

**IN THE MATTER OF
15 GAYTON CRESCENT, LONDON NW3 1TT**

WENDY GALWAY-COOPER

Applicant

AND

LONDON BOROUGH OF CAMDEN

Respondent

**Applications for permitted development
2013/7485/P, 2013/7388/P and 2013/7395/P**

Submissions on behalf of local residents

1. On 30 September 2008, Mrs Galway-Cooper of 15 Gayton Crescent applied to Camden for permission to build a four storey rear extension across the back of the property. That application was, rightly, rejected by Camden. However, under the cover of scaffolding and tarpaulins, Mr and Mrs Galway-Cooper went ahead anyway, and built a four storey extension across the rear of the property.
2. Mrs Galway-Cooper now seeks, retrospectively, permission for that extension, arguing that it was complete by 30 September 2008, the very day her rejected planning application was filed.
3. In short, having been rejected, the building work went ahead anyhow. It is now sought to gloss over nearly five years of unapproved building works at the site, in a Conservation Area, directly overlooking Grade II listed Willow Cottages. Figures 1 and 2 below show a comparison of the rear of the property prior in August 2008 and then as it is now.



Figure 1 - Photograph taken by Council officer on 8 August 2008.



Figure 2 - Photograph taken on 9 January 2014.

4. At a DCC hearing on 23 May 2013, in relation to another (rejected) application to extend the building on three sides, Councillor Chung said:

“In all my years of experience helping residents on planning cases I have never seen such a blatant case of creeping planning development by stealth.”

5. Councillor Braithwaite said:

“I think it’s deplorable and as Councillor Chung has said this is planning creep in its worst guise.”

6. The present applications should be rejected, and enforcement action ordered to remove the unapproved building works and re-instate what was demolished.

7. It is important that Camden takes action to protect the Conservation Area and Grade II listed Willow Cottages, and to send a strong message that planning law cannot be flouted with impunity.
8. An inspection by building regulation officers (including internally) should also be ordered immediately.
9. The history of the site, and two earlier planning applications, is set out in local residents' 14 page submission (with 13 annexures) in relation to 2012/0529/P and 19 page submission (with 12 annexures) in relation to 2013/1031/P, which are incorporated herein by reference.
10. The present three applications have been submitted by Mrs Galway-Cooper. Land Registry records (attached as Annex 1) show that the property has been owned since 2007 by Mr Phillip Galway-Cooper and Mrs Wendy Galway-Cooper. The applications should therefore have been submitted in the names of both owners. Indeed, Mr Galway-Cooper is the person most actively responsible for the works. Mr and Mrs Galway-Cooper are therefore collectively referred to herein as **the Householders**.
11. This submission is supported by a witness statement of Dr Anne Frances Swain, a direct neighbour at 41 Willow Road, who provides evidence of the dates of the photographs shown in Figure 3, Figure 4, Figure 5, Figure 16, Figure 17, Figure 18, Figure 19, Figure 20 and Figure 24.
12. After the following brief summary, these submissions:
 - First review the requirement for full and frank disclosure in applications of this type, concluding that the obligation has not been met;
 - Next, submit that there has been one extension, not three: the three applications should be dealt with as one;
 - Then describe in detail the changes that have taken place at the property, as shown on the submitted drawings and from photographs of the site;
 - Then list the reasons why the 1995 Order and the 2008 Order cannot apply; and

- Conclude with a review of the law on “substantially completed” and why the Householders cannot benefit from the four year rule because they have actively covered up what they have done.

Introduction

13. There is so much wrong with these three applications that it is difficult to know where to start.
14. Section 194 of the Town and Planning Act creates a criminal offence for false or misleading applications for a certificate of lawfulness. There are so many errors and omissions in the applications that they could be rejected on that ground alone.
15. In any event, the evidence for each of the three applications is identical. Under law, they should be treated as a single application for a single piece of building work (**the Extension**).
16. Treated as a single Extension, the substantial work undertaken at the property is clearly not “permitted development” under either **the 1995 Order**¹ or **the 2008 Order**². It therefore does not matter whether works were commenced prior to 1 October 2008 or not – a four storey rear development like this cannot be permitted development under either the 1995 Order or the 2008 Order.
17. Even treated as three separate developments (which we submit is the wrong approach):
 - the Householders submit that both **the Rear Extension**³ and **the Staircase Extension**⁴ were permitted by the 1995 Order under Schedule 2 Class A. They were not: there was an alteration to the roof of a dwelling house on Article 1(5) land. The Extensions also fail on a number of other grounds; and
 - the Householders submit that **the WC Extension**⁵ was permitted under the 2008 Order Schedule 2 Class A. It was not: it is in reality an incomplete two storey extension, and is too high, and too close to the boundary.

¹ The Town and Country Planning (General Permitted Development) Order 1996, Schedule 2, Part 1.

² The Town and Country Planning (General Permitted Development)(Amendment)(No 2)(England) Order 2008, Schedule, Part 1.

³ 2013/7388/P.

⁴ 2013/7395/P.

⁵ 2013/7485/P.

18. As a fall-back position, Mrs Galway-Cooper swears in an Affidavit that if none of the work was permitted under the 1995 Order, it was “substantially completed” by 30 September 2008 and hence no enforcement action can be taken because of Section 171(B)(1) of the Town & Country Planning Act. Photographs taken by a Council officer show that work had not commenced on 8 August 2008. Dr Swain’s photographs show that work had not commenced by 7 September 2008. It is laughable to suggest that work was complete within three weeks. As a question of fact, the Extension was not “substantially completed” by 30 September 2008. The Householders filed an application for planning permission on the very day they say the work was completed – 30 September 2008 – and the drawings for that application show none of the work as extant or even begun. Dr Swain’s photographs from October 2008 show the works not complete. The works were not completed until recently (if indeed they are complete now), and, in any event, have been intentionally concealed under scaffolding and tarpaulins and hence cannot benefit from Section 171(B)(1).
19. The applications should be refused, and enforcement action taken to have the unlawful Extension removed and the lean-tos reinstated. The Extension is harmful to the Conservation Area, and to adjacent Grade II listed Willow Cottages.

A brief chronology

Date	Action
13 February 2007	Householders purchase the property.
27 June 2008	Householders file Application 2008/3118/P for a Lawful Development Certificate for two rear lean-tos.
July/August 2008	Initial dates of construction given by Householders to Gary Bakall in April 2013.
1 August 2008	First invoice, promising completion of extension by end of August.
8 August 2008	Elizabeth Beaumont photographs the site and notes no building works underway.
14-21 August 2008	Mrs Galway-Cooper now says work commences.
19 August 2008	Council grants 2008/3118/P under Section 191 of the Town and Country Planning Act 1990 on the advice on Elizabeth Beaumont.
7-13 September 2008	Dr Swain’s photographs show no work commenced.
15 September 2008	Application made for exemption from council tax on the basis that the property is uninhabitable.
30 September 2008	Householders’ file Application 2008/4730/P for “creation of a rear extension in accordance with plans and drawings enclosed”. This is a four storey rear extension, encompassing the Rear Extension, the Staircase Extension and the WC Extension. Plans submitted show no work underway.
30 September 2008	Householders now say that all work on the Rear Extension and Staircase Extension complete.

6 October 2008	Dr Swain's photographs show work on Staircase Extension and Rear Extension not complete.
28 October-11 November 2008	Dr Swain's photographs show work on Staircase Extension and Rear Extension not complete.
24 December 2008	Application 2008/4730/P for a three storey rear extension refused. The building is then encased in scaffolding and the Extension built.
14 September 2009	Property removed from ratings for council tax purposes.
9 February 2012	Householders file Application 2012/0529/P to extend the building on three sides – later withdrawn after objections.
10 July 2012	Gary Bakall reports "the rear elevation is untouched".
22 February 2013	Householders file application 2013/1031/P to extend the building on three sides.
5 April 2013	Gary Bakall told that the works took place in July and August 2008.
23 May 2013	DCC rejects 2013/1031/P. Householders then appeal to PINS.
3 September 2013	Property deemed inhabitable – council tax begins to be paid.
19 November 2013	These three applications filed at the request of Camden.
December 2013	Scaffolding finally comes down.

The statutory duty of full and frank disclosure has not been met

20. Because of the retrospective nature of Section 191 applications, a special burden is placed on applicants to tell the whole truth. Section 194 of the Town and Country Planning Act (as amended) provides:

"If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 191 or 192—

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

he shall be guilty of an offence."

21. The penalty includes a fine up to £5,000 (on summary conviction) or, on conviction on indictment, up to two years' imprisonment or a fine or both. In other words, it is considered a serious offence.

22. The requirements of Section 194 are separate – it is an offence:

(a) knowingly or recklessly to make a statement which is false or misleading in a material particular;

Or

(b) to use any document which is false or misleading in a material particular, with intent to deceive;

Or

(c) to withhold any material information, with intent to deceive.

23. The Council is invited to consider whether the Householders have fulfilled this high burden on applications under Section 191, including the burden not to withhold material information. In other words, if the Householders have documents or information that contradict their position, they are required by law to present them. In particular, consideration should be given to:

- The application being submitted in the name of Mrs Galway-Cooper, when Mr Galway-Cooper equally owns the property, and has day to day carriage of the renovations (see paragraphs 10 and 59);
- The inaccurate parts of the application, including the failure to mention the demolition of the chimney stack, the installation of an antenna and satellite dish, the installation of a bathroom in the Rear Extension, and other works set out at paragraph 39;
- The failure to provide documents that should be available if the works had proceeded as Mrs Galway-Cooper submits (see paragraph 71);
- The incompatibility of the Householders' 2008 (rejected) application and the current applications – they both cannot be correct (see paragraphs 64 and 65);
- The incompatibility of Dr Swain's photographs taken in September and October 2008 with the sworn statement that the Rear Extension and the Staircase Extension were completed by 30 September 2008 (see Figure 3, Figure 4, Figure 5 and Figure 24); and

- The obfuscatory comments made by the Householders to Council officers (see particularly paragraphs 101, 103 and 112).

24. It is submitted that these failures are sufficient grounds to reject the three applications.

There is only one rear extension

25. On 30 September 2008, the Householders filed planning application 2008/4730/P for a four storey rear extension. It was rejected by Camden. The Householders did not appeal, but went ahead and built it anyway under the cover of scaffolding and tarpaulins.

26. That 2008 application has now been split into three separate applications, made retrospectively:

- 7388 for the Rear Extension;
- 7395 for the Staircase Extension; and
- 7485 for the WC Extension.

27. The House of Lords urged an holistic approach to planning law in *Sage v Secretary of State for the Environment* [2003] UKHL 22 at paragraphs 24 and 25. This was summarised by Mr Justice Silber in the High Court in *Nestorova-Goremsandu v Secretary of State for Communities and Local Government* [2010] EWHC 793 (Admin) as:

*“If a building operation for which planning permission is granted is not carried out, both externally and internally, fully in accordance with the planning permission, **the whole operation is unlawful.**”* (emphasis added)

28. It is therefore submitted that the three applications for the whole rear extension should be treated as a single application for one Extension.

29. It is what the Householders applied for in 2008/4730/P on 30 September 2008 (see Annex 5), and, despite that being rejected by the Council, went ahead and built anyway. The 2008 application included:

- building work on four floors;

- at the south east of the property, demolition of the bathroom lean-to to be replaced by a three storey brick structure, housing a bathroom on the first floor, and topped by a balcony, accessed through French doors piercing the chimney breast; and
 - relocation of the staircase to the central protrusion, and an additional 2 floors added, with a slate roof extension to cover it.
30. This description also fits what has now been applied for in the three separate applications.
31. Breaking the Extension into three pieces may be done for tactical reasons, and does not reflect the reality of what was intended, or the Householders' previous representations to the Council, or the actuality of what was built.
32. It should also be noted that the so called three extensions share several walls – the Rear Extension shares a wall with the Staircase Extension, which shares a wall with the WC Extension. The WC Extension is newly accessed through the Staircase Extension. This is an interlocking, single development built at one time (albeit over several years).
33. Interestingly, in paragraph 7 of her Witness Statement, Mrs Galway-Cooper refers to the cubic meterage of all the Extensions taken together. This is the correct approach. The Householders' approach would make a nonsense of planning law, as it would allow developers to carve developments into little bits, each of which could attempt to sneak through under separate particular exceptions.
34. In any event, as set out below, the individual applications also fail if taken separately.

Images of the rear of the property prior to the unapproved work

35. The following images from 2008 show the rear of the property prior to the unapproved work.



Figure 3 – Dr Swain’s photograph P1011730 of the rear of the property taken between 7 and 13 September 2008 from Willow Cottages showing the two lean-tos either side of the central protrusion. They are simple hut or shed-like structures, subordinate to the main dwelling.



Figure 4 – Dr Swain’s photograph P1011728 (digitally “brightened”) of the south end of the property taken from Willow Cottages between 7 and 13 September 2008. The roof of the southern lean-to bathroom block can be seen.



Figure 5 – Dr Swain’s photograph P1011729 (digitally “brightened”) taken from Willow Cottages between 7 and 13 September 2008. The small scale nature of the southern lean-to is apparent.



Figure 6 - Photograph taken by Council officer from Willow Road on 8 August 2008. Only the two storey central protrusion can be seen from this view. Note the distinctive decorative concrete blocks at the top.



Figure 7 - Photograph taken by Council officer on 8 August 2008. The northern lean-to is visible on the right and the window of the southern lean-to on the left.



Figure 8 - Photograph taken by Council officer on 8 August 2008.



Figure 9 - Photograph taken by Council officer on 8 August 2008 from Willow Road, looking along the 15 Gayton Crescent side of the boundary wall with 41 Willow Road. Note in particular the gap between the wall and the building, which has since been built out. 41 Willow Road is visible.

36. These photographs clearly show the subordinate nature of the two lean-tos, and even how comparatively small the central protrusion was compared to the rest of the house. The photos also show how symmetrical the rear was, prior to the Extension.
37. It is important to note that the Council's photographs date from 8 August 2008, and Dr Swain's from a month later – between 7 and 13 September 2008.

Substantial work has been undertaken

38. To understand properly the work that has been carried out, it is helpful to review the images at Annex 6.
39. These show:
 - The two rear lean-tos have been demolished. The southern lean-to housed a bathroom with a bathtub. The northern lean-to housed a garden shed but was accessible from within the house as well as through an exterior door. These lean-tos were built much earlier. The Householders applied for a certificate of permitted development for these two lean-tos on 27 June 2008 (which was

(rightly, it is submitted) approved). They are still shown as existing on the drawings filed with (rejected) planning application 2008/4730/P dated 30 September 2008;

- On the lower ground floor:
 - The window on the north wall has been removed;
 - The bathroom in the lean-to has been removed;
 - The wall of the former house has been removed (including the chimney breast) to enlarge the family room over the site of the former lean-to bathroom;
 - The internal wall between the family room and the hallway has been removed;
 - A new double door has been inserted through the new external wall, close to the curtilage boundary wall;
 - The toilet in the central protrusion has been removed, and the window above it;
 - The staircase has been moved into the Staircase Extension;
 - The rear entrance to the northern lean-to (shed) has been removed, and what was a modest shed has been replaced by a substantial brick structure, right up to the curtilage boundary wall (there used to be enough room for a gate (see Figure 9 – it now touches the boundary wall));
 - The kitchen has been moved from the south of the building up one floor then back down to the lower ground floor, but at the northern end;
 - A window in the kitchen has been removed; and
 - The pipes shown in Figure 3, Figure 4, Figure 5 and Figure 8 have been moved or removed;

- On the ground floor:
 - The reception room at the south has been extended considerably towards the rear of the property, and the rear wall of the building has been removed (including removing the chimney breast). The new construction has a considerably larger footprint than the former single storey southern lean-to;
 - A blind window has been inserted in the Rear Extension on this level. Although it appears to be made of brick, it is of plaster or concrete, with the brick lines drawn in by hand. This can be readily seen here:



Figure 10 - Photograph taken of the rear of the property on 29 December 2013. Note the lower blind window is made of plaster or concrete with the brick lines hand-drawn. Note also the two extractor fans either side of the upper blind window.

- A real concern exists that an attempt will be made to glaze this window, looking from the main reception room of the property directly into the fronts of Willow Cottages;
- The staircase has been moved; and
- An application has been made to build a further storey over the north lean-to (now the WC Extension);
- On the first floor:
 - The southern bedroom has been extended several metres towards the rear curtilage boundary. As is apparent from Figure 10, two extractor

fans have been fitted, as well as plumbing for this space (Figure 23). Whilst no request has been filed for permission to turn this into an ensuite bathroom, that appears to be what is intended, and, indeed, this space is indicated as a bathroom on the plans for the (rejected) 2008 application (Annex 5). It is submitted that the Householders intend to convert this room into a bathroom, and may already have done so;

- The staircase has been moved into a new Staircase Extension, and a window inserted to the rear; and
- A bathroom has been inserted at the front of the property, visible from the street;
- On the second floor:
 - A new balcony has been built on top of the Rear Extension, accessed through new double doors which pierce the chimney breast. The balcony includes a black metal railing not in keeping with the remainder of the house;
 - The staircase has been moved into a new Staircase Extension, and a window inserted to the rear; and
 - A new bathroom has been inserted at the front of the house, visible from the street.

In addition, several changes are not highlighted on the plans:

- The kitchen has been moved;
- The demolition and rebuilding of the southern chimney stack as seen in Figure 22;
- The installation of an antenna and satellite dish on the southern chimney stack as can be seen in Figure 12;
- The closing in of the skylight in the centre of the roof (see Figure 11 and Figure 13);
- An extension of the roof over the Staircase Extension, including removal of decorative brickwork under the eaves (see Figure 27); and
- A new skylight inserted in the new roof over the Staircase Extension.

The 1995 Order does not permit the Extension

40. In order to take advantage of the 1995 Order, the work must have been commenced prior to 1 October 2008, and meet the requirements of Schedule 2. The

Householders say that they consider that the works meet Class A.1(a)(i), and were “substantially completed” by 30 September 2008.

41. It should be remembered that the burden is on the Householders to demonstrate that the works comply with the 1995 Order. There is a requirement of disclosure: material information must not be withheld with an intent to deceive.
42. The Householders appear to suggest that the work need only meet the cubic meterage requirements of Class A.1(a)(i). Legally, this is not the case - Schedule 2 is cumulative. It is not sufficient that the Householders meet any one of the provisions – they must meet all of them. Hence, it is not enough that the Extension meets the cubic meterage requirements – the Extension must meet all of the requirements in (a) to (f). The alternative position would make a nonsense of Class A – if what the Householders contend is correct, they would be entitled to a 70 metre tall tower at the rear of the property, so long as it was only one metre square (and hence only 70 cubic metres).
43. It should be remembered that Class A was specifically drafted to allow only minimal building work without planning permission – hence it is restrictive, and, in a Conservation Area, difficult to fall within. It allows only small extensions, and removes from permitted development anything that involves changes to rooflines, installation of satellite dishes and the like. It must be strictly interpreted – the legislation provides no discretion to designate work as “permitted development” if the criteria are not met. This is particularly the case in this instance, because the lie of the land is such that the rear of the property is not hidden from the street, but is clearly visible from Willoughby Road and Willow Road, and looms over Grade II listed Willow Cottages (see Figure 33 and Figure 34).
44. The Householders appear to suggest that planning officer reports dated 19 April 2013 and 10 May 2013 “deem” the works permitted development. It should be remembered that the finding of officers on the basis of limited information cannot override the Act. The Council is required to make its own decision based on the evidence.
45. First, it is not accepted that the Householders’ submitted meterage readings are accurate – Council is requested to have them recalculated, given how close the Householders are at 8% to failing the 10% maximum. The (rejected) 2008 application suggested 819.71m³ (see Annex 5).

46. Second, the Extension fails to meet Class A.1(d), because “the part of the building enlarged, improved or altered would be within 2 metres of the boundary of the curtilage of the dwelling house and would exceed 4 metres in height”. As is clear from the plans submitted by the Householders, the Extension touches the curtilage wall with Grade II listed Willow Cottages, and the Extension is approximately 12 metres high. Both the Rear Extension and the Staircase Extension are also each within 2 metres of the boundary and more than 4 metres in height.
47. Third, the Extension fails to meet Class A.1(f), because it includes the installation of a satellite antenna. This is not shown on the drawings submitted by the Householders, but has clearly taken place. Below is shown a picture of the roof-line at the rear of the property taken before the works began (Figure 11), and a photograph taken on 29 December 2013 showing a satellite antenna in place (Figure 12). It is placed on the same chimney that has been subject to the works shown in the Rear Extension, and is part of that development (see also Figure 22).



Figure 11 - Photograph of the rear roof of the property taken before the works began. There is no satellite dish or antenna shown on the left hand chimney in the background. Note also that the skylight has now been removed.



Figure 12 - Photograph taken on 29 December 2013 from Gayton Crescent showing satellite antenna and dish for which no approval has been sought or given. The railing of the new balcony on the second floor is also shown.

48. In relation to the satellite dish, Camden's guidance is clear – permission is needed to affix a satellite dish if (among other things):
- the associated house is covered by an Article 4 direction; or
 - the associated house is located within a Conservation Area and the dish will be fixed to a chimney or be visible from the road.
49. Both apply here – 15 Gayton Crescent is covered by an Article 4 Direction, and the house is within a Conservation Area, and the dish is fixed to a chimney *and* visible from the road, as the photograph above taken from Gayton Crescent shows.

50. Fourth, the extension fails to meet Class A.1(h), because it “consist[s] of or include[s] an alteration to any part of the roof”. As is clear from Drawing Upper Floors (30 June 2008) submitted by the Householders (Figure 13), the roof of the property used to be exactly rectangular, and include a skylight, circled in red.

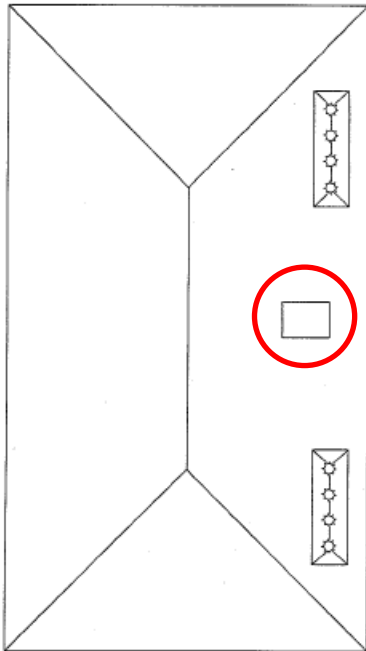


Figure 13 - Drawing Upper Floors (30 June 2008) showing rectangular roof and skylight.

51. Comparing this to Drawing Upper Floors (30 September 2008) (Figure 14), the roof of the building has been altered to include a substantial protrusion over the Staircase Extension, pierced by a skylight. The original skylight has been filled in.

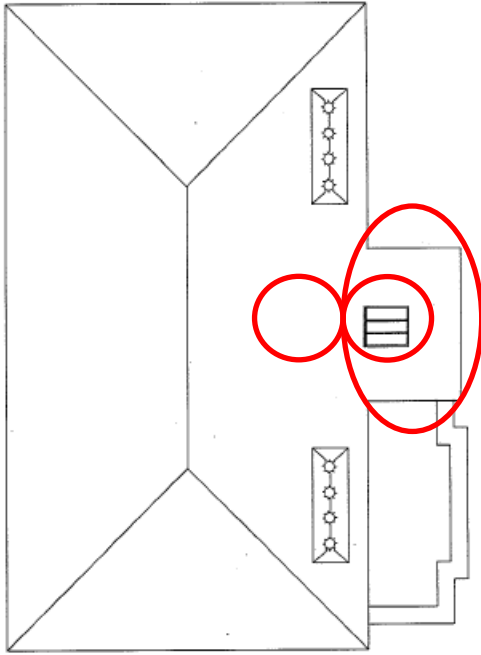


Figure 14 - Drawing Upper Floors (30 September 2008) showing current state of roof, showing significant extension of slate roof, filling in of old skylight and new skylight.

52. Similar facts were before the Minister in App/X/94/X5990/002126, reported at [1995] JPL 450. In that case, “the proposal involved the removal of the flat roof from the single-storey rear part of the house and its upward extension under a new pitched roof to be connected into the main roof”.
53. These are almost identical facts to the present case. In the earlier case before the Minister, the alteration described in the paragraph above was held to be an alteration to the roof. Thus, as there has, under law, clearly been an alteration to the roof at 15 Gayton Crescent, the Householders are not able to take advantage of Class A.
54. Therefore, the Extension, even if it was commenced prior to 30 September 2008, fails to meet three or potentially four of the requirements of Class A.
55. The Householders also cannot take advantage of Class B – which permits development including an alteration to the roof – because Class B does not permit development if the dwelling house is on Article 1(5) land. 15 Gayton Crescent is on Article 1(5) land, being in a Conservation Area.
56. Even if the Rear Extension and the Staircase Extension were to be treated separately (which we submit is the wrong approach), then the Rear Extension and the Staircase Extension each fail to meet the requirements for Class A development:

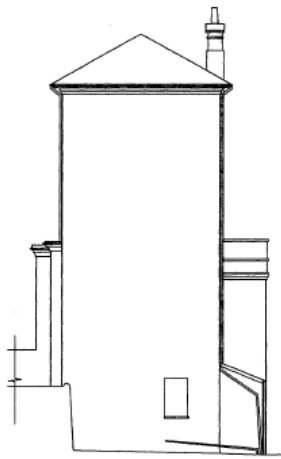
- The Staircase Extension (increasing the height of the central protrusion by two storeys) involves an alteration to the roof, and therefore fails because of Class A.1(h) and Class B.1(e) – it was simply not permissible under the 1995 Order to alter the roof of any dwelling in a Conservation Area, without permission. It is also within 2 metres of the curtilage wall, and is 12 metres in height (Class A.1(d)); and
- The Rear Extension (building out the south end of the building on three storeys and creating a new balcony) is also within 2 metres of the curtilage wall, and exceeds 4 metres in height (Class A.1(d)), and it includes a satellite antenna (Class A.1(f)).

The work was not substantially complete by 30 September 2008

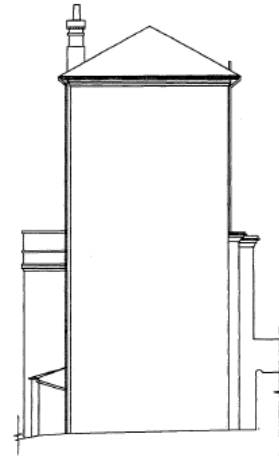
57. Because the Extension does not meet the requirements of either the 1995 Order or the 2008 Order, when the works were commenced does not matter. However, as the Householders submit that the Rear Extension and the Staircase Extension were substantially completed by 30 September 2008, that inaccurate submission is dealt with here.
58. It should be remembered that the burden of proof rests on the Householders to demonstrate what they assert – that the works were substantially completed by 30 September 2008. There is also a duty to provide relevant information.
59. The evidence consists of an affidavit from Mrs Galway-Cooper. As noted above, she is one owner of the property – the joint owner is Mr Galway-Cooper, who has been largely responsible for the building works, who liaises regularly with the builders, is often on site and who attended (alone) the DCC hearing in relation to 2013/1031/P on 23 May 2013. The Council is entitled to draw an inference as to why the affidavit and indeed the three applications have not been made by the person largely responsible for the building works.
60. The state of the property at the time it was purchased by the Householders can be seen from the Benham & Reeves sales brochure (Annex 3) and the rejected application for planning consent to convert the property to a childcare centre filed by the previous owners in 2007 (Annex 2). It is also apparent from the application for a certificate of lawful development filed by the Householders in 2008 to regularise the

two lean-tos (Annex 4). These three sets of documents give a good picture of the state of the property before the Householders' work began.

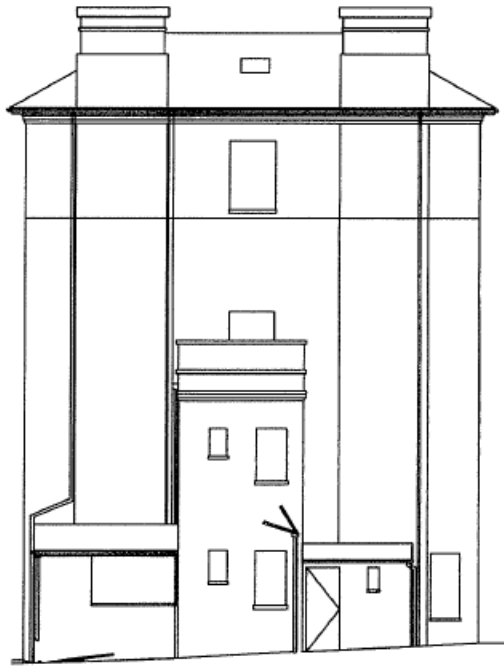
61. The external state of the rear of the property is also known from a series of photographs taken by a Council officer on 8 August 2008 (see Figure 1, Figure 6, Figure 7, Figure 8 and Figure 9).
62. The external state of the rear of the property on or about 7 to 13 September 2008 is also known from Dr Swain's photographs (Figure 3, Figure 4 and Figure 5).
63. The state of the property on 30 September 2008 is also known, because the Householders submitted that day a planning application, 2008/4730/P, which showed "existing" drawings, dated "Sept 2008" as follows - Figure 15 (see also Annex 5):



south flank elevation



north flank elevation



EXISTING REAR ELEV'

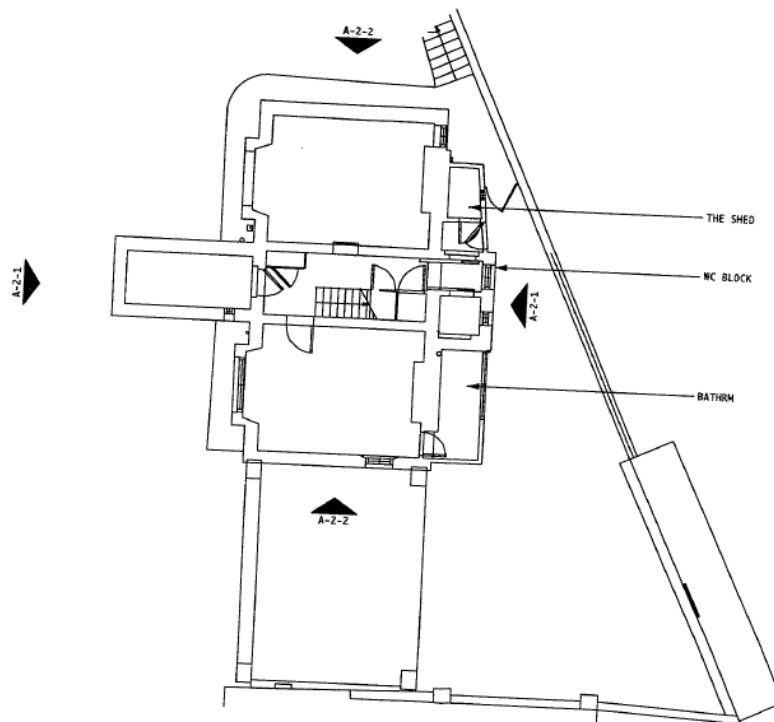


Figure 15 - Images taken from 2008/4730/P. Note the two lean-tos or huts. The subordinate central protrusion is only two storeys.

64. As is apparent from these drawings, by the Householders' own submission on 30 September 2008 (when they now say all the work had already been completed), the

two lean-tos at the rear of the premises were still standing, and the central protrusion was only two storeys high. The staircase was still in the main body of the building – it had not at that time been moved to the Staircase Extension, which had not been built. According to these drawings, work had not begun. Indeed, the letter submitted with the applications dated 30 September 2008, says:

“The grounds for the application are that the property has a central two storey rear projection flanked by a pair of single storey rear projections.”

Note the use of the present tense.

65. It is not possible to reconcile this statement and these drawings from 30 September 2008 with the drawings recently submitted as allegedly showing the property at 30 September 2008: it cannot now be said that the Rear Extension and the Staircase Extension were substantially complete by 30 September 2008 if they were not shown as “existing” on a planning application submitted that very day. It is submitted that the contemporaneous documents are to be preferred – the position on 30 September 2008 was as the Householders said on that day, not how they now, 5 years later, say it was on that day. The contemporaneous drawings show no work had begun by 30 September 2008, let alone been completed.

66. The following photographs show the state of the rear of the property in October 2008:



Figure 16 - Dr Swain's photograph PA160049 taken on 16 October 2008 showing work underway on the Rear Extension (under the scaffolding), but not yet commenced on the Staircase Extension. The northern lean-to is still standing.

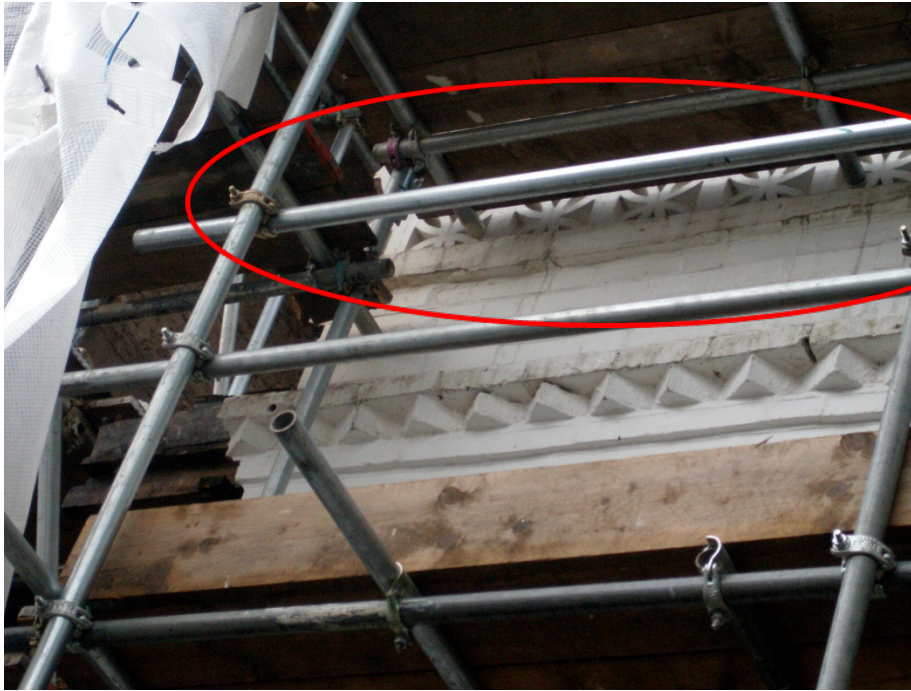


Figure 17 - Dr Swain's photograph P1012271 taken between 28 October and 11 November 2008 showing the decorative brickwork and distinctive decorative concrete blocks on the central protrusion still in place - it had not been demolished by then.



Figure 18 - Dr Swain's photograph P1012270 taken between 28 October and 11 November 2008 showing that the Staircase Extension has not yet been built. The decorative concrete blocks at the top of the old central protrusion are still in place. The roof has not yet been extended, and the decorative brickwork under the eaves is still in place.



Figure 19 - Dr Swain's photograph P1012268 taken between 28 October and 11 November 2008 showing the then existing central protrusion at ground floor level. The jagged brick work is to accommodate the Rear Extension connecting to the central protrusion (Staircase Extension).



Figure 20 - Dr Swain's photograph P102266 taken between 28 October and 11 November 2008 showing the un-built Rear Extension (under the tarpaulin) and the decorative concrete blocks not yet removed to build the Staircase Extension.

66. As is apparent from these photographs, contrary to the Householders' sworn affidavit, the Rear Extension and the Staircase Extension had not been substantially completed by 30 September 2008. They were underway by late October 2008, but not complete.
67. Mrs Galway-Cooper's recollection of events is also troubling. She suggests that, having received an invoice for digging trenches on 1 August 2008, work began two or three weeks later (this is also contrary to representations made to Council officers in 2012 that the works began in July 2008 – see paragraph 74). Then in five or six weeks, a four storey extension was allegedly complete – with the slate roof being

invoiced on 4 September 2008, and internal ceilings being invoiced on 15 September 2008, including the installation of light-fittings. As Dr Swain's photographs show, by 7 September 2008, no work on the Extension had been begun.

68. Looking at the 1 August 2008 invoice, it is also fair to say that a builder promising in writing that work will be "completed by the end of the month" is most unusual. In the event, the building was finished by the end of August, or, according to Dr Swain's photographs, even begun.
69. The invoice dated 19 September 2008 is curious because it refers to "repair and refurbish" of the staircase. In reality, the staircase was moved a few metres towards the rear of the property and completely rebuilt, so the reference of "repair and refurbish" does not seem to reflect what actually happened.
70. Below is the floor plan of the property as shown in the sale brochure produced by Benham & Reeves (Figure 21) – only lower ground and ground floors shown here (see also Annex 3).

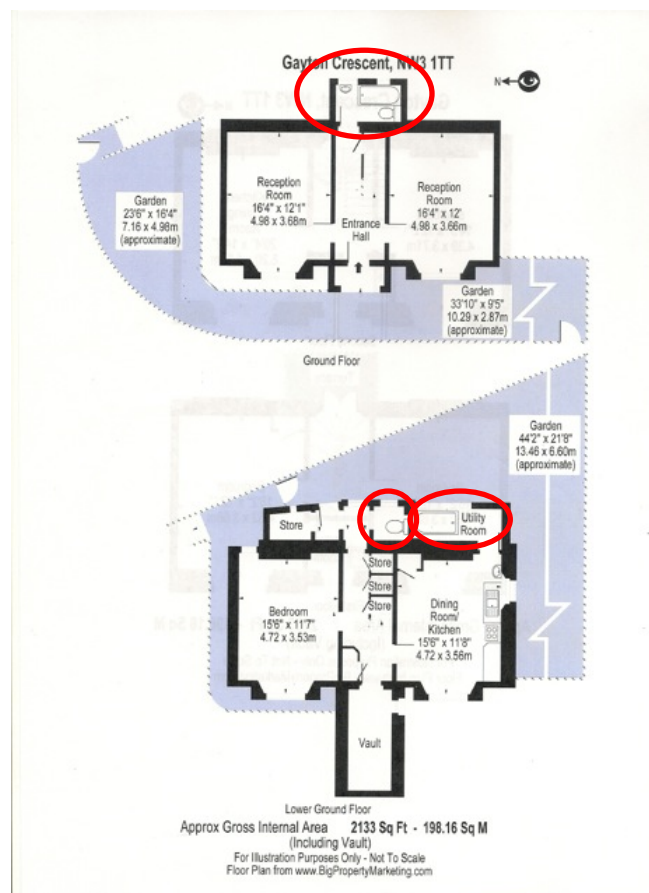


Figure 21 - Floor plan for the property from 2007, showing separate bathroom and toilet on the Lower Ground floor at the rear, and a full bathroom with toilet on the ground floor at the rear.

71. If, as the Householders suggest, the Rear Extension and Staircase Extension were complete by 30 September 2008, then there ought also to be invoices for other parts of the building work that would have been necessary to take the property from the state shown in the sales brochure to the current position:
- Fitting windows in the 3rd and 4th floors of the Staircase Extension;
 - Removing the WC and bath-tub on the lower ground floor and the bathtub and WC on the ground floor – indeed, the lower ground floor bathroom is noted in the Householders’ application 2008/4730/P as a “bathroom block”;
 - Moving the external pipes, including the soil pipe shown in Figure 1 that has been moved several metres from the rear of the building to the south side of the building;
 - Moving the kitchen;
 - Inserting a skylight in the slate roof over the Staircase Extension;
 - Removing the main-wall of the house (including the chimney breast) on the lower ground, ground and first floors to enable the Rear Extension;
 - Supplying and fitting the double doors at lower ground floor level; and
 - Fitting the new plumbing and two extractor fans to the first floor main bedroom to create an en suite bathroom.
72. As the burden of proof rests with the Householders who also have a duty of disclosure, the inference may be drawn that if invoices were not provided at this stage, they do not exist. It is submitted that the work had not been undertaken.
73. There is also no invoice for the balance of the works, to be paid on completion. The inference may therefore be drawn that the invoice shows completion long after 30 September 2008.
74. The Householders’ current version of events is also contradicted by earlier comments made to the Council. On 5 April 2013, Gary Bakall wrote:
- They have responded to a planning contravention notice stating that the works to the taller extension were carried out in July & August 2008 and the works to the single storey extension in early 2009, they had supporting evidence in the form of invoices from this date.*
75. This directly contradicts the current Householders’ position that the works were undertaken in late August and September 2008.
76. Further, on 11 November 2013 Elizabeth Beaumont wrote:

“Rear extension

The owner stated that they intended to submit a certificate of lawful development application for the works to the rear of the property. This was on the basis that extensions have been in place for more than 4 years. The owner was given an opportunity to gather their evidence and submit the application. So far, an application has not been submitted and therefore a final warning was sent to the owner giving them until the 13th November.

Although they have not submitted a formal application the owners have provided an affidavit and bank statements to support their argument that the extensions were substantially completed more than 4 years ago. We have reviewed this information with our legal team and what evidence we have to confirm the age of the extension. At this stage, it is considered that the evidence provided by the owner does not, on the balance of probability confirm that the extensions have been in place more than 4 years.

Accordingly, if a formal application is not received then enforcement action will be taken. An enforcement notice will be served on the owners to require the removal of the elements of the rear extensions which are considered to be harmful.”

77. No mention is made here of permitted development under the 1995 Order, which one would expect if that had been the Householders’ real position.

The 2008 Order does not permit the Extension

78. If the works were not commenced prior to 30 September 2008, then the 2008 Order applies. As noted above, it doesn’t matter, because the Extension is clearly not permitted development under the 1995 Order or the 2008 Order. Again, Class A is a set of cumulative requirements – the Householders have the burden of proving that they meet all of them. The 2008 Order is more restrictive than the 1995 Order: it is harder to meet.
79. First, the Extension fails Class A.1(f), in that the Extension is within seven metres of the curtilage wall with Grade II listed Willow Cottages, and the Extension has more than one storey.
80. Second, the Extension also fails Class A.1(g), in that the enlarged part of the dwelling house is within two metres of the boundary of the curtilage, and the height of the eaves of the enlarged part exceeds three metres.
81. The extension also fails Class A.1(i), in that it:
- includes a “veranda, balcony or raised platform”;

- includes “the installation, alteration or replacement of a microwave antenna” – see the comments at paragraph 47 above;
- it includes work on a chimney. Figure 11 shows the southern chimney before work began. The following photograph, taken at 4:15 pm on 28 February 2011, shows the southern chimney missing altogether. It has therefore been completely demolished and since rebuilt.



Figure 22 - Photograph taken from Willoughby Road on 28 February 2011 showing southern chimney demolished.

- also, to drive the double doors through to the balcony on the second floor; the chimney breast has been pierced. The chimney breast has also been completely removed on the lower ground, ground and first floors. Please also see the Householders’ comments about chimney lining referred to at paragraph 101;
- it includes the alteration to a soil and vent pipe - the soil and vent pipe has been moved from the right hand side of the southern chimney on the rear of the building (shown in Figure 1) so that it is now on the southern side of the building, shown here:



Figure 23 - Photograph taken on 29 December 2013 from Gayton Crescent showing the side of the Rear Extension. The soil/vent pipe (on the right) is new (as are the bricks to which it is attached). Note also the balcony railing. Note that the soil pipe vents directly under a balcony outside double doors i.e., effectively into a bedroom of the property.

- and it includes the alteration to any part of the roof: see paragraph 50 above.
82. Third, the Extension is not permitted by Class A.2(c), because 15 Gayton Crescent is on Article 1(5) land (a Conservation Area) and the Extension has more than one storey.
83. Fourth, the Extension fails Class B.1(d) and (e), because there is a balcony, alteration to a chimney/soil pipe, and the dwelling house is on Article 1(5) land.
84. Fifth, the Extension fails Class C.1(c)(i) (see paragraph 81 above re the chimney and soil pipes).
85. Therefore, it is submitted that regardless of when work on the Extension commenced, it was not permitted development under either the 1995 Order or the 2008 Order. When precisely it commenced is therefore irrelevant.

86. The Householders suggest that the WC Extension is separate, and hence can squeeze in as permitted development. As set out above at paragraph 25 and following it is sophistry to carve out the WC Extension as a standalone development.
87. First, it is part of the Extension – just another part of the Householder’s single grand plan for the rear of the building. It is accessed through the Staircase Extension.
88. Second, the WC Extension is and was intended by the Householder to be extended upwards, and, indeed, the current state of the property allows the ready building of the second storey. For example, it has no roof, and was never intended to have a roof. It is part of a two storey extension, the upper storey of which has not yet been built. This is clear from the (withdrawn) 2012 application (Annex 7) and the (rejected) 2013 application now on appeal to PINS (Annex 8), and from paragraph 9 of Mrs Galway-Cooper’s affidavit which states:

“The intention had been to create a 2 storey extension so that there would also be a WC at street level as there is no WC or facility for this at this level...Construction of the second storey to this extension to install a WC at street level has not been carried out pending an application for planning permission to do so.”

It should be noted that the street level WC in the rear protrusion was removed by the Householders.

The Extension was not “substantially completed” four years ago

89. As a fall-back position, the Householders contend that, even if the Rear Extension and Staircase Extension are found not to be permitted development under the 1995 Order, they were substantially completed more than four years ago, and are thereby saved by Section 171(B)(i) of the Town and Country Planning Act 1990.
90. Section 171B(1) states:

“Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.”

91. The burden of proof is on the Householders to show that they are entitled to rely on Section 171B(1): *Nestorova-Goremsandu v Secretary of State for Communities and*

Local Government [2010] EWHC 793 (Admin) at paragraph 35. The duty of full and frank disclosure remains.

92. Mrs Galway-Cooper swears that the Rear Extension and the Staircase Extension were “substantially completed” by 30 September 2008. She does not suggest that the WC Extension is yet complete – because she is waiting for the second storey to be approved by PINS.
93. As set out above at paragraphs 57 - 77, it is obvious from the photographs taken in October 2008, as well as the Householders’ own application filed on 30 September 2008, that the Rear Extension and Staircase Extension were not substantially completed by 30 September 2008. Indeed, Figure 16 shows that the Staircase Extension was barely begun.
94. The interpretation of “substantially completed” has been the subject of judicial interpretation recently, and at the highest levels.
95. The point was raised squarely in the House of Lords in *Sage v Secretary of State for the Environment* [2003] UKHL 22 – the issue was not, as the Court of Appeal had said, “when had the alterations requiring approval been completed?”, but rather, “was the building as a whole habitable?”. In that case, the building was uninhabitable, and hence, the four year period had not yet begun to run, let alone been completed, even though the works requiring consent had been completed four years previously. An “uncompleted dwelling house” cannot be “substantially complete” (see paragraph 35 of the decision).
96. In an email dated 30 August 2013, Lesley Pigott of the Council wrote:

No Council Tax has been payable on the property since 15 September 2008 when it was deemed uninhabitable and a full exemption applied. The property was removed from the rating list from 14 September 2009 as it was partly demolished.

Our latest information is that the works is ongoing and due to complete in next 6 months. The property will then hopefully be in position to be brought back into Council Tax list.

97. Asking the question posed by the House of Lords – “was the building as a whole habitable” as at 30 September 2008 – an answer is therefore given in that the Householders made an application for exemption from council tax on or about 15 September 2008 on the basis that the property was uninhabitable. This was two

weeks before the Householders now say that everything was done and dusted. The property was then removed from the ratings list on 14 September 2009 (nearly 12 months after Mrs Galway-Cooper says the work was finished). It is a criminal offence to tell untruths on a council tax declaration form: see paragraph 80 of *Secretary of State for Communities v Welwyn Hatfield Borough Council* [2011] UKSC 15). The property remained excluded from council tax until September 2013, and hence, by the declaration of the Householders, could not have been habitable until that date.

98. At the very earliest, then, the work was “substantially completed” when the building became “habitable” (the House of Lords’ words) in September 2013. We emphasise: the legal test is not to ascertain when the works consisting of the breach were complete, but “was the building as a whole habitable?”
99. The Householders are therefore let down by their own council tax declaration – if the premises were not habitable, 15 Gayton Crescent remained an “uncompleted dwelling house” until September 2013. The Householders have not met the burden of proving that the dwelling house was substantially completed by 30 September 2008.
100. Even if for some reason the council tax documents are to be ignored, the following photographs show that the work was on-going in August 2010 (Figure 24), March 2013 (Figure 25) and December 2013 (Figure 26, Figure 27, Figure 28 and Figure 29).



Figure 24 - Dr Swain's photograph P8165779 of the rear of the property taken on 16 August 2010 showing the breeze block construction of the Staircase Extension.



Figure 25 - Photograph of the rear of the property taken on 25 March 2013 - note that the balcony above the Rear Extension is not complete as the railings have not been inserted - the rest of the rear remains tightly covered in tarpaulins.



Figure 26 - View of the rear of the property taken on 5 December 2013 showing that the Stairway Extension is still not complete. Note that a protective board remains on top of the (composite) stone window sill. A large chunk of the wall remains missing, to accommodate the (rejected) second storey to the WC Extension.



Figure 27 - View from Willow Road taken 4 December 2013, again showing the incomplete Staircase Extension.



Figure 28 - View of the rear of the property from Willow Road taken on 5 December 2013, showing the incomplete Staircase Extension, with bricks missing. One gap in the bricks has been covered by white plasterboard, later to be painted trout mousse.



Figure 29 - View of the rear of the property taken in December 2013, showing men working above the roof of the WC Extension. The missing part of Staircase Extension has been covered with white plasterboard.

101. On 14 November 2013, Elizabeth Beaumont of the Council wrote:

“In response to our request to remove the remainder of the scaffolding the owner confirmed that they had instructed their removal a few weeks ago. However it appears that one of the chimney flues which is located in the rear wall needs a stainless steel flue liner repair. This has to be lowered down from the top of the chimney flue. Therefore the scaffolding to the rear is required for these works. The owner has confirmed that these works should be completed within the next few weeks.”

102. Work was therefore ongoing at the rear of the premises in November 2013.

103. Further, on 5 December 2013, Elizabeth Beaumont wrote:

“The works to the rear of the building are repairs to the rear elevation of the building following our request for the removal of the scaffolding. As the scaffolding and sheeting are no longer in place this means that these repairs works now need to be undertaken. The photos provided show that the roof of one of the ground floor rear additions is also in need of repair.

Gary Bakall, the Principal Enforcement Officer dealing with this property has been in contact with the owners this morning to discuss the works that have been undertaken and to establish a timeframe for their completion. Following the visit today from building control the site will be inspected again tomorrow to keep an eye on the works that are being undertaken.”

104. It should be noted that the roof of the WC Extension is not in need of repair – it still has not been built: see Figure 28.

105. Those comments must have come from the Householders, and indicate that the rear extension still was not “substantially completed” in December 2013.

106. Further, the plans submitted with the present applications show the kitchen of the premises on the lower ground floor on the north end of the building. The photograph below (Figure 30) is of the ground (not lower ground) floor north end room, taken from the public street (Gayton Crescent). It shows a temporary kitchen in that room in September 2013. The kitchen has since been moved downstairs, and set up in the place shown on the plans submitted by the Householders. Thus, this part of the development was not substantially complete by 30 September 2008 – indeed, the kitchen was not in place until five years later.



Figure 30 - Photograph of ground floor front room at the north of the property taken from Gayton Crescent in September 2013, showing a temporary kitchen comprised of a hob, oven, fruit bowl, table and chairs and fridge. This room is now no longer a kitchen.

In any event, the Extension was concealed

107. Even if Section 171B(1) is met (which is denied), the Householders are not able to take advantage of it, because the building works were actively concealed by them until the scaffolding and tarpaulins were recently removed.
108. This issue, too, has been discussed at the highest levels of the English judiciary. The question was squarely before the Supreme Court in *Secretary of State for Communities v Welwyn Hatfield Borough Council* [2011] UKSC 15. In that case, Mr Beesley obtained permission to build a hay barn. However, Mr Beesley built a dwelling house within the hay barn, with three bedrooms, gym, study etc. The breach of planning law was a failure to apply for change of use. Having lived in the dwelling

house within the barn for four years, Mr Beesley applied for a certificate of permitted development under Section 191 of the Act (the same section under which the current applications are made by the Householders).

109. The Supreme Court ruled against Mr Beesley, on the basis that he wasn't entitled to take advantage of the four year rule, because "this provision must be based on the general idea that the [breach of planning] has been there for all to see for four years" (Lord Roger at paragraph 61).
110. Mr Beesley had taken steps to conceal the true nature of the development over the four year period. He concealed the fact that the structure was being used as a dwelling house. As Lord Roger noted (at paragraph 62):

"The concealment worked and the true position came to light only when Mr Beesley triumphantly revealed his dwelling house immediately after the four years had expired".

111. At paragraph 80, Lord Brown wrote:

"His was a deliberate, elaborate and sustained plan to deceive the council from first to last, initially into granting him a planning permission and then into supposing that he had lawfully implemented it and was using the building for its permitted purposes. His conduct throughout was calculated to mislead the council and to conceal his wrongdoing. As necessary features of his deceit he omitted to register any member of the household for the payment of council tax for the period 2002-2006, contrary to section 6 of the Local Government Finance Act 1992, and he failed to comply with a number of the requirements of the Building Regulations (SI 2000/2531) with regard to the construction of the dwelling...On any possible view the whole scheme was in the highest degree dishonest and any law-abiding citizen would be not merely shocked by it but astonished to suppose that, once discovered, instead of being enforced against, it would be crowned with success..."

112. The Householders' position is similar – the last that Council heard from the Householders was the application on 30 September 2008 to build a four-storey rear extension. That application having been rejected, Council was entitled to believe that that was it, until the 2012 planning application for a side extension was received. Indeed, obfuscation continued. Having visited the property, Gary Bakalll wrote on 10 July 2012:

"Thanks for reporting this to us as it did appear that some development was taking place but behind the scaffolding the rear elevation is untouched except for a space for some new French Doors on the ground floor."

113. Like Mr Beesley, the Householders did not register for council tax: indeed, the building was listed on 14 September 2008 as uninhabitable. As far as we know, Building Regulations inspectors still have not been permitted to enter the building, despite requests to do so (see below at paragraph 124).
114. One might ask the simple question – if the Extension was substantially completed on 30 September 2008 as Mrs Galway-Cooper swears, why did the scaffolding and tarpaulins stay up for a further 5 years, if not to hide what had been done? Planning Officer Hugh Miller suggested in his report dated 22 February 2013 that the scaffolding remained up “to enable works to the host building”. Either the building was “substantially completed”, and the scaffolding and tarpaulins were for concealment, or building work was still on-going, and the building was not “substantially completed”.
115. The Court of Appeal had an opportunity to comment on the Supreme Court’s decision in relation to Mr Beesley when the same issue arose in *Fidler v SS for Communities and Local Government* [2011] EWCA Civ 1159. In that case, Mr Fidler built a dwelling house concealed by straw bales and a tarpaulin.
116. The Inspector had initially decided that the building operations were not substantially completed until the removal of the straw bales and tarpaulin. That decision was never expressly over-ruled on appeal, and so is open to the Council in this case to find that the removal of the scaffolding and tarpaulins in December 2013 was the completion of the work. In that case, the Householders would not have access to the four year rule.
117. The Court of Appeal held (at paragraph 13):
- “It seems to me that upon the facts found by the Inspector, this is a paradigm case of deception which disentitles an appellant from relying upon the four-year rule; it simply does not lie in this appellant’s mouth to say that this local planning authority should have spotted the building which he had so carefully concealed at, some earlier stage, were he to do so it would indeed frustrate the underlying statutory purpose.”*
118. The position is the same here. The tarpaulins on the scaffolding were not required for any purpose related to safety – indeed, at the front of the building, the tarpaulins deteriorated, and were allowed to show the front of the building, as shown below in Figure 31 (the then white painted bricks can be seen on the right of the picture).



Figure 31 - Photograph taken on 9 May 2013 showing the dilapidation to the tarpaulins at the front of the building. Mr Galway-Cooper is shown talking to a parking officer. Note also the unapproved blocked off parking bays.

119. However, at the rear, the tarpaulins were kept tightly wrapped (but only to cover the building works – not other areas), to ensure that no-one could see what the Householders had done under cover: see Figure 32 below.



Figure 32 - The rear tarpaulins were kept tightly wrapped until they were recently removed.

120. Various attempts were made to have the scaffolding and tarpaulins removed, because they were unsightly, and because the tarpaulins flapped in the wind and kept residents awake at night. Gary Bakall wrote on 30 November 2012:

The Council has informed the owner that it considers the property detracts from the surrounding Hampstead Conservation Area. The owner has agreed to decorate the outside of the property and remove the scaffold by the New Year. The Council will open a new case and monitor the works to improve the appearance of the property. Failure to carry out these works by early in the New Year will result in the Council issuing a s215 Notice to force the owner to undertake the works.

121. On 18 December 2012, Gary Bakall wrote:

Thanks, merry Christmas to you and a promise I will get 15 Gayton Crescent looking presentable in the new year.

122. On 22 March 2013, Gary Bakall wrote:

I have been in contact with the owners who inform me that they have managed to solve their cash flow problem and will be fixing up the roof, renewing rainwater goods and downpipes and decorating the exterior of the house over the next few weeks and think they will be striking the scaffold around 30th April although it may be delayed a little by this poor weather.

Is there still a problem with the shroud round the scaffold?

123. In the end, having gone up in late 2008, the scaffolding came down in December 2013.

124. In addition, the Householders did not register for council tax until the Council asked them to in September 2013 (see paragraph 96). They were not on the electoral roll for the property (see Annex 9). They refused to allow Building Regulations officers inside the property, despite requests to do so. Reference is made to Elizabeth Beaumont's email as late as 11 November 2013:

***“Building control regulations:** The building control team cannot give an undertaking that the works comply with the Building Regulations, because there has not been co-operation from the owner(s). However, the building is likely to have the same structural stability of any similar aged detached property, so the possibility of collapse is very low. Letters have been sent to the owner and there was a meeting at Camden's offices however building control have still not been invited to view the works.”*

125. The authority from the Supreme Court is clear: the Householders cannot rely on Section 171B(1).

Enforcement action should be taken to remove the Extension and reinstate the lean-tos

126. Would the Extension be approved now if a prospective application had been made to build it at some point in the future? The answer to this question is almost certainly a resounding “no”. The Householders’ 2008 application for a four storey extension was rejected by Camden for being more than one storey and within 7 metres of a curtilage boundary wall (failing Class A.1(f)(ii)) and being more than one storey and extending beyond the rear wall of the original dwelling house (failing Class A.2(c)). The Extension as built is bigger than the proposed construction rejected by Camden in 2008. It therefore clearly does not meet Camden’s prospective planning requirements.

127. The Extension would also fail Camden Planning Guidance 1: Design:

“Rear extensions should be designed to:

- be secondary to the building being extended, in terms of location, form, scale, proportions, dimensions and detailing;*
- respect and preserve the original design and proportions of the building, including its architectural period and style;*
- respect and preserve existing architectural features, such as projecting bays, decorative balconies or chimney stacks;*
- respect and preserve the historic pattern and established townscape of the surrounding area, including the ratio of built to unbuilt space;*
- not cause a loss of amenity to adjacent properties with regard to sunlight, daylight, outlook, overshadowing, light pollution/spillage, privacy/overlooking, and sense of enclosure;*
- allow for the retention of a reasonable sized garden; and*
- retain the open character of existing natural landscaping and garden amenity, including that of neighbouring properties, proportionate to that of the surrounding area.”*

128. The Extension meets none of these requirements. What was a simple (but substantial) four bedroom, three reception rooms dolls’ house dwelling has been extended to the rear on all four floors. The Householders have, in effect, achieved under the cover of the tarpaulins what the Council rejected in late 2008. The property now looms over Grade II listed Willow Cottages, as can be seen from these photographs taken on 29 December 2013:



Figure 33 - Photograph taken from Willow Road on 29 December 2013 showing Willow Cottages on the left and the rear of 15 Gayton Crescent on the right.



Figure 34 - Photograph taken 29 December 2013 from Willoughby Road, showing Willow Cottages on the left and the rear of 15 Gayton Crescent in the centre of the photograph.

129. Further, the extensions have closed the gap between the rear of 15 Gayton Crescent and Grade II listed Willow Cottages – 15 Gayton Crescent now touches the curtilage boundary wall.

130. Further, the new balcony on the top floor of the building looks into the fronts of Willow Cottages, and over their gardens. It will not be long before a table and chairs and umbrella could be placed on the balcony impacting on the amenity of Willow Cottages. Similarly, the rear windows overlooking Willow Cottages were previously all from bathrooms and only on the ground and lower ground floors. In addition to the balcony, there are new rear windows on two upper levels from the new stairway, an area of high traffic. Willow Cottages have become significantly more overlooked.
131. Additionally, all symmetry has been lost in the rear of the property. What was a subordinate two storey central protrusion with a little shed/hut either side, is now lopsided and monstrous in scale (see Figure 1 and Figure 2).
132. Still further, and given the long history of unapproved activity on this site detailed elsewhere, Camden has a role to ensure planning law is abided by – if enforcement action is *not* taken, then residents may well ask themselves the question – “why bother with planning approval at all? Why not just chop down a TPO-protected tree, drive my car illegally over a footpath, knock down 100 year old iron railings, cause building misery for my neighbours for 5 years while I build a four storey extension to my house (in contravention of Camden’s rejection of my application) under noisy flapping tarpaulins, because I now know that Camden will do nothing?” It is of vital importance to the neighbourhood, to the Conservation Area, and to Grade II listed Willow Cottages, that enforcement action be taken.
133. Camden would be in breach of its statutory duty if it allows the Extension to stand.
134. Adopting the words of Lord Brown in the Supreme Court (see paragraph 111 above), law-abiding citizens will be not merely shocked, but astonished if instead of being enforced against, the Householders’ unapproved works are crowned with success.

15 January 2014

Annex

1. Land Registry Record.
2. Drawings from 2007 (rejected) application by previous owners.
3. Benham & Reeves Sale Brochure.
4. Drawings from 2008/3118/P to regularise two lean-tos, and officer's report.
5. Drawings from 2008/4730/P for a 4 storey extension, correspondence and LDC report.
6. Marked up drawings showing work carried out.
7. Drawings from 2012/0529/P.
8. Drawings from 2013/1031/P.
9. Electoral roll extract.