Date: 30th May 2022
Your Refs: APP/X5210/C/22/3296760
Our Refs: EN21/0386
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Ms Tracy Warry
The Planning Inspectorate
Room 3A - Eagle
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Warry,

**Site at 88a Savernake Road, London, NW3 2JR**

**APPEAL BY MS ANNA SZELEST**

**Appeal against grounds (b) and (f) in connection with the enforcement notice issued on 10th March 2022 for conversion of the ground floor from 1 x self-contained flat to 2 x self-contained flats**

I write in connection with the appeal as referenced above. The Council's case primarily set out in the Officer's delegated report, a copy of which was sent with the appeal questionnaire. In addition to the information sent with the questionnaire. Copies of the relevant development plan policies and accompanying guidance were also sent with the appeal questionnaire.

In addition to the above, I would be pleased if the Inspector could take into account the following comments before deciding the appeal.

## 1.0 Summary:

**1.1** The site forms the ground floor of a three storey, plus loft storey, semi-detached building located on the north side of Savernake Road. The whole building is used as flats.

**1.2** The full planning history is set out in the delegated report. Of relevance, on 04/12/2017 permission was granted for the erection of single storey side/ rear extension to ground floor flat (Ref: 2017/5272/P) The officer report states that this would provide an additional 34m2 floor space for the existing ground floor flat. The planning permission relating to this rear extension has been implemented **(See Appendix 1)**

**1.3** The extension however has been used to facilitate the provision of two self-contained units by creating a new unit at the front and enlarging the remainder of the existing unit to the rear.

**1.4** The front unit is unacceptable in terms of size comprising only $27m^2$ and the London Plan standards as a minimum requires $39m^2$ for a one person one bedroom flat and 50m2 for a two person one bedroom flat.

**1.5** The rear flat now comprises a 2 bedrooms and is $68m^2$, slightly below the London Plan Standard of $70m^2$ minimum.

**1.6** The development has also resulted in the loss of the original three bedroom family sized flat with outdoor amenity space, which the council's policies seek to protect and encourages its provision.

**1.7** In May 2021 a complaint was submitted to the Council in respect to the ground floor of the appeal site being converted into 2 x self-contained flats. Having contacted the Owner to ascertain what had occurred at the site, the Owner proved unwilling to respond to the Council's queries in a meaningful way, or grant a site inspection. On 9th December 2021 a Council Tax Inspector visited the site and confirmed that the Owner had split the ground floor unit into 2 separate units. The property was accordingly registered as two separate units, both having separate council tax liability.

**1.8** As a breach had been established and planning permission had not been granted for the additional unit that has been created, an enforcement notice was issued on 10th March 2022, which would have taken effect on 21st April 2022. The enforcement notice required the cessation of the ground floor of the property as two self-contained flats.

**1.9** The notice was served for the following reasons:

a) The change of use has occurred within the last 4 years;

b) The conversion of the ground floor flat into 2 x self-contained units has resulted in the loss of a family sized unit and created a sub-standard1 x bed unit which by virtue of its floorspace results in sub-standard living accommodation to the detriment of the residential amenity of existing and potential occupiers and is thereby contrary to policies H6 (Housing choice and mix) and policy H7 (Large and small homes) of Camden's Local Plan 2017; and

c) In the absence of a S106 agreement to designate the development as car-free development the residential units would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and is thereby contrary to policies T1 (Prioritising walking, cycling and public transport), and T2 (Parking and car-free development) of the London Borough of Camden Local Plan 2017.

**1.10** The notice required that within six (6) months of it taking effect, the Appellant is required to:

1. Cease the use of the ground floor of the property as 2 x self-contained flats; and reinstate the previous layout of the ground floor as one 3x bed self-contained flat;

2. Completely remove one kitchen and WC from the ground floor level; and

3. Make good any damage caused as a result of the above works. **(See appendix 2)**

## 2.0 Relevant planning policy:

**2.1** In arriving at its current position the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The development subject to this appeal was considered in the light of the following policies:-

### 2.2 National policy documents:-

2.2.1 National Planning Policy Framework (NPPF) 2021. Paragraph 59 of the NPPF states "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control".

2.2.3 London Plan 2021- policies D6 (Housing quality and standards) T5 (Cycling) T6 (Car Parking) and T6.1 (Residential parking)

### 2.3 Development Plan:-

1. Camden's Local Plan was formally adopted on the 3rd July 2017. The policies expressed in the reasons for refusal are policies H6 (housing choice); H7 (Large and small homes), T1(Prioritising walking, cycling and public transport), and T2 (Parking and car-free development)

   The full text of each of the policies has been sent with the questionnaire documents.

### 2.4 Supplementary Planning Guidance

2. Camden Planning Guidance 2021, in particular CPG – Housing: Chapter 9 and CPG-Transport: Chapters:5

**3.0** **Comments on appellant's grounds of appeal:**

**3.1** The Appellant has appealed on grounds (b) and (f)
**Ground B – that permission should be granted**

**3.2** In Paragraph 4 of the Appellant's statement, the issue is raised in respect to the requirement in the notice to remove one of the kitchens and one of the WC's as permission would not be required for the kitchenette or the toilet, which the Appellant has claimed has been in place for the past 24 years. It should be noted that these elements were not shown in the existing ground floor plan that was submitted by the Appellant in 2017 to support their application for the erection of a rear extension **(See appendix 1)**. Even if the kitchens and a WC's were in the property for the past 24 years this would have been in connection with the use of the ground floor at the appeal site for 1 x 3 bedroom self-contained flat and not to facilitate 2 x separate residential units. It appears that a separate WC and Kitchenette was installed post 2017 at the front of the property to facilitate the use of the property for 2 x self-contained units. As the additional unit created is unauthorised, the Council can seek for the removal of 1 x WC and 1x kitchen in order to ensure compliance with the notice and to also ensure that the property does not lend itself to being used as two separate residential units.

**3.3** Paragraph 5 of the Appellant's statement argues that the Council has created 2 x separate flats on paper. As stated previously, the Appellant submitted an application in 2017 for a rear extension under planning application reference 2017/5272/P. It appears that the rear extension was applied for in order to facilitate the use of the appeal site as 2 separate units by expanding the floor space at ground floor level. The existing plan submitted in support of the 2017 application showed a single 3 x bedroom dwelling at ground floor level. **(See Appendix 1)**. The unit has since been sub-divided into 2 separate units. The flat at front ground floor level was also previously being marketed for rent by Amberden Estate Agents, shown below, which has since been removed from their website. The Estate Agent's marketing brochure clearly shows the front unit as being separate from the unit at the rear, with its own entrance to on the side elevation as shown below:


**3.4** Our Council tax inspectors visited the site on 09/12/2021 and concluded that the property was being used as 2 x separate units, and the property has since been registered accordingly, both having separate Council tax liabilities. Moreover the Appellant admits in paragraph 6 of their statement that they let part of the flat, and it is her only income. The Appellant again confirms in paragraph 10 of their statement that they are being punished for providing a high standard let.

**3.5** In paragraph 7 of the Appellant's statement it is stated that "*it is very clear that I share my flat, it's my furniture, I pay for wear and tear, I pay the bills, and all utilities are in my name…*" The Council is of the opinion that the above statements does not preclude the property from being used as two separate units as the bills etc., can be included in the rent that may be being obtained by the Appellant from the tenant.

**3.6** The Appellant further goes on to state in paragraph 7 of their statement that "*since sharing all amenities I have experienced major adjustments to my lifestyle because it is shared accommodation"*. The Council contends that the property is not being used for shared accommodation. Each unit has their own separate kitchen, bathroom, WC, bedroom(s) and living areas. Therefore, each unit can be used independently of each other without having to share any amenities. The Council is of the opinion that the additional flat is tenanted rather than the Appellant having a lodger. The main difference being that the tenant lives in a self-contained unit at the property that is being "rented out" and the Appellant does not live in that particular unit. On the other hand a lodger would be someone who lives in a property that the Appellant lives in too, and all amenities such as kitchen, and WC's

would be shared facilities. It appears that the current tenant has exclusive rights to the front unit and the Appellant exclusive rights to the rear part of the property having their own front door, amenities and living quarters. Therefore, there is a clear delineation between the two residential units that are being occupied, and they are being used independently of each other. Moreover, as stated above, the units are liable for separate council tax liabilities, which further indicates that the properties are being used independently of each other.

**3.7** The Appellant states in paragraph 16 of their statement "I provide a very high standard for people desperate to have a decent place to live and should be supported in that. Policy H6 aims to secure mixed, inclusive and sustainable communities by seeking high quality homes, accessible homes and a variety of housing suitable for Camden's existing and future households. Commentary in the policy advises that "high quality homes should be designed to ensure that sufficient space is available for furniture, activity and movement. The government has produced a 'nationally described space standard' which local plans can adopt to ensure that homes are designed with sufficient internal space. These standards should be applied to all new dwellings, including conversions". The conversion of the ground floor residential unit into two separate units has led to the creation of an undersized residential unit with a sub-standard cramped internal layout and does not meet the criteria set out in the national space standards as set out in table 3.1 in the London Plan 2021. The proposal has also resulted in the loss of a family unit. Commentary in paragraph 3.188 of Camden's Local Plan states that the Camden Strategic Housing Market Assessment (SHMA) calculates that likely requirement for homes of difference sizes in the market and affordable sectors on the basis of the projected household composition over the plan period and the size/tenure of dwelling that each household type is likely to occupy. It further goes on to confirm that the Camden SHMA indicates that the greatest requirement in the market sector is likely to be two and three bedroom homes. Commentary in paragraph 3.196 of policy H6 in Camden's Local Plan 2017 confirms that the Council would seek to minimise the loss of market homes with 3 bedrooms, particularly where the 3-bedroom homes have access to outside space". The unauthorised development has resulted in the loss of a 3 bedroom unit which undermines the above policy criteria.

**Ground F- that the steps to comply with the requirements of the notice are excessive:**

**3.8** The Appellant argues in paragraph 8 of their statement that the steps required to comply with the notice are excessive, and instead it would have been reasonable to simply demand a different advert content where the flat was shown clearly as shared accommodation to avoid confusion. The Appellant is referring to the advert from Amberden Estate Agents that has been referred to in paragraph 3.3 of this

statement, however, this is neither here nor there, as the property currently lends itself to being used for 2 x self-contained units which does not constitute shared accommodation. Moreover, the Council has no jurisdiction over what is advertised by an Estate Agent and this falls outside the remit of what could reasonably be required for the Appellant to comply with the enforcement notice.

**3.9** The additional unit that has been created is undersized at approximately 27m$^2$ and therefore does not meet the GLA's national space standards for a one bed unit (39m$^2$). The Council contends that the requirements in the notice are not excessive and would result in the additional substandard unit being removed, and the 3 x bedroom residential unit being reinstated, which is considered to be a priority use in the borough and is confirmed in the Dwelling Mix Priorities Table in policy H7 paragraph 3.190 in Camden's Local Plan 2017.

**Other issues raised by the Appellant:**

**3.10** In the sections entitled 'Age' and 'Sex', the Appellant discusses their personal circumstances. The Council is of the opinion that these factors do not justify unauthorised development.

**3.11** In terms of the Appellant's contention in paragraph 12 of their statement that there are different rules for neighbours, the Council's enforcement team is not aware of any other similar breaches along the street and rely on breaches being formally reported to enable them to be fully investigated. Once a breach is reported then the Council are duty bound to investigate and take the appropriate action, which has been done in this particular instance.

**3.12** Paragraph 17 of the Appellant's statement states that their words and facts are disregarded in favour of the other Freeholder, and that the planner seemed to verify their e-mails with the other Freeholder rather than use objective judgement. The Council refutes this claim. Once the breach was submitted, the Council made several attempts to engage with the Appellant to ascertain what had occurred at the site and also sought to do a site inspection. The Appellant proved unwilling to engage with the Council in a meaningful way and therefore, judgement had to be made based on the information that was before us. In this regard, I would refer the Inspector to the 'Investigation History' section in the Officer's delegated enforcement report.

**Car free S106**

**3.13** The Appellant has indicated in section E- grounds and fact on their appeal form that they do not intend to submit a planning obligation or a unilateral undertaking for this appeal. If the development were acceptable in all other respects then in accordance with policy T2 of Camden's Local Plan 2017, the Council would have required car-free

housing for the additional unit created. In the absence of a S106 agreement to secure car-free housing, the Council maintains that the development is unacceptable in transport terms.

**3.14** The council will nevertheless liaise with the appellant regarding a car free agreement and will update the Inspector at final comments stage

**Justification for S106 rather than condition**

**3.15** A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the level of control is considered to go beyond the remit of a planning condition.

**3.16** Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "car free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car Free" Section 106 Obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car Free", and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car Free".

**3.17** Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

*Compliance with CIL regulation 122*

**3.18** The proposed restriction on the development being secured as "car-free" meets the requirements of the CIL Regulations in being: (i) necessary to make the development acceptable in planning terms as identified by the relevant development plan policies; (ii) is directly related to the occupation of the residential units being part of the

development; and (iii) is fairly and reasonably related in scale and kind to the residential units. This supports key principle 9 of the National Planning Policy Framework: Promoting sustainable transport.

**Conclusion**

**4.1** The Council maintains that the proposal is considered to be unacceptable by virtue of the substandard accommodation that has been created and the resultant loss of a family sized unit which is a priority use in the borough.

**4.2** As the use is already operational the Council considers that there are no conditions that can apply to the development to mitigate the unacceptable impact, should the Inspector be minded to allow this appeal.

**4.3** On the basis of the information available and having regard to the entirety of the Council's submissions, including the content of this letter, and for all the reasons given above the Inspector is respectfully requested to dismiss this appeal.

If you require any further information or clarification on any matter associated with this case please contact Angela Ryan on the above direct dial number.

Yours Sincerely,

Angela Ryan
Planning Officer
Culture and Environment Department