



Appeal Decision

Site visit made on 2 September 2020

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 October 2020

Appeal Ref: **APP/X5210/C/20/3248056** **341 Gray's Inn Road, London WC1X 8PX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Omer Barut against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 20 January 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission change of use of the first, second and third floors from 3 x self-contained flats (Class C3) to 9 x short-term lets (sui generis).*
 - The requirement of the notice is to totally cease the use of the property as nine short-term lets and reinstate the former use as 3 x self-contained flats at first, second and third floor levels.
 - The period for compliance with the requirement is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by **deleting** the words "Totally", "nine", and the rest of the sentence after "lets" in sub-paragraph 5.1 of the notice.
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. I note that a separate planning appeal¹ has been lodged against the Council's refusal of planning permission². However, that is not part of this enforcement appeal and has not influenced my decision.
4. Policy H7 of the Camden Local Plan (CLP) was not specifically identified on the enforcement notice as a reason for issuing the enforcement notice. However, it is clear from the Council's reason for refusal of the planning application and its enforcement appeal case that its reasons for taking enforcement include conflict with the aforementioned policy. Since the appellant has dealt with the policy through his appeal statement, I am satisfied that the appellant would not be prejudiced by my consideration of Policy H7.

¹ Appeal reference APP/X5210/W/19/3243214

² Planning application reference 2019/2538/P refused 7 August 2019

The Appeal on Ground (a) and the Deemed Planning Application

5. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

6. I consider the main issues in this case are:-

- The effect of the development on the supply of housing, and
- The effect on the development on the living conditions of existing occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

Housing Supply

7. The appeal site comprises a 4 four storey building within a terrace of mixed commercial and retail units, located in a mixed use area at the busy junction of Gray's Inn Road and Euston Road, close to Kings Cross and St Pancras railway Stations. The site lies within Kings Cross Conservation Area (CA).
8. There is a restaurant on the ground floor and the appeal relates to the upper three floors, which are accessed by a separate door from the street. From the door, there is a communal hallway and staircase leading up to the alleged short-stay units. On my site visit I observed that each floor comprised similar accommodation in the form of entrance door off a small landing leading to 2 double sized bedrooms and a single sized bedroom, each with tea and coffee making facilities. On each floor there was also a communal shower room with toilet, but no kitchen facilities or Wifi connections. On the mid-landing there was a laundry room for use by the caretaker for washing, drying and ironing.
9. The rooms are individually let as short-stay accommodation via an online booking system. Each of the nine rooms has its own punch code security lock, as does the door from the street, and visitors are given an access code on booking. The appeal development would see the loss of three permanent residential flats, one on each floor.
10. CLP Policy H3 regards self-contained housing as a priority land use and seeks to protect all types of existing housing from development that would involve a net loss of residential floorspace. It also seeks to protect housing from conversion to short-stay accommodation³, and development involving the net loss of two or more homes will be resisted. CLP Policy H7 seeks to secure a range of homes of different sizes to contribute to a creation of mixed, inclusive and sustainable communities. These policies collectively seek to tackle Camden's housing need.
11. The appellant advises the previous flats had deficient internal space provision, each measuring approximately 37 square metres, with a kitchen and two rooms measuring approximately 10 sqm, and so would be below the current 50 sqm standard⁴. Whilst this may be the case, it does not mean that the existing accommodation would be rendered unsuitable for permanent residential occupation. Whilst I saw that the rooms are not overly spacious they have a

³ Which Policy H3 describes as accommodation intended for occupation for periods of less than 90 days.

⁴ Whilst not specified, 50 sqm is the minimum gross internal floor areas and storage for 1 bed, 2 person residential units set out in the government's 'Technical housing standards – nationally described space standards' (March 2015).

regular shape and would be capable of providing functional living accommodation in separate rooms to provide the facilities necessary for day-to-day living. Furthermore the rooms were well-lit with natural light from good sized windows.

12. I acknowledge that 1 bed flats and the lack of external amenity space, together with their location on a busy junction with general higher levels of noise and pollution, may make them less attractive to families. On the other hand, being located in a busy and central part of London, with easy access to shops and other facilities, including public transport with the Underground, Kings Cross and St Pancras railway stations and bus stops in close proximity, would also make it an attractive location for other occupiers.
13. Access to living accommodation above shops and restaurants via a separate door from the street is not uncommon, especially in London. Indeed, in the same terrace I observed a number of separate doors between shops and restaurants with doorbells for the flats above.
14. Although the flats would be small 1 bed units I have not been presented with any substantive evidence to indicate that the units are not required to help meet the borough's housing need. Indeed, I find they would add to the range of sizes of permanent homes to help create mixed and sustainable communities in accordance with Policy H7.
15. The appellant advises that the units previously suffered from pest and rodent infestations. This is not an intrinsic fault of the accommodation itself or demonstrates they are unsuitable for permanent residential accommodation. Good management and routine property maintenance could address these matters. A regular turnaround of occupiers does not indicate the units are incapable of being permanent units of accommodation. How long occupiers chose to stay is a matter for them and can depend on their personal circumstances.
16. From the evidence before me, I am not persuaded that the previous flats were unsuitable or substandard for long term residential use. I find the change of use to short-term let and visitor accommodation would result in the loss of permanent residential floorspace and the net loss of two or more homes in the borough. Furthermore, the loss would frustrate the Council's aims to secure a range of homes of different sizes to create mixed, inclusive and sustainable communities. Accordingly the appeal development would be contrary to CLP Policies H3 and H7, whose aims are outlined above.
17. I acknowledge that short-term visitor accommodation would help support a vibrant city centre and London's visitor economy. It is also well located to railway and Tube stations allowing easy access to public transport including the national rail network and airports. Whilst there may be a demand for such short-stay accommodation for particular groups of people in the city, I have not been provided with any substantive evidence to demonstrate that the need for short-term visitor accommodation is more pressing than maintaining the borough's permanent housing stock.

Living Conditions

18. The supporting text of Policy H3 states that visitor lettings can increase the incidence of noise, sometimes at unsociable hours, and the high turnover of

- occupiers can harm community cohesion. The scale of the appeal development with nine individually bookable rooms and the consequential increased turnover of occupants, as well as cleaning and maintenance staff, would all combine to increase general comings and goings to the property beyond what would normally be expected of three small flats. This would give rise to an associated increase in overall noise and disturbance.
19. Visitors are also more likely to come and go at different hours compared to permanent residents. Furthermore, the short-term and transient nature and frequency of new occupiers would likely mean they had less connection or investment with the local area. Hence they may be less inclined to respect the surrounding area and its existing residents, and have fewer concerns or realisation of causing noise and disturbance.
 20. The property is located at the busy junction of Gray's Inn Road and Euston Road. There are four lanes of traffic along Gray's Inn Road directly outside the appeal property. The appeal property is also part of an active street frontage with a number of restaurants, cafes and shops. Kings Cross and St Pancras railway stations are close by. In addition, the short-stay accommodation is accessed by its own separate door and not shared with residents of any nearby flats. The door is also set between two large restaurant shopfronts and set some distance from the nearest doors serving other upper floor flats in the terrace.
 21. With the surrounding noise levels and location of the access door in the street frontage, I find it unlikely that that the additional comings and goings of occupiers would result in a significant increase in noise and disturbance.
 22. The Council refers to the nearest residential flats at 343 Gray's Inn Road, which I observed as being above the Indian restaurant next door. I have not been presented with any third party comments from occupiers of the above mentioned flats, but I am aware of one objection from a resident of an unknown address concerned in general about the loss of residential and growth in the number of short-term lets in the area. The property is already in use as short-stay accommodation and, according to the Council, has been for a number of years. Whilst the behaviour of individual occupiers is difficult to control, I have not been presented with any substantive evidence from the Council, the Police, local residents or their representatives that during this time the accommodation has caused, or is causing, unacceptable noise and disturbance or other persistent anti-social behaviour issues. I have no reason to believe that the accommodation is not well managed or that visitors are not considerate.
 23. I am not persuaded that the appeal development would cause unacceptable harm to the living conditions of neighbouring occupiers with regard to noise and disturbance. Accordingly it would not be contrary to CLP Policies A1 and A4, which collectively seek to protect the amenity of neighbours and seek to ensure that development likely to generate unacceptable noise impacts is not permitted.

Other Matters

24. I have had regard to the site's location within the CA and, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability

of preserving or enhancing the character or appearance of the CA. There would be no external alterations to the building and I am satisfied that the character and appearance of the CA would be preserved.

Conclusion on ground (a) and the deemed planning application

25. Whilst I find no harm to living conditions of neighbouring occupiers, I find the loss of permanent residential floorspace would cause harm to the borough's supply of housing. Accordingly, the appeal development would not accord with the development plan as a whole and there are no other considerations which outweigh this finding. For the reasons given above, the appeal on ground (a) fails and planning permission for the deemed application is refused.

The Appeal on Ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity, which has been caused by any such breach.

27. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The appellant must show that the requirements of the notice are excessive to remedy the breach or to remedy any injury to amenity which has been caused by any such breach, and that 'lesser steps' would achieve the same end.

28. The notice alleges a change of use to 9 short-term lets. The steps required to be taken are to cease that use. The purpose of the notice is therefore to remedy the breach of planning control.

29. The appellant states that reinstating the use to three one-bedroom flats would be unsatisfactory as the units would still not be used by families. Instead he states the notice should be varied to allow the use to return to a residential use (Class C3) so that a bigger unit or units could be created.

30. In addition to requiring the use to cease, the enforcement notice also requires the former use of the property, as 3 x self-contained flats at first, second and third floor levels, to be reinstated. However, the enforcement notice cannot seek to revive a former use, even if that use is lawful, as this goes beyond remedying the breach. The breach was the change of use to short-term lets. In order to remedy the breach it is only necessary for the use to cease. It is excessive to require the appellant to resume the lawful use.

31. The notice could have required the carrying out of works to put the property back into its previous condition, but that isn't what it actually says. Adding such a requirement now would make the notice more onerous and cause injustice.

32. Therefore I will correct the notice to require only the unauthorised use to cease. I shall omit the number of short-term lets as this is not necessary. Furthermore, requiring the use to cease "totally" serves no practical purpose, so I shall delete this.

33. Correcting the notice as described will allow the appellant to return the property to any use that is lawful. The appeal on ground (f) succeeds in part.

The Appeal on Ground (g)

34. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The appellant states that 3 months is too short because bookings have already been taken, even a year in advance, and he would need to arrange for builders to install kitchens. He wants a minimum of 1 year.
35. In all cases the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose.
36. The 3 month compliance period would take effect from the date of this decision and would allow existing occupiers or those who have booked to stay more imminently to proceed with their bookings, provided their stay fell wholly within the 3 month compliance period. I acknowledge that there may be future booking commitments after the 3 month period, even for a year in advance. These will have to be cancelled and bookings refunded or costs paid if necessary, according to any terms and conditions of the bookings. I appreciate this may inconvenience some visitors, but I regard the disturbance and distress this may cause any future occupiers would be relatively modest - 3 months would give future visitors ample advance notification for them to find alternative accommodation, especially for those who have booked well in advance.
37. I have already found that the notice ought to be corrected to delete the requirement to reinstate the previous use because that goes beyond what the notice can require. The appellant may nonetheless still wish to put the building back into active use as flats, and he may need to instruct builders to put the property back into a condition where it can be viably let out as flats, such as installing kitchens. However, any such activity would not need to be carried out within the period for compliance with the notice because it would not be a requirement of the notice as corrected. I could not use that argument to extend the compliance period.
38. Based on the evidence before me I am satisfied that the 3 month compliance period to cease the use, as set out in the corrected notice, strikes a proportionate and reasonable balance between the public and private interests in this case.
39. The appeal on ground (g) therefore fails.

Conclusion

40. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice corrections and refuse to grant planning permission on the deemed application.

K Stephens
INSPECTOR