

Appeal Decisions

Hearing held on 5 January 2017

Site visit made on 6 January 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 March 2017

Appeal A Ref: APP/X5210/C/16/3149980

Land at 148 Camden Street, London NW1 9PA

- 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 Redcourt Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 30 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a two storey rear extension to create a substandard residential maisonette.
 - The requirements of the notice are:
 1. Either permanently remove the two storey rear extension, remove all resultant debris from the side; and make good the rear elevation: or
 2. Combine the newly created floorspace within the ground and lower ground floor rear extension into the existing ground floor unit to enlarge the existing self-contained residential unit in accordance with the layout shown on drawing 13-103-05 (as part of 2013/3562/P in appendix 1 of the notice).
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/X5210/W/16/3152151

148 Camden Street, London NW1 9PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Leo Kaufman of Redcourt Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2015/2906/P, dated 21 May 2015, was refused by notice dated 19 May 2016.
 - The development proposed is described as an alternative layout to Ground Floor Flat B.
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Summary Decisions: Appeal A is dismissed and the enforcement notice upheld as corrected and varied. Appeal B is dismissed.

Applications for costs

1. Prior to the Hearing, an application for costs was made in writing by Mr Leo Kaufman of Redcourt Ltd against the Council of the London Borough of Camden. That application related solely to the appeal under section 78 of the 1990 Act. At the Hearing, additional grounds for costs were advanced by Mr Leo Kaufman of Redcourt Ltd relating to both the appeal under section 78 and the appeal under section 174 of the 1990 Act. Furthermore, at the Hearing, the Council of the London Borough of Camden also made an application for
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costs against Mr Leo Kaufman of Redcourt Ltd. These applications are the subject of separate Decisions.

Procedural Matters

2. These appeals were initially started under the written representations procedure, and as part of that procedure I made an accompanied site visit on 5 October 2016. However, during that site visit, it became apparent to me that I required more information on a point raised by the appellant relating to the validity of the enforcement notice, specifically relating to the requirement at paragraph 5.2 of the notice to implement a planning permission previously granted. The procedure was therefore changed to a Hearing in order that this particular point could be fully discussed.
3. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer to the erection of a two storey rear extension to create a substandard residential maisonette 'without planning permission' rather than 'unauthorised' as stated in the notice. No injustice would arise from correcting the notice in that respect, and I shall correct the notice accordingly.
4. The requirements of the notice at paragraph 5.1 contain a typographical error, in that the word "side" is clearly intended to refer to the "site". I will correct that minor typographical error and this will cause no injustice.
5. The requirements of the notice at paragraph 5.2 refer in parenthesis to 2013/3562/P, that intended as a reference to a planning permission granted on 5 August 2013 for the erection of a ground floor extension with rooflights for the provision of an additional bedroom to form 1 x 2 Bed flat in connection with the existing ground floor residential flat. However, the correct reference for that permission is 2013/3462/P. It was agreed at the Hearing that no injustice would arise from correcting the notice in that respect. I shall therefore correct the notice accordingly and in so doing will also clarify the relevance of that reference number by linking it to the planning permission granted on 5 August 2013. It was also established at the Hearing that the reference to drawing number 13-103-05 at paragraph 5.2 is correct.
6. In relation to the appeal under section 78, the development proposed in the application is described as an alternative layout to Ground Floor Flat B. In my view, that does not accurately describe the development applied for. I have therefore adopted the description of development used by the Council in its Decision Notice, amended to take account of my finding that neither the ground floor nor lower ground floor had the benefit of planning permission at the time the application was submitted, such that both need to be referenced in the description of development applied for.

The Enforcement Notice

7. The appellant considers that the enforcement notice is flawed to the point of being a nullity because it requires the removal of the extension but does not give any reasons why the extension is physically unacceptable. The appellant further considers that the enforcement notice is flawed because the requirement at paragraph 5.2, in summary to combine the newly created floorspace with the existing such that it accords the planning permission

granted on 5 August 2013 (2013/3462/P), is not achievable on the basis that planning permission 2013/3462/P is physically incapable of being implemented. I shall consider each of these two points in turn.

8. The breach of planning control alleged in the notice is the unauthorised erection of a two storey rear extension to create a substandard residential maisonette. On my reading, it is evident that this breach of planning control has two components: the physical structure (i.e. "erection of a two storey rear extension") and the use taking place within that structure (i.e. "create a substandard residential maisonette"). The Council made it clear at the Hearing that it had no objection to the extension as a physical structure, either in terms of its effect on the character and appearance of the area or any impact upon the living conditions of the occupiers of surrounding residential properties. The Council's sole objection is the use taking place within that structure, namely the creation of a substandard residential maisonette.
9. Setting aside for this purpose whether the description of the use as a substandard residential maisonette is correct, which forms the basis for the appellant's appeal on ground (b), it is apparent that the use to which the Council objects cannot subsist without the physical structure within which it takes place. Whether the removal of the extension is excessive in terms of remedying the breach of planning control is a matter to be considered under ground (f), to which I return below. However, in principle I find nothing perverse or irrational in requiring the demolition of the extension as a means of remedying the breach of planning control relating to the use of the space it generates, even where as in this case there is no objection to the physical structure itself. The notice is therefore not a nullity in that respect.
10. The planning permission granted on 5 August 2013 (2013/3462/P) involves the linking of the space created by the new extension with the existing ground floor flat (Flat B). The application drawings, specifically drawing number 13-103-05, show this being achieved by removing the existing toilet in Flat B and creating a passage into the new space. The existing toilet in Flat B is located beneath the main communal staircase in the building, as evidenced by the sloping ceiling and restricted head room within that space. The main staircase serves the flats in the upper floors of the building, with the entrance to the first floor flat (Flat C) being directly above Flat B.
11. However, the appellant argues that there is not sufficient head room to create the passage passing beneath the staircase, as shown on drawing number 13-103-05. The appellant's arguments were not supported by any structural survey or technical reports, and I have not been provided with copies of any determinations made under the Building Regulations. Nevertheless, measurements taken on site, and agreed by the Council, show that the lowest part of the ceiling within the existing toilet of Flat B, this being the point where the ceiling begins to slope upwards as it follows the underside of the main staircase, is some 1.5 metres.
12. As a consequence, the appellant argues, it would be necessary to raise the main staircase by the amount necessary to generate the minimum head room in the passage required under the Building Regulations. The staircase would then either not join with the first floor landing, such that access to Flat C would no longer be possible, or it would be necessary to increase the angle at which the staircase rises in order construct a new landing at the midway point

between Flats B and C, in which case the steepness of the staircase would not accord with requirements in the Building Regulations. This leads the appellant to question whether planning permission 2013/3462/P is actually capable of being implemented.

13. It was on the basis of this point that the procedure was changed to a Hearing, and there was considerable discussion on it both at the Hearing and on the subsequent site visit. To my mind, the answer to the question posed by the appellant lies within drawing number 13-103-05 itself. Careful analysis of this drawing shows that the lower part of the main staircase, that is to say the section immediately outside the entrance to Flat B, is proposed to be re-configured. This reconfiguration includes a turn at the very start of the staircase and again at the midway point. The Design & Access Statement submitted with the application also indicates that the communal staircase would be re-configured to allow entry to the rear extension below the staircase, and drawing number 13-103-05 is consistent with that.
14. However, all of the changes shown on drawing number 13-103-05 are confined to the lower part of the main staircase on the ground floor. There is nothing on that drawing to indicate that the section of the main communal staircase above the midway point would be altered, but it is this section of the staircase that lies directly above the toilet in Flat B. Having compared drawing number 13-103-05 with the existing layout and position of the main communal staircase, and in the absence of any technical evidence to the contrary, I am unable to establish how the reconfigured staircase would address the issue of insufficient head room in the passage that would run beneath the staircase. The consequences envisaged by the appellant in terms of significant structural revision to the main communal staircase, which in any event may not be physically achievable, would manifest themselves. Consequently, on the basis of the information available to me, I am not convinced that planning permission 2013/3462/P is capable of being implemented.
15. Nevertheless, this does not necessarily mean that the enforcement notice is a nullity. The requirement in paragraph 5.2 to combine the newly created floorspace with the existing ground floor flat such that it accords the planning permission 2013/3462/P is just one of two alternatives. The other option, the demolition of the rear extension, remains as a potentially valid requirement, subject to considerations that arise under ground (f). I am therefore satisfied that the notice is not a nullity in this respect either, but shall correct the notice to delete the requirement to combine the newly created floorspace with the existing ground floor flat. Because this matter was discussed in detail at the Hearing, I am satisfied that no injustice would be caused by doing so.

Appeal A: The appeal on ground (b)

16. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matter stated in the notice, those matters have not occurred.
17. The essence of the appellant's case under this ground is that the description of the alleged breach of planning control as a 'residential maisonette' is misleading. The appellant defines a maisonette as a residential flat with habitable rooms spread over two floors, whereas the appeal property provides habitable accommodation on the ground floor only, with the lower ground providing non-habitable accommodation in the form of a bathroom.

Furthermore, the appellant considers that the accommodation provided by the appeal property should more accurately be described as a 'well-appointed bedsit', adopting a description accepted by the Inspector in an appeal relating to a property at 64 Fellows Road (APP/X5210/C/12/2187790) and consistent with the finding of an Inspector in relation to an appeal regarding 17 College Crescent (APP/X5210/X/10/2131829), both in the London Borough of Camden.

18. The Oxford English Dictionary (OED) defines a maisonette as a flat on two storeys of a larger building. There is no reference in the OED definition to habitable accommodation being provided on both floors, the only defining feature being that the flat is on two storeys of a larger building. The breach of planning control alleged in that notice accords with that definition. In my view, it also accords with a wider understanding of the term 'maisonette' and I am satisfied that the term 'residential maisonette' adequately describes the breach of planning of control alleged to have taken place.
19. I recognise that the accommodation provided also has some of the characteristics of a well-appointed bedsit in the context of the use accepted as such by the Inspector in the Fellows Road appeal, including the absence of a separate bedroom and the rental level. However, on my reading of that Decision, the Inspector's conclusions in that respect were in part based on his finding that the units in that case had "not been turned into 1 bed flats in any real sense". This took into account not only that they would be let to the same clientele whether self-contained or not, and on the same short-term tenancies, but also that they were considerably below the minimum floorspace required for a one-bed flat. The Inspector in that case therefore considered that the accommodation had all the characteristics of a bedsit other than that they included self-contained toilet facilities.
20. In my view, that is not the case in relation to the accommodation provided in the current appeal property. The sleeping arrangements take the form of a bed on a mezzanine-type structure with a separate seating area below. There is a well-appointed kitchen and a separate shower/toilet, the latter on a different floor to the habitable accommodation. Overall, and notwithstanding the absence of a separate bedroom, the accommodation provided is of a higher standard than might normally be associated with a conventional bedsit and has the very real sense of being a one-bedroomed flat, albeit over two floors. On that basis, and as a matter of fact and degree, I consider that the accommodation in the appeal property cannot accurately be described as a well-appointed bedsit and can therefore be distinguished from the accommodation accepted as such by the Inspectors in the Fellows Road and College Crescent appeals.
21. Accordingly, the appeal on ground (b) fails.

Appeal A: The appeal on ground (c)

22. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matter stated in the notice, those matters do not constitute a breach of planning control.
23. The appellant contends that planning permission has been granted for the extension under planning permission 2013/3462/P. That permission involves the construction of an extension at ground floor level only and the linking of the space created by the new extension with the existing ground floor flat (Flat

- B). The application drawings show the lower ground floor as a patio, with the extension at ground floor level being supporting by piers.
24. At the Hearing, the appellant explained that construction of the ground floor extension was originally commenced in late 2013, being at that time supported by piers as shown on the approved drawings. Construction then ceased and the extension was subsequently left in an unfinished state until mid-2014, at which time the lower ground floor was enclosed. Utilities were also installed at this time. It was confirmed by Mr Kaufman that the extension was not occupied during the period between the construction of the ground floor and the enclosure of the lower ground floor, but was substantially completed and first occupied in September 2014. The appellant contends that the infilling of the lower ground floor after the completion of the ground element did not result in a material change in the appearance of the building and therefore did not require planning permission.
25. Although constructed in two distinct phases, one commencing in 2013 and one commencing in 2014, it is evident from the description given by the appellant that the ground floor extension was neither complete nor occupied when construction of the second phase commenced. On the appellant's own evidence, the extension was only substantially completed in or around September 2014, shortly before being first occupied. It follows that the extension was constructed as one single building operation, albeit undertaken by different builders at different times. The scenario indicated by the appellant, specifically the infilling of a space below a lawfully implemented planning permission, did not therefore arise.
26. The resultant structure is over two floors and is materially different in external appearance to that granted planning permission 2013/3462/P. Moreover, as set out above, the appellant's primary point was that planning permission 2013/3462/P is not capable of implementation due to the conflict with the main internal staircase and I have concurred with that view. The corollary is that the extension to the property as existing must be different to that granted planning permission under reference 2013/3462/P, specifically insofar as the accommodation provided is self-contained and does not include the link with the existing ground floor flat (Flat B). For all these reasons, I consider that the extension as constructed does not benefit from the planning permission granted under reference 2013/3462/P and does not have planning permission.
27. Accordingly, the appeal on ground (c) fails.

Appeal A: The appeal on ground (a), and Appeal B

28. The appeal under ground (a) is that planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice. Although the planning application deemed to have been made under Appeal A and the proposal under Appeal B are for different developments, the issues raised to some extent overlap and it is therefore convenient to consider them together.

Main Issues

29. I consider that the main issues raised in these appeals are whether the developments:

- provide adequate living conditions for existing and future occupiers, specifically in relation to internal living space (Appeal A only)
- make adequate provision for car parking.

Living conditions for existing and future occupiers (Appeal A only)

30. Policy 3.5 of The London Plan indicates that housing developments should be of the highest quality internally, and that all new dwellings should have adequately sized rooms that accord with the minimum internal space standards set out in Table 3.3 of the London Plan. The latter has been updated through the Minor Alterations to the London Plan 2016 to incorporate the Technical Housing Standards – Nationally Described Space Standard. This is consistent with the Planning Practice Guidance, which indicates that where a local planning authority wishes to require an internal space standard, they should only do so by reference to the Nationally Described Space Standard.
31. The Planning Practice Guidance also indicates that, where a need for internal space standards is identified, local planning authorities should provide justification for requiring internal space policies having regard to evidence of need, impact on the viability of residential development and the timing of the introduction of such policies. The appellant referred me to an appeal decision relating to a property in West Street, Manchester (APP/B1425/W/15/3135001), in which the Inspector afforded the Council's internal space standards limited weight on the basis that they were not supported by any evidence or assessment of need and were not subject to public consultation. The appellant invites me to reach a similar conclusion in relation to the Council's internal space standards.
32. In the London Borough of Camden, the Nationally Described Space Standard is applied through the auspices of Policy 3.5 of The London Plan. The supporting text to this Policy 3.5 indicates that the standards in The London Plan have been tested to ensure that they are sound in terms of need of and viability. The Minor Alterations to the London Plan 2016, which incorporated the Technical Housing Standards – Nationally Described Space Standard, was the subject of public consultation before adoption. I am therefore satisfied that Policy 3.5 of The London Plan accords with the Planning Practice Guidance in these respects and therefore deserves to be afforded the full weight of an adopted development plan policy. As such, the position with The London Plan is different to that being considered by the Inspector in the West Street decision.
33. For the purposes of the Nationally Described Space Standard, the extension as existing constitutes a one bedroom, one person dwelling. However, because the total floorspace provided is spread over two floors, the accommodation does not fall neatly into any of the categories set out in those standards. Given that the habitable accommodation is confined to the ground floor only, I have taken the category for a one storey, one bedroom, one person dwelling as being the nearest equivalent. Because the bathing facilities in the lower ground floor are limited to a shower with no bath, I have taken the lower requirement within that category of a minimum of 37m² gross internal floor area. This is also the figure used by the Council in their original assessment.
34. The Council calculate the gross internal floor area within the extension as being 22 m², although the appellant suggests that the correct figure is nearer to 24.5

- m². However, even taking the appellant's higher figure, a total gross internal floor area of 24.5 m² represents a significant shortfall when measured against the minimum standard of 37m² set out in the Nationally Described Space Standard.
35. The London Plan does indicate that single person dwellings of less than 37m² may be permitted if the development is demonstrated to be of exemplary design and contributes to the achievement of other objectives and policies in the Plan. I accept that the extension provides a form of relatively low cost housing and as such contributes to meeting a specific housing need. I therefore accept that, to that limited extent, the accommodation provided by the extension accords with other objectives and policies in The London Plan. However, I do not accept the proposition advanced by the appellant that the accommodation is of exemplary design. Although it does feature a modern well-appointed kitchen and a separate shower/toilet, the accommodation on the ground floor is cramped and the outlook from within that space is poor. Moreover, whilst the provision of sleeping accommodation on a mezzanine-like structure makes efficient use of the available space, I do not consider that resorting to such solutions is an indication of exemplary design. If anything, in my view, having to resort to such a solution indicates that the opposite is the case.
36. The appellant considers that the Council's approach in this case has an element of irony to it insofar as, by requiring the unit to be non-self-contained, it causes tenants to occupy accommodation of a lower quality. I do not agree. The Council has approached this case on the basis that the accommodation is not a bedsit but a one-bedroom flat, in the form of a residential maisonette. For the reasons set out above, I consider that the Council's approach was well founded. Having reached that conclusion, the Council then applied the correct standard in the Nationally Described Space Standard, and found the accommodation to be substandard when measured against that standard. The Council was therefore not requiring tenants to occupy accommodation of a lower quality: it was ensuring that the accommodation met the required standard for its type.
37. In this respect, the current appeal can also be distinguished from the findings of the Inspectors in the Fellows Road and College Crescent appeals. In the former, the appeal succeeded on ground (c). The latter was against the refusal to grant a certificate of lawful use or development. Consequently, although self-contained and described as a well-appointed bedsit, in neither case did the accommodation fall to be tested against internal space standards.
38. I conclude that the residential maisonette does not provide adequate living conditions for existing and future occupiers in relation to internal living space and in that respect may be considered substandard. I therefore conclude that the breach of planning control is contrary to Policy 3.5 of The London Plan, as well as failing to accord with the London Housing Supplementary Planning Guidance. The latter re-states the importance of housing quality set out in The London Plan and to achieving minimum gross internal floor areas in new dwellings.
39. The reason for issuing the enforcement notice in this respect of this issue refers to Policies CS6 of the London Borough of Camden Local Development Framework Core Strategy (Core Strategy) and Policy DP26 of the London Borough of Camden Local Development Framework Development Policies

document (Development Policies DPD). However, on my reading, Policy CS6 of the Core Strategy relates primarily to the supply of housing whereas Policy DP26 of the Development Policies DPD relates primarily to the impact of development on the occupiers of adjoining properties. I therefore consider that these two policies are of only limited relevance to this main issue, and for that reason I attach only limited weight to them in this context.

Car parking

40. The enforcement notice refers to Policies CS11 and CS19 of the Core Strategy, as well as Policy DP18 of the Development Policies DPD. The latter indicates that the Council will expect development to be car free in areas within Controlled Parking Zones that are easily accessible by public transport.
41. The appeal site is within a Controlled Parking Zone (CPZ) and is within an area having a Public Transport Accessibility Level (PTAL) rating of 6(b), which is regarded as being 'excellent'. The site must therefore be considered to be within a CPZ that is easily accessible by public transport for the purpose of Policy DP18 of the Council's Development Policies DPD. In the absence of some mechanism to ensure that these developments are car free, the development subject to the enforcement notice and that proposed under Appeal B are therefore both immediately in conflict with Policy DP18.
42. The appellant considers that the Council has provided no evidence to support the contention that the developments contribute towards parking stress and congestion in the surrounding area. However, as explained in the supporting text, Policy DP18 forms part of a wider strategy to address the issue of congestion in Camden adopted by the Council. The Council's policy approach to this issue has been tested on examination through the adoption of the Core Strategy and the Development Policies DPD. As such, and given the way in which Policy DP18 is framed and worded, I do not consider that the Council is required to demonstrate that developments cause congestion on an individual basis.
43. Nevertheless, in this instance, the Council has provided some evidence in support of its reasons for issuing the enforcement notice and refusing the grant planning permission. The Council advise that within this particular CPZ some 103 parking car parking permits have been issued for every 100 spaces that are available. The Council consider that anything over 90 permits per 100 spaces available indicates that a CPZ is under parking stress. In my view, the number of parking permits issued as a percentage of the total number of spaces available indicates that this particular CPZ is clearly under stress.
44. Because of the change in procedure with these appeals, I visited the appeal site on two separate occasions, separated by a period of some three months. On the first occasion, in October 2016, there were no spaces available in the immediate vicinity of the appeal site at the time of my visit. On the second occasion, in January 2017, one space was available in Bonny Street when I arrived but had been occupied by the end of my site visit. Although only a snapshot in time, my own observations tend to support the Council's evidence that this particular CPZ is under parking stress.
45. I accept that being located within an area having a PTAL rating of 'excellent' reduces the need for a private car. However, a high PTAL rating does not entirely negate the need or desire for occupiers to own a car. Moreover, I

understand that much of Camden has a high PTAL rating and therefore the 'excellent' PTAL rating of the appeal site does not qualify as exceptional circumstances for the purposes of Policy TR18.

46. Similarly, I accept that the low-cost nature of the accommodation provided by the appeal premises reduces the likelihood that the occupier may own a car. Indeed, the current occupier, Mr Trifot, indicated at the Hearing that he does not own a car or hold a driving licence. Nevertheless, that does not necessarily mean that other occupiers may not choose or need to own a car, possibly a small vehicle whereby the operating cost may be relatively low. In that scenario, even a small low-cost vehicle would add to congestion in the area, contrary to Policy DP18.
47. In order to overcome the concerns of the Council in relation to car parking, the appellant has provided Unilateral Undertakings under Section 106 of the Town and Country Planning Act 1990 (1990 Act), both in relation to deemed planning application arising through Appeal A and the application refused planning permission by the Council and now subject to Appeal B. Through these Unilateral Undertakings, the owner of the appeal site undertakes, amongst other things, to ensure that prior to occupying any residential unit forming part of the development each new resident is informed of the Council's policy that they shall not be entitled to be granted a Residents Parking Permit to park a vehicle in a residents parking bay.
48. I understand that the wording of the Unilateral Undertakings is based upon the Council's standard agreement for car-free developments, which itself had been modified to reflect the findings of the High Court in *Westminster City Council v Secretary of State for Communities and Local Government and another* [2013] EWHC 690 (Admin). The appellant considers that the Unilateral Undertakings provide the necessary assurances to prevent the occupiers from having access to on-street parking spaces, whilst overcoming the problems in achieving a similar objective with a planning obligation under the provisions of Section 106 of the 1990 Act, as found in *Westminster City Council*. In particular, it was found in *Westminster City Council* that the Unilateral Undertaking offered in that case did not meet the requirements of sub-paragraphs (1)(a)-(d) of Section 106 and therefore did not have the characteristics of a planning obligation, in that it was purely a personal undertaking by the land owners which did not run with the land and which was not capable of being registered as a land charge.
49. In my view, the Unilateral Undertakings provided by the appellant suffer from exactly the same defects identified in *Westminster City Council*, insofar as they do not relate to the use of land and do not bind the land. The Unilateral Undertakings provide that the owner shall ensure each new resident is informed of the Council's policy that they shall not be entitled to be granted a Residents Parking Permit to park a vehicle in a residents parking bay. However, the undertaking is not in connection with the land and does not run with land: it is a personal undertaking on the part of the owner.
50. It follows, then, that the obligation on the part of the owner would be discharged once the owner had advised the new resident that they would not be entitled to be granted a Residents Parking Permit. This raises a number of issues. Firstly, it raises the spectre of uncertainty should the new residents claim that they were not advised by the owner of the restriction on parking

permits. Secondly, even if the new resident was so advised by the owner, there is nothing in the Unilateral Undertakings to prevent that resident from applying for a Residents Parking Permit. Moreover, because the Unilateral Undertakings are no more than personal undertakings on the part of the owner, they are not capable of being registered as a local land charge.

51. As explored at the Hearing, there are also issues in relation to the enforceability of the Unilateral Undertakings should a parking permit be applied for. I am mindful in this respect of the comments made by Deputy Judge Bucknall QC in *Westminster City Council* who, in contemplating a similar scenario, considered that the putting out on the street of, say, a family of four because one of them has applied for a parking permit "does not strike me as a procedure to which the court would readily lend its aid". In my view, the same could equally be said of any occupiers of the appeal property, and for that reason I am not persuaded that the Unilateral Undertaking provided by the appellant would be readily enforceable.
52. I accept that the Unilateral Undertakings provided by the appellant would be directly, fairly and reasonably related to the development. I can also accept that they could be considered to be necessary, in terms of seeking to address a specific policy in the development plan. The Unilateral Undertakings provided by the appellant would therefore meet the tests in the National Planning Policy Framework (Framework) in those respects. However, they cannot be planning obligations, because they do not relate to the use of the land. Moreover, for the reasons set out above, I consider that the Unilateral Undertakings would not be enforceable. I am therefore unable to give these Unilateral Undertakings significant weight.
53. In the absence of suitably worded Unilateral Undertakings, the residential maisonette subject to Appeal A and the non-self-contained accommodation subject to Appeal B would both result in the possibility that an additional vehicle or vehicles would need to be accommodated in an area where on-street parking is both limited and controlled. This would unacceptably contribute to parking stress and congestion in the surrounding area, contrary to Policies CS11 and CS19 of the Core Strategy, as well as Policy DP18 of the Development Policies DPD.

Other Matters

54. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control alleged in the notice and the development proposed under Appeal B both fail to accord with the development plan in at least one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
55. The current tenant of the residential maisonette, Mr Trifot, spoke in person at the Hearing. He confirmed that he has been resident at the property since October 2016 and considered it to be spacious. He preferred the self-contained accommodation to a bedsit. As someone who does not hold a driving licence, Mr Trifot found the location of the property close to the Underground station to

- be convenient. It was evident to me that Mr Trifot is entirely content with the accommodation provided by the residential maisonette and in that respect the property clearly meets his accommodation needs.
56. It is likely others would take a similar view to Mr Trifot, and would prefer a relatively low cost unit to a larger flat with its higher rent and associated running costs. I therefore accept that the property as existing assists in meeting a local housing need and in providing a range of housing choice in the area. The same would apply to the accommodation provided by the extension proposed under Appeal B, albeit the accommodation would not be self-contained and would attract a slightly different clientele. To the extent that they would both assist in meeting a local housing need, this is a benefit that weighs in support of the developments.
57. I accept also that the existing accommodation represents an efficient use of the available space in a highly sustainable location. In that respect, the use of the existing space accords with the objective of securing sustainable development set out in the Framework. However, one of the core planning principles set out in the Framework is that planning should always seek to achieve a high quality design and a good standard of amenity for all existing and future occupiers of land and buildings. For the reasons set out above, I consider that the existing accommodation does not accord with Framework in this respect and I therefore attach only limited weight to the sustainability benefits arising from the efficient use space in a highly sustainable location.
58. The appeal site is within the Jeffreys' Street Conservation Area. Although not raised as an objection by the Council, I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area.
59. The Jeffrey's Street Conservation Area Statement describes the area as forming an enclave of quiet, predominantly residential, streets and narrow lanes between the busy thoroughfares of Camden Street and Royal College Street and consisting of mainly 18th and 19th century terraced housing. The appellant does not challenge that description, and I am satisfied that this is an accurate description of the area immediately surrounding the appeal property.
60. The ground floor element of the extension is clearly visible from Bonny Street. The residential scale and brick finish of the extension are entirely in keeping with the character of Bonny Street as well as the wider conservation area. I am also mindful that the element of the extension visible from Bonny Street is externally identical to that granted planning permission under reference 2013/3462/P as well as that proposed under Appeal B, and that the Council raise no objection to the extension in terms of its effect on the character and appearance of the conservation area. The lower ground floor element is not widely visible from outside the site and has no material effect on the character and appearance of the conservation area.
61. I therefore conclude that the extension as constructed and that proposed under Appeal B both preserve the character and appearance of the Jeffrey's Street Conservation Area. I therefore conclude that both extensions accord with Policy 7.8 of The London Plan, as well as Policy CS14 of the Core Strategy and Policy DP25 of the Development Policies document. These policies indicate, amongst other things, that the Council will take account of conservation area

statements when assessing applications within conservation areas and only permit development that preserves and enhances the character and appearance of the area.

62. Apart from the standard time limit condition and conditions requiring the development proposed under Appeal B to be carried out in accordance with approved drawings, the Council has not suggested any conditions that would overcome the harm that I have identified above. The appellant did not advance any conditions and no such conditions are obvious to me.

Having regard to all the above, and to all other matters raised, I conclude that the benefits arising from increasing housing choice and the contribution towards meeting a local housing need in a sustainable location do not outweigh the harm caused in relation to inadequate living standards and the contribution to parking stress and congestion in the surrounding area. I therefore conclude that the deemed planning application arising from Appeal A, and refusal of planning permission subject to Appeal B, should both be determined in accordance with the development plan.

Appeal A: The appeal on Ground (f)

63. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes, in summary, are (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the remaining requirements of notice may be summarised as the permanent removal of the two storey rear extension and making good the rear elevation. The primary purpose of the notice must therefore be to remedy the breach of planning control albeit, as the Council explained at the Hearing, the notice also seeks to rectify an injury to amenity in the relation to the living conditions of the occupiers of that space.
64. In considering this ground of appeal, I am mindful that the Council has no objection to the physical form of the extension. I therefore concur with the appellant that it would be excessive to require the removal of the extension in its entirety if the harm resulting from the use within that extension could be removed or mitigated. To my mind, this would be achieved if the requirements of the notice were amended to include the cessation of the use of the extension as a residential maisonette, as suggested by the appellant.
65. I acknowledge that the Council has reservations about such a requirement, in part because it considers that it would be difficult to enforce. I have some sympathy with that view, and for that reason I consider that it would also be necessary to require the removal of the kitchen and/or the toilet/shower. The latter would effectively prevent the occupation of the extension as a self-contained residential unit, and the removal of these facilities could be monitored and enforced by the Council. A number of alternative uses of the space were canvassed in the written representations and at the Hearing, but that is not a matter before me. The acceptability of any such uses, including whether or not they require planning permission, is a matter for the Council.

66. I acknowledge also that ceasing the use of the extension as a residential maisonette, in conjunction with the removal of the kitchen and/or toilet/shower, would not fully achieve the purpose of the notice in terms of remedying the breach. It would, however, rectify the injury to amenity in the relation to the living conditions of the occupiers of that space that the Council confirmed also formed part of the purpose of the notice. In these circumstances, and given that the Council has no objection to the physical form of the extension, I consider that ceasing the use as a residential maisonette and removing the kitchen and/or toilet/shower is an obvious alternative to requiring the removal of the extension, and one which would overcome the planning difficulties with less costs and disruption to the appellant.
67. I shall therefore vary the requirements to include ceasing the use of the extension as a residential maisonette, as well as the removal of the kitchen and/or toilet/shower. The appeal on ground (f) succeeds to that extent.

Appeal A: The appeal on Ground (g)

68. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months.
69. The appellant confirms that the residential maisonette is let on a yearly tenancy, and that the current occupier took up residence on or around 1 October 2016. The appellant went on to explain that the period of notice is two months but that even with a Section 21 Notice it would be difficult to secure possession and comply with the requirements of the notice within six months. A period of compliance of 12 months is therefore sought.
70. The corollary of a yearly tenancy commencing on 1 October 2016 is that, even without recourse to the procedures under Section 21, vacant possession would be secured on or before 30 September 2017. The occupation of the residential maisonette does not impact upon the living conditions of the occupiers of neighbouring properties. The current occupier, Mr Trifot, does not have a driving licence or own a car, and consequently there is no imperative in terms parking stress or congestion to secure compliance with the notice before that date. I therefore consider that no harm would occur from allowing occupation by Mr Trifot to continue until his tenancy agreement expires at the end of September 2017.
71. I recognise that the Council is concerned that continued occupation would enable the appellant to benefit from the breach of planning control that has occurred but the enforcement procedures are intended to be remedial rather than punitive. The appellant is also entitled to anticipate success on the other grounds of appeal, and it is therefore not relevant that the appellant has had time during the appeal proceedings to start compliance with the notice.
72. On the expiration of Mr Tifot's tenancy, or beforehand if the tenancy does not reach full term, the requirements of the notice in relation to the use of the extension would be secured. Sufficient time must then be allowed for compliance with the other requirements of the notice. These would be either the permanent removal of the two storey rear extension and the making good of the rear elevation, or the removal from the extension of the kitchen and/or toilet/shower. By that time, with the benefit of a known date for carrying out the works, the appellant would have had ample opportunity to arrange for

these works to be carried out in terms of sourcing and instructing suitable builders to undertake the work. It is necessary to allow only for sufficient time to physically undertake the works.

73. Taking the permanent removal of the two storey rear extension as being the more onerous of the two options, I consider that two months would be sufficient to carry out the physical work of removing the extension and making good the rear elevation. Although the appellant has not justified the period of 12 months sought, I consider that it would be proportionate in the circumstances to extend the period for compliance to a date two months after the expiry of the current tenancy, specifically 30 November 2017.

74. The appeal on ground (g) succeeds to that extent and I shall vary the notice accordingly.

75. Conclusion

76. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with corrections and variations, and refuse to grant planning permission on the deemed application. I also conclude that Appeal B should not succeed.

Formal Decisions

77. It is directed that the notice is corrected and varied by:

- replacing the word 'unauthorised' at paragraph 3 of the notice with the words 'without planning permission'
- deleting the word 'unauthorised' at paragraph 4 (b) of the notice
- replacing the word 'side' at paragraph 5.1 of the notice with the word 'site'
- replacing the reference to planning permission '2013/3562/P' at paragraph 5.2 of the notice with '2013/3462/P' and inserting the words "granted on 5 August 2013."
- deleting the words "within a period of six (6) months from the Notice taking effect:" at paragraph 5. of the notice.
- deleting entirely the requirement at paragraph 5.2 of the notice, as corrected above, to combine the newly created floorspace with the existing ground floor flat such that it accords the planning permission 2013/3462/P.
- deleting the requirement at paragraph 5.1 of the notice, and replacing this with the following requirements:
 1. By 30 September 2017, permanently cease the use of the accommodation within the two storey rear extension as a residential maisonette.
 2. By 30 November 2017, either permanently remove the two storey rear extension, remove all resultant debris from the site and make good the rear elevation: or permanently remove of the kitchen and/or toilet in the two storey rear extension.

78. Subject to those corrections and variations, Appeal A is dismissed, 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.

79. Appeal B is dismissed.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Leo Kaufman	Redcourt Ltd
Mr E.M.Pick	E.M.Pick Planning
Mr Jonas Trifot	Resident, Flat F, 148 Camden Street, London NW1 9PA

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Peres da Costa	Senior Planning Officer
Mr Gary Bakall	Town Planner
Ms Jennifer Lunn	Solicitor

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Unilateral Undertakings dated 15 September 2016.
- 2/ Photographs of the appeal site, submitted by the Appellant.
- 3/ Copy of e-mail from Patricia Tavernier, Legal Assistant with the London Borough of Camden, to Nick Panayiotou dated 29 September 2015.
- 4/ Copy of planning application 2013/3462/P and supporting documents.
- 5/ Copy of Camden Parking Services: Fees and Charges (2016/17).
- 6/ Copy of the Camden Annual Parking Report 2016 (October 2016).
- 7/ Copy of Drawing No 13-103-05.
- 8/ Copies of Policies 3.5 and 7.8 of The London Plan; Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and Policy DP25 of the London Borough of Camden Local Development Framework Development Policies.
- 9/ Copies of the Camden Planning Guidance: Transport (CPG7) and the Camden Planning Guidance: Planning Obligations (CPG8).
- 10/ Copy of Chapter 2 of the Mayor of London Housing Supplementary Planning Guidance 2016.

- 11/ Copy of the Camden Local Implementation Plan: The Local Transport Strategy 2006-2011 – Interim Parking and Enforcement Plan

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1/ Unilateral Undertakings dated 17 January 2017, with supporting information.
- 2/ Unilateral Undertakings dated 31 January 2017, with supporting information.