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Dear Mr Maxwell

10 June 2016

**15 Gayton Crescent London NW3 1TT Appeal by Mrs Wendy Galway-Cooper Reference APP/X5210/X/16/3148353 LPA reference 2015/5288/P**

I am uploading the papers relating to this appeal. This letter provides the background, and we will add to it in an appeal statement before 17 June. I have numbered these paragraphs for ease of reference

1. At the outset of this process, on 30 September 2008, the day before The Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995) was substantially amended, an application for a Certificate of Proposed Lawfulness (CLOPUD) number 4730/2008/P was submitted to the LPA in relation to the proposed enlargement of the three contiguous rear extensions.
2. The LPA however, notwithstanding representations by my clients, applied the new law that came into force on 1 October 2008 and, we say wrongfully, refused the CLOPUD.
3. On 31 December 2012 an application for planning permission number 2013/1031/P for a 2 storey Orangery side extension was submitted to the LPA. The drawings showed the three enlarged rear extensions as built. The Officers' report (paragraph 6.4) concluded that *On this basis the development was deemed as permitted by Class A, of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995*. On 23 May 2013 the LPA refused the planning permission (number 2013/1031/P) and this was appealed to the Planning Inspectorate under reference APP/X5210/A/13/2203132. The Appeal was heard at a Public Inquiry and allowed in relation to the 2 storey Orangery Side Extension on 19 December 2014. The application for planning permission number 2013/1031/P also included a North bay window and additional storey to the rear WC extension which was refused on Appeal.

4. On 18 November 2013 three separate applications for CLEUDs were submitted following invitation by the LPA as follows:
  5. Application number 2013/7388/P for a 3 storey rear South Eastern corner extension
  6. Application number 2013/7395/P for a 4 storey rear stair tower extension
  7. Application number 2013/7485/P for a 1 storey rear WC extension
8. In a set of three Decisions dated 4 March 2014 the LPA refused all three applications.
9. These CLEUD refusals were appealed under reference APP/X5210/C/14/2217197, joined to Appeal reference APP/X5210/A/13/2203132 (see paragraph 3 above), and both heard at the same Inquiry. The Appeal relied upon grounds (a), (d), (f) and (g). Prior to the Inquiry our client withdrew ground (d) because it was clear that she was unable to produce sufficient evidence to prove on balance that the three rear extensions had been completed 4 years prior to the Enforcement Notice. At the Inquiry therefore evidence was focused on ground (a). The Inspector determined that the three contiguous rear extensions should be treated separately for planning purposes and duly allowed the Appeal in part under ground (a) granting retrospective planning permission for the 4 storey rear stair tower and 1 storey rear WC extension. The Inspector refused the Appeal under ground (a) in relation to the 3 storey rear South Eastern corner extension without giving any prior indication of doing so and/or inviting submissions in relation to the consequences of that Decision. No evidence on ground (d) was led or heard at the inquiry.
10. Our client then discovered 4 strands of documentary evidence, all of which have been in the possession of the LPA at all relevant times, which all indicate that construction was commenced on 15 September 2008 and in any event before 1 October 2008 as follows:
  - a. In a letter dated 15 September 2008 Dr Frances Swain, who lives next door at 41 Willow Road, wrote to the LPA (using the name of Ms Frances Say) complained that the original rear South Eastern corner extension *has* been demolished.
  - b. On 15 September 2008 a Council Tax Officer inspected the property and decided that the property should be removed from the Council Tax Valuation List because of major building works making the property uninhabitable indicating that on balance demolition had commenced.
  - c. On 30 September 2008 the LPA received the application for a CLOPUD number 2008/4730/P which records that *the proposal has been started*.
  - d. On 30 September 2008 the LPA received a covering letter of the same date enclosing the Application for a CLOPUD number 2008/4730/P which refers to drawings of the property *being constructed*.
  - e. On 30 September 2008 LB Camden received an application for Building Control number 08/1/0601 together with fee which records a *Commencement Date* of 15

*September 2008* which was deleted from the LB Camden website following enquiries by our client in June 2015.

11. On 16 September 2015 our client submitted a renewed application for a CLEUD number 2015/5288/P in relation to the 3 storey rear South Eastern corner extension on the basis that:
12. First, the evidence now available (and at all times in the possession and control of the LPA) indicated on balance that the demolition works had been commenced on 15 September 2008 and that the letter dated 15 September 2008 apparently sent by Dr Frances Swain to the LPA complaining about the demolition had not been produced to the inquiry. As a result, the old GPDO 1995 applied without later amendment on 1 October 2008 and the South Eastern corner extension complied with the provisions of the GPDO 1995.
13. Secondly, the Inspector had held that 3 storey rear South Eastern corner extension should be considered separately from the 4 storey rear stair tower for planning purposes and, in any event, following his retrospective grant of planning permission for the 4 storey rear stair tower, this no longer caused the contiguous 3 storey rear South Eastern corner extension to be unlawful as the LPA had determined.
14. At first the LPA refused on the grounds of their power in Section 70A of the Town and Country Planning Act 1990, to determine the renewed application for a CLEUD (reference 2015/5288/P) relating to the lawfulness of the three storey extension. In a letter dated 19 October 2008 to the LPA our client explained that the power under Section 70A of the Town and Country Planning Act 1990 did not apply to applications for a CLEUD. The LPA accepted this point was correct and in a Decision dated 8 December 2015 refused the application for a CLEUD number 2015/5288/P primarily on the ground that our client had failed to submit any new evidence and ignoring the documents attached to the email sent on 19 October 2008.
15. On 14 April 2016 our client submitted her Appeal Form Number APP/X5210/X/16/3148353. Subsequently the LPA have taken the point that our client is not entitled to make an application for a CLEUD by reason of Section 191(2)(b) of the Town and Country Planning Act 1990. In response we say, first, that the LPA waived that point which appears to have been enacted to prevent Appellants waiting for 4 years after an Enforcement Notice has been served and then making an application for a CLEUD on the ground that the works were completed more than 4 years earlier.
16. The argument has not been heard that a CLUED should be issued because the development was begun at a time when it was permitted development. It has not been deliberately withheld by my client but was not available until the Inspector took the view that the elements of development before the inquiry should be treated separately. In our view it should be heard, as if the development is indeed for this reason lawful, the applicant/appellant has a right to the CLEUD. If Section 191(2)(b) is nevertheless to be applied in this unusual case then our client requests the Public Inquiry in relation to Appeal number APP/X5210/C/14/2217197 to be re-opened under ground (c) *ie* that the 3 storey rear South Eastern corner extension is lawful because it complies with the provisions of the GPDO 1995 in force on 15 September 2008 when demolition was commenced.



17. At the Inquiry in 2014 our client was not able to rely on ground (c) because first, the LPA had held that the 3 contiguous rear extensions must be treated as a single structure for planning purposes and our client had become aware that the rear stair tower did not comply with the GPDO 1995. Secondly, the LPA had been misled by the evidence produced by local residents and had wrongly determined that the demolition works probably started after 30 September 2008. This was something that our client did not have evidence to challenge although that evidence has at all times been in the possession of the LPA.
18. In his Decision the Inspector determined that the 3 rear extensions should be treated as separate structures for planning purposes and, therefore, it flows from *that* decision that the rear South East corner extension is not made unlawful by mere contiguity with the rear stair tower which did not comply with the GPDO 1995. The Inspector also granted retrospective planning permission for the rear stair tower so that it no longer was unlawful.
19. Our client has repeatedly requested the LPA to produce copies of the letter dated 15 September 2008 from Dr Frances Swain to the LPA. The requests were made on 3 occasions prior to the Inquiry (twice in writing and once at the telephone) and the requests have repeatedly been ignored. A request to the LPA under the Freedom of Information Act made by our client resulted in production of an imperfectly redacted copy of the letter dated 16 October 2008 which disclosed that the complaint letter had been written by Frances Say of 41 Willow Road, who almost certainly was Dr Frances Swain of the same address, however, the LPA say that they are unable to find the letter dated 15 September 2008 from Dr Frances Swain. Following the Public Inquiry our client found the details of a Building Control application on the LPA website which indicated a start date of 15 September 2008. When enquiries were made this information was deleted. A further request under the Freedom of Information Act disclosed a computer screen print showing that the Building Control application was made on 30 September 2008 and the fee was also paid on 30 September 2008.
20. Finally, we would advise that the LPA have commenced criminal proceedings against our client and her husband before the Magistrates sitting at Highbury Corner for failure to comply with the Enforcement Order. It is desirable that a decision whether to permit an Appeal to proceed against the Decision dated 8 December 2015 refusing the application for a CLEUD number 2015/5288/P and/or reopen the Public Inquiry in relation to Appeal number APP/X5210/C/14/2217197 be determined at the Inspectorate's earliest convenience unless the LPA agree that the prosecution is adjourned or stayed pending the final determination of this Appeal.

I look forward to hearing from you urgently on this matter.

Yours sincerely



Ian Trehearne