
Appeal Decision

Site visit made on 13 April 2016

by Chris Hoult BA(Hons) BPhil MRTPI MIQ

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

Decision date: 13 May 2016

Appeal Ref: APP/X5210/C/15/3139629

Land at 162 Agar Grove, London, NW1 9TY

- 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 1990 Act").
- The appeal is made by Mr Sameh El Gamal against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN13/0761.
- The notice was issued on 28 October 2015.
- The breach of planning control as alleged in the notice is, without planning permission, a change of use of the basement, first and second floors to short terms lets (C1 use).
- The requirements of the notice are that the use of the first, second and third floor of the property (*sic*) as short stay accommodation (C1 Use Class) shall permanently cease.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary matters

1. The name of the appellant on the appeal form is as set out above. However, he is not, at least in name, among those served with a copy of the notice. The appeal submissions made by his agent are on behalf of "Short Stay Limited" and they were also served a copy of the notice at the appeal property address. There is no ground (e) appeal to consider and I have no reason to presume other than that the appellant and "Short Stay Limited" are one and the same entity. I deal with the appeal on that basis.
2. At my visit, I noted that access was via a staircase leading from a door opening directly on to the street at the neighbouring premises, no. 164 Agar Grove. A further door on the first floor, with a combination lock, provided the means of entry to the rooms themselves (see below for an explanation of the layout). To what extent the use may extend to no. 164, other than providing access, is a matter for further investigation by the Council and my considerations are restricted to the appeal premises, no. 162.
3. There is no legal ground of appeal to consider on the basis that the change of use which has occurred is not material and therefore not development. The Council points out that, under the Greater London Council (General Powers) Act 1973, a switch from use as permanent housing to a use as lets for less than 90 days is in any event considered to be a material change of use.

Matters concerning the notice

4. There are, I consider, errors in the drafting of the notice. Firstly, in the "Reasons for Issuing the Notice", the Council says that it appears that the breach has occurred in the last 4 years. The alleged breach is a material change of use from a Use Class C3 use¹ as a dwellinghouse to a Class C1 use as short-term lets. S171B(2) of the 1990 Act concerns changes of use of any building to use as a single dwellinghouse, where a time limit of 4 years applies in respect of any enforcement action. However, this is a change of use from a dwellinghouse use. In my view, this should be considered under s171B(3) of the 1990 Act², in respect of which a longer time limit, of 10 years, applies. I put this view to the parties and invited their comments.
5. The Council agreed that s171B(3) of the 1990 Act should apply, requiring a correction to the notice. The appellant agreed that its correction was required. The Council pointed out that enforcement action followed the refusal of a retrospective application for the change of use, which was said to have commenced in 2013. This is well within either a 4 or 10-year time limit for enforcement action so no injustice would arise to the appellant were I to correct the notice to refer to the longer period. I shall therefore correct the notice in accordance with my powers under s176(1) of the 1990 Act.
6. Secondly, the alleged breach relates to the change of use occurring in the basement and on the first and second floors of the property. However, the notice requires the use as short stay accommodation to cease in respect of the first, second and third floors. I raised this anomaly with the parties. As will be seen from my description of the internal layout of the property as I found it, the Class C1 use does appear to be occurring on the first, second and third floors. The ground floor shop unit appeared to be vacant and no access was available to the basement.
7. The Council accepted that an error had occurred and invited me to correct the notice. It referred to the appellant's appeal submissions which relate to the first, second and third floors and said that the retrospective application was accompanied by plans which clearly show the use taking place on those floors. This is also confirmed in the submitted Design and Access Statement. Any correction to the notice, which would be to the alleged breach, would be in order that it reflects the agreed location of the alleged unauthorised use and no injustice would occur were I to do so. I shall correct the notice accordingly.

Ground (a) appeal

Main issue

8. The appeal premises have been the subject of previous applications for changes of use to uses in Class C1, including the retrospective application referred to above, and an application in 2011, for a change of use to a guest house, which was dismissed on appeal. In that appeal, as in this, the single main issue was the loss of permanent residential floorspace and the Council's objection was on that basis. Policies of the Camden Core Strategy (CS) and the Camden Development Policies (CDP) aim to minimise the loss of existing

¹ Town and Country Planning (Use Classes) Order 1987 as amended

² This refers to "any other breach of planning control" – other than building, engineering, mining or other operations or the change of use of any building to use as a single dwellinghouse.

floorspace in permanent residential use and to protect existing housing from conversion to short-stay accommodation. In the light of this, the main issue is the effect of the change of use on the supply of permanent housing within Camden Borough, having regard to relevant local and national planning policy.

Reasons

9. The appeal property forms part of a short terrace of properties directly fronting the footway on Agar Grove close to its junction with York Way. The terrace differs from other housing fronting the south side of the road in not being set back behind front gardens. The character of the immediate locality is that of an inner-urban area in mixed residential and commercial use. Its use for short-stay accommodation occurs on the floors above the shop unit, with varying internal layouts on each floor as shown on copies of the plans accompanying the retrospective application. These are reproduced on the Council's letter of 19 April 2016 in response to my queries about the notice, although they do not show the door leading in from no. 164.
10. I was only able to access those rooms on the first floor, where they were as on the plans. Rooms on the second floor were occupied while those on the third floor were inaccessible. It is unclear from the evidence submitted by the appellant how many units of accommodation are provided, though it appears from the plans to be more than one, with shared kitchen and laundry facilities.
11. CS Policy CS6 aims to make full use of Camden's capacity for housing and section (d) seeks to minimise the net loss of existing homes. CDP Policy DP2 explains how this aim would be met in practice. This includes, in section (e), protecting permanent housing from conversion to short-stay accommodation intended for occupation for periods of fewer than 90 days. The appeal premises have plainly been converted to this type of accommodation.
12. While the immediate surroundings of the appeal premises are unprepossessing, it is located close to the Kings Cross regeneration area. Major residential development is under way on York Way, a little way to the south. Beyond that, within reasonable walking distance, is the heart of the regeneration area, with its mix of new public squares and open spaces, housing, office and other commercial development, and cultural and educational buildings.
13. The appellant points to the proximity of the appeal premises to this area, by way of emphasising its attractiveness to clients as short-term lets. Details of bookings covering the period from October to December 2015 demonstrate that it generates a healthy revenue stream. Policy DP14 supports tourism development including, among other things, by allowing smaller-scale visitor accommodation in town centres, including Camden Town, subject to criteria set out in sections (d)-(f) of the policy. The appellant argues that the use complies with these criteria, with regard to public transport links to major rail termini, ease of dropping off guests and effects on the balance and mix of uses in the area. I saw at close quarters the buildings shown in his attached photographs.
14. For all that, the retention of permanent housing wherever possible remains a priority for the Council and a clear aim of its policies. It explains that the expected delivery of additional homes in the period to 2024/25 falls significantly short of the projected growth in the number of households up to 2026. Any loss of permanent residential floorspace that could provide living

accommodation would worsen this shortfall. To that extent, the use is contrary to policies CS6(d) and DP2(e). Paragraph 2.20 of the reasoned justification to Policy DP2 acknowledges a demand for short-term accommodation in the borough but says that this accommodation falls outside the Council's land-use priority for housing. Demand should be met from appropriate sites in non-residential use rather than from permanent housing.

15. The 2011 appeal Inspector considered that the loss of a residential unit to other uses was the decisive factor in dismissing the appeal. He accepted that the loss of a single unit, of itself, would have a barely discernible effect on housing supply. This is all the more so in this case as the appellant's evidence is that the building has not in any event been in "normal" residential use for some years, having been occupied by squatters. However, the cumulative loss of such units in similar locations or circumstances could be significant. The Council's top priority for unused and underused buildings is housing.
16. I see nothing in the circumstances of this appeal to persuade me to take a different view regarding the balance of considerations from that taken by the previous Inspector. The clear local planning policy position is that short-term visitor accommodation will be encouraged subject to certain criteria being met but not at the expense of the loss of permanent housing. There is no evidence before me that the policy position has changed in the intervening period. I see no evidence from the appellant to the effect that the Council's policy stance is misplaced in the light of more recent evidence on housing supply or visitor accommodation. There is nothing to indicate a policy presumption that such accommodation should now take priority over housing.
17. I am directed to the lack of external amenity space at the property and I could see on my visit that a rear extension to the ground-floor unit has fully taken up what external space might have been available to the rear. However, this is not new housing, where the provision of acceptable levels of private amenity space would be an issue. The property is suitable for conversion to flats and its locational advantages would apply to occupiers of flats just as much as they would to visitors to London. Its occupation by squatters has not prevented it from being converted to provide well-managed accommodation for visitors, from what I could see on my visit. There is no evidence to indicate that the lawful use of the property is other than as a dwellinghouse, in the sense that this use has been abandoned and/or supplanted by a different lawful use.
18. The appellant quotes at length extracts from the National Planning Policy Framework (NPPF) but I see nothing in that document, nor am I directed to any particular passage in it that might override the established local planning policy position in the appellant's favour. I see no reason why a residential use of the property, aside from whether that is its lawful use in any event, should be any less sustainable than a use for short term lets.
19. Accordingly, I conclude, having had regard to local and national planning policy, that the change of use causes harm to the supply of permanent housing in the borough, in so far as it adds cumulatively to the loss of such housing. Any conflict with policies CS6 and DP2 is not outweighed by such support as can be found under Policy DP14, having regard to paragraph 2.20 of the CDP, and the use is therefore contrary to the development plan. For these reasons, I conclude that the ground (a) appeal must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Other issues

20. The appeal property is within, albeit close to the boundary of the Camden Square Conservation Area (CA). No issue is taken or evidence adduced by either party regarding any effect of the use on its character or appearance. While I am required to have special regard to the desirability of preserving or enhancing the character or appearance of the CA, nothing in the evidence or from what I saw on my visit persuades me other than that no harm in respect of either has arisen from the development.

Ground (g) appeal

21. An appeal on this ground is on the basis that the period for compliance is too short and a longer period is sought. The requirement is to cease the use. No building works are required to be undertaken, or the removal of items which may have facilitated the use. All that would be required would be for clients to have vacated the premises by the end of the two-month period given and for any continuing use as letting accommodation to have ceased.
22. The appellant says that use as short term lets is longer than two months and subject to different legislation. The Council says that it is unaware of what legislation may be being referred to but no further explanation is forthcoming. There is no evidence of units being let for longer than two months, now or in the future. Such details of bookings as are given in support of the ground (a) appeal indicate that the periods for which accommodation is sought is much less than two months, typically only a few days. In the light of this, I conclude that the period for compliance is reasonable. No variation to the requirements is necessary and the appeal on ground (g) fails accordingly.

Decision

23. The enforcement notice is corrected by:
- (i) in Section 3, the deletion of the words "basement, first and second" and their substitution with the words "first, second and third"; and
 - (ii) in Section 4(a), the deletion of the words "last 4 years" and their substitution with the words "last 10 years".
24. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

C M Hoult

INSPECTOR