



Appeal Decision

Site visit made on 10 January 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th February 2024

Appeal Ref: APP/X5210/C/23/3329544

Land at: Flats 13a and 13b, 19 Lancaster Grove, London NW3 4EX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Daniel Elghanian, Welby London Ltd. against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 4 August 2023.
- The breach of planning control as alleged in the notice is without planning permission: the subdivision of a rear ground floor studio flat (Flat 12) to create two studio flats with mezzanine floors (Flats 13a and 13b).
- The requirements of the notice are: 1. Cease the use of the 2x rear ground floor studio flats with mezzanine floors known as 13a and 13b as residential units; 2. Remove the partition wall which facilitates the use as two residential units; 3. Remove the mezzanine level; 4. Remove one kitchen; 5. Reinstate one residential unit as per the approved drawings for 2015/0268/P attached at appendix A; 6. Make good on any damage caused as a result of the works and remove any resulting debris from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f), and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Government published a revised National Planning Policy Framework (the Framework) after appeal submissions had been made. I have not considered it necessary to consult parties on those revisions, but have taken the Framework, as revised, into account when reaching my decision.
2. The Council's final comments were not sent to the appellant until after my site visit. They did not introduce new material, but I have taken subsequent responses from the appellant into account.
3. The appeals under grounds (g) and (e) have been withdrawn. It is not disputed that copies of the notice were served as required by section 172 of the Act or that the period specified for compliance with the notice falls short of what should reasonably be allowed. I see no reason to find otherwise, and I shall not consider these matters further.

The Notice

4. It is incumbent on me to get the notice in order. A studio flat at upper-ground floor level (the former Flat 12) has been subdivided into 2 studio flats, with kitchen facilities provided at a new mezzanine level (Flats 13a and 13b).

Although it is not explicitly stated in the notice, this subdivision of 1 dwelling into 2 dwellings is a material change in the use of part of the building.

5. Section 176 of the Act allows me to correct any defect, error or misdescription in the notice, or to vary its terms, if doing so would not cause injustice to any parties. In the interests of clarity, I shall correct the notice so that it refers to the material change of use brought about by the subdivision of the former Flat 12 to create Flats 13a and 13b. This will not cause injustice to any parties, as it merely provides an alternative description of the same alleged breach of planning control, consistent with the terms used at section 55 of the Act.

Ground (c)

6. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the breach of planning control alleged in the notice does not constitute a breach of planning control. It is claimed that the subdivision of the former Flat 12 and the creation of mezzanine floors, as internal works, do not constitute development requiring planning permission.
7. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 336 of the Act confirms that 'land' includes a building, and that 'building' includes any part of a building. Section 55 provides the meaning of 'development', which includes the making of any material change in the use of any buildings. Subsection (2)(a) of section 55 states that the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, shall not be taken to involve development.
8. The internal partition wall, mezzanine level, and additional kitchen and shower room facilities have facilitated the material change of use which has taken place, as they create 2 separate dwellings. These internal works only affect the interior of the building and do not materially affect its external appearance. However, they are integral to, and form part and parcel of, the material change of use of 1 dwelling to 2 dwellings which took place as a single act of development requiring planning permission. No planning permission exists for the development, which has taken place in breach of planning control.
9. The appeal under ground (c) must therefore fail.

Ground (a) and the deemed application for planning permission

10. The main issues are:

- Whether Flats 13a and 13b provide acceptable living conditions, with particular regard to internal floor areas, heights, and layouts;
- Whether the development promotes sustainable transport, with particular regard to cycle storage facilities and car parking; and
- If any harm is found in respect of the first 2 main issues, whether the Unilateral Undertaking¹ (UU) is an appropriate method to address any such harm.

¹ Entered into by the appellant company as the owner of the site and its mortgagee, dated 30 November 2023

Living Conditions

11. The Council's Officer Report refers to the Government's nationally described space standard² and states the gross internal floor areas of Flats 13a and 13b are approximately 26 square metres (sqm) and 24.4 sqm respectively. These figures are not disputed and fall significantly short of the recommended minimum internal floor area of 37 sqm for a 1-bedroom 1-person dwelling with a shower room.
12. Flats 13a and 13b provide extremely cramped and uncomfortable living spaces, with awkward layouts. This includes mezzanine floors with low ceiling heights accommodating kitchen/dining spaces above sleeping areas. The flats provide very small spaces which are insufficient for people to live in with reasonable comfort. Although the flats are evidently capable of accommodating paying tenants, the lack of space and contrived layouts with restricted headroom create very poor and unacceptable living conditions.
13. Flats 13a and 13b fail to provide acceptable living conditions for their occupiers on account of substandard internal floor areas, heights and layouts. The development is therefore contrary to Policy H6 of the Camden Local Plan (2017) (CLP). This seeks to achieve high quality homes which meet the nationally described space standard, amongst other things.

Sustainable Transport

14. Policies T1 and T2 of the CLP seek to promote use of sustainable modes of transport in the borough. Policy T1 requires development to provide accessible and secure cycle parking facilities. Policy T2 requires all new development to be car-free and aims to reduce car ownership and use, and lead to reductions in air pollution and congestion. To comply with these policies the appellant would need to provide appropriate cycle parking facilities and secure 1 dwelling as car-free.
15. The UU intends to secure 3 dwellings (including Flats 13a and 13b) as car-free development, and a financial contribution of £1,140 towards the provision of on-street cycle storage facilities. However, the Council has stated that a financial contribution of £1,440 would be required to provide appropriate on-street cycle parking facilities in this case. I have not been provided with a copy of an amended UU to address this issue.
16. I have no information before me to explain how a financial contribution of £1,140 would be sufficient to provide appropriate on-street cycle storage facilities, where those facilities may be provided, or what they may comprise. In the absence of that information, it is also unclear whether a financial contribution of £1,140 would be excessive for those purposes. My other concern in this regard is that the UU does not bind the Council to provide any on-street cycle facilities, or otherwise control what happens to the financial contribution once it has been paid to the Council.
17. Flats 13a and 13b are currently occupied and their residents are free to seek permits to park cars in the local area. The UU intends to prohibit the owner of the site from occupying or permitting the occupation of Flats 13a and 13b if an occupier of those flats holds a parking permit or is permitted to park a vehicle in Council car parks unless the occupier is the holder of a disabled persons

² Technical Housing Standards (2015)

badge. The UU makes other provisions in this regard, but it fails to explain how it would secure appropriate monitoring of the obligation. No provisions are made for payment of the Council's reasonable costs which would be incurred when carrying out such monitoring, and it is concerning that 'Development' at paragraph 4.2.3 of the UU has not been defined. The UU therefore lacks the necessary precision to convince me that this obligation could be enforced.

18. For the above reasons, the UU would not secure appropriate cycle parking facilities or Flats 13a and 13b as car-free development with reasonable certainty. The development does not provide appropriate cycle storage facilities or otherwise promote sustainable transport, contrary to Policy T1 of the CLP. Although the development results in only 1 additional residential unit of very small size, close to public transport links, occupiers of the additional flat remain capable of obtaining a parking permit for the local area. The development is therefore capable of exacerbating parking stress and congestion in the local area in conflict with Policy T2 of the CLP.

Unilateral Undertaking

19. The UU seeks to secure 3 dwellings as car-free, which would exceed the requirements of Policy T2 of the CLP. It also seeks to secure a 'use swap'.
20. Flats 13a and 13b are located directly above Flats 15 and 15a, which are at lower-ground floor level. Flats 13a and 13b have similar footprints compared to Flats 15 and 15a, but Flats 15 and 15a do not have mezzanine floors. The intention of the proposed use swap obligation is to require Flats 15 and 15a to be amalgamated into a single flat, which would be car-free. This would have a similar overall result as complying with the notice, but it would allow the new kitchen and shower room facilities within Flats 13a and 13b to be retained. The dated kitchen and shower room facilities in Flats 15 and 15A would be replaced as part of the amalgamation.
21. Paragraph 57 of the Framework states that planning obligations must only be sought where they meet 3 tests consistent with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the Regulations). Obligations need to be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. In this case, the development the subject of the deemed application for planning permission is the breach of planning control stated in the notice. That is the material change of use of the former Flat 12 to 2 dwellings with mezzanine floors.
22. The UU would not make the development acceptable in planning terms because the living conditions in Flats 13a and 13b would remain very poor. The replacement of the dated facilities in Flats 15 and 15a would not be a significant improvement to any occupiers' living conditions. I have already explained why the UU does not secure appropriate cycle parking facilities or the additional flat created as car-free.
23. The use swap and car-free obligations the UU seeks to secure are not directly related to the development, and nor are they fairly and reasonably related in scale and kind to the development. This is because Flats 15 and 15a comprise land outside that referred to by the notice, occupied by different tenants, and because the UU seeks to secure 3 dwellings as car-free, where only 1 additional dwelling has been created.

24. The use swap and car-free obligations do not meet the tests set out in the Framework and the Regulations. The UU is not therefore an appropriate method to address the harm identified in the first 2 main issues, and I do not assign it significant weight in favour of the development.

Other Matters

25. People currently live in Flats 13a and 13b. These flats are said to benefit from Building Regulations approval. A certificate of lawfulness confirms 20 flats are lawful within the building and a House in Multiple Occupation licence has been granted for the building by the Council. It is also claimed that Flats 13a and 13b are of similar sizes and layouts to other lawful flats within the building, and that the former Flat 12 had a floor area of 36 sqm. The former Flat 12 would have therefore fallen 1 sqm short of the recommended minimum internal floor area for a 1-bedroom 1-person flat with shower room. These matters do not show that the living conditions created by Flats 13a and 13b are justified or otherwise acceptable in the context of similarly unacceptable living conditions within other flats.
26. Flats 13a and 13b are likely to provide housing for people on modest incomes. The development has increased housing choice, which is an aim of Policy H6 of the CLP. However, the overriding priority of Policy H6 is to create high-quality homes. The development does not accord with Policy H6, for the reasons set out above. On account of the very poor living conditions created by the flats, in comparison to the former Flat 12, I assign very limited weight to any benefits derived from the provision of low-cost housing in this case.
27. None of the harm identified could be addressed by conditions. The matters which the UU seeks to address could not be dealt with by conditions compliant with paragraph 56 of the Framework. Even if the harm could be addressed by an amended UU or an alternative legal agreement, such obligations could not be secured through conditions attached to a planning permission in this case, considering the advice of the Framework and the Planning Practice Guidance³.

Conclusion on the appeal under ground (a) and the deemed application for planning permission

28. The development creates 2 flats which provide unacceptable living conditions for their occupiers on account of substandard internal floor areas, heights, and layouts. The living conditions provided by Flats 13a and 13b are far worse than those which were previously provided by the former Flat 12. In addition, the development is not car-free and it fails to provide adequate cycle parking facilities. The UU does not appropriately address these matters with reasonable clarity and certainty. The harm caused by the development cannot be overcome by conditions attached to a planning permission. The development is therefore contrary to the development plan taken as a whole and there are no material considerations which indicate planning permission should be granted. For these reasons, the appeal under ground (a) should not succeed and the deemed application for planning permission should be refused.

Ground (f)

29. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken, or the activities

³ Paragraph: 010 Reference ID: 21a-010-20190723

required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.

30. The notice requires the cessation of the use of the unauthorised flats as residential units, and the reinstatement of 1 residential unit consistent with floor plans of the former Flat 12. This would return the land to its condition before the breach of planning control took place. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.
31. The first step required to be taken by the notice does not prohibit any part of the land from being used as a residential unit. However, it is poorly worded, and I shall vary it to require the land to cease being used as 2 dwellings.
32. It is necessary to require the reinstatement of the layout of the former Flat 12 to remedy the breach of planning control. This would return the land to its condition before the breach took place. On account of section 57(4) of the Act, it is excessive to require the reinstatement of the former use. It is also unnecessary for kitchen and shower room facilities to be reinstated in the exact same positions as those which previously existed to achieve the purpose of the notice.
33. The mezzanine level and partition wall do not help provide acceptable or improved living conditions. They create low internal heights, awkward stair arrangements, and cramped layouts. The retention of all or parts of the mezzanine and/or partition wall would not therefore provide improved or otherwise satisfactory living conditions for future residents.
34. A mezzanine floor and internal walls could be installed after the notice has been complied with. However, there is no convincing evidence before me that any parts of the existing unauthorised internal works could be retained in an acceptable and safe manner while remedying the breach of planning control. There are no lesser steps or obvious alternatives which would achieve the purpose of the notice.
35. Removing the mezzanine level and partition wall would necessitate the removal of the kitchens. It is unclear how any damage could be made good within the former Flat 12 as a result of those works. It is not therefore necessary to specify that one kitchen needs to be removed or that any damage needs to be made good in this case. It would, however, be reasonable for any debris to be removed from the site in the interests of protecting the living conditions of future and neighbouring residents.
36. I shall vary the notice by deleting the requirement to remove one kitchen, and the requirement to make good on any damage caused as a result of the works. I shall also amend the wording of the fifth requirement to clarify that it is the layout of the former Flat 12 which needs to be reinstated, rather than the use as a single dwelling, and that this does not include the positions of kitchen and shower room facilities. These would be the minimum works necessary to remedy the breach of planning control.
37. The appeal under ground (f) therefore succeeds insofar as I shall vary the steps required to be taken by the notice, as set out in my Formal Decision.

Overall Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

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

- i) The deletion of the text 'subdivision' at section 3 of the enforcement notice and its substitution with the text 'material change of use';
- ii) The deletion of the text 'create' at section 3 of the enforcement notice;
- iii) The deletion of the text '2x rear ground floor studio flats with mezzanine floors known as 13a and 13b as residential units' at section 5 of the enforcement notice and its substitution with the text 'land as 2 dwellings';
- iv) The deletion of the text '4. Remove one kitchen' at section 5 of the enforcement notice;
- v) The deletion of the text 'one residential unit as per the approved drawings for 2015/0268/P' at section 5 of the enforcement notice and its substitution with the text 'the layout of the former Flat 12, with one kitchen only, to match the layout (with the exception of the positions of any kitchen and shower room facilities) which previously existed prior to the unauthorised material change of use. The layout of the former Flat 12 is shown on the plan'; and
- vi) Deletion of the text 'Make good on any damage caused as a result of the works and' at section 5 of the enforcement notice.

40. Subject to the correction and variations, the appeal 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 Act.

L Douglas

INSPECTOR