had the documentation to demonstrate this.

Reason 6 – planning permission (para 39-42)

50. The appeal is under ground (b) as the building (or the part enforced against) is not used as short term letting accommodation. Ground (c) does not arise as the planning permissions are for C3 use, not the use alleged in the enforcement notice.

51. The Council fail to respond to most of the Appellants' case on prior approval. In particular they do not dispute that if the conversion did not take place under the prior approvals then the C3 dwellinghouse use became lawful after four years (and the obligations and conditions do not apply). The Council's arguments in paragraphs 40 and 41 are therefore positively damaging to development management in the area. In respect of article 3(5), the prior approval was for the lawful existing building, which as a part of a building was lawful when the extension works were carried out.

52. The Council do not address their repeated acceptance that the prior approvals were carried out.

53. At paragraph 42 the Council draw an incorrect distinction between the conversion of the building and its use. The conversion of the building gave rise to a change of use (as C3, which has continued since).

Reason 7 – the Grounds of Appeal (para 43 to 48)

54. *Matter 1 'restrictions on use'* Since the occupation data provided by the Appellants is comprehensive, it is not clear what the Council's point is.

Matter 2 – Deregulation Act

55. By section s 25(2)(b) '"residential premises" means a building, or any part of a building, which was previously used, or was designed or constructed for use, as one or more permanent residences.' The buildings were designed and constructed for use as permanent residences, as shown by the prior approval drawings and the subsequent conversion into flats as shown on the drawings.

56. The second condition in s 25A(3)(a) is ‘(3) '(a) the person who provided the sleeping accommodation for the night was liable to pay council tax under Part 1 of the Local Government Finance Act 1992 in respect of the premises, or (b) where more than one person provided the sleeping accommodation for the night, at least one of those persons was liable to pay council tax under Part 1 of that Act in respect of the premises." The flats are registered for Council Tax, not business rates. As the Council accepts the flats which are not occupied under ASTs have Council tax paid by the Appellants (para 46). Those are the person who provide the sleeping accommodation (Castle Trading simply manage the process and have no rights themselves). The requirements are met.

57. The Council argument is simply that flats which have short lets for less than 90 nights a year are in a short let use, but that fails to consider the use for the rest of the time and the planning use. Since the use was C3, short lets for less than 90 nights a year is not a material change of use.

58. *Matter 3 – Grenfell/Chalcot Estates* In asserting that ‘this temporary occupation is consistent with the Council’s position that the Site is used for the Unauthorised Use’ (para 45), the Council are in the shameful position of enforcing against the Appellants for accommodating Grenfell survivors and the Council’s own residents. The Council overlook their acceptance that these lettings were of C3 dwellinghouses and would be not be counted against the 90 night period. The occupation was of flats for persons who hard temporarily or permanently lost their homes.

59. *Matter 4 – Council Tax* The Council accept that flats were inspected and all their layouts are the same. The payment of Council Tax by individuals and the Appellant is entirely in accordance with the lawful use.

60. *Matter 5 – the previous enforcement investigations* The evidence for the periods of the original investigations is unchanged and the later evidence is of the same character. The Council accepted then that the buildings had been converted to C3 dwellinghouses and that this use had continued.

61. *Matter 6 – planning unit* The Council fail to address the point that each flat is its own planning unit. This is

Conclusion

62. The Council ignores the prior approval for conversion and the layout which accords with C3 use and the actual use of the building.

Ground (f) appeal

63. As in the grounds and Statement of Case. The Council fail to address the vagueness of requiring the return of the use to office accommodation' when it is not apparent whether works are required and, if so, what they are.

Ground (g) appeal

64. The Council fail to address the time for a planning application, and are unrealistic about how long it would take to convert (if it was known what that requirement was).

Meetings

65. The Appellants' reiterate their concerns about the Council's refusal on numerous occasions to meet to discuss the enforcement issues.

15th August 2024