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Paul Eland  
The Planning Inspectorate  
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Dear Paul Eland,

**Appeal against Enforcement Notice dated 19<sup>th</sup> November 2019.**

**Address: 33 Colonnade, London WC1N 1JA**

**Appeal by Mr Ifan Evans regarding the use as 'temporary sleeping accommodation' (as defined by Section 25 of the Greater London (General Powers) Act 1973 and as set out in the 'Explanatory Note' below) for more than 90 nights in the same calendar year in breach of Section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973 at 33 Colonnade, London WC1N 1JA**

Summary

The unit is located on the first floor of a 2-storey terraced mews building on the south side of Colonnade, a street to the east of Russell Square in the heart of Bloomsbury.

Colonnade is mainly residential in use and character, with some small office and light industrial units at ground level.

The surrounding area is mixed use in nature with hotels, shops, education, museum and leisure uses in close proximity.

A representative of a local heritage and amenity group made the complaint that led to the opening of this enforcement case.

The change of use of the unit in question to short term let accommodation has reduced the stock of permanent housing available to people who wish to live in Camden in a time of acute housing shortage. In addition, the use as short term beyond the 90-day limit impacts harmfully on residential amenity of neighbours through noise and disturbance.

The Council's case is largely set out in the officer's delegated report, a copy of which was sent with the questionnaire. In addition to the information already sent I would be pleased if the Inspector could take into account the comments below before deciding the appeal.

### **Status of the development plan**

It is noted that Ground A has not been appealed so an assessment of the development in relation to Camden's policies will not need to be carried out by the Inspector.

Nevertheless, to provide background, I can confirm that the Council's policies are set out in the Camden Local Plan, which was adopted in 2017.

Housing is the primary land use of the Local Plan and Policies H1 Maximising Housing Supply, H3 Protecting Existing Homes and H6 Housing Choice and Mix are aimed at protecting existing housing and providing new housing of an appropriate quality and mix.

Policy A1 Managing the Impact of Development is aimed at protecting the amenity of residents and preventing unreasonable disturbance arising from noise, overlooking, artificial light, vibration and other potentially harmful impacts of development.

There are no material differences between the Council's policies contained in the Camden Local Plan and the NPPF.

The Council's policies therefore have been adopted recently and are up to date. There are no material differences between these policies and the NPPF. The Council's policies should be given substantial weight in accordance with the NPPF.

### **Enforcement action**

The Council issued an Enforcement Notice under Delegated Powers on 19<sup>th</sup> of November 2019 against the following breach of planning control:

*Without planning permission use as 'temporary sleeping accommodation' (as defined by Section 25 of the Greater London (General Powers) Act 1973 and as set out in the 'Explanatory Note' below) for more than 90 nights in the same calendar year in breach of Section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.*

The reasons for issuing the notice were as follows:

- 1. The number of nights that the flat has been let on a short term basis has exceeded the conditions set by Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to Conditions, including Conditions set out at Section 25A (2) (a) and (b) limiting the use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year. In doing exceeding the 90 day limit this has resulted in the unacceptable loss of permanent residential accommodation in the Borough which is contrary to policies H1 (Maximising housing supply), and H3 (Protecting existing homes), of the Camden Local Plan (2017)*
- 2. The high turnover of occupiers has resulted in an increased incidence of noise and disturbance to the detriment of the neighbouring occupiers which is contrary to policy A1 (Managing the impact of development), of the Camden London Plan (2017).*

The requirement of the Notice was:

Within ONE (1) month:

*Discontinue the use of the premises as 'temporary sleeping accommodation' as defined at Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to Conditions, including Conditions set out at Section 25A (2) (a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year.*

## **Appellant's grounds of appeal**

The Appellant has appealed under Ground D and Ground G.

Ground D

*That, at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated in the notice.*

The issues raised by the appellant in relation to Ground D are as follows:

- Para 4.3: The site has been operating since 1998/9 under a lease from Acorn Management Services identifying the use as “Provision of accommodation for overseas students and provision of property management and procurement services”;
- Para 4.4: The 1999 lease “identified the limitations for terms of subletting as: AST, Holiday letting or student letting”;
- Para. 4.8: A letter from Acorn of London and Acorn Management Services dated 16<sup>th</sup> of December 2019 confirms that Acorn Management Services was the occupier of the site for over 10 years with leases dated 22<sup>nd</sup> January 1999 and 30<sup>th</sup> October 2006. The letter confirms that the permitted use under the lease was the provision of accommodation for overseas students and other managed property services;
- Para 4.11: From 2016-2019 the site was let to Maida Vale Home on a business lease. The lease further restricted the definition of use to holiday let only

Ground G:

*Except in relation to such a requirement as is mentioned in Section 38 (2) (b) or (c) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.*

The issues raised by the appellant in relation to Ground G are as follows:

- Para 4.14 The property is currently vacant due to refurbishment work being undertaken, facilitating the required works will require a period greater than one month... a period of six months would be reasonable and proportionate.

### **Officer comments on appellant's grounds of appeal**

The principal ground under consideration is Ground D. Should the appellant's Ground D case be successful, Ground G will not need to be considered.

The Council's comments on the grounds of appeal are set out below.

#### **Ground D**

For the Ground D appeal to succeed the owner needs to demonstrate that the use as Sui Generis Short Term Lets took place for 10 years continuously from November 2009 to November 2019.

The legal standard that needs to be satisfied is "On the balance of probability".

The onus is on the owner to submit sufficient evidence to demonstrate their case. The evidence should be comprehensive and consistent and should cover the entire 10-year period with no gaps.

Should the Council disagree with the Appellant's version of events they need to provide evidence to support their case.

#### *The appellant's evidence*

This is in the form of:

- i) a lease for the property; and
- ii) a letter from Acorn London dated 16<sup>th</sup> of December 2019.

#### *Lease*

On the first page, the lease identifies the landlord, the tenant, the address, the lease period, the use allowed and the rent conditions.

It is noted that the lease period is defined as follows “20<sup>th</sup> of August 1998 and ending on the day of 2004”.

The lease identifies the use as:

*The provision of accommodation for overseas students and the provision of property management and procurement services principally in the educational sector or any other use to which the Landlord consents.*

Section 6.2 of the lease sets out three categories of subtenant who may occupy the premises without notice to the Landlord being necessary:

- *an assured shorthold tenancy within the provisions of the Housing Act 1988 or*
- *a holiday letting within paragraph 9 of Part 1 of the Schedule 1 of the Housing Act 1988 or*
- *a letting to a student within paragraph 8 of Part 1 of the Schedule 1 of the Housing Act 1988*

#### *Letter*

A letter from Acorn of London has been submitted as appendix 2 to the Appeal Statement.

This is dated 16<sup>th</sup> of December 2019 and describes the use of several premises, including the appeal unit, since 1999. The use, it is stated, comprised “management of temporary letting accommodation, principally to students and visitors to the UK”.

#### *Officer comments on Appellant’s evidence*

The lease and letter fail to provide acceptable evidence to support the claim that the unit operated for 10 years continuously in Sui Generis Short Term Let Use prior to the service of the Enforcement Notice in November 2019.

With regard to the lease, it is noted that it covers the period 1998-2004. This is not relevant to demonstrating 10 years continuous use as Short Term Lets from November 2009 to November 2019.

In terms of the land use identified on the first page of the lease, the provision of accommodation for overseas students is a different type of Sui Generis use to Short Term Holiday Lets and permission would be needed for a change of use between these two uses. As a result, the provision of accommodation for overseas students would not establish the use as Sui Generis Short Term Lets.

As regards the provisions for sub-tenancies set out in Section 6.2, the 1988 Housing Act sets a minimum length of 6 months for Assured Shorthold Tenancies. If AST agreements were entered into at the site, the continuous nature of any Sui Generis Short Term Letting use would come to an end and the 10-year period would revert to zero. There is no evidence about any ASTs having been entered into during the lease period, or during the relevant period November 2009 to November 2019.

In terms of letting to students, as stated above this is a separate category of Sui Generis use and any occupation in this category would mean that that the continuous nature of any Sui Generis holiday letting would come to an end and the ten-year period that needs to be demonstrated would revert to zero. There is no evidence about the length of any student lets that were entered into during the period of the lease or during the relevant period November 2009 to November 2019.

It is noted that the lease that has been submitted is incomplete (e.g. in relation to the lease period this has not been filled in in full). The lease document is unsigned and undated other than the first line which indicates the year 1998.

The lease does not relate to the relevant period and does not demonstrate the use for Sui Generis Short Term Lets.

In relation to the letter from Acorn London, this was written in December 2019 after the Notice was issued in November 2019. It is not contemporaneous with the relevant period and is descriptive in nature rather than containing information of an evidential nature.

In the evidence submitted, the appellant has not provided contemporaneous records dating from the relevant period November 2009 to November 2019 to demonstrate their case, nor have they submitted any basic evidential material such as logs of stays, names of occupiers, invoices, receipts or photographs.

The appellant has not demonstrated on the balance of probability that the use as Sui Generis Short Term Lets took place for 10 years continuously from November 2009 to November 2019.

#### *The Council's evidence*

There are no records of a planning application having been submitted for retention of the Sui Generis Short Term Lets use, nor was a Certificate of Lawfulness applied for to formally demonstrate the use. Officer experience is that in order to operate a business in a central London location and if necessary secure credit the operator would need the appropriate planning permission.

Other than the enforcement case subject to this appeal no other enforcement complaints were received by the Council in relation to the unit. This indicates a longer-term type of occupation rather than transient STL use for a couple of nights at a time, with the resultant disturbance to neighbour amenity. It is common for the Council to receive complaints in residential streets such as this arising out of STL use. The lack of complaints would be consistent with the use as Assured Shorthold Tenancies and Student Letting arrangements.

#### *Conclusion*

On the balance of probability the appellant has not demonstrated the continuous use of the premises as Sui Generis Short Term Lets for the relevant period November 2009 to November 2019. As a result, the Inspector is respectfully invited to find that the Ground D appeal is not established.

#### **Ground G**

Should the Inspector agree with the Council that the appeal on Ground D has not be established, he or she must consider how long the breach and the resulting harm should be allowed to continue until it is required to be rectified.

The requirement of the Notice relates solely to the use of the premises and does not involve an obligation to carry out any physical works. The action required in relation to the use is to discontinue it. The owner states in paragraph 4.14 of their statement that the unit



is vacant due to refurbishment so discontinuing within one month should be feasible on the part of the owner.

In addition, the following comments are also offered in relation to the appellant's Ground G appeal:

- No works are required to be carried out to secure compliance and no planning permissions would need to be sought. As a result, there is no reason why the carrying out of the Notice requirement would be technically unfeasible within the one-month period set out in the Notice.
- In terms of setting a one-month compliance period, officers took account of the impact on the owner and any occupiers of the property in the carrying out of the requirement. The impacts on the owner and occupiers were balanced against the fact that the works took place without permission, the potential for ongoing harm to the amenity of neighbouring occupiers as well as the undermining of the borough's stock of housing.
- Housing is the primary land use of the Council's Local Plan and there are a range of policies in the Local Plan whose aim is to protect existing housing and provide new housing.

Given the priority use that housing represents, that the requirements relate solely to change of use rather than new development and that no further consents are necessary for the rectification works the Council is of the view that one month is a reasonable and proportionate compliance period in this case.

### **Conclusion**

The Council is of the view that the Ground D case has not been established. As a result, Ground G falls to be considered.

In relation to this Ground, the breach should not be allowed to continue longer than is reasonable and necessary. In this case one month is an appropriate compliance period.

For the above reasons the Council respectfully requests that the Inspector upholds the Council's decision and dismisses this Appeal.

Yours sincerely,

John Sheehy  
Senior Planning Officer