



TOWN & COUNTRY PLANNING ACT 1990 (as amended)

APPEAL HEARING SCHEDULED FOR 16th APRIL 2019

STATEMENT OF CASE: SUMMARY & FINAL COMMENTS

APPEAL SITE: 275 EVERSHOLT STREET, NW1

APPELLANT: REDCOURT LTD (MR LEO KAUFMAN)

HEARING APPEALS AGAINST:

1. Enforcement Notice ref: EN18/0386 (3209863) issued on 16 July 2018 regarding the unauthorised use of basement as a self contained flat. The notice requires to: Cease the use of the residential flat (use class C3) and remove the kitchen.
2. Non determination of planning application 2018/3316/P (3217324): against the failure of the London Borough of Camden to give notice of its decision within the appropriate 8 week period. The application is for: Change of use of lower ground floor from Sauna (Sui Generis) to a 1 bedroom flat (Class C3) (Retrospective).

To be read in conjunction with the submitted Council's statement dated 18.3.19

Raymond Yeung

DATE: 8th APRIL 2019

Recap of the Enforcement Notice and Planning Application

The Enforcement Notice:

The Enforcement Notice dated 16th July 2018 (EN18/0386) against the following works;

The unauthorised use of a self-contained flat at basement level and requires to;

Cease the use of the residential flat (use class C3) and remove the kitchen, the period for compliance is six (6) months.

The reason for the notice is that the creation of a residential flat without a suitable mechanism to secure the development as car-free housing would contribute to parking stress and congestion in the surrounding area, contrary to policies T1 Prioritising walking, cycling and public transport and T2 Parking and car-free development of the Camden Local Plan 2017.

A copy of the Enforcement Notice and Enforcement report has already been sent to PINs and is reattached for convenience. See appendix 1

Non determination of Planning Application:

- 1.2. The application was submitted (2018/3316/P) for :

Change of use of lower ground floor from Sauna (Sui Generis) to a 1 bedroom flat (Class C3) (Retrospective).

The Council confirms it would have refused permission, had an appeal not been lodged, on the following grounds:

In the absence of a legal agreement to secure the development as car-free housing, it would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policy T1 (Prioritising walking, cycling and public transport) T2 (Parking and car-free development) of the Camden Local Plan 2017, CPG7 (Transport) CPG8 (Planning Obligations), The London Plan (2016) and the National Planning Policy Framework 2019.

A copy of the Councils draft decision (would have been) is now attached in appendix 2

Final comments on the appellant's hearing statement dated 18/3/19 and summary of the Council's case.

1. The Council summarises its statement of case submitted on 18th March 2019 as set out below in paragraphs 2.1 – 2.17. In addition it provides the following updates.
 - 1.1 For purposes of clarity, the Council's formal "draft would have been decision" on the planning application, had an appeal not been lodged, is attached in Appendix 2 along with the associated delegated report. The reason for refusal would have been the same as the reason provided on the enforcement notice.
 - 1.2 It is noted that tenant in the basement flat has now changed since the appellant submitted the appeal. Previously the occupier was known to be Melanie Oliver, however according to Camden's residential council tax manager, there has been new occupants since 7th October 2018. It is unclear whether this has implications for the appellant' case in paragraphs 2.7 and 2.8 in their statement. Details of occupancy is attached in Appendix 3.
 - 1.3 Draft Section 106 agreements in the Council's standard appeal format were sent to the appellants in relation to both of these appeals, on 12 December 2018 and 31 January 2019. The Council's legal representative followed up with the appellants in relation to both agreements and received no response. This is set out in Appendix 4.

2 Summary of case

Background

- 2.1 The Application relates to the lower ground/basement floor of a four storey mid terrace building. This lower floor had been in use as a massage/sauna unit (a sui generis use) but was recently converted to a self-contained flat without the required planning permission for the change of use. The Council objects to the change of use to the self-contained flat solely on grounds that the new residential development is unacceptable without a car free agreement.
- 2.2 The site is located on the west side of Eversholt Street. It forms part of a shopping frontage within the Eversholt Street neighbourhood centre. There is a pharmacy at ground floor level.
- 2.3 The site has the best possible Public Transport Accessibility Level (PTAL) of 6B (excellent). It is within a controlled parking zone, immediately adjacent to the Mornington Crescent underground station and immediately adjacent (within 10-20 metres) to Bus stops F and G which

services bus route numbers 168, 253 and night bus N253 towards Chalk Farm, Holloway and Euston. The site is also amongst several other bus stops nearby in Camden Town which serve Central London, King's Cross and the north of the Borough. It also has excellent access to nearby London Overground services from Camden Road and National Rail services from King's Cross St Pancras and Euston.

The unauthorised development

- 2.5 Circa late 2014/ early 2015 the basement was converted to a self-contained flat without planning permission. The council considers that that the creation of a residential flat is unacceptable for solely one reason; that is - without a suitable mechanism to secure the development as car-free housing would contribute to parking stress and congestion in the surrounding area. It is noted that permission was refused for the conversion in 2015 on the same basis, albeit different policies within the 2010 local plan which is now superseded.

The planning issue

- 2.6 As set out in the Council's statement, the Council's policies seek to ensure that all new residential development in Camden should be car free and that this would be secured by a S106 legal agreement. In addition, it is also noted that the site has the best possible Public Transport Accessibility Level.

Exceptions are made for parking for disabled people and specific parking should be provided where it can be demonstrated as being necessary, taking into account existing availability of on-street parking for Blue Badge holders.

A section 106 agreement for the appeal scheme would restrict the development as car-free (unless the occupant is disabled) which prevents occupants of the development from being granted parking permits and contracts for Council owned or controlled car-parks. This would facilitate sustainability and would help to promote alternative, more sustainable methods of transport, including walking and cycling.

The Enforcement Notice requirements

- 2.7 The enforcement notice was issued to remedy the breach within the required 4 year period. It requires to cease the use of the residential flat and remove the kitchen. The notice specified 6 months compliance period from the effective date.

2.8 Enforcement notice - appeal grounds:

(f) the notice requiring the kitchen to be removed is considered excessive

(g) that 6 months compliance is unreasonable as it too short and that one year period should be allowed

The Council's response

2.9 Ground (f) - the Council considers that the Notice is reasonable and enforceable, requiring the appellant to cease the use of the residential flat and to remove the kitchen. The appellant states that removal of the kitchen is excessive. The kitchen could be used for 'private ancillary purposes' without expanding on what purpose this would be. Removing the kitchen however would be physical evidence to ensure that the basement cannot be used as a self-contained residential flat again. The notice is not excessive and is enforceable, for example it does not require removal of the bathroom/toilet, only the kitchen.

2.10 Ground (g), the Council considers that the time given to comply with the notice was more than sufficient giving them 6 months from the effective date.

Appeal against non-determination of planning application (and enforcement notice); grounds

2.11 Whilst the appellant agrees to the signing of a car-free s106 legal agreement, he states however that it is not possible for the freeholder to sign as he cannot be contacted. The discussion surrounding this subject between the appellant and the council was not concluded and hence the application had not been determined.

2.12 The council asserts that planning permission cannot be granted in the absence of evidence that the freeholder cannot be located and therefore cannot be a signatory to the S106 legal agreement. The Council's statement discusses this in detail. It is the standard practice when drafting Section 106 agreements to include all parties with a legal interest in the land, due to the requirements of Section 106(3)(a) of the Town and Country Planning Act 1990 ('the Act') which states that obligations are only enforceable against persons entering the obligation or persons deriving title from those persons. Due to this section of the Act, excluding parties that have a legal interest in the land causes undue risk to the Council, because if an excluded party was to implement the planning permission, they would not be bound by the obligation.

2.13 The appellant has not provided any substantial evidence indicating that the freeholder cannot be located, and a solicitor's certificate has not

been provided to certify that all efforts have been made to contact the freeholder.

- 2.14 The appellant states in their further comments in para.2.10 that the Council's standard car-free agreement is not enforceable. The Council disagrees with this assertion, and has dealt with this at 7.16 – 7.18 of the council's Appeal Statement. It is important to note that the Council's standard car free wording has changed since this appeal and addresses the issues raised by the Inspector, and the decision in that appeal related to a Unilateral Undertaking rather than a Section 106 agreement.

Summary of Council's case

- 2.15 The council statement sets out the council's policies and legal issues regarding the s106 requirement and justification for the requirements of the enforcement notice.
- 2.16 It also cites 6 recent relevant planning decisions within Eversholt Street. This includes 3 planning refusals regarding no S106 car free development and 3 recent decisions where permission was granted subject to a s106 agreement securing car free development. This shows that the council is consistent in its approach to car free development.
- 2.17 The statement also cites 3 recent appeal decisions regarding similar development and nature of car-free and legal agreements. Each inspector dismissed all the appeals on grounds of the failure to sign a suitably worded legal agreement. This shows that the Council has been successful in defending its policies regarding car free development.
- 2.18 The appellant has failed to provide evidence that the Freeholder cannot be located and therefore has failed to prove that the Agreement should be completed without the Freeholder's agreement and signature. Without this proof, the Section 106 agreement cannot be completed and the development is therefore unacceptable to the Council.