

<b>Committee(s)</b>	<b>Dated:</b>
Planning and Transportation Committee	13/12/2016
<b>Subject:</b> 15 Trinity Square Unauthorised Short Term Letting - Enforcement Report	<b>Public</b>
<b>Report of:</b> Chief Planning Officer and Development Director	<b>For Decision</b>
<b>Report author:</b> Sue Bacon	

### Summary

It appears that there has been a breach of planning control at 15 Trinity Square involving the unauthorised use of flats 6, 9 and 15 as short term lets well in excess of the 90 nights permitted per calendar year. Complainants have been in regular contact with the City Corporation regarding the problem of noise disturbance, wear and tear and security of the building and other issues detailed in the main report. Evidence of the use of the building as short term lets is in part supported by 'reviews' posted on web-sites, responses to the service of Planning Contravention Notices served on interested parties, site visits, correspondence and discussions with the interested parties.

The principal issues in considering this breach are the loss of residential flats, the effect on the amenity of residents in terms of noise and shared facilities, lack of security both in terms of the building and City wide and the impact on the building.

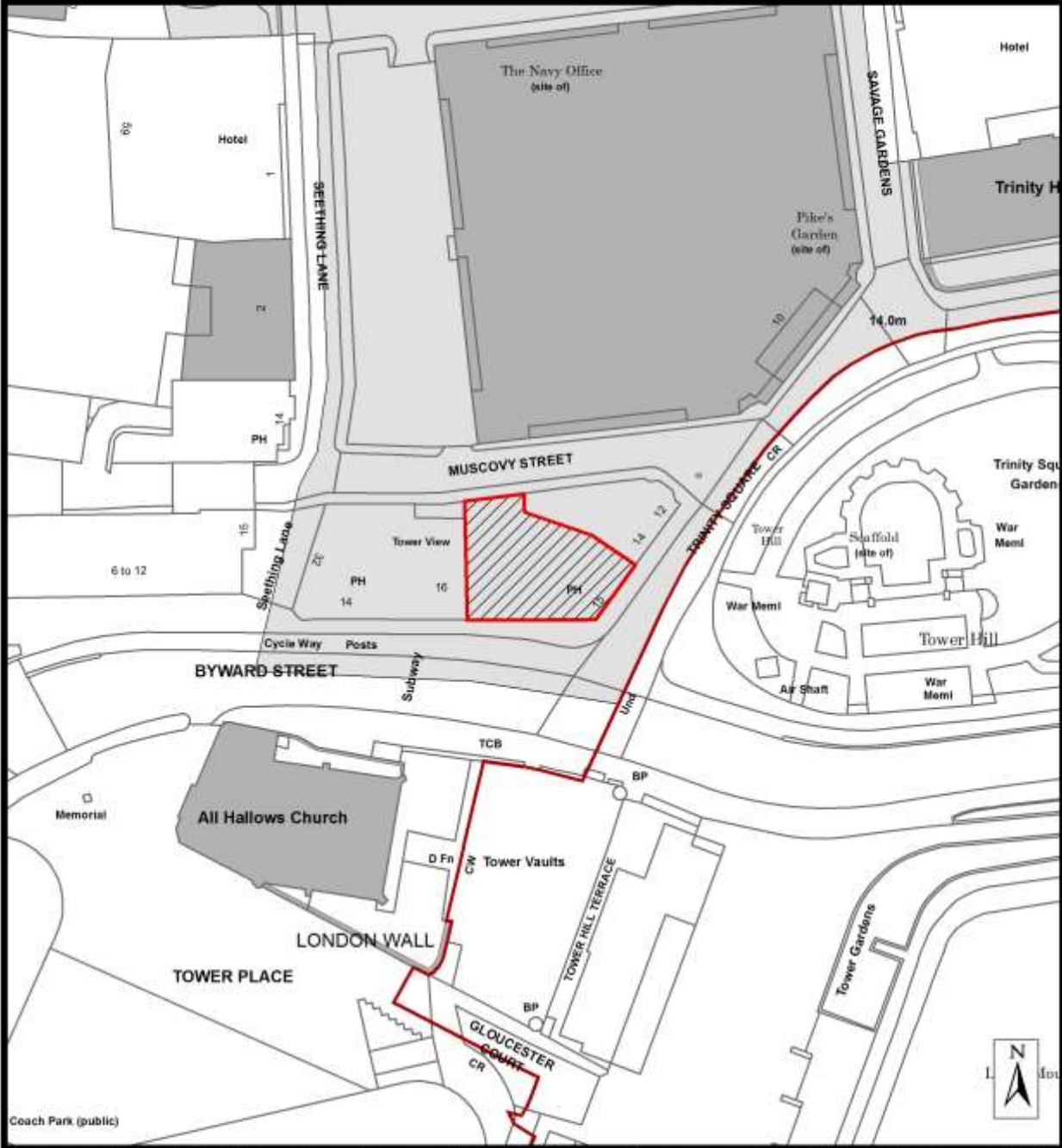
The use of the flats as short term lets involves the loss of 3 flats which impacts on the local housing supply and gives rise to a noise nuisance, adversely affecting the quality of life of the permanent residents in the building. It also presents a potential security risk to both the building and the City as a whole being located in such close proximity to the Tower of London a World Heritage Site. The use of the 3 flats as short term lets is contrary to policies of the NPPF, the London Plan and Local Plan, as detailed in full in the main report, which seek to increase housing supply, resist the loss of housing to short term lets and protect residential amenity and security.

Having regard to the provisions of the development plan and the material considerations, it is considered expedient to take enforcement action, under section 172 of the Town and Country Planning Act 1990, to remedy the breach of planning control.

### Recommendation

- (1) issue Enforcement Notices in respect of flats 6, 9 and 15, 15 Trinity Square to secure the cessation of the unauthorised use.
- (2) instruct the Comptroller and City Solicitor to serve copies on the owners and occupiers and any other persons having an interest in the land materially affected by the Notice.


# Enforcement Notice Site Plan



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ADDRESS:  
Flats 6, 9 & 15 Trinity Square EC3N 4AA

CASE No.  
15/00021/UWDP, 15/00022/UWDP, 15/00023/UWDP

-  SITE LOCATION
-  LISTED BUILDINGS
-  CONSERVATION AREA BOUNDARY
-  CITY OF LONDON BOUNDARY



DEPARTMENT OF THE BUILT ENVIRONMENT



View of 15 Trinity Square from the corner of Byward Street and Trinity Square

## **Main Report**

### **Site**

1. 15 Trinity Square forms part of a prominent corner plot situated at the junction of Byward Street and Trinity Square. It comprises a five storey 1900's refurbished building in use as a drinking establishment at ground floor level with four floors of residential above. The residential comprises 16 flats which are accessed by a ground floor entrance lobby with a secondary entrance to the rear which incorporates refuse facilities. The basement comprises plant which serves all levels and storage cupboards for the flats.
2. The site lies within the Trinity Square Conservation Area just to the south of 10 Trinity Square the ex-port of London Authority Grade II\* building being converted to hotel and flats. The site also overlooks the Tower of London, a World Heritage site and major tourist attraction.

### **Background**

#### Breach of Planning Control

3. It appears that there has been a breach of planning control involving the unauthorised use of flats 6, 9 and 15 at 15 Trinity Square as short term lets.

#### Complaint

4. Complaints were received from 4 residents alleging short term letting of a number of flats at 15 Trinity Square. The complaints were received in November 2014, April 2015, February 2016 and June 2016. The flats identified included those the subject of this report:

Flat 6 - Second Floor

Flat 9 - Third Floor

Flat 15 - Fourth Floor

(Other flats were also identified but breaches of planning control subsequently ceased or were not found)

### **Relevant Legislation**

#### Town and Country Planning Act 1990

5. Section 171A of the Town and Country Planning Act 1990 sets out what constitutes a breach of planning namely:
  - (a) carrying out development without the required planning permission; or
  - (b) failing to comply with any condition or limitation subject to which planning permission has been granted.
6. Section 172 of the Town and Country Planning Act 1990 provides that a local planning authority may issue an Enforcement Notice where it appears to them that there has been a breach of planning control and it is expedient to issue the Notice, having regard to the provisions of the development plan and to any other material considerations.

## Greater London Council (General Powers) Act 1973 (as amended) and Deregulation Act 2015

7. The use of residential premises in Greater London as temporary sleeping accommodation involves a material change of use requiring planning permission by virtue of Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) (the 1973 Act) unless it benefits from the new exception introduced by the Deregulation Act 2015 which came into force on 26th May 2015.
8. Temporary sleeping accommodation is defined as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights and which is provided (with or without services) for a consideration arising either by way of trade for money or money's worth, or by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created.
9. Section 44 of the Deregulation Act 2015 creates a new section 25A of the 1973 Act which provides that the use as temporary sleeping accommodation of any residential premises in Greater London does not constitute a change of use, (for which planning permission would be required), if certain conditions are met. The conditions are set out in subsections (2) and (3) of section 25A.
  - (1) The first condition is that the total number of nights of use as temporary sleeping accommodation in the same calendar year, does not exceed ninety nights.
  - (2) The second condition is that the person who provided the sleeping accommodation must be liable to pay council tax.
10. If the two conditions in the new exception are not met use as temporary sleeping accommodation of residential premises involves a material change of use requiring planning permission.

### **Framework Policies and Guidance**

11. The relevant extracts are set out in Appendix 1.

### **Considerations**

#### Development and material alteration

12. The City Corporation in determining whether to take enforcement action must establish whether there has been a breach of planning control i.e. do the works amount to development and if so do they amount to a material change of use of the flats.

#### Evidence

- *Complaints* have been received. The evidence supplied by third parties is to the effect that the flats in question are used as temporary sleeping accommodation on an ongoing basis, well in excess of the 90 nights per calendar year permitted under the amended legislation. These assertions as to frequency and extent of occupation are in part supported by evidence of 'reviews' posted on web-sites. It is not however always possible to link each entry or review to a specific flat.

- *Independent inspection by officers* has not found anyone actually in occupation of any of the flats as short term lets and available for interview. But when an interview was carried out on site with a leaseholder the information gathered was found to be consistent with information as to occupation posted on the web-site and the sheer number of reviews would suggest a level of use potentially in excess of that permitted by law.
  - *On line searches* have been carried out by officers and provide evidence of occupation of various flats at 15 Trinity Square as short term lets. It is not always possible to link the lettings to specific flats.
  - *Planning Contravention Notices (PCN's)* –Interested parties were asked to provide information including the number of lettings that had taken place, the length of the letting, whether rent was paid, whether council tax was paid and whether there was any residential use between 1 January 2015 and 31 December 2015 and for the same period in 2016. The returns confirmed that flats 6, 9 and 15 were in use as short term lets for more than 90 nights per calendar year during these periods although there was some residential use by some of the leaseholders.
  - *Council tax* - At least one of the leaseholders at flats 6, 9 and 15 confirmed that they paid Council Tax and a check of the City Corporation records confirmed that this is the case.
13. On balance the evidence indicates that flats 6, 9 and 15 are being used as short term lets for more than 90 nights per calendar year. This activity therefore constitutes a material change of use falling within the meaning of development as defined by Section 55(1) of the Town and Country Planning Act 1990. This use therefore requires planning permission.
14. The principal issues in considering this development are the loss of residential, the effect on the amenity of permanent residents, security both in terms of the building and City wide and the impact on the building.

#### Loss of residential

15. In considering whether it is expedient to take enforcement action regard must be had to the provisions of the Development Plan, so far as material, and to any other material considerations (Section 70 Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compensation Act 2004).
16. The London Plan seeks to retain housing where possible and appropriate, except where there are acceptable plans for its replacement and to resist short term letting especially for holiday lets as this can result in a serious loss of housing.
17. The City of London Local Plan seeks to ensure that the net loss of existing housing units is not be allowed except where they provide poor amenity to residents which cannot be improved, they lack a separate entrance and large scale office development would be prejudiced by the retention of isolated residential units. It also seeks to resist the change of use of permanent residential accommodation to temporary sleeping

accommodation. The NPPF advocates that the housing needs of an area must be met.

18. The City's housing is concentrated around the edge of the City principally in four estates (the Barbican, Golden Lane, Middlesex Street and Mansell Street) plus Smithfield, the Temples, parts of the riverside (Queenhithe), Fleet Street (City West), Carter Lane and around Botolph Lane. Most residential units in the City are flats with one or two bedrooms. There have been a number of premises developed in the City specifically for temporary sleeping accommodation.
19. The City has a growing residential population currently comprising 9,000 residents. The GLA's 2015-based projections suggest that the City's population (including those with main homes elsewhere) will increase to over 11,000 by 2026. The City of London's 2016 Strategic Housing Market Assessment (SHMA) supports the need for additional housing in the City, including affordable units. The City Corporation's Housing Trajectory shows that the supply of small windfall sites, together with large sites in the development pipeline, will provide sufficient capacity to meet the London Plan annual average monitoring target of 141 additional homes over the period to 2026.
20. Within London short term let accommodation, to address visitor demand, reduces significantly the housing stock available for permanent residents. The 2011 Census found that 27% of the City's housing stock was not permanently occupied due to the combination of second homes and short-term lets. The 2015 changes in legislation surrounding short-term lets is likely to increase this figure making it harder for the City to meet the London Plan housing targets and therefore its role in delivering the increase in permanent homes that London needs.
21. In this context it is important that the local supply of housing is maintained as any loss will impact on the local housing supply and will set precedents. The breach involves the loss of 3 units of residential accommodation at least one of which comprises two bedrooms. The loss of this number of units should be considered in the context of the City's overall housing targets as set out in the London Plan. 3 units is equivalent to 2.13% of the City's annual housing target. The loss of the 3 units therefore reduce the City's housing stock and impact on the City Corporation's ability to meet housing needs.
22. The loss of 3 residential units is contrary to policies 3.3 and 3.14 of the London Plan which seek to increase the housing supply and to resist the loss of housing to short term provision (lettings less than 90 days) and policies CS21, DM 21.2 and 21.6 of the Local Plan which seeks to resist the loss of housing except where poor amenity is provided to residents which can't be improved and where they lack separate entrance and to resist the change of use of permanent residential accommodation to temporary sleeping accommodation. The NPPF also supports boosting the supply of housing.

#### Impact on the amenity of the occupiers and security

23. Both the London Plan and the Local Plan seek to protect the cumulative impact of individual developments on the amenity of existing residents

and to manage noise in order to improve the health and quality of their life. The NPPF also advocates this approach.

24. Complainants have been in regular contact with the City Corporation regarding the extent of use of the flats as temporary sleeping accommodation and the problem of noise disturbance, wear and tear of the building and security have been raised. Other issues raised such as increased financial expenditure, breach of the building insurance and lease, non-declaration of business rates and issues relating to service charges are not material planning considerations.
25. It is considered that the loss of residential to short-term lets has adverse consequences for the residential amenity of the long term residents in the building. People on holiday and business people have a markedly different lifestyle to residents. Short stay visitors often do not have the same consideration for neighbourliness or care of their accommodation as permanent residents. They are often unfamiliar with domestic arrangements, for example waste disposal and constant comings and goings with wheelie trollies can result in damage to the building. In addition this type of use often gives rise to an increase in noise disturbance. This can be generated by the increased comings and goings of numerous different people to the flats including families who are unfamiliar with the building and people congregating in the foyer. Some permanent residents feel that their amenity is diminished through noise and disturbance and that a sense of community in the building or neighbourhood is threatened by transient visitors. The Local Plan specifically seeks to resist temporary sleeping accommodation in mixed permanent residential accommodation within the same building for these reasons.
26. Security problems caused by transient occupants are a common concern both in terms of the building and the City. Both the London Plan and NPPF advocate a safe and secure environment. The Local Plan seeks to ensure self-containment in mixed uses to prevent problems with security, management and amenity and to ensure that the City is safe from crime disorder and terrorism by ensuring that security and safety measures are of an appropriate high quality design.
27. 15 Trinity Square is served by a main entrance fronting onto Trinity Square and a second entrance at the rear of the building leading onto Muscovy Street. The layout of the building does not lend itself to the self-containment of the four flats in question, therefore the building currently operates as a mixed use. Residents are increasingly concerned about the comings and goings of unknown persons and the increasing potential for security issues to arise. Whilst there is CCTV in operation this is not considered to be sufficient to eliminate the security concerns. There is a large turnover of unknown people coming and going from the building and no proper means of vetting all the individuals to determine whether they are a security risk. There is limited control of who comes and goes from the flats once occupied as there is no one permanently on site such as a concierge.
28. Security and safety are important to the quality of life of those who work, live and travel in the City and to protect its economic role. The premises



are situated within a short distance of the Tower of London which is a world heritage site and major tourist attraction, and within easy reach of the City's financial centre. It is therefore considered important that a high level of security is maintained.

29. The City of London Police has commented that they note the concerns of residents about 'unknown persons' at the flats and that this is typical of short term lets. They refer to the:

- Corporation of London Local Plan which highlights Safety and Security as of critical importance
- City of London Police Force Priorities
- Paragraphs 58 and 69 of the National Planning Policy Framework
- Section 17 of the Crime and Disorder Act 1998, as amended by the Police and Justice Act 2006
- Planning Inspectorate Note 953 2005

all of which stress a need to consider the likely impact on crime and disorder.

30. The Police are of the view that short term lets by their nature allow for unknown persons to locate in communities and occupy premises without security checks. Such premises are not visibly managed as they have no reception, security or concierge service. The absence of a suitable guardian causes issues for neighbours and public services when there is a need to contact a responsible owner of the premises in an emergency. They point out that short term lets have been used for parties with resultant noise, anti-social behaviour, crime and disorder and there is concern surrounding criminal activity in short term lets. Such crime includes prostitution and sexual offences, and a risk of the under-reporting of crime within such premises. Owners and the management of such premises are typically hard to reach and it is difficult to ensure that management of short lets are conducting checks on those occupying the premises in order to mitigate and reduce the risk of crime and disorder. (However, there is no suggestion of either parties or unlawful activities involved in the premises the subject of this report).

31. The use of the 3 flats as short term lets is therefore contrary to policies 7.3, 7.13 and 7.15 of the London Plan which seek to design out crime, maintain a safe and secure environment and reduce noise and Strategic Objective 5 and policies CS3, DM3.1, DM3.2, DM15.7, DM21.3 and DM21.6 of the Local Plan which seek to protect the amenity of residents, ensure improvements in their quality of life and to resist a mix of temporary sleeping accommodation and permanent residential accommodation within the same building and to ensure that the City is secure from crime, disorder and terrorism, ensuring that security and safety measures are of an appropriate high quality design, that security measures are applied to existing buildings and that there is self-containment in mixed uses developments. The NPPF also seeks to avoid noise giving rise to significant adverse impacts on health and quality of life and to create safe and accessible environments.

### Further Evaluation

32. It is acknowledged that both the loss of residential and the adverse impacts on amenity and security of residents will arise even where temporary lettings are lawful in that they do not exceed 90 nights per calendar year and that, in those circumstances, enforcement action may not be available. However, it is still considered appropriate to have regard to such impacts and to consider enforcement action to address them where this is within the City's powers, because this will assist in reducing the adverse impacts and loss of residential.

### **Negotiation**

33. Meetings have taken place with interested parties. Despite the City's attempts to find a solution three flats continue to be used for short term letting. Having regard to the Development Plan and to other material considerations it is considered expedient to take enforcement action.

### **Human Rights**

34. The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (right to peaceful enjoyment of possessions) and Article 8 (right to respect of private and family life) are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, regard should be had to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.
35. There must therefore be a balancing exercise between the public interest and the individual's rights. It would be proposed to allow at least four weeks for compliance, which is considered to strike a fair balance. In this case it is considered that any interference caused by enforcement action is proportionate having regard to the interests of affected permanent residents and the public benefits.

### **Equalities Act 2010**

36. The public sector equality duty applies and therefore due regard must be had to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between persons sharing a relevant protected characteristic and those who do not. It is not considered that acceptance of the recommendations will have a negative impact on any of those considerations.

### **Conclusion**

37. It would appear that without planning permission a material change of use has occurred. Having regard to the provisions of the development plan and the material considerations set out above, it is considered expedient to take enforcement action, under section 172 of the Town and Country Planning Act 1990, to remedy the breach of planning control for the reasons sets out in the report.

38. It is recommended to:

- (1) issue Enforcement Notices in respect of flats 6, 9 and 15, 15 Trinity Square ( the precise terms to be delegated to the Chief Planning Officer in consultation with the City Solicitor) to secure the cessation of the unauthorised use.
- (2) instruct the Comptroller and City Solicitor to serve copies on the owners and occupiers and any other persons having an interest in the land materially affected by the Notice.

### **Appendices**

- Appendix 1 – Relevant Policies and Guidance

### **Background Papers**

Email 18/11/16 City of London Police

Email 20/11/16 City of London Police