

APPEAL AGAINST ENFORCEMENT NOTICE

APPELLANT'S APPEAL STATEMENT

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

Proposal: Change of use of the first, second and third floor levels from permanent housing (Class C3) to nine short-term let units.

LB Camden Reference: 1800.1252

Appeal Reference: APP/X5210/C/20/3248056

Appellant: Mr Omer Barut



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 bathrooms are shared.
- 1.7 When the rooms are booked online, the appellant provides them with door-lock codes.
- 1.8 All the rooms and communal areas are maintained and cleaned daily. This includes regular BnB services relating to guest room preparations. The former utility room is converted into a laundry room which is used by the caretaker(s) for washing, drying, ironing and any other such duties.
- 1.9 The appeal site is within the most accessible locations in London with PTAL rating of 6b 'best' accessibility.
- 1.10 The appeal site borders the Congestion Zone and the Ultra Low Emission Zone (ULEZ).

2. Relevant Planning History

- 2.1 2019/2538/P Change of use from residential use (Class C3) to 9 x short term let units (retrospective application) – **Refused 07/08/2019**

3. Development Plan / Policy Area

The NPPF (2019), London Plan and Camden Local Plan form the statutory development plan for this appeal. In 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.

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 innovation⁴⁰, 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.

Paragraph 122. Planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

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 cent¹ should be wheelchair accessible
 - c) ensure that new visitor accommodation is in appropriate locations:
 - beyond the Central Activities Zone (CAZ) it should be focused 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 focused 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 m² in the City, 20,000 m² in Central London and 15,000 m² 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

4.1 An Enforcement Notice was served by the Council for 'without planning permission: Change of use of the first, second and third floor levels from 3 x self-contained flats (Class C3) to 9 x short term lets (Sui Generis)' on 20 January 2020 (Appendix A). The notice which will take effect on 2 March 2020 (unless an appeal is made) by the following reasons:

'a) The unauthorised change of use has occurred within the last 10 years.

b) The change of use to short-stay accommodation intended for occupation for periods less than 90 days, due to the loss of long-term accommodation for permanent residents, is detrimental to the amount of permanent residential floor space in the borough, contrary to policy H3 (protecting existing homes) of the London Borough of Camden Local Plan 2017.

c) The change of use to nine short term lets by reason of the high turnover of occupiers, is to the detriment of the amenity enjoyed by the occupiers of the flats adjacent to the proposed development and wider community cohesion, contrary to policies H3 (protecting existing homes), A1 (Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.'

4.2 The time for compliance of the Notice is stated as 3 months from the date of the notice takes effect unless an appeal made against it beforehand. Notice requires:

1. Totally cease the use of the property as nine short term lets, and reinstate the former use of the property to 3 x self-contained flats at first, second and third floors levels.

5. GROUNDS OF APPEAL

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

- 5.1 The National policies NPPF clearly states 'the presumption in favour of sustainable development' and urges that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal is for retention of 9 air bnb rooms and appropriate to the application site and in line with the National and London policies and there are no material considerations for this application to result in refusal.
- 5.2 The appeal site is in the middle of a congested area in Kings Cross, fronting a busy Gray's Inn Road with 24 hours traffic noise and late night open commercial units on the ground floor all along the adjoining buildings.
- 5.3 One of the reasons cited within the Enforcement Notice is loss of long-term accommodation for permanent residents and harm to the amount of permanent residential floorspace in the borough.

'... due to the loss of long-term accommodation for permanent residents, is detrimental to the amount of permanent residential floor space in the borough, ...'

- 5.4 The existing upper floors were three self-contained flats. Although it is stated as 'residential', the standard of accommodation would not be satisfactory for the residential use. These flats weren't occupied by families, long term residents. This is due to the noisy and polluted location, unsafe access arrangements, lack of amenity space and internal space provision.

- 5.5 The occupiers of the flats were changed regularly and the units suffered from pests and rodent infestation due to lack of care creating an unhygienic environment.
- 5.6 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.
- 5.7 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.
- 5.8 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 unit whilst minimum 50 sqm is the current standards), no private amenity space provision (minimum 5 square metres is the current standards), external noise (traffic, ground floor restaurants' extraction flue and general public/drunken noises) as well as most polluted location with over 75% Nitrogen Dioxide (NO₂)¹.
- 5.9 The units as explained above were not suitable for long term residential accommodation. The appeal subject of change of use to Air bnb – short term visitor accommodation is most suitable to this location and the building itself as it is in line with the London Plan.
- 5.10 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 change of use to nine short term lets by reason of the high turnover of occupiers, is to the detriment of the amenity enjoyed by the occupiers of the flats adjacent to the proposed development and wider community cohesion ...'***
- 5.11 The management of existing Air bnb units are running smoothly without any harm to its busy surroundings. The visitors are given codes to access external and internal doors, and they enter the building as well as their rooms themselves. As they do not cook within the premises and there is no free wi-fi for them to connect

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

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 well maintained and professionally managed guest rooms, their occupiers are very considerate of their neighbours when entering/exiting the premises.

- 5.12 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.
- 5.13 In addition, the flats were previously occupied by working men and women (not families) who regularly attracted all types of individuals into the site, causing more noise and pedestrian traffic.
- 5.14 The units are unsuitable 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 cosmopolitan and busy location.
- 5.15 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.
- 5.16 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.
- 5.17 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.
- 5.18 In addition, there are no residential units immediately adjoining the unit or due to the appeal site's location, no occupiers would be permanent to create a community.
- 5.19 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

- 5.20 As explained above, the existing flats were not providing much needed housing in the borough or provided any help towards creation of mixed and inclusive communities.
- 5.21 As the London Plan, Draft London Plan and NPPF supports the optimizing the potential of the sites and the range of uses within town centres, the appeal proposal would be an efficient use of this site. The appeal proposal, would not be detrimental to the Council’s existing housing stock as explained above and it would be a suitable use for this busy town centre location.
- 5.22 Due to the location and size of the existing units, it is not possible to be occupied by families or for long-term residency and the existing units would be unsuitable for families.
- 5.23 In the light of the above, the appellant respectfully requests from the Inspector that the planning application for this change of use ought to be granted.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

- 5.24 The appeal proposal is for the retention of nine air bnb units/rooms. The Enforcement Notice (Appendix A) requires appellant to `cease the use of the first, second and third floor levels as 9 short term lets

and reinstate the use of the property to 3 x self-contained flats at first, second and third floors levels’.

- 5.25 If this appeal would be unsuccessful, the appellant would have to cease the use of air bnb units and re-instate this unsatisfactory 3 one bedroom flats on each floors which still not be used by families.
- 5.26 The notice should only request short term lets use to be ceased and reinstate the residential (C3) within the premises so bigger unit or units could be created.
- 5.27 Cease the use of the property as 9 short term lets to reinstate the former use of the property to 3 x self-contained flats at first, second and third floors levels requested by the notice, however rather than creating 3 unsatisfactory units notice should have requested to return into a residential use which would be sufficient to comply with the notice.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

- 5.28 The Enforcement Notice only gives to appellant three months to comply.
- 5.29 The appeal site is a working/in use short term accommodation. The rooms are advertised on Air bnb website and could be rented in one year in advance. The notice requires cease of Air bnb use and return the building to single residential unit.
- 5.30 The rooms are rented up to 1 year in advance and ceasing the use would result cancellations to already booked visitors and even compensation in most cases.
- 5.31 The former kitchens in each floor are already removed and turned into single bedrooms. After the cease of use, the appellant needs to arrange a builder to re-install the kitchen(s) within each unit to be suitable to residential use.
- 5.32 To comply with the notice, the cease of short-term accommodation use and installation of kitchen(s) needed. However, ceasing the use and preparing these building works to comply with the Enforcement

Notice would cause disturbance/distress to the already booked visitors as well as installation of kitchen(s) within this short period would not be possible within 3 months.

- 5.33 The cancellations would have to be sent out, the builders need to be arranged and booked for the job.
- 5.34 In the light of the above, the appellant respectfully requests the time for compliance to be extended to minimum one year.

6. Conclusion

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 The Inspector is respectfully requested to allow the appeal subject.

7. Appendices

Appendix A – Enforcement Notice