



PLANNING SERVICES

TOWN & COUNTRY PLANNING Act 1990 (as Amended)

**TOWN & COUNTRY PLANNING (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2000**

**TOWN & COUNTRY PLANNING (Enforcement) (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2002**

RULE 6 STATEMENT OF CASE

PLANNING INSPECTORATE REFERENCE: APP/X5210/C/20/3245308

APPEAL SITE

Site at 8-9 Spring Place, London, NW5 3ER

APPELLANT

Gaylord Investment Limited

SUBJECT OF APPEAL

Issue an Enforcement Notice dated 17th December 2019 (Council Ref: EN16/0772) alleging: 'Without planning permission: the use of the building as thirty residential units'

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1. INTRODUCTION

- 1.1. This is the Statement of Case submitted on behalf of the London Borough of Camden ("the Council") in relation to the Appeal APP/X5210/C/20/3245308.
- 1.2. This appeal was made by Gaylord Investment Limited against an Enforcement Notice issued by the Council on 17 December 2019 ("the Enforcement Notice") following the Council's refusal of the Appellant's application for Lawful Development Certificate reference no. 2019/2873/P ("the LDC Application) for continued use of the Property as 30 residential flats. The breach of planning control alleged in the Enforcement Notice is, without planning permission: the use of the building as thirty residential units.
- 1.3. The Appellant has appealed on grounds (a), (d), (f) and (g) of Section 174(2) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
- 1.4. This statement of case contains full particulars of the case which the Council proposes to put forward at the Public Inquiry in support of its decision to issue the Enforcement Notice.

2. APPEAL SITE AND SURROUNDINGS

- 2.1. The site in question contains a part single, part three storey former commercial building on the southern side of Spring Place. The building is not listed and is not located within any Conservation Area.
- 2.2. The local vicinity is generally characterised by a cluster of light industrial or employment uses that straddle the raised viaduct of the London Overground route between Gospel Oak and Kentish Town West.
- 2.3. Abutting the site to the south east, however, is a modern 7 storey housing block providing 21 flats (built circa 2010). To the north west of the site is Spring House (known as Spring Studios) which provides photographic studios. To the rear of the site are some small commercial units and two storey dwellings. On the opposite side of Spring Place is a row of three storey terrace properties.

3. ENFORCEMENT NOTICE

- 3.1. The appeal is against the issue of the Enforcement Notice by the Council on the 17th December 2019 against the use of the building as 30 residential units. The Council does not consider the lawful use of the site to be residential but office accommodation, the prior approval for residential use (reference 2013/6494/P, referred to in Section 4 below) was never implemented and has now expired so the lawful use is B1/office.
- 3.2. The Council provided the following reasons for issuing the Enforcement Notice
- a) It appears to the Council that the above breach of planning control has occurred within the last 4 years.
 - b) The unauthorised development, in absence of evidence to justify that the building is no longer suitable for the previous business use, or for reusing or redeveloping the site, results in the loss of a business/employment use contrary to policy E2 of Camden's Local Plan.
 - c) The unauthorised development, by reason of the inadequate size, layout, and levels of natural light and outlook of the residential accommodation, has resulted in the provision of sub-standard accommodation to the detriment of existing and future residential occupiers contrary to policies D1 and H6 of Camden's Local Plan 2017.
 - d) The unauthorised development provides sub-standard levels of external amenity space within site. In absence of a S106 Legal Agreement to secure adequate provision for open space puts unacceptable pressure on the Borough's network of open spaces contrary to policy A2 (open space) of Camden's Local Plan 2017.
 - e) The unauthorised development, by reason of the failure to provide a mix of units and provision of high priority units in line with the Council's dwelling size priorities table, is contrary to policy H7 of Camden's Local Plan 2017.

- f) The unauthorised development, in absence of the provision of affordable housing in line with policy H4, fails to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the Local Plan 2017, policy 3.12 of the London Plan 2016.
- g) The unauthorised development, in the absence of a legal agreement for car-free housing, contributes unacceptably to parking stress and congestion in the surrounding area and fails to promote more sustainable and efficient forms of transport, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of Camden's Local Plan 2017.
- h) The unauthorised development, by reason of the unsatisfactory amount of cycle parking provided, discourages the ownership and use of cycles as a sustainable form of transport, contrary to policy T1 (Prioritising Walking, Cycling and Public Transport) of Camden's Local Plan 2017.
- i) The unauthorised development, in the absence of a legal agreement to secure an Energy Efficiency and Renewable Energy Plan, to show how the development has been designed following the steps in the energy hierarchy, assessment of the embodied carbon emissions associated with the development, assessment of feasibility of connecting to an existing decentralised energy network and provision of on-site renewable energy generation, and ability to demonstrate a 20% 'Be Green' stage carbon dioxide reduction from renewables and the greatest possible reduction meeting part L1B for retained thermal elements (London Plan 5.4, Local Plan CC1) or to secure the submission of post-construction reviews demonstrating compliance, fails to be sustainable in its use of resources, contrary to policies CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC3 (Water and flooding) CC4 (Air quality), C1 (Health and wellbeing) and DM1 (Delivery and monitoring of Camden's Local Plan 2017).

- 3.3. The Enforcement Notice requires the following steps within a period of 6 months of it taking effect:
1. Cease the use of the 30 residential units.
 2. Remove all bathrooms and kitchens that facilitate the unauthorised use.
 3. Make good any damage caused as a result of the above works.
- 3.4. The Enforcement Notice is being appealed on grounds (a) that planning permission should be granted for what is alleged in the notice; (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; (f) that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections; and (g) that the time given to comply with the notice is too short.

4. RELEVANT PLANNING HISTORY OF SITE

4.1. A summary of the planning history of the property is set out below in chronological order:

1) **Application 2013/2913/P**: Change of use of ground, first and second floors from film production offices and studio (Class B1) to gymnasium (Class D2). Planning permission was refused on the 2 September 2013 for the following reasons:

- *In the absence of sufficient evidence to justify the loss of the existing employment use on the site, the proposed development would result in the unacceptable loss of floorspace suitable for continued employment use and would therefore fail to support economic activity in Camden particularly small and medium sized businesses. This is contrary to policy CS8 (Promoting a successful and inclusive Camden economy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP13 (Employment premises and sites) of the London Borough of Camden Local Development Framework Development Policies.*
- *The proposed development, in the absence of a legal agreement to secure car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and would promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and DP18 (Parking standards and the availability of car parking) of the London Borough of Camden Local Development Framework Core Strategy and Development Policies.*
- *The proposed development, in the absence of environmental sustainability measures in its use of energy, water and resources and in the absence of a legal agreement to secure such measures, would fail to ensure proper standards of sustainability in the new use, contrary to policies CS13 (tackling climate change) and DP22 (sustainable design and construction) of the London Borough of Camden Local Development Framework Core Strategy and Development Policies.*
- *The proposed development, in the absence of sufficient information provided to demonstrate the use properly integrates with the existing*

transport network, would be likely to create unacceptable traffic generation and congestion, contrary to policies CS5 (Managing the impact of growth and development) and DP16 (The transport implications of development) of the London Borough of Camden Local Development Framework Core Strategy and Development Policies.

- *The proposed development, in the absence of a Travel Plan and in the absence of a legal agreement to secure such measures, would be likely to give rise to significantly increased car-borne trips and would result in an unsustainable form of development, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel), DP16 (The transport implications of development) and DP17 (Walking, cycling and public transport) of the London Borough of Camden Core Strategy and Development Policies.*

- 2) **Application 2013/6494/P:** Certificate of Lawfulness (Existing), use as offices on the ground, first and second floors. Granted on 17 January 2014.
- 3) **Application 2014/0597/P:** GPDO prior approval for the “Change of use from office (Class B1a) to 13 x residential units (Class C3)”. Withdrawn on 18 March 2014.
- 4) **Application 2014/2146/P:** Alterations to all elevations to include installation of new windows, doors, boundary wall and gates and rooflights to office building (Class B1). Granted in June 2014.
- 5) **Application 2014/4578/P:** Change of use from office (Class B1a) to 13 x residential units (Class C3) with amenity provision and external landscaping. Granted Prior Approval Subject to Section 106 Legal Agreement on 3 September 2014. This development was not implemented and the prior approval has now expired.
- 6) **Application 2015/4691/P:** GPDO prior approval for the “Conversion of existing B1 (A) office building to 24 self-contained residential units with ancillary storage spaces on the ground floor serving the flats (C3)”. Withdrawn on 23 October 2015.

- 7) **Application 2017/4320/NEW:** Conversion of existing B1(A) office building to 24 self-contained residential units with ancillary storage spaces on the ground floor serving the flats (C3). Withdrawn in August 2017.
- 8) **Application 2019/2873/P:** Lawful Development Certificate for continued use of the property as 30x residential flats (Class C3). LDC was refused on 18 November 2019 for the following reason:
- *The applicant has provided insufficient evidence to demonstrate that, on the balance of probability, the premise was converted into no.30 self-contained dwellings (Use Class C3) at least four years prior to the submission of the application (03/06/2015) nor that the use of the thirty dwellings has remained in continuous use since this time, in accordance with Section 191 of the Town and Country Planning Act 1990.*
- 4.2. Following the refusal of the Certificate of Lawful Development (**2019/2873/P**) the Enforcement Notice that is the subject of this Appeal was issued on 17 December 2019.
- 4.3. The Council considers that as the development has already been carried out before the commencement of this appeal, it is no longer open to the Appellant to rely on Class J – which requires the developer to apply for prior approval “*before beginning the development*”.

5. THE COUNCIL'S CASE

- 5.1. The Council considered that it was expedient to issue the Enforcement Notice because a failure to act in respect of the unauthorised development would have resulted in the continuation of the unauthorised use of the substandard accommodation to the detriment of existing and future residents and in clear breach of many Local Planning Policies intended to make such developments acceptable in the wider community.
- 5.2. The Appellant appeals the Enforcement Notice on grounds (a), (d), (f) and (g) of Section 174(2) of the Town and Country Planning Act 1990 (as amended). The Council disputes all 4 grounds of appeal.

Ground (a) Appeal

- 5.3. An appeal made under ground (a) must show: that planning permission should be granted for any breach of planning control alleged in the notice. The Appellant's grounds of appeal can be summarised briefly as follows and are subsequently addressed in the paragraphs below.

Appellant's Case

- 5.4. The Appellant states that the proposal is supported by the Council's positive housing policies set out in Chapter 3 (Meeting Housing Needs) of the Local Plan, namely Policies H1 (Maximising Housing Supply) and H3 (Protecting Existing Homes). The above Camden Local Plan policy is cited as justification for the as-built scheme, including the borough's aim to meet the 2016/17 to 2030/31 target of 16,800 additional homes, including 11,130 self-contained homes which are regarded by the Council as a priority land-use. The Appellant argues that Clause C of Policy H1 of the Local Plan (p.44) seeks to resist alternative development of sites identified for housing or self-contained housing through a current planning permission or a development plan document, unless the site is shown to be no longer developable for residential use. The Appellant

asserts that the building can therefore be altered to house a policy compliant scheme. The Council notes that the site is not identified for housing or self-contained housing through a current planning permission or development plan document.

- 5.5. The Appellant states that some of the units are occupied by Camden Council tenants, and it is claimed that these occupants would struggle to find appropriate alternative housing given the borough's housing shortage.
- 5.6. The Appellant makes reference to the National Planning Policy Framework (NPPF) section 5 - Delivering a sufficient supply of homes, and paragraph 68 that deals with developing small sites on brownfield land and managing patterns of growth to make the best use of public transport, walking and cycling and concentrating development in sites which have the ability to be made sustainable. The site's location is noted as being within close proximity to Kentish Town West underground station, other bus routes and the shopping hub of Kentish Town.
- 5.7. The Appellant accepts that improvements could be made to the as-built layout and states willingness to implement those improvements. Although recognising that improvements (external amenity, housing mix, affordable housing, transport and sustainability) are required, it is argued that their harm should be disregarded in favour of the contribution that the site makes to the borough's housing supply. A Section 106 contribution is suggested as a means to rectify the shortcomings of any revised scheme. However given that the revised scheme suggested by the Appellant is for a total of 16 units across the site (which is different to the scheme involving 30 units as identified as a breach in the Enforcement Notice) it is not open to the Inspector to grant planning permission. If the Appellant wishes a 16 unit scheme to be considered by the Council, they would need to submit a planning application for such a scheme.

Council's Case

- 5.8. In response to the Appellant's claim that the proposals are supported by policies H1 (Maximising Housing Supply) and H3 (Protecting Existing Homes), due to a lack of housing in the borough, along with the need to develop on brownfield sites, the Council argues that while the Council's policies are strongly supportive of delivering housing, this cannot be to the detriment of residential amenity and compliance with other aspects of the Camden Local Plan. The development plan must be read as a whole and policy E2 seeks to protect sites suitable for continued business use unless the building/site is no longer suitable and other possibilities for using the site for business have been suitably explored over reasonable period. Housing is important in Camden but the development plan also views the retention of employment sites as important. Even if the principle of housing was acceptable on this site (which it is not), the development would still have to meet policy requirements regarding amenity, housing mix, affordable housing, transport and sustainability.
- 5.9. The Council issued the Enforcement Notice after considering the use of the site in light of policies of the Local Plan 2017 and found the development did not meet the following policies:
- 1) E2-loss of business/employment use in that no evidence has been presented to show that this site is no longer suitable for employment use nor that other possibilities for business use of the site have been explored but have been unsuccessful;
 - 2) Policies D1-Design, H6-Housing Choice and Mix and A2-Open Space, the units are substandard with regard to size, natural light and access to outdoor amenity space;
 - 3) H7-Large and Small Houses in that no larger high priority units have been provided;
 - 4) H4-Maximising the Supply of Affordable Housing in that no affordable housing has been provided;
 - 5) T1-Prioritising Walking, Cycling and Public Transport, T2-Parking and Car Parking, A1-Managing the Impact of Development and DM1-Delivery and

Monitoring in that through the absence of a car free legal agreement and sufficient cycle parking the development will contribute to unacceptable to parking stress and fail to promote more sustainable and efficient forms of travel;

- 6) The absence of an Energy Efficiency and Renewable Energy Plan makes the development contrary to Policies CC1-Climate Change Mitigation, CC2-Adapting to Climate Change, CC3-Water and flooding, CC4-Air Quality, C1-Health and Wellbeing and DM1-Delivery and Monitoring.

5.10. The Council considers that the occupancy of 12 tenants from Camden housing waiting list is not relevant to the planning merits of the ground (a) appeal because in the absence of a planning consent with a suitable condition or Section 106 obligation, the Appellant is under no obligation to provide affordable housing on the site. These 12 tenants are not Council tenants, but secured these units through the Camden Private Renting Scheme and have private assured shorthold tenancies where the Council is not party to the contract.

5.11. The Appellant suggests that improvements could be made to the as-built layout and states a willingness to implement these; in doing so the Appellant implicitly acknowledges that the units are sub-standard. It is argued by the Appellant that this harm should be disregarded in favour of the contribution that the site makes to the borough's housing supply. The Council does not agree.

5.12. The Council has a deliverable five-year supply of housing sites which is in excess of requirements. It is not required to operate the tilted balance due to the most recent housing delivery test results. So, the tilted balance under NPPF paragraph 11 does not apply in relation to housing delivery or to housing land supply.

5.13. The Council considers that the provision of the 30 flats is against Council Local Plan Policies and material considerations do not demonstrate that planning permission should be granted. Any contribution to the Borough's housing stock

would be a contribution that provided sub-standard accommodation in an unsuitable location.

- 5.14. The Council has also considered the new changes to GPDO Class O and considers that if development as built was now to be proposed to the Council in a prior approval application, it would not meet the standards for Prior Approval under Class O of the GPDO because it does not provide adequate natural light to all habitable rooms.

Ground (d) Appeal

- 5.15. The Appellant argues that, at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- 5.16. The Appellant maintains that the as-built units have been in continuous existence for in excess of four years before the EN was served on 17th December 2019, citing the contents of a refused Certificate of Lawful Development (ref: 2019/2873/P) as evidence of this claim. The Council considers that the evidence that was provided in respect of the application that was refused was not sufficiently clear and unambiguous to justify a certificate, and included information that suggested that the site had not been developed and occupied as 30 residential units for in excess of 4 years. Together with evidence that the Council possesses, the conclusion is that the Appellant has not demonstrated that the property was developed and used as 30 self-contained residential units on a continuous basis since 17th December 2015. Furthermore, a Prior Approval application for 24 units was applied for in 2015 and again in 2017, which, albeit withdrawn, demonstrate that the Appellant considered the site's lawful and existing use to be as office use on the dates those applications were submitted.
- 5.17. The Council will produce evidence from Council records including from the Planning, Council Tax, Electoral Register and Building Control departments. In

particular, Council officers from the Council Tax Section attended the site a number of times before and after 17th December 2015 (four years prior to the service of the Enforcement Notice) and have site visit notes and other sources showing that the site was not in use as 30 residential units at this time and has not been used continually as 30 residential units since that date.

Ground (f) Appeal

- 5.18. The Appellant argues that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
- 5.19. The approved Certificate of Lawful Development Certificate (ref: 2014/4578/P) for *'Change of use from office (Class B1a) to 13x residential units (Class C3) with amenity provision and external landscaping'* is referenced by the Appellant. The Appellant argues that had the "more intensive" as-built scheme, which was subsequently built out following the approval of planning application 2014/4578/P been applied for via this same prior approval route, it would have satisfied the relevant permitted development criteria set out at Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended 2016). It is consequently argued that it should be considered that there is no loss of employment as alleged in the Council's Enforcement Notice and planning permission therefore ought to be granted. This is plainly wrong.
- 5.20. The Council will show that the requirements necessary to rely upon a prior approval under Class O of the GPDO were not carried out so the Appellant no longer has a valid prior approval for any residential units in respect of the site. The material change of use of the premises from office to residential took place without the benefit of a planning permission. As the prior approval has now expired and no fall-back position exists, the loss of the appeal site's last lawful use (employment) is therefore a relevant consideration when assessing the acceptability of the development sought by the Appellant.

5.21. As stated above the Appellant's request that the Inspector considers a 16 unit scheme across the site is not permissible under an enforcement notice appeal regarding a 30 unit development across the site. A 16 Unit scheme would require a totally different layout across the whole site and the use of the site as a 16 Unit scheme of this nature is not identified in the Enforcement Notice so planning permission cannot be granted for such a scheme through the appeal relating to the Enforcement Notice.

Ground (g) Appeal

5.22. The Appellant has appealed against the Enforcement Notice on ground (g), that the time given to comply with the notice is too short, although no alternative time period has been suggested. The Council contends that a period of six months for residents to find alternative accommodation is reasonable considering that the usual period of Short Hold Tenancies is six months and this is considered a reasonable period of time to remove kitchens and bathrooms and make good any damage.

6. APPROPRIATE CONDITIONS

- 6.1. In accordance with Government advice and without prejudice to the Council's case, it is anticipated that appropriate planning conditions will be agreed and included in a Statement of Common Ground concluded by the Council and the Appellant. In the event that the conditions cannot be agreed, a list of conditions proposed by the Council will be provided prior to the Inquiry.

7. DOCUMENTS

7.1. The Council may refer to all or part of the following list of legislation, national planning guidance, plans and documents and any other it considers relevant, having regard to the Appellant's case to be identified in its Statement of Case or any other change of circumstances:

- Acts of Parliament and Statutory Instruments
- Government Advice, especially
 - National Planning Policy Framework 2012 & 2019
- London Borough of Camden, Local Development Framework (2015)
- London Borough of Camden, Camden Planning Guidance (2011, as amended 2013 and 2020)
- Correspondence and notes in connection with the investigation (from London Borough of Camden files, the Appellant, external bodies and third parties).
- Relevant Inspector's appeal decisions
- The London Plan 2016
- Draft New London Plan 2019
- London Borough of Camden Local Plan (2017)
- Previous planning applications, accompanying documents
- Photographs

7.2. Documents will be made available on the Council's website

7.3. The Council reserves the right to refer to other documents in response to the Appellant's case should it prove necessary to do so.

Contact: Gary.bakall@camden.gov.uk 020-7974-5618