APPENDIX 2

Appeal Decisions

Inquiry held on 16 September 2008

Site visit made on 16 September 2008

by Graham Dudley **BA (Hons) Arch Dip Cons AA RIBA FRICS**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
7 November 2008

Appeal A: APP/X5210/C/07/2054324
285-287 Finchley Road, London NW3 6ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Sonar Global Investments Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN06/0307.
- The notice was issued on 9 July 2007.
- The breach of planning control as alleged in the notice is the unauthorised change of use of the basement, part of the ground floor, first floor, second floor, and third floor of the premises for 27 self-contained flats (26 studio flats and 1 one-bedroom flat).
- The requirements of the notice are either;
  1. The residential use shall completely and permanently cease
  2. All residential furniture, fittings and other equipment associated with the use of the premises for residential purposes shall be completely and permanently removed from the site, or;
  3. The residential use shall be implemented in strict accordance with the planning permission dated 28 March 2003 (Ref PWX0103752) and approved plans.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary Decision: The appeal is dismissed and the corrected and varied enforcement notice upheld.

Appeal B: APP/X5210/A/08/2069776
285-287 Finchley Road, Hampstead, London NW3 6ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Sonar Global Investments Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2007/4826/P, dated 4 September 2007, was refused by notice dated 17 January 2008.
- The development proposed is the change of use to HMO (24 self-contained units and 3 non self-contained units) and the retention of the building as constructed.

Summary Decision: The appeal is dismissed

Procedural Matters

1. The S78 appeal is for 24 self-contained units and 3 non self-contained units. The alteration to form this arrangement was completed, but subsequently the arrangement was converted back to 27 individual flats.

2. It was confirmed that the 'owner' for the Section 174 appeal is Sonar Global Investments Limited.

Reasons

Ground (b)

3. It was confirmed at the inquiry that there is no dispute that the flats alleged in the enforcement notice were constructed and present when the notice was issued. Although the council's records of the premises do not indicate the previous office use above one of the retail units, there was no disagreement with the appellant that the previous use of the premises was two independent retail units at ground level and an office and flat at first floor level. While all in one ownership, the independent use of the 4 parts of the building would be likely to have been four separate planning units or possibly two planning units of each retail unit and the associated retail/residential use above.

4. The appellant argues that the arrangement with 27 independent flats was a planned project and intended from the start of construction, so there has been no change in the use of the constructed building as alleged. I accept that the introduction of the extra floor behind the retail units, the associated additional flats and the extension to the top storey is significant and are material changes in relation to the layout granted planning permission in 2003. Therefore that permission was not commenced or implemented. Whether lawful use has been established will be considered under ground (d).

5. Upon completion of the construction works there were two independent retail units and 27 flats. These flats are fitted with bathroom and kitchen facilities, accessible from a communal stair/lobby area and have locked doors separating them from the communal areas. The various units are generally occupied by people unrelated to each other. In my view, these are separate independent residential units forming individual 'dwellinghouses' and each is a planning unit in its own right. The subdivision of the flat the appellant notes was existing before the works began specifically requires planning permission in accordance with Section 55 (3)a and the change of use of the office to residential use is also a material change in the use of that part of the building. In addition, the subdivision and extension of the former lawful arrangement of the office and flats in the part of the building referred to in the allegation, from a flat and office to 27 separate flats, is a substantial intensification of the previous use and, in my view, also a material change of the previous lawful use of the building requiring planning permission.

6. While the proposed use of the building, since construction, has not changed, during construction the site would be in a state of flux and it is likely to have been unusable for any of its former lawful uses, with the intended use yet to commence. In my view, this interim period would best be described as a nil use, so even comparing the resulting use for 27 flats with the use of the building during construction, it involved a substantial and material change in

the building's use. I conclude that the change of use of the building as alleged in the notice has occurred as a matter of fact and that the appeal on ground (b) fails.

Ground (d)

7. I have concluded above that on completion of construction the residential aspect of the building would have been 27 planning units. The evidence is clear that all but one of the units were not occupied until around October 2003, which would have been too late to demonstrate 4 years' continual use before 9 July 2007. Mr Ovadia senior moved into one of the flats on 16 June 2003, but then he returned to Israel on 3 July, not returning to the flat until 3 August 2003.

8. While operational development is not at issue in the allegation, the constructional state of the building is relevant to the ability to use the flats for their intended purpose. It is evident that the building work was not fully completed until some time in September 2003. The certificates authorising payments to the contractor show that on about 23 June 2003, 20% of the work was yet to be completed and on 28 July 2003 about 8% of the work was yet to be completed. Therefore, around 9 July 2003 there would still have been a substantial amount of work to complete.

9. I acknowledge that a lot of that work would have been associated with the decorative stone balustrade and the works to the rear wall, where there had been delays associated with the sewer. However, the appellant noted in the inquiry that because of work required to the flats at the rear on the lower floors and because the access for the builders was through the main entrance there was no safe access to the flats, and it was once the builder was out that the flats were put on the market.

10. Given the state of the building at the time Mr Ovadia senior moved in, and that he soon after returned to Israel where his home and business are, I do not consider that staying in the flat for 2 weeks, then having a break for about 4 weeks, amounts to the commencement of a continuous use before 9 July 2003. As he did not return until after 9 July 2003, 4 years continuous use of this flat has not been demonstrated. Even if it had, it would relate to the planning unit of that flat only and not the remaining 26 flats, each individual flat being a planning unit in its own right.

11. The appellant also argues in relation to the Section 78 appeal that the use of the building was changed to a House in Multiple Occupation when three of the flats were altered to share kitchen facilities. If that were the case and the use of the whole building had changed to a House in Multiple Occupation, then the building would not be used for dwellinghouses and the period to prove the continual use would also have changed from 4 years to 10 years and clearly that length of occupation would not have been proven. The House in Multiple Occupation aspect is considered below.

12. The appeal on ground (d) fails.

Section 78 appeal

Main issues

13. The main issues are:-

- The effect of the mix of accommodation in relation to housing provision.
- Whether the self contained flats provide acceptable living conditions.

Policy

14. The development plan includes the London Borough of Camden Replacement Unitary Development Plan 2006 [UDP], and advice is contained in Camden Planning Guidance 2006 relating to housing. UDP Policy H1 seeks to increase the floor area in residential use provided that the accommodation reaches acceptable standards. UDP Policy H8 notes that planning permission will only be granted for residential development that provides an appropriate mix of unit sizes, including large and small units. The Council will consider the mix and sizes of units best suited to site conditions and the locality, and the requirements of special needs housing.

Mix

15. The residential units are in a highly sustainable location, with good local facilities and access to public transport. I acknowledge that the nearest play facilities and amenity space are some distance from the appeal site. I also acknowledge that the access at the front of the building is direct to the pavement, the road is very busy and that the limited private amenity area provided by the balconies of some of the flats at the rear upper levels would not provide the best conditions for children. However, some families may find the location meets a specific need in terms of the good accessibility offered by the site and the fact that there is noise generated by the nearby railway and road would not make the building significantly less suitable for children more than any other occupier. So the fact that the location is not ideal in relation to provision of housing where there are children does not mean that some mix of units is not appropriate or that some children should not be accommodated here.

16. When determining the number of units against the now superseded UDP Policies, the council recognised the location of the site and significantly reduced the requirement for the larger units. While the numerical requirement has not been carried into the new policies, there is still a need to provide a reasonable mix of housing. In my view, the 24 self-contained units and 3 non self-contained units do not provide a suitable mix of housing and the proposal does not accord with the aims and objectives of UDP Policy H1 and the council's Supplementary Planning Guidance.

Size

17. Representations were made that because a small number of the residential units are proposed to be converted, the result would be a house in multiple occupation. The evidence for this includes the council's licensing requirements for houses in multiple occupation and the council's housing department's acceptance that this would be the situation once the change has occurred, and

an inspector's decision relating to a property in Mornington Crescent. These are material considerations that I have taken into account, but considerations relating to licensing of Houses in Multiple Occupation and assessment of change of use for planning purposes and consideration of planning units is quite different.

18. 24 of the units would be unchanged in the Appeal B proposal. There would be some additional circulation in communal areas by the occupiers of the three non self-contained units in terms of gaining access to the shared kitchen and laundry. 24 of the units would remain in separate occupation with all their own facilities and occupied by unrelated persons. In my view, the planning situation of these units would be unchanged and would remain as 24 individual planning units with a new single planning unit formed in the place of the three non self-contained units. The small area of mixed use of the circulation spaces would not be sufficient to alter this situation.

19. I have also taken into consideration the council's decision in relation to 374 Finchley Road. Notwithstanding that this was treated differently, at the appeal site the nature of the units leads me firmly to the conclusion that those with kitchens and bathrooms are individual flats forming separate single dwelling units and should be considered as individual planning units. I am not specifically aware of the actual arrangement of the building referred to in the Mornington Crescent decision, but I acknowledge that there is an apparent difference between that decision and this conclusion. However, given the facts of this case and the clear arrangement of the flats and their separate independent use, I am satisfied that in this case the remaining flats should be considered as separate planning units and be considered against the council's standards for flats.

20. I acknowledge that the unit in multiple occupation would be acceptable in relation to the council's standards, but the remaining flats fall to be considered against the council's standards for flats. Camden Planning Guidance 2006 [CPG], referring to Residential Development Standards, indicates that the council seeks to ensure that all the housing in the Borough is designed and built to an adequate standard, recognising that planning cannot control the precise internal layout of individual proposals. It is a legitimate planning aim to ensure that housing is of a reasonable quality and to provide appropriate guidance. The CPG notes the areas that self contained dwellings should normally comply with and that combined kitchens and living areas are acceptable providing there is adequate space.

21. I appreciate that the floorspace identified is not a 'fixed' minimum standard and that some variation might be expected, particularly when altering and extending an existing building. However, even the floorspace of the largest rooms, although acceptable in my opinion, is close to the minimum recommended area. Many of the smaller rooms are substantially below the guidance standards. Overall, the consistent under-provision in relation to the standards and the considerable difference in relation to the smaller units results in an overall development where the provision is well below that which the council legitimately seeks, and this is unacceptable. I appreciate that many of the occupiers are content with their accommodation, but the aim must be to ensure that housing provision overall is at or close to the reasonable standards of the unitary development plan. I conclude that the Section 78 proposal would

have an unacceptable effect on the mix of accommodation in relation to housing provision and because of the units' size would not provide acceptable living conditions. It would not accord with the aims and objectives of UDP Policies H1 and H8.

Ground (f)

22. Parts 1 and 2 of the requirements are clear and precise, requiring ceasing the residential use and removal of associated fittings. I acknowledge that requirement 3, referring to the 2003 planning permission, intended for there to be an alternative. However, it clearly is not a requirement that could ever have been implemented, because of the differences between the original permission and the building as built and therefore could not have been an option available to the appellant. The notice needs to be corrected to remove this requirement.

23. The council says the later scheme for the residential use of the building, where the planning application has been approved in principle and is only awaiting an S106 obligation, should be substituted. That planning application shows an arrangement of flats that would be acceptable to the council, providing a reasonable size and mix of units. However, there is no need for this to be formally added to the notice as a requirement, as it is plain that the appellant can readily implement this permission by completing the necessary obligation which, under S180 of the Planning Act, would override the requirements of the notice; thus the appellant has a less onerous alternative than requirements 1 and 2 available and is not disadvantaged by the correction of the enforcement notice. The appeal on ground (f) succeeds to a limited extent, removing part 3 of the requirement.

Ground (g)

24. Witnesses indicated that some of the tenancies may be for less than six months. However, I consider that it will take some time for occupiers to find suitable alternative accommodation. Obviously the time that the tenancies will expire will vary depending on when they commenced. The 'usual' period is 6 months, so a further 2 months for those that have been recently renewed would seem reasonable to ensure that the requirements of the notice can be reasonably achieved. I shall therefore extend the compliance period to 8 months. The appeal on ground (g) succeeds to that limited extent.

Conclusions

25. For the reasons given above I conclude overall that the Section 174 appeal should not succeed. I shall uphold the enforcement notice with corrections and variations. I also conclude that the Section 78 appeal should be dismissed.

Formal Decisions

Appeal A

26. I direct that the enforcement notice be corrected in Paragraph 5 'What You Are Required to Do' by deleting section 3, and varied by the deletion of 6 months and the substitution with 8 months as the period for compliance. Subject to this correction and variation I dismiss the appeal and uphold the enforcement notice.

Appeal B

27. I dismiss the appeal.

Graham Dudley

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson	Of counsel, appointed by the Solicitor for The London Borough of Camden
He called	
Mr P A Jones Dip Environmental Planning	Planning Officer, Appeals and Enforcement Team, London Borough of Camden
Ms B Arbery BSc (Hons) MPhil MRTPI	Senior Planning Officer, London Borough of Camden

FOR THE APPELLANT:

Mr A Aylesbury	Of Counsel, appointed by PPMS
He called	
Mr A Ormonde	PPMS, 32 Sneath Avenue NW11 9AH
Mr O Ovadia	Appellant, Sonar Global 788-790 Finchley Road, NW11 7TS

INTERESTED PERSONS:

Ms S Loriana	Flat 18, 287 Finchley Road, NW3 6ND
Ms T Elisavet	Flat 13, 287 Finchley Road, NW3 6ND
Mr A Borghol	283 Finchley Road, NW3 6ND
Mrs L Zorina	24 Elm Court, Admiral Walk, London W93TZ

DOCUMENTS SUBMITTED TO THE INQUIRY

Document	1	Notification letter
	2	Statement of Common Ground
	3	Missing appendix 9
	4	Missing appendices 13 - 15
	5	Letter dated 3 Sept 2008 from S Adams Architects
	6	Letter dated 10 Sept 2008 from Mr Ashe
	7	Bundle of documents handed in by Mr Borghol
	8	Invoice for beds dated 13 June 2003
	9	Unilateral undertaking
	10	Condition
	11	London Plan extract
	12	Mornington Crescent appeal decision
	13	Closing submissions on behalf of the local planning authority

PLANS

Plan A Bundle of various sections and elevations

APPENDIX 3

Date: 9th January 2008
Our Ref:CA\2008\ENQ\33675
Your Ref:
Contact: Bethany Arbery
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Email: Bethany.Arbery@camden.gov.uk

Development Control
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London WC1H 8ND

Tel 020 7278 4444
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Mr Ovadia
E-mail: orenovadia@hotmail.com

Dear Mr Ovadia

Town and Country Planning Act 1990 (as amended)
RESPONSE TO ENQUIRY, REFERENCE CA\2008\ENQ\33675
285-287 Finchley Road, London NW3 6ND

Thank you for your e-mail dated 26th November 2008 concerning the proposed change of use of the above property.

On 7th November 2008 the Planning Inspectorate issued its decision on two appeals submitted in respect of this property. The first was against the Council's issuing of an enforcement notice against the unauthorised change of use of the basement, part of the ground floor, first to third floor as 27 self-contained flats (26 x studios and 1 x 1-bedroom). The second appeal was against the Council's refusal of planning permission for change of use of the property to 24 self-contained flats and 3 non-self contained units and the retention of the building as constructed. On both cases the appeal was dismissed and the enforcement notice was upheld.

During the Public Inquiry there was a lengthy discussion as to the lawful use of the building. It is acknowledged that the original use (residential, retail and office) of those parts of the building which formed the appeal site ceased sometime ago and the current use as 27 self-contained flats is unauthorised. Once the unauthorised use has ceased and the requirements of the enforcement notice have been satisfied i.e. 'removal of all residential fixtures and fittings' the lawful use of the building will be as a 'nil use'. Until such time as this the use of the building is as 27 unauthorised self-contained flats.

As I understand it from your e-mail you are now looking at two alternative proposals for use of the building, the first for its conversion to a House in Multiple Occupation (HMO) and secondly to short-term (less than 90 days) let holiday accommodation.

As the basement, part ground, and first to third floor will once the unauthorised use ceases have a nil use no consideration will need be given to the acceptability of the proposed change of use in terms of the loss of the existing use.

In terms of the proposed uses you have not provided any detailed drawings of the layout of the accommodation, but have provided a schedule of the accommodation in terms of the proposed HMO. You have provided no details of the short-term let accommodation.

The floorspace schedule that you have provided indicates that the proposed HMO is to include a proportion of self-contained residential accommodation. The proposal would provide 12 self-contained residential units and 13 bedrooms with their own en-suite bathroom facilities and 3 shared kitchens. The kitchens would be located at basement, first floor and second floor level. In my opinion the proposed use would therefore be as 12 individual self-contained residential units (Class C3) and an HMO with 13 bedrooms. The proposal is considered to be contrary to planning policy and is therefore unacceptable.

The provision of permanent residential accommodation in the form of self-contained flats is welcomed and supported by Policy H1 of the Unitary Development Plan (2006). However, the proposed residential accommodation provides solely 1-bedroom units which is contrary to Policy H8. Policy H8 seeks to ensure that all new residential developments provide a mix of unit sizes including family sized units. The Inspector at the appeal acknowledged the suitability of the site for larger households including families:

> *'some families may find the location meets a specific need in terms of the good accessibility offered by the site and the fact that there is noise generated by the nearby railway and road would not make the building significantly less suitable for children more than any other occupier.'*

In terms of the size of this units, as you have been advised previously the residential developments standards expect a minimum of 32sqm to be provided for a 1-person and 48sqm for a 2-person unit. At the recent appeal the Inspector stated that he agreed with the Council that seeking to ensure all new housing is designed and built to an adequate standard is a legitimate planning aim. He stated, however, that the floorspace identified in the guidance should not be seen as a fixed minimum and that some variation might be expected, especially when converting an existing building. I note that he states '*even the floorspace of the largest rooms, although acceptable in my opinion, is close to the minimum recommended area*'. The proposed self-contained units are between 25sqm and 30sqm. I take on board the Inspectors comments and have no objection to the largest units, but would still encourage you to increase the size of the smallest units some of which are 7sqm below our recommended minimum standard for a 1-person unit.

In terms of the HMO element although we have planning policies which we seek to protect HMO accommodation there is no policy which specifically seeks to encourage the provision of new HMO accommodation. It is clear that there remains a demand for this type of accommodation which provides a low cost form of housing so there would be no objection to this element of the proposal subject to it meeting the HMO standards set by environmental health and all other policies of the plan.

As the proposal provides more than 10 units of accommodation it would be expected that 50% of the new accommodation provided would be secured as affordable housing. Furthermore, you would be required to make financial contributions towards the provision of public open space in the local area. All residential accommodation would need to be secured as car-free.

In terms of the conversion to short-term let accommodation the Unitary Development (2006) does acknowledge that there is a need for short-term accommodation within the Borough, but makes it clear that the priority is for the provision of permanent residential accommodation. Policy H5 states that the Council will not grant planning permission for the conversion of permanent residential accommodation into short-term let accommodation. In this instance the existing lawful use of the building is not permanent residential accommodation and therefore there would be no objection to the proposed change of use to short-term let accommodation subject to the proposal meeting all other relevant policies of the plan.

I hope that this information is of assistance. If you require any further guidance please do not hesitate to contact me.

Yours sincerely,

Bethany Arbery
Senior Planning Officer
Culture and Environment Directorate