

**APPEAL AGAINST REFUSAL UNDER SECTION 78 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990  
APPELLANT'S APPEAL STATEMENT**

**Site:** 341 Gray's Inn Road, London WC1X 8PX

**Proposal:** Change of use from residential use (Class C3)  
to 9 x short term let units (retrospective  
application)

**LB Camden Reference:** 2019/2538/P

**Appeal Reference:**

**Appellant:** Mr Omer Barut



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## **1. Site and Surrounding Area**

- 1.1 The appeal site is a mid-terrace, four storey building, located on the southern side of Grays Inn Road.
- 1.2 The ground floor and basement are occupied by a restaurant and the upper floors are used as short term air bnb let units.
- 1.3 The building is not listed but located in the Kings Cross Conservation Area.
- 1.4 The ground floor of whole terrace is used by commercial units and the access to the upper floors are between two restaurants.
- 1.5 There are two double and one single three rooms on each floor as well as a shared WC and bathrooms. There are no kitchen or en-suite facilities.
- 1.6 The rooms are booked through the Airbnb site individually and clearly advertised that there are no kitchen facilities apart from a kettle, tea and coffee within the rooms and bathroom is shared.
- 1.7 When the rooms are booked through this website, the appellant pass the guests passcode to enter doors.
- 1.8 There is a cleaner who visits the property daily to clean communal areas, change bedding and prepare the rooms. The former utility room is converted into a laundry room where the cleaner daily wash/dry and iron the bedding.
- 1.9 The appeal site is within the most accessible location in London with PTAL rating of 6b 'best' accessibility.
- 1.10 The appeal site borders with a congestion charge as well as Ultra Low Emission Zone (ULEZ).

## **2. Relevant Planning History**

- 2.1 None relevant

## **3. Development Plan / Policy Area**

The National Planning Policy Framework (February 2019), London Plan and Camden Local Plan form the statutory development plan for this appeal. In the consideration of this appeal the following Policies are of particular relevance:

### **National Planning Policy Framework (February 2019)**

Paragraphs 7 and 8

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs<sup>4</sup>.

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

### **Building a strong, competitive economy**

Paragraphs 80, 81 and 82

80. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can

be a global leader in driving innovation<sup>40</sup>, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

81. Planning policies should:

a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;

b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;

c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and

d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.

82. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

### **Ensuring the vitality of town centres**

Paragraph 85

Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:

a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;

d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and

f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

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## **NPFF - Annex 2 - glossary**

**Main town centre uses:** Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

## **London Plan (2016)**

### **Policy 4.5 London's visitor infrastructure** **Strategic**

A The Mayor will, and boroughs and relevant stakeholders should:

a support London's visitor economy and stimulate its growth, taking into account the needs of business as well as leisure visitors and

seeking to improve the range and quality of provision especially in outer London

b seek to achieve 40,000 net additional hotel bedrooms by 2036, of which at least 10 per cent<sup>1</sup> should be wheelchair accessible

c ensure that new visitor accommodation is in appropriate locations:

- beyond the Central Activities Zone (CAZ) it should be focussed in town centres and opportunity and intensification areas, where there is good public transport access to central London and international and national transport termini
- within the CAZ strategically important hotel provision should be focussed on its opportunity areas, with smaller scale provision in CAZ fringe locations with good public transport. Further intensification of provision in areas of existing concentration should be resisted, except where this will not compromise local amenity or the balance of local land uses
- It may be appropriate to locate visitor accommodation related to major visitor attractions of sub-regional or greater significance in locations other than those set out in this paragraph, but only where it can be shown that no suitable site in one of these locations exists and that there is a clear link in scale, nature and location (particularly demonstrating sufficient proximity to minimise the overall need to travel and maximise walking and cycling) between the accommodation and the attraction being served.

d support provision for business visitors, including high quality, large scale convention facilities in or around the CAZ

e recognise the need for apart-hotels in the context of the broader policies of this Plan.

f promote, enhance and protect the special characteristics of major clusters of visitor attractions including those identified in Strategic Cultural Areas in Map 4.2.

### Planning decisions

B. Developments should:

a contribute towards the hotel provision target and ensure that at least 10 per cent of bedrooms are wheelchair accessible

b be consistent with the strategic location principles set out above

c not result in the loss of strategically important hotel capacity

## LDF preparation

### C. LDFs should:

- a seek to ensure that all new visitor accommodation meets the highest standards of accessibility and inclusion and encourage applicants to submit an accessibility management plan with their proposals
- b promote high quality design of new visitor accommodation so that it may be accredited by the National Quality Assurance Scheme
- c identify opportunities for renovation of the existing visitor accommodation stock
- d promote and facilitate development of a range of visitor accommodation, such as hotels, bed and breakfast accommodation, self-catering facilities, youth hostels and camping and caravan sites
- e support and encourage development of good quality budget category hotels, especially in outer London.

Strategically important hotel capacity will depend on local circumstances, but typically comprises development exceeding 100,000 m<sup>2</sup> in the City, 20,000 m<sup>2</sup> in Central London and 15,000 m<sup>2</sup> outside Central London.

## **Camden Local Plan (2017)**

### **Policy H3 - Protecting existing homes**

The Council will aim to ensure that existing housing continues to meet the needs of existing and future households by:

- a. resisting development that would involve a net loss of residential floorspace, including any residential floorspace provided;
  - within hostels or other housing with shared facilities; or
  - as an ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use;
- b. protecting housing from permanent conversion to short-stay accommodation intended for occupation for periods of less than 90 days; and c. resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals), unless they:
  - create large homes in a part of the borough with a relatively low proportion of large dwellings;
  - enable existing affordable homes to be adapted to provide the affordable dwelling-sizes that are most needed; or
  - enable sub-standard units to be enlarged to meet residential space standards.

Exceptionally, the Council may support development that involves a limited loss of residential floorspace where this provides for the expansion of existing health premises to meet local needs.

### **Policy H7 – Large and small homes**

The Council will aim to secure a range of homes of different sizes that will contribute to creation of mixed, inclusive and sustainable communities and reduce mismatches between housing needs and existing supply.

We will seek to ensure that all housing development, including conversion of existing homes and non-residential properties:

- a. contributes to meeting the priorities set out in the Dwelling Size Priorities Table; and
- b. includes a mix of large and small homes. We will take a flexible approach to assessing the mix of dwelling sizes proposed in each development having regard to:
- c. the different dwelling size priorities for social-affordable rented, intermediate and market homes;
- d. any evidence of local needs that differ from borough wide priorities;
- e. the character of the development, the site and the area, including the impact of the mix on child density;
- f. site size, and any constraints on developing the site for a mix of homes of different sizes;
- g. the economics and financial viability of the development including any particular costs associated with it, having regard to any distinctive viability characteristics of particular sectors such as build-to-let housing; and
- h. the extent to which flexibility around the mix of market homes could secure the delivery of additional affordable housing.

### **Policy A1 – Managing the impact of development**

The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity.

We will:

- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;
- b. seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;
- c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and
- d. require mitigation measures where necessary. The factors we will consider include:



- e. visual privacy, outlook;
- f. sunlight, daylight and overshadowing;
- g. artificial lighting levels;
- h. transport impacts, including the use of Transport Assessments, Travel Plans and Delivery and Servicing Management Plans;
- i. impacts of the construction phase, including the use of Construction Management Plans;
- j. noise and vibration levels;
- k. odour, fumes and dust;
- l. microclimate;
- m. contaminated land; and
- n. impact upon water and wastewater infrastructure.

#### **Policy A4 – Noise and vibration**

The Council will seek to ensure that noise and vibration is controlled and managed.

Development should have regard to Camden’s Noise and Vibration Thresholds (Appendix 3). We will not grant planning permission for:

- a. development likely to generate unacceptable noise and vibration impacts; or
- b. development sensitive to noise in locations which experience high levels of noise, unless appropriate attenuation measures can be provided and will not harm the continued operation of existing uses.

We will only grant permission for noise generating development, including any plant and machinery, if it can be operated without causing harm to amenity. We will also seek to minimise the impact on local amenity from deliveries and from the demolition and construction phases of development.

#### **4. Appeal Subject**

The application which involved a proposal to ‘Change of use from residential use (Class C3) to 9 x short term let units (retrospective application)’ was deposited by the Council on 16 May 2019. The application refused by decision notice (Appendix A) dated 7 August 2019 by the following reasons:

**‘The change of use to short term let accommodation, results in the loss of permanent residential accommodation in the form of a family sized unit, detrimental to the amount of permanent residential floorspace in the borough and failing to contribute to the creation of mixed and inclusive communities, contrary to policies H3 (protecting existing**

**homes) and policy H7 (Large and small homes) of the London Borough of Camden Local Plan 2017.**

***The high turnover of occupiers has 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) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.'***

## **5. Details of appeal proposal**

- 5.1 The appeal proposal relates to three storey residential accommodation above an existing restaurant in the middle of busy Kings Cross town centre.
- 5.2 The former use of the property was three one-bedroom flats. (Appendix B)
- 5.3 The current use and the appeal subject is to use the property as air b and b.
- 5.4 The layout of the property is not altered but the former kitchens are converted into single bedrooms. Each floor now contains two double bedrooms and one single bedroom with a separate bathrooms, total of 9 rooms. The rooms are not self-contained and contains kettle to make tea/coffee only.
- 5.5 The existing mezzanine floor converted into a laundry room with washing machine, drier and ironing board/iron.
- 5.6 The rooms are let out via Airbnb website for short term visitors accommodation.
- 5.7 The building and the rooms are accessed via coded lockers where visitors let themselves in without need of any receptionist.
- 5.8 There is a cleaner daily who visits the property changes the bedding, wash/dry/iron the bedding and cleans the communal areas.
- 5.9 The property was operating as an Airbnb since March 2018.

## **6. Grounds of appeal**

**... loss of permanent residential accommodation in the form of a family sized unit, detrimental to the amount of permanent residential floorspace in the borough and failing to contribute to the creation of mixed and inclusive communities ...**

- 6.1 The appeal proposal is for the retention of an existing Airbnb visitors accommodation in this mid-terrace property above an existing restaurant.
- 6.2 As a first refusal reason, the Council states: loss of permanent residential accommodation in the form of a family sized unit, detrimental to the amount of permanent residential floorspace in the borough and failing to contribute to the creation of mixed and inclusive communities. Whilst the policy H3 fiercely protects any loss of housing within the borough, in the context of the location of this appeal site, the visitors accommodation is more suitable than the residential use.
- 6.3 One of the reasons cited within the refusal is loss of long-term accommodation for permanent residents and harm to the amount of permanent residential floorspace in the borough.
- 6.4 Whilst this is correct on the paper and the appeal proposal would result in a loss of residential floorspace, the existing upper floors were not a single unit but three self-contained flats (Appendix B).
- 6.5 Although it is stated as 'residential', the standard of accommodation would not be satisfactory for the residential use. This is due to the noisy and polluted location, unsafe access arrangements, lack of amenity space and internal space provision. The existing building was already converted into three flats and these units were occupied by families.
- 6.6 The existing property was used as three self-contained units (Appendix B) and was not necessarily occupied by long term accommodation for permanent residents. The occupiers regularly changed and the units were infested by rodents and pests due to the unhygienic environment.
- 6.7 The existing three one-bedroom or studio flats are considered as 'lower' priority within the Local Plan as shown below. The appeal subject would provide a visitors accommodation in this very

accessible location and would result in the loss of three 37 square metres lower priority, low quality flats.

3.189 The Dwelling Size Priorities Table (Table 1) has been based on the outputs of the Camden SHMA, considered alongside the mismatch between the need for large affordable homes (indicated by overcrowding) and supply (indicated by average number of bedrooms per household) and the cost constraints on delivering large intermediate homes. Dwelling sizes are expressed in terms of number of bedrooms and distinct priorities are identified for market housing, intermediate housing and social-affordable rent.

**Table 1: Dwelling Size Priorities**

	1-bedroom (or studio)	2-bedroom	3-bedroom	4-bedroom (or more)
Social-affordable rented	lower	high	high	medium
Intermediate affordable	high	medium	lower	lower
Market	lower	high	high	lower

Camden Local Plan Dwelling Size Priorities Table

- 6.8 As explained above paragraphs that the existing flats were not providing much needed housing in the borough or helping for the inclusive communities.
- 6.9 The each floor (therefore each unit) was 37 square metres and contained one WC/shower, one kitchen and two approximately 10 square metres rooms. In terms of current housing standards the units as one-bedrooms were at least 13 square metres smaller with no private or communal amenity spaces. Although, all were with double aspect.
- 6.10 Therefore, considering the busy/noisy/polluted location of the appeal site on top of unsatisfactory accommodation standards, the loss of housing should not be considered harmful to the Council's housing stock.
- 6.11 The units should be considered unsatisfactory accommodation due to their access (between two restaurant units, directly from a busy pavement), deficient internal space provision (37 sqm for one bedroom units), no private amenity space provision, external noise (traffic, ground floor restaurants' extraction flue and general public/drunken noises) as well as most polluted location with over 75% Nitrogen Dioxide (NO<sub>2</sub>)<sup>1</sup>.
- 6.12 The residential units as explained above were not suitable for long term residential accommodation in the first place and the appeal

<sup>1</sup> According to: <http://www.londonair.org.uk/london/asp/annualmaps.asp> website.

subject of change of use to air bnb – short term visitor accommodation is most suitable to this location and building as well as in line with the London Plan.

- 6.13 Therefore, this low quality housing stock on this most polluted and noisy location above the commercial units should not be considered loss of permanent residential floorspace.

***... The high turnover of occupiers has resulted in an increased incidence of noise and disturbance to the detriment of the neighbouring occupiers ...***

- 6.14 The management of existing air bnb units are running smoothly without any harm to its busy surroundings. The visitors are given code to access external and internal doors, and they enter to the building as well as their rooms themselves. As they do not cook within the premises and there are no free wi-fi for them to connect and work, the users arrive to the appeal site for sleeping purposes only and they spend minimum amount of time within. As there are nine separate rooms with occupiers, the visitors are quiet when exiting and entering into the premises.

- 6.15 Furthermore, when considering the 24 hours busy location of the area with already existing high pedestrian and vehicle traffic and commercial units on the ground floor provides such a loud background noise, the appeal proposal would not be harmful or would create a noise to be noticed by the nearby residential units.

- 6.16 In addition, the flats are previously occupied by working men and women who borough constant visitors/customers into the site, resulting more noise and pedestrian traffic.

- 6.17 Also, the reality is even if this was a residential unit, due to its unsuitability for a family, it would operate as an HMO and the occupiers would not know the neighbouring occupiers and unite with the local public as desired in this cosmopolite and busy location.

- 6.18 Most importantly, the neighbouring property to the east is an Italian restaurant on ground and first floors and ancillary offices to the second and third floors. The other neighbouring property to the west, upper floors are already merged with existing Carlton Hotel on the corner and therefore there are no residential units adjoining to the appeal site to be harmed by the proposal. The closest

residential units are above the Nisa Local Store of six one-bedroom flats.

6.19 In terms of community cohesion, the flats within this specific location as explained above would not be suitable for family units or would attract any families to unite with the wider community. The Council has residential units behind the Kings Cross Station which would benefit of community cohesion and create a community.

6.20 Therefore, the appellant believes that the air bnb operation from the premises, whilst would create a high turnover, would not be harmful to the neighbouring residential properties as it is managed respectfully without any harm to the surrounding.

6.21 In addition, there are no residential units immediately adjoining to the unit or due to the appeal site's location, no occupiers would be permanent to create community.

6.22 In the light of this, the reasons for refusals are not considered to be reasonable to refuse this appeal subject of change of use to nine air bnb units.

6.23 As the London Plan (Policy 4.5 for visitors infrastructure), Draft London Plan and NPPF supports the optimizing the potential of the sites and ensures visitors accommodation as air bnb in suitable locations. The proposal in this location where there is very good public transport access to central London and international and national transport terminals would not be detrimental to the character of this mostly commercial host property and surrounding.

6.24 As stated above, the appeal proposal is suitable in this location and would not result in much needed family housing in the borough and would not harm the neighbouring amenities, optimizes the potential of the site. The proposal would be sympathetic addition to this area and without any harm.

## **7. Conclusion**

7.1 As shown above the appeal subject of change of use to nine air bnb units should be granted planning permission as when assessed under national, London and local planning policies.

- 7.2 The proposal would provide vital visitors accommodation for short-term in this appropriate location and would support aimed 40,000 hotel bedrooms in London Plan.
- 7.3 It is shown that the existing units are not suitable for long-term residential uses and their loss would not be harmful to the borough's existing housing stock.
- 7.4 The short term visitor accommodation would not be harmful to the area or to the nearby residential units as immediate neighbours are commercial and the area itself with high pedestrian/vehicle traffic, as well as noisy and polluted and not suitable other than as short term accommodation.
- 7.5 The Inspector is respectfully requested to allow the appeal subject.

## **8. Appendices**

### **Appendix A – Decision Notice**

### **Appendix B – Flats evidence**