

# Appeal Decision

Site visit made on 1 March 2017

**by George Mapson DipTP DipLD MRTPI**

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

**Decision date: 30 March 2017**

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**Appeal Ref: APP/V5570/C/16/3156305**  
**350 Caledonian Road, London, N1 1DU**

- 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 Ergun Yurdagul against an enforcement notice issued by the Council of the London Borough of Islington.
  - The Council's reference is E/2016/0248.
  - The notice was issued on 15 July 2016. *"Without planning permission, the material change of use of the Premises from a mixed use of four self-contained flats and retail unit to use of the Premises as six self-contained flats and retail unit."*
  - The requirements of the notice are: *"1. Cease the use of the premises as six (6) self-contained flats. 2. Remove all additional kitchens from the Premises so that only one remains in each of the four flats that have permission, including all waste materials and detritus therefrom. 3. Remove all additional showers and bathrooms from the Premises so that only one shower/bathroom remains in each of the four flats that have permission, including all waste materials and detritus therefrom."*
  - The period for compliance with the requirements is five months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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## Decision

1. The enforcement notice is varied by deleting from Section 5 requirement 1 in its entirety and substituting *"1. Cease the use of the premises by any number of self-contained flats exceeding four"*.
2. Subject to this variation 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

### *The enforcement notice*

3. The drafting of the requirements recognises the fact that where a lawful use or activity is referred to in the allegation as part of a mixed use, the notice cannot require that element of the mixed use to cease. For that reason, the notice does not require the cessation of the retail element.
4. Equally, the notice cannot require the cessation of the use as four self-contained flats, the other element of the lawful mixed use. The notice is clearly directed at the two additional flats that have been created without planning permission.

5. However, that is not what requirement 1 says. It requires the recipient to "*Cease the use of the premises as six (6) self-contained flats*". This presents a problem because it could be interpreted as allowing use of the premises as any number of self-contained flats other than six; for example, five or even seven.
6. In simple cases where self-contained flats are created within premises where hitherto there were none, this consequence can be averted by wording the requirement as "*Cease the use as separate flats*", rather than specify a number.
7. That approach would not be appropriate here because the premises already contain four self-contained flats that are lawful. Consequently, the correct approach is for requirement 1 to read: "*1. Cease the use of the premises by any number of self-contained flats exceeding four*". I propose to vary the notice accordingly.
8. I have sought the views of the Council and the appellant on this matter. The appellant has confirmed that he has no objections to this variation. No objections have been received from the Council. I am satisfied therefore that this variation would not cause injustice to any party.

## **Background**

### *The appeal site*

9. No. 350 Caledonian Road lies within a local shopping centre and a designated conservation area. It comprises a basement, a ground floor and three floors above (including a loft). The front part of the ground floor is used as a hair and beauty salon trading as "*Eda's*". The rear of the ground floor, and the floors above and below it, have been converted into self-contained flats.

### *The flats*

10. There are no floor plans of the appeal property on the case file. Following the site visit the Council supplied copies of floor plans from its records. These are annexed to my decision as Plan A.
11. The plans show two self-contained flats in the basement (Flat Nos. 1 and 5) and one flat on each of the other floors. Flat No. 6 is located at the rear of the ground floor. Flat Nos. 2 and 3 are on the first and second floors respectively. Flat No. 4 is a studio flat located on the third floor, in the loft.
12. Flat Nos. 1 and 4, the studio flats, each have one bedroom and would be for one-person occupancy. The floor plans show that Flat Nos. 2 and 3 contain two double bedrooms and could be used for four-person occupancy. I saw that Flat No. 5 is also being used as a two-bedroom flat (a double bedroom and a single bedroom, utilising the 'living room' as the second bedroom. At the time of my visit, I saw that Flat 1 had still to be fitted-out and was vacant. The others flats appeared to be occupied, in some cases by families with children.

## **The appeal on ground (a) and the deemed planning application**

13. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice. The main issue is whether the flats provide a satisfactory standard of accommodation for existing and prospective occupiers<sup>1</sup>.

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<sup>1</sup> The submissions made on behalf of the appellant focus mainly on the fact that the appeal property is located within a conservation area. It is asserted that the use of the property as a shop unit and six self-contained flats, as opposed to a shop unit and four self-contained flats, has no impact on the historic environment. However, this is not at issue in this appeal. The reasons for issuing the enforcement notice make it clear that the Council's objection to the unauthorised use is that the failure to meet minimum floorspace standards has resulted in flats with cramped conditions and consequently, the flats fail to provide a satisfactory standard of accommodation for prospective occupiers.

*Planning policy*

14. A number of development plan<sup>2</sup> policies have been cited by the Council. The most relevant for the purposes of this appeal are policy 3.5 of the London Plan (2011 and its Alterations of 2015 and 2016); and policy DM3.4 of the Development Management Policies (2013).

*The London Plan*

15. Policy 3.5 (*Quality and design of housing developments*) states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Table 3.3 sets out minimum space standards for dwellings of different sizes. This is based on the minimum gross internal floor area (GIA) required for new homes relative to the number of occupants and taking into account commonly required furniture and the spaces needed for different activities and moving around, in line with Lifetime Home Standards.
16. According to Table 3.3, the essential GIA for a one person flat is 37sqm, but paragraph 3.36 of the supporting text explains that a single person dwelling of less than 37sqm may be permitted if the development proposal is demonstrated to be of exemplary design and contributes to the achievement of other objectives and policies of the Plan.

*Development Management Policies*

17. Policy DM3.4 (*Housing standards*) provides a range of criteria that affects housing quality and liveability. Meeting these criteria will help to ensure a reasonable level of residential amenity and quality of life for occupants.
18. The policy applies to all new housing developments, including conversions. Its aim is to ensure that all accommodation would be of an adequate size, with an acceptable shape and layout of rooms. It requires that due consideration is given to aspect, outlook from habitable rooms, noise, ventilation, privacy and light. The space provided should be functional and usable, with good provision for play, amenity and garden space. Each unit of accommodation should include sufficient space for storage and utility purposes.
19. The policy requires all new residential developments, including conversions and extensions, to meet or exceed the minimum GIA space standards that are set out in Table 3.2. These standards reflect those in Table 3.3 of the London Plan. For example, the minimum GIA for a studio, bedsit or single bedroom flat designated for two-person occupancy is 37sqm. For a flat with one double bedroom designated for two-person occupancy, the minimum GIA is 50sqm. For a flat with two double bedrooms designated for four-person occupancy, the minimum GIA is 70sqm. For dwellings designed for more than six people, an extra 10sqm is required for each additional occupant above the sixth person accommodated.

*Reasons and conclusions on the ground (a) appeal*

20. The Council's case is that each one of the six flats within the appeal property fails to meet the development plan's minimum GIA standards by a considerable margin. Two examples are given. The first is basement Flat No. 1, which has a GIA of 22sqm. This is well below 37sqm, the minimum standard for this type of accommodation. The second is Flat No. 2 on the first floor. This has a GIA of 40sqm; again well below the minimum standard of 70sqm.
21. On the basis of size deficiencies alone, the accommodation provided offers a very poor quality of life for occupants. With such constraints on space, there would be insufficient room for furniture, access and movement, meaning that occupants would

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<sup>2</sup> Under s.38 (6) of the Planning and Compensation Act 2004, the decision must be made in accordance with the development plan unless material considerations indicate otherwise.

- have limited scope for even the most basic items of furniture or possessions that could be accommodated.
22. Furthermore, as regards the unfinished basement Flat No. 1, I saw that the only natural light would be from two small lightwells in the two front-facing rooms. There is no natural lighting from the sides or rear to provide natural light to the rest of the flat. As a consequence, Flat No. 1 would provide sub-standard living conditions to prospective occupants not only because of its inadequate size, but also because of the poor quality of its aspect, outlook and natural lighting.
23. It is asserted on behalf of the appellant that the appeal development is policy compliant, but no reasoned argument has been advanced to support this assertion. No evidence has been adduced – either in terms of measurements of the rooms within the flats or alternative GIA calculations – to contradict the Council’s contention that the flats provide a sub-standard quality of accommodation when assessed against the standards in the development plan.
24. It is evident that the unauthorised development represents a significant and serious departure from the adopted GIA standards and fails to accord with the objectives of the development plan. No material considerations have been put forward to indicate that the decision on the appeal should be made other than in accordance with the development plan. For example, there is no suggestion in the representations that any part of the accommodation provided is of exemplary design, or that it contributes to the achievement of other objectives and policies of the London Plan, such as to merit consideration as an exception to the policy.
25. No conditions would overcome the strong objections to the development and consequently, for all these reasons, the appeal on ground (a) fails.

### **The appeal on ground (g)**

26. An appeal on ground (g) is that the time given to comply with the notice is too short. The appellant’s case is that five months provides existing tenants with insufficient time to find alternative accommodation. The compliance period should be extended to eleven months.

### *Reasons and conclusions on Appeal 1 on ground (g)*

27. One of the basement flats has yet to be fitted out and is vacant. Whilst I have some sympathy for the predicament of the tenants of the other flats, particularly those with children, no evidence – for example, in the form of tenancy agreements – has been submitted to show that eleven months would be needed to serve them with notices to terminate their tenancies and for the unauthorised use to cease.
28. In the absence of such evidence, or any other good reason for extending the compliance period, I find that five months provides adequate time to meet the requirements of the notice. Accordingly, the appeal on ground (g) fails.

### **Overall conclusions**

29. I have taken account of my observations at the site and in the surrounding area, and of all the matters raised in the written representations. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice, as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*George Mapson*

INSPECTOR

## Plan A

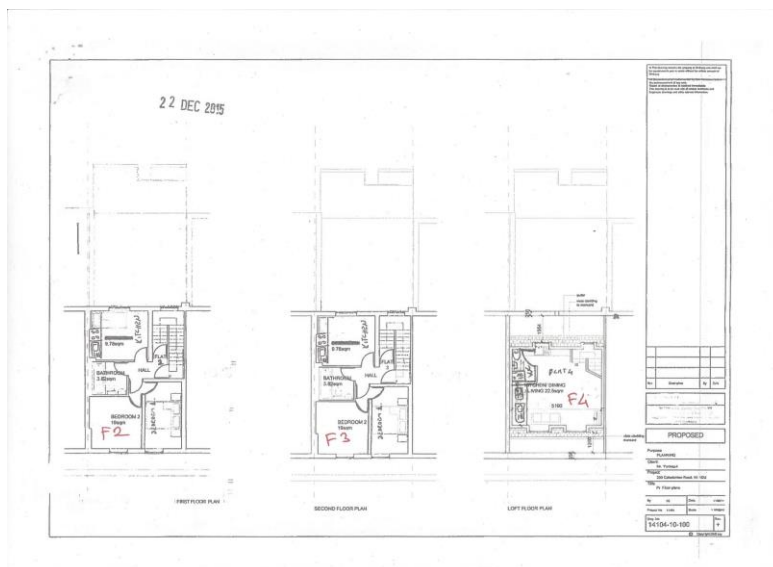
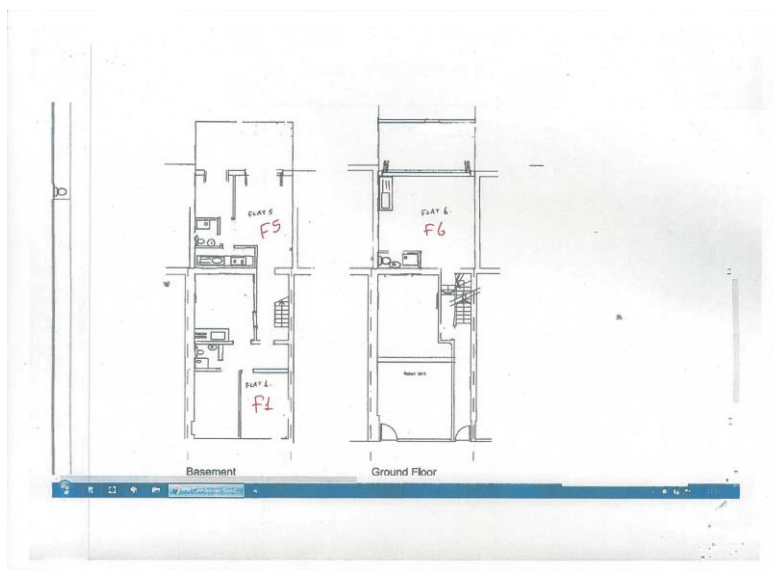
This is the plan referred to in my decision dated: 30 March 2017

**by George Mapson DipTP DipLD MRTPI**

**Land at: 350 Caledonian Road, London, N1 1DU**

**Reference: APP/V5570/C/16/3156305**

Scale: NTS



*George Mapson*

INSPECTOR