

## Appeal Statement

**Appeal against Enforcement Notice in respect of land at:** 50-52 Eversholt Street, NW1 1DA

**Alleged breach of planning control:** *“The subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and a professional office unit including the installation of clear windows to the rear of the property at ground floor level.”*

### **Reasons for issuing Notice:**

- (1) *“The unauthorised subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit has resulted in the unacceptable loss of permanent residential accommodation contrary to policies A1 (Managing the impact of development), H1 (Maximising housing supply) and H3 (Protecting existing homes), of the Camden Local Plan 2017.”*
- (2) *“The unauthorised subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit in respect of the high turnover of occupation resulted in a increased incidence of noise and disturbance to the detriment of the neighbouring occupiers contrary to policies A1 (Managing the impact of development), H3 (Protecting existing homes), of the Camden Local Plan 2017 and CPG6 (Amenity) of the London Plan (2016).”*
- (3) *“The unauthorised subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit has resulted in the unacceptable loss retail space which harms the function, character and success of the retail parade and designated neighbourhood centre contrary to policy TC2 (Camden’s centres and other shopping areas) of the Camden Local Plan (2017) CPG5 (Town Centres and Employment), the London Plan 2016 and the National Planning Policy Framework (2012).”*
- (4) *“The installation of clear glazed operable windows at ground floor level to the rear results in overlooking of the adjacent residential dwelling and garden to the east of the site to the detriment of the residential amenity of its occupants and mutual overlooking between the short term lets at the site resulting in poor quality accommodation, all contrary to policy A1 (Managing the impact of development), of the Camden Local Plan 2017 and CPG 6 (Amenity) ), the London Plan 2016 and the National Planning Policy Framework (2012).”*

## **Requirements of the Notice:**

Within a period of 3 months from the Notice taking effect:

1. Cease the unauthorised use of the property as multiple self-contained short term residential lets (C1 use), the bureau de change and office.
2. Cease all residential use at ground floor level.
3. Remove all but one set of bathrooms and kitchens from the ground floor level.
4. Either remove the windows located to the rear of the property on ground floor level and infill with brick to match the existing brickwork on the external rear and side elevations.  
Or
5. Obscure and permanently fix-shut the rear windows at ground floor level on the rear and side elevations.

**The appeal is made under grounds (a), (f) & (g).**

**1.0 Ground (a) Appeal - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed).**

### **2.0 Application Site and Location**

2.1 The application site contains a 3 storey plus-basement mid-terrace Victorian building. The buildings are designated as Locally Listed Buildings. The site is located on the retail frontage between numbers 34-70 Eversholt Street and is within the designated Eversholt Street South Neighbourhood Centre (which includes numbers 22-118 Eversholt Street even).

2.2 The ground floor was previously a double fronted sex shop but has been vacant since 2014. The unit was split to provide a bureau de change use (subject to the Notice), which commenced in July 2017 and the remaining retail space at the front has been used as a temporary office by the appellant since November 2017.

2.3 Along Eversholt Street there are three commercial units that are being used as sex shops and three commercial units that are being used as a strip club.

2.4 The basement of Nos.50-52 and the first and second floors of No.50 were previously in office use (B1a use). Two GPDO prior approval permissions were granted in 2015 for 4 studio flats (C3 use) at basement level at Nos.50-52 and 4 studio flats (C3 use) at first/second floor level at No.50.

2.5 The site lies within an area identified in the local planning authorities (LPA) adopted Local Plan as a designated Neighbourhood Centre.

2.6 The site is also located within the Crossrail 2 Safeguarding Area. The LPA's delegated report for the planning proposal refused permission (appendix 1) confirms the site is directly adjacent to the area of land safeguarded for construction of the new Euston station (including works on Eversholt Street itself). The report also confirms the site is located within the Crossrail 2 Safeguarding area.

2.7 The site has a public transport accessibility level rating (PTAL) of 6b, which is the best possible PTAL rating.

2.8 The site lies within a low flood risk area (flood zone 1).

2.9 The property is not statutory listed and does not fall within a designated conservation area.

### **3.0 Relevant Planning History**

3.1 Prior approval was granted 12<sup>th</sup> October 2015 (ref: 2015/4734/P) for: "*Change of use from office (Class B1a) to 4 x studio flats (Class C3)*". This permission was implemented.

3.2 Prior approval was granted 13<sup>th</sup> October 2015 (ref: 2015/4950/P) for: "*Change of use from office (Class B1a) to 4 x studio flats (Class C3) at lower ground floor level*". This permission was implemented.

3.3 Planning permission was refused 21<sup>st</sup> May 2018 (ref: 2017/5574/P) for: "*Change of use/conversion of existing retail unit (A1) to provide a retail unit (A1 use) and bureau de change (A2 use) at the front and two self-contained studio flats (C3 use) at the rear, together with alterations to the shopfront and window openings to the rear (part retrospective application)*". This refusal is subject to a separate appeal.

3.5 Planning permission was refused 21<sup>st</sup> May 2018 (ref: 2017/5575/P) for: "*Change of use/conversion of existing retail unit (A1) to provide a retail unit (A1 use) and bureau de change (A2 use) at the front and 4 self-contained short term residential lets (C1 use) at the rear, together with alterations to the shopfront and window openings to the rear (part-retrospective application)*".

3.6 The appellant was advised by a planning consultant (not Henry Planning) that the rear part of the former sex shop could be converted to residential under permitted development. Unfortunately, the appellant started work before the prior approval process was approved thus negating permitted development rights

### **4.0 Planning Policy Context**

4.1 Government policy is set out in the National Planning Policy Framework (2018) ("the NPPF").

4.2 The adopted Local Plan is the Camden Local Plan 2017 and the relevant policies for the appellants case are as follows:

## **Policy E1 - Economic development**

This policy “recognises the contribution that tourism makes to the character of Camden and the way that is perceived by those living outside the borough, and also the substantial number of jobs it provides.” (paragraph 5.54).

## **Policy E3 – Tourism**

This policy sets out the detailed approach to supporting tourism and providing accommodation for those visiting the borough.

This policy states that; “the Council recognises the importance of the visitor economy in Camden and will support tourism development and visitor accommodation.”

Policy E3 states, inter alia:

*We will:*

*c. consider tourism development outside of the areas listed above where it would have a local or specialist focus and would attract limited numbers of visitors from outside the borough;*

*All tourism development and visitor accommodation must: f. be easily reached by public transport;*

*g. provide any necessary pickup and set down points for private hire cars and coaches and provide taxi ranks and coach parking where necessary;*

*h. not harm the balance and mix of uses in the area, local character, residential amenity, services for the local community, the environment or transport systems; and*

*i. not lead to the loss of permanent residential accommodation.*

Paragraph 5.58 of the Local Plan states: “The Council will guide tourism development that is likely to attract large numbers of people to Camden’s part of Central London, particularly the growth areas of King’s Cross, Euston, Holborn and Tottenham Court Road.” – the application site is within the Euston area.

**Policy TC2** in part seeks to protect retail frontages. In Neighbourhood Centres, which the application site falls within, the Council “*will seek to retain convenience shopping for local residents in Camden’s Neighbourhood Centres and will ensure that development in them does not harm the function, character or success of that centre.*”

Paragraph 9.23 of the Local Plan states: “*The Council will seek to retain a strong element of convenience shopping for local residents in Camden’s neighbourhood centres and ensure that any development in them does not harm the function, character or success of that centre. We will take into account the individual character of the centre when assessing development proposals but, as a guide, we will resist schemes that would result in less than half of ground floor premises in a neighbourhood centre from being in retail use or in more than three consecutive premises being in non-retail use. We will also take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises.*”

## **5.0 The main planning issues for consideration in respect of the reasons for issuing the Notice are as follows:**

- Loss of permanent residential accommodation
- Principle of short term holiday lets
- Quality of short term holiday lets
- Impact on neighbouring residential amenity
- The loss of retail space
- Other material considerations

## **6.0 Loss of permanent residential accommodation**

6.1 The reason for issuing the Notice includes the following reason: *“The unauthorised subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit has resulted in the unacceptable loss of permanent residential accommodation contrary to policies A1 (Managing the impact of development), H1 (Maximising housing supply) and H3 (Protecting existing homes), of the Camden Local Plan 2017.”*

6.2 For clarification, the wording for the reason for issuing the Notice refers to the loss of permanent residential accommodation because of the change of use to a bureau de change and an office unit.

6.3 It is a matter of fact accepted by the LPA that the change of use of the rear ground floor has not resulted in the loss of permanent residential accommodation but the loss of retail floorspace.

6.4 The basement of Nos.50-52 and the first and second floors of No.50 were previously in office use (B1a use). Two GPDO prior approval permissions were granted in 2015 for 4 studio flats (C3 use) at basement level at Nos.50-52 and 4 studio flats (C3 use) at first/second floor level at no. 50. It is accepted by the LPA that these prior approvals were implemented – refer to relevant planning history section (section 3).

6.5 It is accepted that the eight residential units built under prior approval and the four units at ground floor level are now in use as short term holiday lets for a period greater than 90 days in any calendar (definition of short term let).

6.6 The appellant accepts ordinarily the existing lawful dwellings should in planning policy terms only be used as Class C3 residential accommodation (permanent residential accommodation) because existing planning policies protect permanent dwellings (policies H1 and H3 of the Local Plan).

6.7 However, it is the appellants case that there are significant material considerations to allow the units to be retained as short-term holiday lets. Appendices 2 & 3 are floor plans of the prior approvals that have been implemented (refer to relevant planning history section – section 3). These floor plans demonstrate the prior approvals allowed for exceptionally poor permanent residential accommodation. The size of units are

woefully short of London Plan minimum space standards for studios (37m<sup>2</sup>) and general outlook and light to many of the units is poor and there is no amenity space provision. Therefore, the level of amenity provided would be massively below the standards expected of permanent living accommodation.

6.8 The quality of the accommodation is appropriate for short term holiday lets because the units are used as a holiday base for sleeping and not general living. In fact, the units have proven to be very popular with exceptionally high occupancy throughout the year. Users of the short-term holiday lets are attracted by the high quality, good value holiday accommodation in an exceptionally accessible location (highest possible PTAL rating).

6.9 The Local Plan seeks to protect self-contained permanent residential accommodation but was anticipating protecting fit for purpose residential accommodation. And because the lawful position is the provision of very poor permanent residential accommodation, it is considered justified to allow an exception to policy and allow the units to be retained as short-term holiday lets. Otherwise, the Notice if upheld in this respect requires poor permanent residential accommodation to be brought back into use.

## **7.0 Principle of short term holiday lets**

7.1 There are no policies which prohibit short term holiday lets subject to other policies being complied with. In fact, the Council policies encourage the provision of tourist accommodation/facilities in sustainable locations (like this site). The LPA accept this position.

7.2 The site is located within the highest possible PTAL rating (6b), indicating the site has exceptional access to public transport. And the site is in close proximity to many tourist attractions and excellent transport links to London wide tourist attractions.

7.3 Paragraph 5.58 of the Local Plan states: *“The Council will guide tourism development that is likely to attract large numbers of people to Camden’s part of Central London, particularly the growth areas of King’s Cross, Euston, Holborn and Tottenham Court Road.”* – the application site is within the Euston area.

7.4 Policy E1 of the Local Plan *“recognises the contribution that tourism makes to the character of Camden and the way that is perceived by those living outside the borough, and also the substantial number of jobs it provides.”* (paragraph 5.54).

7.5 Policy E3 sets out the detailed approach to supporting tourism and providing accommodation for those visiting the borough. This policy states that; *“the Council recognises the importance of the visitor economy in Camden and will support tourism development and visitor accommodation.”*

7.6 Policy E3 states, inter alia:

*We will:*

*c. consider tourism development outside of the areas listed above where it would have a local or specialist focus and would attract limited numbers of visitors from outside the borough;*

*All tourism development and visitor accommodation must:*

*f. be easily reached by public transport;*

*g. provide any necessary pickup and set down points for private hire cars and coaches and provide taxi ranks and coach parking where necessary;*

*h. not harm the balance and mix of uses in the area, local character, residential amenity, services for the local community, the environment or transport systems; and*

*i. not lead to the loss of permanent residential accommodation.*

7.7 Therefore, the Local Plan clearly supports the provision of short term holiday lets in this location.

## **8.0 Quality of units**

8.1 While there are no adopted standards that need to be met when providing short term holiday lets, the proposed units would provide good quality short-term accommodation in a highly accessible location to Camden and London wide tourist attractions.

8.2 Eight of the units are required by the Notice to go back to the permanent residential use (appendices 2 & 3 show approved floor plans). Therefore, the LPA are not challenging the quality of these units because the standards required for permanent residential accommodation are significantly higher than those standards required for short-term holiday lets.

8.3 There are four short term holiday let units located at the rear on the ground floor of the property and the appellant seeks planning permission for the retention of these units. The units have floor areas of 23.8 sq. m, 18.2 sq. m, 15 sq. m and 19.7 sq. m.

8.4 The appellant also seeks retention of the eight short term holiday let units at lower and upper ground floor level that were previously permanent residential units (appendices 2 & 3 show approved floor plans).

8.5 The LPA's report (appendix 1) for the refused planning proposal (appendix 1) confirms the LPA agrees there are no adopted standards for short term holiday let units. The report also confirms the four units at ground floor level comply with the Councils Housing in Multiple Occupation (HMO) room size standards (significantly in excess). The units are each provided with an open plan layout containing beds, kitchenettes and bathrooms.

8.6 The LPA's report (appendix 1) criticises the short term let units at ground floor level for being single aspect and having a restricted outlook. This is despite the window and floor area ratio being relatively generous for all the units. And while the report states the arrangement would provide low quality tourist accommodation, it does not explain

why but then goes onto say; *“the quality is not considered to be so poor as to justify the refusal of the application on these grounds.”* But the report goes onto to justify refusal on the grounds of quality of space provision by referring to the mutual overlooking between the ground floor short term holiday let units.

8.7. The ground floor units are modern, provide a good level of amenities, including kitchen facilities, have a reasonable outlook and decent levels of light – the side windows face a southerly direction. The nature of the use of these units is that the occupiers would reside short term (tourists) and would mainly use the premise for sleeping and not use the premise as living accommodation during the day for any prolonged period of minutes/hours. Therefore, the level of amenity required would be significantly below the standards expected of permanent living accommodation.

8.8 One of reasons for issuing the Notice states: *“The installation of clear glazed openable windows at ground floor level to the rear results in overlooking of the adjacent residential dwelling and garden to the east of the site to the detriment of the residential amenity of its occupants and mutual overlooking between the short term lets at the site resulting in poor quality accommodation, all contrary to policy A1 (Managing the impact of development), of the Camden Local Plan 2017 and CPG 6 (Amenity) , the London Plan 2016 and the National Planning Policy Framework (2012).”*

8.9 Therefore, in respect of the quality of space provision, the Notice solely criticises the overlooking between the short-term holiday let properties.

8.10 The appellant accepts there will be some angled overlooking between the four rooms. However, as stated before, the nature of the use is for short term holiday lets where occupiers would mainly use the units for sleeping when the curtains would ordinarily be drawn. And because each of the units would have minimal occupation during the day both during the week and weekend (by the very nature of a short-term holiday let use) there would be minimal actual overlooking occurring. And this is recognised by the fact there are no privacy standards for short term let properties.

8.11 The Enforcement Notice requires either the removal of the windows or that they are permanently obscured glazed and fixed shut. If the Inspector considers there is harmful overlooking into neighbouring short-term holiday let units, then a solution could be that the bottom half of the windows (up to a height of 1.7 metres measured from the floor level) are obscured glazed and permanently fixed shut only. This allows for natural ventilation on the upper parts of the windows and an outlook that would not allow overlooking between holiday let units.

8.12 In fact, the units have proven to be very popular with exceptionally high occupancy throughout the year. Users of the short-term holiday lets are attracted by the high quality, good value holiday accommodation in an exceptionally accessible location (highest possible PTAL rating).



## **9.0 Impact on neighbouring residential amenity**

9.1 Two reasons for issuing the Notice are applicable to neighbouring residential amenity and these state:

*“The installation of clear glazed openable windows at ground floor level to the rear results in overlooking of the adjacent residential dwelling and garden to the east of the site to the detriment of the residential amenity of its occupants and mutual overlooking between the short term lets at the site resulting in poor quality accommodation, all contrary to policy A1 (Managing the impact of development), of the Camden Local Plan 2017 and CPG 6 (Amenity) , the London Plan 2016 and the National Planning Policy Framework (2012).”*

*“The unauthorised subdivision and change of use of the property to form a mixed use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit in respect of the high turnover of occupation resulted in an increased incidence of noise and disturbance to the detriment of the neighbouring occupiers contrary to policies A1 (Managing the impact of development), H3 (Protecting existing homes), of the Camden Local Plan 2017 and CPG6 (Amenity) of the London Plan (2016).”*

9.2 The change of use of part of the retail floor space at the rear at ground floor level to short-term holiday let units has included the installation of new windows on the rear and rear side/return elevations at ground floor level. The LPAs delegated report (appendix 1) state that the windows *“on the main rear set back elevation are sited 15 metres from the dwelling to the rear on Edith Neville Cottages, whilst the windows on the rear side/return elevation have an oblique outlook onto the rear garden of this property.”* The report therefore acknowledges that any overlooking occurring to neighbouring residential properties is an oblique view with the reality being the level of overlooking to sensitive areas is minimal. And there are already upper residential units (studio’s 2 & 3) which overlook neighbouring properties (refer to appendices 2 & 3 for approved floor plans). The LPA’s report goes onto say that the level of overlooking is harmful but does not expand on the perceived harm caused with reference to particular sensitive areas but only states “material” levels of overlooking.

9.3 The Enforcement Notice requires either the removal of the unauthorised ground floor windows or that they are permanently obscured glazed and fixed shut. If the Inspector considers there is harmful overlooking into neighbouring residential properties, then a solution could be that the bottom half of the windows (up to a height of 1.7 metres measured from the floor level) are obscured glazed and permanently fixed shut only. This allows for natural ventilation on the upper parts of the windows and an outlook that would not cause harmful overlooking into neighbouring residential properties.

9.4 Another solution would be to require all the windows to be obscured glazed and permanently fixed shut. And because the short-term holiday let’s do not require an outlook, then this is a solution which would be accepted by the appellant if the Inspector considers this an appropriate solution.

9.5 In respect of the concerns raised by the LPA in the Notice that the change of use would lead to a higher turnover of occupation with consequential increased incidence of noise and disturbance to the detriment of the neighbouring occupiers, the appellant would comment as follows.

9.6 The LPA have not raised the same concern in their refusal of the planning proposal (appendix 1 – LPA's report).

9.7 The background noise levels in this relatively busy location would be reasonably high throughout the day and night. The lawful use of the ground floor premises is unrestricted retail use which means the premise can operate 24 hours 7 days a week. And such a use would continually attract night time customers who may cause some disturbance.

9.8 The existing bureau de change use currently closes at night and a planning condition could be imposed to control the hours of use, if the Inspector considers necessary. The unit currently used as an office which has very low levels of coming and going activities. And this unit is highly likely to attract a day time activity like an estate agent or a barber's shop, which would cause minimal disturbance.

9.9 The short-term holiday lets are likely to generate minimal activity comparable to the lawful use of eight of the units as permanent residential use. It could be argued the permanent residential use would generate more activity than the short-term lets through visiting friends and more comings and goings associated with permanent residence.

9.10 It is therefore not understood why the LPA have stated in the Notice that the change of use generates significantly more activity and consequential noise issues when compared to the lawful position.

## **10.0 The loss of retail space**

10.1 The Notice states that the *"unauthorised subdivision and change of use of the property to form a mixed-use development consisting of 12 units of self-contained temporary accommodation (C1), a bureau de change and an office unit has resulted in the unacceptable loss retail space which harms the function, character and success of the retail parade and designated neighbourhood centre.."*

10.1 The ground floor was previously a double fronted sex shop but has been vacant since 2014. The unit was split to provide a bureau de change use (subject to the Notice), which commenced in July 2017 (appendix 6 – copy of lease agreement). The other part of the former sex shop frontage (retail use) has been used as an office by the appellant since November 2017.

10.2 And along Eversholt Street there are three commercial units that are being used as sex shops and three commercial units that are being used as a strip club.

10.3 Policy TC2 of the Local Plan in part seeks to protect retail frontages. In Neighbourhood Centres, which the application site falls within, the Council *"will seek*

*to retain convenience shopping for local residents in Camden's Neighbourhood Centres and will ensure that development in them does not harm the function, character or success of that centre."*

10.4 Paragraph 9.23 of the Local Plan states: *"The Council will seek to retain a strong element of convenience shopping for local residents in Camden's neighbourhood centres and ensure that any development in them does not harm the function, character or success of that centre. We will take into account the individual character of the centre when assessing development proposals but, as a guide, we will resist schemes that would result in less than half of ground floor premises in a neighbourhood centre from being in retail use or in more than three consecutive premises being in non-retail use. We will also take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises."*

10.5 The last retail use of the premise was a sex shop and the road still has a strong sex industry presence. It cannot then be said that the premises formerly provided *"convenience shopping for local residents"*, as promoted by local plan policy.

10.6 It is accepted the existing situation has resulted in a significant loss of retail floorspace at the rear. The LPA are concerned the remaining units; *"do not have adequate operability and functionality to contribute to the character and success of this retail parade. The original retail unit on the other hand was a large open-plan unit with an adequate retail display"* (Appendix 1 - LPA's report).

10.7 The concern raised by the LPA has not considered the success of the bureau de change shop which has operated successfully since it opened July 2017. This shop has helped to increase the footfall along the street so has contributed to helping the vitality and viability of the parade and centre generally. And the appellant is confident that the remaining unit will be leased soon because the unit is attractive to flexible and small-scale operators – refer to last paragraph of this section.

10.8 Policy TC2 of the Local Plan also states that account will be taken on the history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises. The LPA have failed to properly consider the vacancy history of the site, the challenges faced by the Crossrail 2 designation of the site and the marketing report dated October 2016 (appendix 4).

10.9 The LPA's report does acknowledge; *"that a marketing report has been submitted and there have been difficulties marketing the unit."* The LPA though criticise the date of the report despite the Crossrail 2 position being as prevalent now as in October 2016.

10.10 Appendix 5 is a Cross Rail 2 Fact Sheet. This sheet confirms that the application site is located within a "designated area" and a map shows the site is within "Site B".

10.11 The LPA's report (appendix 1) confirms that an objection to the proposal refused planning permission was received from Transport for London (TfL). The objection stated the following:

*“The site is located within the Crossrail 2 Safeguarding area. The application proposes additional units of residential accommodation within an Area of Surface Interest (AOSI) identified in the 2015 Crossrail 2 Safeguarding Directions and therefore, represent development that would conflict with the proposals for the construction of the railway. TfL, in administering the Safeguarding Directions on behalf of the Department for Transport (DfT), have a responsibility to protect the delivery of Crossrail 2 from conflicting development.”*

10.12 Despite the significant relevance of the objection, the LPA stated in their report that they give little weight to the likelihood that Crossrail 2 will occur, despite the opposite being the more likely outcome.

10.13 The marketing report dated October 2018, written by MW Chartered Surveyors (appendix 4) states the following, inter alia:

#### *“HISTORY OF MARKETING*

*The premises were marketed in various ways (see above) and attracted interest mainly from developers/investors.*

*Many offers were received over the period and eventually the property went under offer at £1,79 million. The solicitors were a week from exchange of contracts when we understood the terrace had been designated as a safeguarded area due to possible future use as part of Crossrail 2.*

*Subsequently the purchaser withdrew so our marketing focused on letting the ground and lower ground. The Co-op retail chain showed initial interested but declined as the footfall was insufficient in that part of Eversholt Street. There was generally very little interest from retailers.*

*This is evidenced by the fact that there are a few vacant shops or businesses. Those that do survive are specialist retailers, betting offices or restaurants. However, from our conversations with the planners they do not necessarily want more of the same use but would prefer ‘a mix of uses’ and there in lies the problem, because ‘normal’ retailer from our feedback would not survive.*

#### *EVERSHOLT STREET - LOOKING FORWARD*

*The problem that now exists for the existing retailers regarding the Safeguarding status is that they are trapped as no one will want to take assignment of their business lease whilst Safeguarding is in place, and the present timescale is 10 years.*

*The retail status of Eversholt Street at present is poor and the outlook is even worse. Assuming shop keepers are able to successfully serve a Blight Notice and provided the government will compensate can only make matters worse as you will have further vacant shops.*

*The vacant shops will be difficult to let because of the uncertainty with the Crossrail 2 (will it, or wont it go ahead) and if so in what format. Given this existing issues together with the foreseeable problems in the area, we feel the best use for the building would*

*untimely to be residential, hotel, or hostel which will benefit the increased influx of people created by Crossrail 2 once its finished.”*

10.14 This marketing statement confirms that securing tenants for the retail premises is difficult because of the low footfall of pedestrians and the fact the terrace has been designated for compulsory purchase for the future Crossrail 2 project.

10.15 The marketing statement also confirms the terrace had been designated as a “safeguarded area” due to possible future use as part of Crossrail 2. And this poses the biggest challenge to secure retail tenants because the safeguard designation for the Crossrail project serves as a negative blight to securing retail occupiers.

10.16 Because the site is within a designated “safeguard area” for Crossrail 2, any land registry search of the appeal property states this position. And this deters potential commercial tenants who are concerned about investment being lost if the properties are compulsorily purchased as envisaged. As evidenced by the marketing report (appendix 4), the appeal site is blighted in respect of potential investors for a large retail unit.

10.17 While the proposal would lead to a loss of retail floorspace at the rear, the commercial frontage will be protected in compliance with Local Plan policy - there are no policies which restrict the change of use of retail floorspace at the rear unless the loss leads to unviable units. And in this case the appellant has demonstrated that one unit is viable solely because it is a small unit and the appellant is confident that by the time the Inspector makes their site visit that the other unit will also be leased, being attracted to the fact it is a small unit with less overheads and commercial risk – the commercial risk for a large unit is so high. because of the reasons outlined, it has become near impossible to rent large units in this location.

10.18 The smallest unit has been proven to be unaffected by the smaller provision of commercial floor space demonstrated by the lease agreement the applicant has secured for ten years for the bureau de change shop. This shop has helped to increase the footfall along the street contributing to helping the vitality and viability of the centre generally. And the appellant is confident the remaining unit will be leased soon because the unit is attractive to flexible and small-scale operators.

10.19 The appellant has had enquiries to lease the remaining ground floor unit by a barber’s shop, estate agent, a small coffee bar operator and a newspaper shop operator who sells snacks, drinks and sweets. All the enquiries have come about because they are seeking small and flexible units (not a large unit as previously existing), which significantly cut down on lease and business rates costs which can be prohibitively expensive for a larger unit. The appellant will advise on the progress of negotiations. If successfully leased to such an operator, then this would evidence that the smaller units are more viable than the previous large unit.

## **12.0 Other material considerations**

12.1 The appellant was advised by a planning consultant (not Henry Planning) that the rear part of the former sex shop could be converted to residential use under permitted development. Unfortunately, the appellant started work before the prior approval process was approved thus negating permitted development rights.

12.2 However, if the Notice is upheld, in so far as the lawful retail use needs to be re-introduced, then the appellant could then follow the prior approval process again to provide small permanent residential units.

12.3 Class M of Part 3 of Schedule 2 of the General Permitted Development Order 2015, allows for the change of use of a retail use to a use falling within Class C3 (dwellinghouses) and also allows for building operations reasonably necessary to convert to dwellinghouses. Therefore, if prior approval was granted then clear glass could be introduced in the same positions as existing and the Council would have no power under the Order to prohibit this.

12.4 Class D of Part 4 of Schedule 2 of the General Permitted Development Order 2015, allows for the change of use of a Class A1 premises (or part of the premise) to a flexible use, including Class A2 and Class B1 uses for a period of 2 years. The change of use is permitted by Class D subject to the developer notifying the LPA of the date the site will begin to be used for one of the flexible uses, and what that use will be, before the use begins. The current uses at the front would have benefitted from this provision had Notice been given to the LPA. If the appellant is required to cease the use of both premises as they are currently used and revert back to the lawful use, then the existing uses at the front could be immediately introduced after notice has been given in writing to the LPA.

12.5 If the Inspector is minded to accept that some of the uses are acceptable then the appellant would request that the Inspector amend the requirements of the enforcement notice.

**13.0 Ground (f) - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.**

13.1 The bureau de change is a successful business which contributes to the vitality and viability of the parade by increasing footfall. The Notice should therefore not require this use to cease.

13.2 If the Inspector is minded to agree with the LPA that the ground floor short term holiday lets allows for harmful overlooking between the properties, then this could be resolved by requiring all the windows to be obscured glazed or allowing one or two of the units to remain while the others cease use.

13.3 The Notice requires the removal of all but one set of bathroom facilities from the ground floor. The only chance the unit has of being leased as a retail space is if the unit is split into two and such a split does not require planning permission. Therefore, at least two bathrooms should be allowed to be retained.

**14.0 Ground (g) – That the time given to comply with the notice is too short**

14.1 The lease contract the appellant has with the bureau de change operator means there are legal consequences that cannot be resolved within a three-month period. The bureau de change also requires sufficient time to find suitable alternative premises to safeguard jobs.

14.2 The appellant therefore requests the period of compliance is extended to 6 months.