

STATEMENT OF CASE

ON BEHALF OF WENDY GALWAY-COOPER

IN RELATION TO

APPLICATIONS FOR CERTIFICATES OF LAWFUL DEVELOPMENT

AT

15 GAYTON CRESCENT

HAMPSTEAD

LONDON

NW3 1TT

APPEAL APP/X5210/X/16/3148353

LONDON BOROUGH OF CAMDEN

LPA REF 2008/4730/P

LPA REF 2013/7388/P

LPA REF 2014/1374/P

LPA REF 2015/5288/P

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1 Foreword and Introduction

Foreword

- 1.1 This case concerns the south eastern extension of 15 Gayton Crescent, the family home of the Applicant, her husband and children, the erection of which was begun in 2008. There is no argument that if this extension was constructed pursuant to the Town and Country Planning (General Permitted Development) Order 1995, it would have the benefit of the permission granted by that Order, which is set out at paragraph 2 below. The case turns on when construction began, since if the extension was constructed after the Town and Country Planning (General Permitted Development) Order 2008 came into force on 1 October 2008, it would no longer have had the benefit of the development order permission. The best reliable evidence, which is set out in paragraphs 21 to 25 below is persuasive that demolition began in mid September 2008 and that therefore by reason of section 56 Town and Country Planning Act 1990, development should be taken as having begun then when it had the benefit of the permission granted by the 1995 Order.
- 1.2 It has only recently been realised that there was additional evidence available which would show that the erection of the south eastern extension was lawful because it had begun while the 1995 GDPO was still in force. This case was not led in the inquiry into the enforcement notice which was held in December 2014. In that inquiry the Inspector, Mr Clive Whitehouse, considered it appropriate to deal individually with three extensions which were the subject of a single enforcement notice served by the local planning authority, the London Borough of Camden. He granted planning permission for two extensions, but refused permission for the third, being the south eastern extension, and upheld the enforcement notice in relation to this extension. However, the critical point is that this decision can be of no effect if, as is demonstrated by the evidence, the extension was in fact begun with the benefit of a GDPO permission.
- 1.3 The position has not been made easy for the local planning authority, partly by its policy of consulting neighbours on applications for certificates of lawful development, and partly by the skillful and well organised campaign of the neighbours to oppose the development, which generated a high level of emotion. The result has been that the authority has not assessed the applications for certificates of lawful development on an objective legal basis, as it should have.
- 1.4 The Council has sought to argue that the present appeals should not be heard because of the effect of section 191(2)(b) Town and Country Planning Act 1990. This is dealt with at paragraph 27 below. It is clear that notwithstanding the wording of the section, if, as is true in this case, the lawfulness of development was asserted in the way it has been in this case before enforcement action was taken, the existence of an enforcement notice will not stand in the way of a certificate of lawfulness being granted.
- 1.5 As will be seen the Council has begun prosecution proceedings on the basis of the failure of the Applicant to comply with the enforcement notice, but these have been stayed pending the outcome of the present appeals. If the enforcement notice is upheld the results will be entirely disproportionate to any harm. Half of the rear part of the family home will have to be demolished; it will be rendered uninhabitable while the works are under way and the family will be deprived of it for the period of the works; the removal of the south eastern rear extension will have structural effects on the rest of the building which will need to be remedied, and the resultant effects will be a building which has less utility.

Appeal

- 1.6 The Appellant appeal under Section 195 of the Town and Country Planning Act 1990 against the refusals by London Borough of Camden to grant the following Certificates of Lawful Development in relation to what is known as the Rear South Eastern Corner Extension:
- (1) Application dated 30 September 2008 for a Certificate of Lawful Proposed Development number 2008/4730/P
 - (2) Application dated 18 November 2013 for a Certificate of Lawful Existing Development number 2013/7388/P
 - (3) Application dated 16 September 2015 for a Certificate of Lawful Existing Development number 2015/5288/P
 - (4) Application dated 19 February 2014 for Certificate of Lawful Proposed Development number 2014/1374/P
- 1.7 The Application for a Certificate of Lawful Existing Development number 2015/5288/P was a renewal of the Application number 2013/7388/P relying upon new evidence which had been discovered by the Appellant but had since 30 September 2008 been in the possession of London Borough of Camden.
- 1.8 London Borough of Camden seek to rely upon Section 191(2)(b) of the Town and Country Planning Act 1990. They say this is a bar to the grant of a Certificate of Lawful Existing Development after an Enforcement Notice has been issued which in this case was on 5 March 2014.
- 1.9 Application dated 16 September 2015 for a Certificate of Lawful Existing Development number 2015/5288/P was in effect a renewal of Application dated 18 November 2013 for a Certificate of Lawful Existing Development number 2013/7388/P based on new evidence which the Appellant had discovered. London Borough of Camden eventually agreed to determine Application Number 2015/5288/P on its merits and waived their right to rely upon Section 191(2)(b) of the Town and Country Planning Act 1990.
- 1.10 In any event, Section 191(2)(b) of the Town and Country Planning Act 1990 does not apply to an Application for a Certificate of Lawful Existing Development submitted before the Enforcement Notice was issued and, therefore, the Appellant remains entitled to a Certificate of Lawful Existing Development pursuant to Application dated 18 November 2013 for a Certificate of Lawful Existing Development number 2013/7388/P.
- 1.11 There is no equivalent provision in Section 192 of the Town and Country Planning Act 1990 in relation to an Application for the grant of a Certificate of Lawful Proposed Development and, therefore, the Appellant is entitled to issue the two other Appeals.

2 Grounds of Appeal

2.1 The Grounds of Appeal are that:

- (1) the development was commenced on or before 30 September 2008 and, therefore, planning permission was granted by the Secretary of State for the Environment by Order, namely The Town and Country Planning (General Permitted Development) Order 1995.
- (2) the development, which is on Article 1(5) land, complies with all the provisions of Schedule 2 Class A of The Town and Country Planning (General Permitted Development) Order 1995 because:
 - (a) the cubic content of the resulting building did not exceed the cubic content of the original dwellinghouse —
 - (i) by more than 10%;
 - (ii) by more than 115 cubic metres;
 - (b) the part of the building enlarged, improved or altered did not exceed in height the highest part of the roof of the original dwellinghouse;
 - (c) the part of the building enlarged, improved or altered was not nearer to any highway which bounds the curtilage of the dwellinghouse than—
 - (i) the part of the original dwellinghouse nearest to that highway, or
 - (ii) any point 20 metres from that highwaywhichever is nearer to the highway;
 - (d) the part of the building enlarged, improved or altered was not within 2 metres of the boundary of the curtilage of the dwellinghouse;
 - (e) the total area of ground covered by buildings within the curtilage (other than the original dwellinghouse) did not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);
 - (f) it did not consist of or include the installation, alteration or replacement of a satellite antenna;
 - (g) it did not consist of or include the erection of a building within the curtilage of a listed building;
 - (h) it did not consist of or include an alteration to any part of the roof;
 - (i) it did not consist of or include the cladding of any part of the exterior with stone, artificial stone, timber, plastic or tiles.

3 Site and Surroundings

- 3.1 The Appeal Property at 15 Gayton Crescent London NW3 1TT is a single dwellinghouse set within its own plot (“the Property”).
- 3.2 The Property is not Listed but lies within the Hampstead Conservation Area and, therefore, is on Article 5(1) land.
- 3.3 It is 4 storey detached Victorian dwellinghouse built in about 1870 with a symmetrical front which faces West.
- 3.4 The Property is set on a terrace cut into a hill so that it is entered from Gayton Crescent at Raised Ground Floor Level.
- 3.5 The courtyard garden to the rear and to the South side of the Property is at Lower Ground Floor Level.
- 3.6 The original internal layout of the Property comprised a central stair core with a single room either side on each floor level rather like a dolls house.
- 3.7 Like many dolls houses, the original internal layout of the Property had no sanitation facilities on the upper two bedroom floors and there was no provision for them.
- 3.8 Drawings submitted to London Borough of Camden in 1906 show that at that time the Property had 3 rear extensions as follows which remained standing until 2008:
 - (1) 1 Storey South Eastern Rear Corner Extension
 - (2) 2 Storey Central Rear WC Extension
 - (3) 1 Storey Rear Garden Shed Extension
- 3.9 The Property is the last house at the end of Gayton Crescent at the junction with Willow Road.
- 3.10 To the North of the Appeal Property, across Willow Road, lies a block of flats known as Willow Hall.
- 3.11 The Property benefits from planning permission, allowed on appeal, to erect a 2 storey Orangery Extension to the South. This has not been constructed.
- 3.12 To the South of the Property is a side courtyard garden beyond which stands 14 Gayton Crescent and 13 Gayton Crescent which are a pair of semi-detached houses.
- 3.13 To the East of the Property lie a terrace of 3 storey dwellinghouses known as Willow Cottages.

4. Application for a Certificate of Lawful Existing Development 2008/3188/P

- 4.1 On 30 June 2008 an Application for a Certificate of Lawful Existing Development number 2008/3188/P was submitted to London Borough of Camden in relation to the pre-existing three rear extensions shown on drawings previously submitted to and approved by London Borough of Camden in 1906.

Grant of Certificate of Lawful Existing Development 2008/3188/P

- 4.2 By a Decision letter dated 19 August 2008 a Certificate of Lawful Existing Development was granted. The Reason given was that the operations were substantially completed more than four years before the date of this application.

Application for a Certificate of Lawful Proposed Development 2008/4730/P

- 4.3 On 30 September 2008 an Application for a Certificate of Lawful Proposed Development number 2008/4730/P was delivered by hand to London Borough of Camden in relation to the increase in the size of the pre-existing three rear extensions resulting in a total increase in volume of the entire dwellinghouse by about 9% which was less than statutorily permitted 10% in volume.
- 4.4 This Application was submitted by hand to London Borough of Camden together with the required Application Fee of £150 which was paid to London Borough of Camden. London Borough of Camden produced a receipt dated 30 September 2008 for that Application Fee of £150.
- 4.5 This Application stated that *the proposal has been started* (past tense) and originally was date stamped *Received 30 September 2008* by London Borough of Camden although subsequently London Borough of Camden altered this document and stamped it a second time and purported to re-date it *Received 1 October 2008*.
- 4.6 This Application was submitted under cover of a letter also dated 30 September 2008 which referred to *drawings of the property being constructed* (present tense) and this letter also was date stamped *Received 30 September 2008* by London Borough of Camden although subsequently London Borough of Camden also altered this document and stamped it a second time purporting to re-date it *Received 1 October 2008*.
- 4.7 In a letter dated 7 November 2008 and received the same day by London Borough of Camden the Applicant complained that *the application was not received on 1 October 2008 as you indicate. The application was submitted by hand on 30 September 2008. A receipt for the fee of £150 sealed Received 30 September 2008 was issued by Development Control. If you inspect my letter dated 30 September 2008 and the application dated 30 September 2008 you will see these were sealed Received 30 September 2008.* The letter then went on to clarify the point *Finally, construction of the extension was substantially commenced before 30 September 2008 and the application was received by you on 30 September 2008.*

Refusal of Certificate of Lawful Proposed Development 2008/4730/P

4.8 In a Decision letter dated 24 December 2008 London Borough of Camden wrongly applied The Town and Country Planning (General Permitted Development Order) 1995 as amended on 1 October 2008 by The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008. London Borough of Camden then refused this Application on the basis that it did not comply with The Town and Country Planning (General Permitted Development Order) 1995 as amended by The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 giving the following reasons:

1. *The proposed rear extension would be more than one storey and would be within seven metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse. It therefore fails to comply with Class A.1 (f) (ii) of the Town and Country Planning (General Permitted Development Order) 1995 as amended by (Amendment) (No 2) (England) Order 2008.*
2. *The enlarged part of the dwellinghouse would have more than one storey and extends beyond the rear wall of the original dwellinghouse. It therefore fails to comply with Class A.2 (c) of the Town and Country Planning (General Permitted Development Order) 1995 as amended by (Amendment)(No 2)(England) Order 2008.*

4.9 The reasons given by London Borough of Camden were wrong in law because The Town and Country Planning (General Permitted Development) Order 1995 as amended by The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 did not apply. Its provisions were irrelevant because it had only come into force on 1 October 2008 prior to which time the original single storey Rear Extension had been demolished, digging a trench for the foundations and construction of the 3 storey Rear South-Eastern Corner Extension had been commenced and Application number 2008/4730/P had been submitted.

4.10 London Borough of Camden should have applied original The Town and Country Planning (General Permitted Development) Order 1995 and found that the proposed Rear Extensions did comply with the provisions of Class A of Schedule 2 of the 1995 Order.

4.11 By this time construction of three adjacent Rear Extensions along the lines proposed by this Application number 2008/4730/P, but subject to some amendments, was well under way. There was and is a central 4 storey Rear Staircase Extension flanked on its South side by a 3 storey Rear South-Eastern Corner Extension (the subject of this Appeal) and on its North side by a 1 storey Rear WC Extension.

4.12 The 3 storey Rear South-Eastern Corner Extension followed the overall dimensions of the Second Application save that the complex curved bay windows were omitted and replaced by a simple rectangular bay mirroring the simple rectangular bay windows to the front elevation.

5. Application for Planning Permission for Orangery Side Extension Number 2013/1031/P

- 5.1 On 18 May 2012 a Pre-Application Application for Planning Permission for a 2 storey Orangery Side Extension to the South side of the house was submitted to London Borough of Camden. The 3 Rear Extensions were clearly shown in all the drawings.
- 5.2 On 3 August 2012 this Pre-Application Application for Planning Permission for a 2 storey Orangery Side Extension to the South side of the house was approved by Mr Hugh Miller, Senior Planning Officer of London Borough of Camden.
- 5.3 On 31 December 2012 an Application for Planning Permission for the 2 storey Orangery Side Extension to the South side of the house was submitted to London Borough of Camden.
- 5.4 The 3 Rear Extensions were clearly shown in all the drawings submitted to London Borough of Camden. The 3 Rear Extensions were also measured on site by Mr Hugh Miller, Senior Planning Officer, who referred the matter to his Team Leader. It was determined by London Borough of Camden, and the Appellant was informed, that the 3 Rear Extensions were permitted by The Town and Country Planning (General Permitted Development) Order 1995.
- 5.5 A Delegated Report dated 20 May 2013 produced by Mr Hugh Miller, Senior Planning Officer, at paragraph 6.5(a) stated that *On this basis the development was deemed as permitted by Class A Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995.*
- 5.6 On 23 May 2013 at a meeting of the Development Committee this Application for Planning Permission was refused. The Decision letter dated 4 June 2013 stated that:

The proposed extensions, virtue of their scale, location and design would result in the loss of the visual gap between the property and No 14 Gayton Crescent, harmful to the symmetry and character of the host building, the character and appearance of the Hampstead Conservation Area, and the setting of the Grade II listed buildings to the rear in Willow Road, contrary to Policies CS14 (promoting high quality places and conserving our heritage), DP24 (securing high quality design and DP25 (conserving Camden's heritage) of the London Borough of Camden Core Strategy and Local Development Framework Policies.

Planning Permission for Orangery Side Extension Number 2013/1031/P Granted on Appeal

- 5.7 On Appeal, Mr Nick Baxter and Mr Jonathan McClue gave evidence in support of all of these purported reasons given by the Development Committee. Mr David Stone of 40 Willow Road also gave evidence. The Inspector rejected their evidence.
- 5.8 The Inspector rejected the Council's case the gap between the property and No 14 Gayton Crescent was of any importance, and that the proposed extension was harmful to the symmetry and character of the host building or the to the character and appearance of the Hampstead Conservation Area, or the setting of the Grade II listed buildings to the rear in Willow Road.
- 5.9 After hearing all the evidence and inspecting the site from Gayton Crescent, from Willow Road, from within the Appeal Property and in particular from within 41 Willow Road, which is owned by Dr Frances Swain, the Inspector found that the design was of high quality and in accordance with London Borough of Camden's policies.
- 5.10 The Inspector, therefore, allowed the Appeal in relation to the 2 storey Orangery Side Extension and granted Planning Permission for it. He also held that there was no reason in principle to refuse Planning Permission for a North Bay Window, to which London Borough of Camden and Mr David Stone had strenuously objected, although he did not approve a pair of French windows above it or iron railings at its head.

6. Threat of Enforcement Action against Painting Property Different Colour

- 6.1 On 9 May 2013 at 09:57 Mr Gary Bakall, Planning Enforcement Officer of London Borough of Camden wrote to the Appellant, in response to a misconceived complaint from Mr David Stone, alleging that the painting of the exterior of 15 Gayton Crescent contravened an Article 4 Direction in place relating to the Hampstead Conservation Area. Subsequently this allegation was withdrawn as the building had in fact been painted prior to the date of the making of the Direction, and the Council apologised.

7. Application for Certificate of Lawful Existing Development 2013/7330/P

- 7.1 On 13 November 2013 an Application for a Certificate of Lawful Existing Development number 2013/7330/P was properly submitted to London Borough of Camden in relation to works carried out in 2008 to remove iron railings at the North Western corner of the Property where it adjoins the junction between Gayton Crescent and Willow Road. London Borough of Camden refused to determine this Application and withdrew it.

8. Application for Certificate of Lawful Existing Development Number 2013/7388/P

8.1 On 18 November 2013 an Application for a Certificate of Lawful Existing Development number 2013/7388/P was submitted to London Borough of Camden along with parallel Applications for Certificates of Lawful Existing Development for the central 4 storey Rear Staircase Extension number 2013/7395/P and also for the 1 storey Rear WC Extension number 2013/7485/P.

8.2 This Application for a Certificate of Lawful Existing Development number 2013/7388/P was dismissed by London Borough of Camden. In their Delegated Report at paragraphs 3.1, 3.2 and 3.5 Mr Neil Quinn erred in law and applied the wrong test under Section 56 of the Town and Country Planning Act 1990 when he stated:

3.1 For the four-storey rear extension (C) to constitute permitted development under the GPDO 1995 (original), work must have begun before 1st October 2008 to completely demolish the pre-existing staircase structure and then commence works to build the four-storey extension, either in tandem with or in isolation from extension B with which this extension is now integral, sharing its flank wall with.

3.2 Photographs contained within the neighbours' main document – taken at various points by Dr Swain between 7th and 13th September 2008 – show clearly that works relating to the demolition of the structure, as visible externally, had not begun on the four-storey rear extension between these dates (see figures 3, 4 and 5: p. 10 & 11), with the single-storey 'lean-to' to the south east elevation still intact. This means that, at the very least, the pre-existing extension/s had to be completely demolished and works commenced on the four-storey rear extension in the space of two weeks.

3.5 On the basis of this information, it is considered highly unlikely that work to completely demolish the pre-existing single-storey lean-to extension and commence works on the existing four storey rear extension could have been carried out before 1st October 2008, and therefore the works could not constitute permitted development under the GPDO 1995 (original). As the 16th October 2008 photograph shows that the original staircase extension had not yet been demolished, and thus the replacement extension B not yet commenced, for the works relating to extension C to be lawful, the previous single storey extension in this position would have needed to both be demolished within the space of a few weeks in September 2008, and the construction of extension C commenced.

8.3 Mr Neil Quinn incorrectly focused on the date when the Pre-Existing 2 Storey Rear WC Extension (which he wrongly described as a Pre-Existing Staircase Structure although at that time this structure contained a WC and did not contain any staircase although it was in due course replaced by the 4 Storey Rear Staircase Extension) had been completely demolished.

- 8.4 London Borough of Camden should have considered the evidence to determine the date when any demolition work of the Pre-Existing 1 Storey Rear South Eastern Corner Extension was commenced and/or the digging of a trench which is to contain the foundations, or part of the foundations, of a building and/or the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench was commenced.
- 8.5 Mr Neil Quinn further erred in law when he concluded that it was necessary to completely demolish the pre-existing single-storey lean-to extension and, in addition, also to have commence[d] works on the existing four storey rear extension. The provisions of Section 56 of the Town and Country Planning Act 1990 are disjunctive and not conjunctive. It is sufficient if demolition has commenced or the digging of a trench which is to contain part of the foundations has commenced. It is also sufficient if any work of construction in the course of erection of a building is commenced, however, it is not necessary for more than one of these conditions to have been satisfied.
- 8.6 In any event, the photographs said by Dr Frances Swain to have been taken between 7 and 13 September 2008 show that the digging of a trench, which subsequently contained part of the foundations of the new 3 Storey Rear South Eastern Corner Extension had commenced no later than the time that the photograph was taken between 7 and 13 September 2008 and, therefore, substantially before 1 October 2008. Accordingly, The Town and Country Planning (General Permitted Development) Order 1995 applied and London Borough of Camden erred in law by applying The Town and Country Planning (General Permitted Development) Order 1995 as amended by The Town and Country Planning (General Permitted Development) Order (Amendment) (England) (No 2) Order 2008.
- 8.7 Dr Frances Swain produced photographs of the rear of the Appeal Property which she says were *taken on 16 October 2008*. These photographs are taken from an angle where the Pre-Existing 1 Storey Rear South Eastern Corner Extension cannot be seen. The existence of the scaffolding, which could only have been erected after all digging for the foundations had been completed and the trenches infilled with concrete, is evidence that the construction of the new foundations was by this time complete and is also consistent with the deemed permission having been commenced on or before 30 September 2008.
- 8.8 London Borough of Camden continued to make this fundamental error in law in Mr Bakall's letter dated 22 June 2016 sent to PINS in which he asserted that the test is when development was substantially complete. The Appellant's case is that the development was commenced with the benefit of Planning Permission granted by The Town and Country Planning (General Permitted Development) Order 1995, which of course, the Enforcement Notice cannot in the circumstances retrospectively remove.
- 8.9 Further, London Borough of Camden were misled by Dr Francis Swain of 41 Willow Road and also by Mr David Stone of 40 Willow Road who both had in their possession evidence that the original 1 Storey Rear South Easter Corner Extension had been demolished no later than 15 September 2008 when Dr Francis Swain wrote to London Borough of Camden to complain that the rear extension had been demolished (past tense) and failed to disclose this or produce it to London Borough of Camden, the Appellant when this Application was being determined, or subsequently in their evidence before the Public Inquiry.

Application for Certificate of Lawful Existing Development Number 2013/7395/P

- 8.10 On 18 November 2013 an Application for a Certificate of Lawful Existing Development number 2013/7395/P was submitted to London Borough of Camden for the central 4 Storey Rear Staircase Extension number 2013/7395/P.
- 8.11 In a Decision Notice dated 4 March 2014 London Borough of Camden refused to grant a Certificate of Lawful Existing Development for the 4 Storey Rear Staircase Extension and on 5 March 2014 London Borough of Camden issued a single Enforcement Notice number EN14/0149 requiring the removal of the 4 Storey Rear Staircase Extension, the 3 Storey Rear South Eastern Corner Extension and the 1 Storey Rear WC Extension.
- 8.12 The Appellant appealed against the Enforcement Notice and, following a Public Inquiry lasting 3 days, the Inspector rejected the evidence given by Mr Nick Baxter and Mr Jonathan McClue on behalf of London Borough of Camden and by Mr David Stone in relation to the planning merits of the 4 Storey Rear Staircase Extension and granted Planning Permission for it.

9. Application for Certificate of Lawful Existing Development Number 2013/7485/P

- 9.1 On 18 November 2013 an Application for a Certificate of Lawful Existing Development number 2013/7485/P was submitted to London Borough of Camden for the 1 Storey Rear WC Extension number 2013/7485/P.
- 9.2 In a Decision Notice dated 4 March 2014 London Borough of Camden refused to grant a Certificate of Lawful Existing Development for the 1 Storey Rear WC Extension and on 5 March 2014 London Borough of Camden issued a single Enforcement Notice number EN14/0149 requiring the removal of the 4 Storey Rear Staircase Extension, the 3 Storey Rear South Eastern Corner Extension and the 1 Storey Rear WC Extension.
- 9.3 This Decision of London Borough of Camden to refuse the Application for a Certificate of Lawful Existing Development in relation to the 1 Storey Rear WC Extension was irrational because, immediately following the demolition of it, the Appellant would be entitled lawfully to re-erect it as it fully complied with The Town and Country Planning (General Permitted Development) Order 1995 as amended by The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 then in force, which the Delegated Report recognised, but chose to rely upon the fiction that the Rear WC Extension was part of the 4 Storey Rear Staircase Extension thereby making the Rear WC Extension unlawful.
- 9.4 The Appellant appealed against the Enforcement Notice and, following a Public Inquiry lasting 3 days, the Inspector rejected the evidence given by Mr Nick Baxter and Mr Jonathan McClue on behalf of London Borough of Camden and by Mr David Stone in relation to the planning merits of the 1 Storey Rear WC Extension and granted Planning Permission for it.

10. Renewed Application for Certificate of Lawful Existing Development Number 2014/0968/P

- 10.1 On 5 February 2014 a Renewed Application for a Certificate of Lawful Existing Development number 2014/0968/P was submitted to London Borough of Camden in relation to works carried out in 2008 to remove iron railings at the corner of Gayton Crescent and Willow Road to pursue the Application for a Certificate of Lawful Existing Development number 2013/3188/P previously withdrawn by London Borough of Camden.
- 10.2 At all times Mr Gary Bakall, Planning Enforcement Officer of London Borough of Camden, had a photograph taken on 24 September 2008 by Ms Darlene Dike, Planning Enforcement Officer of London Borough of Camden, which showed that the iron railings had been removed on or before that date and, therefore, the Appellant was entitled to a Certificate of Lawful Existing Development because the removal of the iron railings took place more than 4 years previously.

11. Delay in Granting Certificate of Lawful Existing Development Number 2014/0968/P

- 11.1 Mr David Stone, of 40 Willow Cottages, submitted some 37 pages of submissions putting pressure on both Members and Officers of London Borough of Camden to refuse to grant the Certificate of Lawful Existing Development. These submissions were misconceived as the Appellant was lawfully entitled to the Certificate of Lawful Development because:
- (1) The works were not *development* within the meaning of the Town and Country Planning Act 1990 and, therefore, London Borough of Camden had no power to control the works and should have rejected Mr Stone's submissions.
 - (2) The works had been carried out on or before 24 September 2008 and a Planning Enforcement Officer had taken photographs of the works on that date and, therefore, there was no possibility of taking enforcement action.
- 11.2 In a Delegated Report dated 12 August 2014 and running to 14 pages, produced substantially after the expiry of the statutory time limit of 8 weeks, Mr Neil Quinn, Planning Officer of London Borough of Camden, recommended the grant of the Certificate of Lawful Existing Development to Members of London Borough of Camden because first, the removal of the iron railings was not development and, secondly, the removal had occurred more than 4 years previously. However, London Borough of Camden unlawfully refused to determine this Application.
- 11.3 In a Decision letter dated 17 November 2014, more than 12 months after 13 November 2013 when the original Application for a Certificate of Lawful Development had first been submitted and 1 week prior to the commencement of a Public Inquiry, London Borough of Camden granted the Certificate of Lawful Development giving the Reason that:

The works are not considered to fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.

12. Application for Certificate of Lawful Proposed Development Number 2014/1374/P

12.1 On 19 February 2014 an Application for a Certificate of Lawful Proposed Development number 2014/1374/P was submitted to London Borough of Camden to *increase* the height of the 1 Storey Rear WC Extension number which would have been permitted by The Town and Country Planning (General (General Permitted Development) (Amendment) (England) (No 2) Order 2008.

12.2 The proposal to increase the height if the Rear WC Extension complied with *Technical Guidance* issued by the *Department of Communities and Local Government* which at page 9 unequivocally explains and illustrates that, if an extension less than 2 metres from the boundary has a flat roof, then the flat roof may be no higher than 3 metres, however, a parapet wall may exceed this height limit of 3 metres.

13. Refusal to Determine Application for Certificate of Lawful Proposed Development Number 2014/1374/P

13.1 In an email sent on 8 April 2014 at 15:02 Mr Neil Quinn, on behalf of London Borough of Camden, informed the Appellant that London Borough of Camden refused to determine her Application for a Certificate of Lawful Proposed Development number 2014/1374/P and purported to rely upon the power to do so conferred by Section 70C of the Town and Country Planning Act 1990.

13.2 The Town and Country Planning Act 1990 does not contain a Section 70C, however, it is presumed that London Borough of Camden purported to rely upon Section 70A of The Town and Country Planning Act 1990. The power granted by Section 70A of the Town and Country Planning Act 1990 applies to repeated applications for Planning Permission and does not apply to repeated Applications for Certificates of Lawful Existing Development and/or Applications for Certificates of Lawful Proposed Development.

14. Appeal Against Enforcement Notice EN14/0149 Issued on 5 March 2014

- 14.1 The Appellant appealed against the single Enforcement Notice under grounds (a), (d), (f) and (g). The Appellant requested a Public Inquiry.
- 14.2 In a Decision dated 19 December 2014 the Appeals against (1) the refusal of Planning Permission to construct the 2 Storey Orangery Side Extension, (2) the Enforcement Notice in relation to the 4 Storey Rear Stair Extension was allowed under ground (a) on planning merit and (3) in relation to the 1 Storey Rear WC Extension also was allowed under ground (a) on planning merit.
- 14.3 The Appeal against the Enforcement Notice in relation to the 3 Storey Rear South Eastern Corner Extension was not allowed under ground (a) on planning merit.
- 14.4 There was no Appeal against the Enforcement Notice in relation to the 3 Storey Rear South Eastern Corner Extension under ground (c) and, therefore, the Inspector did not consider nor determine whether the 3 Storey Rear South Eastern Corner Extension was permitted by The Town and Country Planning (General Permitted Development) Order 1995.
- 14.5 There has been no Appeal against the refusal to grant the Certificate of Lawful Existing Development submitted on 18 November 2013 which London Borough of Camden refused to grant by their Decision letter dated 4 March 2014 until this Appeal number APP/X5210/X/16/3148353 was issued on 14 April 2014.
- 14.6 London Borough of Camden are wrong repeatedly to assert that the lawfulness of the 3 Storey Rear South Eastern Corner Extension has been determined by any Inspector appointed by the Secretary of State for the Environment.

15. Enforcement Notice EN13/1075 Issued on 2 June 2014

- 15.1 There are 4 brick piers to the front of the Property and iron railings between each pair of brick piers either side of the front door.
- 15.2 By 2012 the brick piers, iron railings and the dwarf brick wall and coping stones into which the iron railings had originally been fixed had become severely deformed by the pressure of the pavement and earth below it and had become dangerously unstable.
- 15.3 When in about 2012 statutory undertakers installed new water mains, gas mains and electricity mains from the street into the Property the two brick piers either side of the Property collapsed. In 2013 these brick piers were duly reconstructed with new York stone caps by the Appellant.
- 15.4 Subsequently, the remaining 2 original brick piers collapsed and the original iron railings were stolen from the Property.
- 15.5 In December 2013 the Appellant applied to the Department of Building Control and installed reinforced concrete piles along the front boundary of the Property in order to retain the pavement and earth below it. The installation of reinforced concrete piles was a major undertaking requiring the pavement to be closed to the public for about 2 weeks.
- 15.6 On 30 January 2014 at 10:04 the Appellant submitted by email to Mr Gary Bakall of London Borough of Camden details of the new twisted iron railings and wrought iron finials that the Appellant intended to install for his approval, however, he failed to approve or reject these.
- 15.7 The Appellant was unable to complete the works by rebuilding the 2 brick piers, dwarf wall and York stone copings into which the new iron railings were to be fixed unless and until a Completion Certificate had been granted by the Department of Building Control of London Borough of Camden for the reinforced concrete piles onto which the 2 brick piers, dwarf wall and York stone copings were to be built.
- 15.8 On 2 June 2014, instead of producing a Completion Certificate for the reinforced concrete piles and also approving the design details for the proposed new iron railings so that the Appellant could finish rebuilding of the 2 brick piers, dwarf wall and York stone copings into which the new iron railings were to be fixed, London Borough of Camden issued an Enforcement Notice EN13/1075 requiring the Appellant to replace the front boundary railings.
- 15.9 It was not until 15 July 2014 that the Department of Building Control of London Borough of Camden issued a Completion Certificate so that the dwarf wall could be rebuilt, the York stone copings sourced from a quarry in Yorkshire, cut, dressed, delivered and installed at the Property. Mr Gary Bakall did not respond to the request for approval of the iron railings and finials and the Appellant was obliged to install these without the approval of London Borough of Camden Department under threat of further enforcement action.

16. Renewed Application for Certificate of Lawful Proposed Development Number 2015/5288/P

- 16.1 On 16 September 2015 the Appellant submitted a renewed Application inviting London Borough of Camden to grant Certificate of Lawful Existing Development number 2015/5288/P in relation to the 3 storey Rear South Eastern Corner Extension in the light of new evidence all of which the Appellant had discovered since making the previous Application for a Certificate of Lawful Existing Development number 2013/7388/P and much of which the Appellant had discovered since the Public Inquiry.
- 16.2 A key part of this evidence, a letter dated 15 September 2008 sent by Dr Frances Swain to London Borough of Camden, has been in the possession of Dr Frances Swain and Mr David Stone who failed to disclose or produce this evidence when making their submissions to London Borough of Camden.
- 16.3 All of this evidence has been in the possession of London Borough of Camden since no later than 30 September 2008 and, therefore, this evidence was particularly reliable.

17. Refusal to Determine Renewed Application for Certificate of Lawful Existing Development Number 2015/5288/P

- 17.1 In an email sent on 5 October 2015 at 15:56 Mr Matthew Dempsey, on behalf of London Borough of Camden, informed the Appellant that London Borough of Camden refused to determine her Application for a Certificate of Lawful Existing Development number 2015/5288/P and unlawfully purported to rely upon the power to do so conferred by Section 70A of the Town and Country Planning Act 1990.
- 17.2 The power granted by Section 70A of the Town and Country Planning Act 1990 applies to repeated applications for Planning Permission and does not apply to repeated Applications for Certificates of Lawful Existing Development and/or Applications for Certificates of Lawful Proposed Development.
- 17.3 By an email sent on 19 October 2015 at 08:36 the Appellant sent Mr Gary Bakall, Planning Enforcement Officer, copied to Patrick Kelly and Louise McLoughlan, Lawyers employed by London Borough Camden, a letter dated 19 October 2015 explaining the reasons why the power under Section 70A of the Town and Country Planning Act 1990 does not apply to repeated Applications for Certificates of Lawful Existing Development.

18. New Evidence of Commencement of Development

18.1 The Appellant further attached to the email sent on 19 October 2015 at 08:36 (to which had been attached the letter dated 19 October 2015 about London Borough of Camden's power under Section 70A of the Town and Country Planning Act 1990 and to which letter Mr Jonathan McClue on behalf of London Borough of Camden later responded) various documents which showed that the development of the Rear South Eastern Corner Extension had been commenced on or before 30 September 2008:

- (1) Letter dated 14 October 2008 sent by Mr Gary Bakall, Planning Enforcement Officer, to Dr Frances Swain of 41 Willow Road London NW3 1TN in which Mr Gary Bakall had stated:

Thank you for your letter dated 15 September [2008]

Demolition of a rear extension does not require planning consent but the property does have planning consent for a new rear ground floor extension.

- (2) Letter dated 14 October 2008 of Mr Gary Bakall showed that he had received from Dr Frances Swain a letter dated 15 September 2008 complaining about the demolition of the Pre-Existing 1 Storey Rear South Eastern Corner Extension.
- (3) Application for Certificate of Proposed Lawful Development Number 2008/4730/P dated 30 September 2008 which originally had been stamped *Received 30 September 2008*, but subsequently this was altered to *Received 1 October 2008*, by London Borough of Camden.
- (4) Letter dated 30 September 2008 under cover of which the Application for Certificate of Proposed Lawful Development Number 2008/4730/P had been submitted which also originally had been stamped *Received 30 September 2008*, but had also subsequently altered to *Received 1 October 2008*, by London Borough of Camden.
- (5) Receipt dated *30 September 2008* and stamped *Received 30 SEP 2008* by London Borough of Camden for the Application Fee of £150 for the Application for Certificate of Proposed Lawful Development Number 2008/4730/P.
- (6) Computer screen print produced by London Borough of Camden Building Control showed that Building Control Application Number 08/1/0601 had been received on *30 September 2008* by London Borough of Camden and the fee of £507 had been paid on *30 September 2008*.
- (7) London Borough of Camden Building Control online computer access made on 23 June 2015 showed that Building Control Application Number 08/1/0601 summary had recorded a *Commencement date 15/09/2008*.
- (8) London Borough of Camden Building Control online computer access made on 11 August 2015 showed that Building Control Application Number 08/1/0601 summary had been altered the *Commencement date 15/09/2008* had been *deleted*.

- 18.2 Further, following an inspection of the Property on 15 September 2008 by a Council Tax Officer, London Borough of Camden determined that it should be removed from the Council Tax Valuation List due to major building works making the property uninhabitable. This shows that demolition had commenced by 15 September 2008.
- 18.3 Importantly, none of this evidence had been available to the Appellant when on 18 November 2013 she submitted her Application for a Certificate of Lawful Existing Development number 2013/7388/P and much of the evidence was only discovered by the Appellant following the Public Inquiry.

19. Agreement to Determine Renewed Application for Certificate of Lawful Existing Development Number 2015/5288/P

- 19.1 In an email sent on 10 November 2015 at 16:51 Mr Jonathan McClue, Planning Officer, stated that he had *been asked to determine the above application*. Thereafter, Mr Jonathan McClue purported to determine to Application on the merits and thereby waived the technical point that London Borough of Camden might have taken under Section 191(2)(b) of the Town and Country Planning Act 1990 that the Appellant was not entitled to a Certificate of Lawful Existing Development on an Application submitted following the issue of the Enforcement Notice dated 5 March 2014.

20. Prosecution Before Highbury Corner Magistrates' Court

20.1 On 17 February 2016 London Borough of Camden laid Informations before the Justices' Clerk of Highbury Corner Magistrates' Court alleging against the Appellant and also against Mr Philip Galway-Cooper, the Appellant's husband:

That between 22 September 2015 and 12 January 2016 you failed to comply with an Enforcement Notice EN14/0149 issued on 5 March 2014 and served by the London Borough of Camden to:

- (a) Completely demolish the three-storey extension and balcony located at the south east corner of the house and remove from the land all materials resulting from the demolition.*
- (b) Restore the part of the rear wall of the house to which the extension is attached to its condition before the development occurred, including the removal of the French windows that open onto the balcony.*

Contrary to section 179(2) and (8) of the Town and Country Planning Act 1990 as substituted by section 8 of the Planning Compensation Act 1991.

20.2 On 14 April 2016 the Appellant issued the Appeal to the Secretary of State for the Environment against the refusal of London Borough of Camden to grant the Certificates of Lawful Existing Development applied for on:

- (1) 18 November 2013 Application Number 2013/7388/P; and
- (2) 16 September 2015 Application number 2015/5288/P

20.3 At the Pleas Hearing on 14 April 2016 the Appellant and her husband pleaded *not guilty* to the offences charged. London Borough of Camden, who had confirmed that the Appeal to the Secretary of State for the Environment had been issued, nevertheless pressed the Magistrates to give Directions for a Trial to commence on 22 August 2016.

20.4 At a Pre-Trial Review on 28 July 2016 London Borough of Camden conceded that it would be wrong in principle to proceed with the prosecution unless and until the Appeal in relation to the refusal to grant a Certificate of Lawful Existing Development had been determined and the criminal proceedings have been adjourned.

21. Evidence Demonstrating that Works to the Rear South Eastern Corner Extension began before the Amended General Permitted Development Order came into force on 1 October 2008

Letter dated 15 September 2008 from Dr Frances Swain

- 21.1 In her signed proof dated 26 October 2014, submitted to the Public Inquiry, Dr Frances Swain provided a meticulous chronology of her observations of the building works to the rear of the Appeal Property including photographs taken by her and details when these were downloaded and stored onto her computer.
- 21.2 Dr Frances Swain produced photographs of the rear of the Appeal Property which she said *I know to have been taken between 7 and 13 September 2008*. These photographs showed the Pre-Existing 1 Storey Rear South Eastern Corner Extension *in situ*.
- 21.3 Despite this careful and detailed chronology made by Dr Frances Swain, including the statement at paragraph 7 that she took *a holiday in the Lake District with my family between 13 and 15 September 2008*, Dr Frances Swain omitted to mention that upon her return to her home at 41 Willow Cottages on 15 September 2008 she observed that the Pre-Existing 1 Storey Rear South Eastern Corner Extension had been demolished and that she wrote to the London Borough of Camden to complain about this.
- 21.4 In an email sent on 8 April 2014 at 13:20 the Appellant asked Mr Gary Bakall to provide her with a copy of the letter dated 15 September 2008 to which he had replied in his letter dated 14 October 2008. Mr Gary Bakall did not reply to this request.
- 21.5 During a subsequent telephone call the Appellant's husband chased Mr Gary Bakall for a copy of the letter dated 30 September 2008 to which Mr Gary Bakall had replied in his letter dated 14 October 2008. Mr Gary Bakall agreed to do so but did not in fact produce the letter or any reply in writing to this request.
- 21.6 In his signed proof dated 26 October 2014, submitted to the Public Inquiry, Mr Gary Bakall provided a detailed chronology of the Planning Enforcement History and at paragraph 4.1 stated:

EN08/0799 – Fence removed and used as a parking space – opened 11/09/2008 closed 29/09/2008 as permitted development.

- 21.7 Mr Gary Bakall failed to make any mention under this heading that he had received a letter dated 15 September 2008 from Dr Frances Swain complaining about demolition of the Pre-Existing Rear South Eastern Corner Extension and that on 14 October 2008 he had replied to Dr Frances Swain under the same reference number EN08/0799 stating:

Thank you for your letter dated 15 September [2008]

Demolition of a rear extension does not require planning consent but the property does have planning consent for a new rear ground floor extension.

- 21.9 In a letter dated 14 November 2014 Messrs Savills wrote to Mr Gary Bakall and repeated the request for a copy of the letter dated 30 September 2008 to which he had replied in his letter dated 14 October 2008. Mr Gary Bakall did not reply to this repeated request.

22. Photographs of Dr Frances Swain

- 22.1 The photographs produced by Dr Frances Swain, said to have been taken between *7 and 13 September 2008*, show a substantial amount of timbers in the side garden of the Appeal Property which shows that internal demolition works had by then commenced.
- 22.2 These photographs, said by Dr Frances Swain to have been taken between *7 and 13 September 2008*, show that digging a trench for the construction of the foundations for the new 3 Storey Rear South Eastern Corner Extension had already commenced.
- 22.3 Dr Frances Swain produced photographs of the rear of the Appeal Property which she says were *taken on 16 October 2008*. These photographs are taken from an angle where the Pre-Existing 1 Storey Rear South Eastern Corner Extension cannot be seen.
- 22.4 The photographs taken by Dr Frances Swain do show, however, that the Rear Main Wall of the Appeal Property together with almost half of the Pre-Existing 2 Storey Rear Central WC Extension had been entirely demolished.
- 22.5 The line of demolition of the Rear Main Wall of the Appeal Property together with almost half of the Pre-Existing 2 Storey Rear Central WC Extension is shown in red on a drawing of the Rear Elevation of the Appeal Property.
- 22.6 Demolition of the Rear Main Wall of the Appeal Property was a major structural undertaking which required a structural scaffold to support the Front Main Wall of the Appeal Property and would have taken several weeks to carry out.
- 22.9 It would have been necessary to demolish the Pre-Existing 1 Storey Rear South Eastern Corner Extension and construct new foundations for the new 3 Storey Rear South Eastern Corner Extension before erecting scaffolding to do the above.

23. Freedom of Information Act 2000 Request Reference Number 9954847

23.1 On 16 February 2015 a Freedom of Information Act 2000 Request reference number 9954847 was made to London Borough of Camden asking for copies of all complaints and decisions in relation to five Enforcement Cases including EN08/0779.

23.2 London Borough of Camden have a two limbed statutory duty first, to respond promptly and, secondly, in any event to respond in no less than 20 working days. London Borough of Camden grossly failed to discharge that statutory duty.

23.3 Chaser emails were sent to London Borough of Camden on:

- (1) 17 March 2015 – 21 working days after the request
- (2) 15 April 2015 – 42 working days after the request
- (3) 1 May 2015 – 54 working days after the request
- (4) 27 May 2015 – 72 working days after the request

23.4 In an email sent on 29 May 2015 at 14:39, 74 days after the request, Ms Elizabeth Beaumont failed to disclose any documents. Ms Elizabeth Beaumont provided thumbnail explanations about 4 of the requests, however, in relation to EN08/0779 incorrectly stated that an Enforcement Notice had not been served as follows:

However, in respect of EN08/0779 this case was not a formal enforcement investigation (ie an enforcement notice was not served) and therefore information in relation to this matter is exempt on the grounds it is personal information and is not in the public interest to reveal this information.

23.5 In a further email sent on 24 June 2015 at 17:04, 92 days after the request had been submitted and almost *five* times the statutory long stop of 20 working days, Ms Elizabeth Beaumont continued in her failure to disclose any documents.

24. Freedom of Information Act 2000 Request Reference Number 17707296

24.1 Following a renewed Freedom of Information Act 2000 request reference number 17707296 on 5 October 2015 Ms Elizabeth Beaumont responded as follows:

We are sorry to inform you that this information is not held. The Council does not have a copy of the letter dated 15 September 2008 on enforcement file EN08/0779.

Freedom of Information Act 2000 Request Reference Number 17707258

24.2 Following a Freedom of Information Act 2000 request reference number 17707258 on 8 October 2015 Mr Gary Bakall sent a letter to the Appellant stating that:

The Council cannot find a copy of the letter dated 15 September 2008 that you refer to. The letter may have been lost when the planning enforcement files were digitised. However as advised before, a letter dated 14th October 2008 remains on file which talks of off street parking, removal of a Holly tree and demolition of the rear extension. A redacted copy of the letter is attached FYI.

24.3 Mr Gary Bakall did not explain how both the original paper letter, all paper copies as well as digital copies had all been lost nor what efforts he had made to obtain a further copy of the letter from Dr Frances Swain and/or Mr David Stone.

24.4 The copy of Mr Gary Bakall's letter dated 14 October 2008 disclosed on this occasion clearly showed that Mr Gary Bakall had written to Dr Frances Swain of 41 Willow Cottages London NW3 1TN.

25. Section 56 of the Town and Country Planning Act 1990

25.1 The rules on the start of development carried out pursuant either to a planning permission granted by the local planning authority or one by the Secretary of State in the form of a development order are the same. The relevant date is when development is begun.

Section 56 of the Town and Country Planning Act 1990 provides that:

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated —
 - (a) if the development consists of the carrying out of operations, at the time when those operations are *begun*;
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which *any* material operation comprised in the development *begins* to be carried out.
- (4) In subsection (2) “material operation” means—
 - (a) any work of construction in the course of the erection of a building;
 - (aa) any work of demolition of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

25.2 London Borough of Camden erred in law, therefore, when in the Delegated Report in relation to the Application for a Certificate of Lawful Existing Development number 2013/7388/P at paragraph 3.1 Mr Neil Quinn focused on the date when the Pre-Existing 2 Storey Rear WC Extension (wrongly described as a Pre-Existing Staircase Structure although at that time this structure contained a WC and did not contain any staircase although it was in due course replaced by the new 4 Storey Rear Staircase Extension) had been *completely demolished*.

25.3 London Borough of Camden have continued to pursue this fundamental error in law in Mr Bakall’s letter dated 22 June 2016 sent to PINS in which he wrongly asserted that:

The basis for the appellant’s new appeal appears to be the assumption that as long as some demolition was started prior to 30 September 2008 this keeps the 1995 GPDO provisions alive. This is not the case, firstly the true test is whether the new extension was substantially complete on this date, they have no evidence that any demolition had taken place before September 30th 2008, demolition is not a material operation in this case

- 25.4 It is plain on any reading of Section 56 of the Town and Country Planning Act 1990 that, to adopt Mr Gary Bakall's words, *as long as some demolition was started prior to 30 September 2008 this keeps the 1995 GPDO provisions alive*. It is equally plain that Section 56 of the Town and Country Planning Act 1990 does not require *the new extension to have been substantially complete on this date* as he mistakenly asserts.
- 25.5 The Appellant's case is that the development was begun with the benefit of planning permission granted by The Town and Country Planning (General Permitted Development) Order 1995, which of course, the Enforcement Notice cannot in the circumstances retrospectively remove.

26. Further Points of Law

Section 70A of the Town and Country Planning Act 1990

26.1 Section 70A of the Town and Country Planning Act 1990 provides as follows:

- (1) A local planning authority may decline to determine a relevant application if —
 - (a) any of the conditions in subsections (2) to (4) is satisfied, and
 - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
- (2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application referred to him under section 76A or 77.
- (3) The condition is that in that period the Secretary of State has dismissed an appeal —
 - (a) against the refusal of a similar application, or
 - (b) under section 78(2) in respect of a similar application.
- (4) The condition is that —
 - (a) in that period the local planning authority have refused more than one similar application, and
 - (b) there has been no appeal to the Secretary of State against any such refusal or, if there has been such an appeal, it has been withdrawn.
- (4A) A local planning authority in England may also decline to determine a relevant application if —
 - (a) the condition in subsection (4B) is satisfied, and
 - (b) the authority think there has been no significant change in the relevant considerations since the relevant event.
- (4B) The condition is that —
 - (a) in the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,
 - (b) the similar application was an application deemed to have been made by section 177(5), and

- (c) the land to which the application mentioned in subsection (4A) and the similar application relate is in England.
- (5) A relevant application is —
- (a) an application for planning permission for the development of any land;
 - (b) an application for approval in pursuance of section 60(2).

Relevant Application

- 26.2 Sub-section 70A(1) provides that the Local Planning Authority *may* decline to determine a *relevant application*.
- 26.2 Subsection 70A(5) defines a *relevant application* as an *application for planning permission* for the development of any land or an application for approval in pursuance of section 60(2).
- 26.3 The Application for a Certificate of Lawful Existing Development is made under *Section 191* of the Town and Country Planning Act 1990 and, therefore, does not fall within this definition of sub-sub-section 70A(5)(a).
- 26.4 Similarly, an Application for a Certificate of Lawful Proposed Development is made under *Section 192* of the Town and Country Planning Act 1990 and, therefore, does not fall within this definition of sub-sub-section 70A(5)(a).
- 26.5 Nor does an Application for a Certificate of Lawful Existing Development fall within the alternative application under sub-sub-section 70A(5)(b) for approval in pursuance of section 60(2) because the Local Planning Authority is not being asked for approval with respect to the design or external appearance of the buildings in accordance with section 60(2) of the 1990 Act.

27. Section 191(2)(b) of the Town and Country Planning Act 1990

27.1 Section 191 of the Town and Country Planning Act 1990 provides that:

191 Certificate of Lawfulness of Existing Use or Development

- (1) If any person wishes to ascertain whether —
 - (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
- (2) For the purposes of this Act uses and operations are lawful at any time if—
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

27.2 The *Encyclopedia of Planning Law and Practice* at paragraph P191.03.1.1 states as follows:

Lawfulness is referable to the date on which the section 191 application is validly made, not the date on which the application is determined. The issuing and service of an enforcement notice after the section 191 application has been made cannot therefore act as a bar to issuing of a section 191 certificate.

27.3 In this case, the following Applications were all validly made before the Enforcement Notice dated 5 March 2015 was issued and, therefore, Section 191(2)(b) is not a bar to the grant of Certificates of Lawful Development in the case of:

- (1) Application for a Certificate of Lawful Proposed Development number 2008/4730/P which was issued on 30 September 2008;
- (2) Application for a Certificate of Lawful Existing Development number 2013/7388/P which was issued on 18 November 2013;
- (3) Application for a Certificate of Lawful Proposed Development number 2014/1374/P which was issued on 19 February 2014.

27.4 Further, the Application for a Certificate of Lawful Existing Development number 2015/5288/P issued on 16 September 2015 was accepted by London Borough of Camden who agreed to determine it on the merits waiving the right to rely upon Section 191(2)(b) of the Town and Country Planning Act 1990 and they should not be allowed to do so on Appeal.

Section 192 of the Town and Country Planning Act 1990

27.5 Applications for a Certificate of Lawful Proposed Development are made and granted under Section 192 of the Town and Country Planning Act 1990 which does not contain any equivalent provision to Section 191(2)(b) and, therefore, the issue of an Enforcement Notice cannot be a bar to either of the two Appeals against the refusal by London Borough of Camden to grant:

- (1) the Certificate of Lawful Proposed Development number 2008/4730/P which was applied for on 30 September 2008; and/or
- (2) the Certificate of Lawful Proposed Development number 2014/1374/P which was applied for on 19 February 2014.

28. Letter dated 27 July 2016 of London Borough of Camden

28.1 The letter dated 27 July 2016 of London Borough of Camden improperly seeks to stifle the Appellant's statutory right to Appeal the Decisions of London Borough of Camden. In this letter dated 27 July 2016 London Borough of Camden state that:

The purposes of section 191(2) is to prevent people from being able to benefit from development from becoming lawful through the passage of time after an enforcement notice has come into force.

28.2 This Appeal is *not* made on the basis that the Appellant is entitled to a Certificate of Lawful Existing Development through the passage of time. The basis of the Appeal is that the Appellant is entitled to a Certificate of Lawful Existing Development because the development was commenced on or before 15 September 2008 and complies with the provisions of The Town and Country Planning (General Permitted Development) Order 1995. In any event, the point is not valid in relation to Applications submitted to London Borough of Camden prior to the issue of the Enforcement Notice. See *Encyclopedia of Planning Law and Practice* at paragraph P191.03.1.1 and *Duguid -v- Secretary of State for the Environment* [2001] 82 P&CR 6 in application of the *Mansi* principle.

28.3 In their letter dated 27 July 2016 the London Borough of Camden wrongly allege that *The subject of this appeal has already been heard at the Planning Inquiry in 2014*. There has never been any Appeal against the refusals of London Borough of Camden to grant the Certificates of Lawful Existing Development now being appealed. Nor did the Appellant Appeal against the Enforcement Order under ground (c). Accordingly, the Inspector has not made any prior determination in relation to the lawfulness of the development and/or the entitlement of the Appellant to Certificates of Lawful Development.

28.4 The suggestion that *the Appellant intends to delay the criminal proceedings by this Appeal* does not bear scrutiny. If the Appeal is successful then the Appellant will have been right to issue this Appeal and London Borough of Camden's Decisions will have been held to be wrong and it will also have been wrong of London Borough of Camden to oppose the Appeal. If the Appeal is dismissed, then the criminal proceedings will conclude with the same verdict as if the Appeal had not been issued.

28.5 This Appeal can only properly be determined following a *Public Inquiry* where all of the evidence can be tested and considered by the Inspector because of:

- (1) the new evidence which the Appellant has discovered about the date when development was commenced on or before 30 September 2008;
- (2) non-disclosure by Dr Frances Swain and/or Mr David Stone of the letter dated 15 September 2008 complaining about demolition;
- (3) non-disclosure of that evidence by London Borough of Camden all of which evidence they have had in their possession as long ago as 30 September 2008;
- (4) the responses of London Borough of Camden to requests made under the Freedom of Information Act 2000;
- (5) frustration of the Appellant's right to Certificates of Lawful Development by the threat and issue of criminal proceedings.

29. Planning Considerations

- 29.1 If the Rear South Eastern Corner Extension is permitted by The Town and Country Planning (General Permitted Development) Order 1995 and/or the proposal to increase the height of the Rear WC Extension is permitted by The Town and Country Planning (General Permitted Development) Order 1995 as amended by permitted by The Town and Country Planning (General Permitted Development) (Amendment) (England) (No 2) Order 2008, then there are no planning considerations and/or policies that are applicable.

30. Conclusion

- 30.1 Development is initiated when any work of demolition of a building *or* the digging of a trench which is to contain part of the foundations of a building is *commenced*. London Borough of Camden erred in law by determining when all demolition was completed.
- 30.2 All the available evidence indicates that development of the Rear South Eastern Corner Extension commenced on or before 30 September 2008 and, therefore, The Town and Country Planning (General Permitted Development) Order 1995 applies.
- 30.3 Accordingly, a Certificate of Lawful Proposed Development should have been granted in relation to Application number 2008/4730/P and the Appeal against the refusal of London Borough of Camden to grant this should be allowed.
- 30.4 London Borough of Camden have repeatedly measured the Rear South Eastern Corner Extension and found that it complies with the provisions of Schedule 2 Class A of The Town and Country Planning (General Permitted Development) Order 1995.
- 30.5 Accordingly, a Certificate of Lawful Existing Development should have been granted in relation to Application number 2013/7388/P and the Appeal against the refusal of London Borough of Camden to grant this should be allowed.
- 30.6 The proposal to increase the height of the Rear WC Extension in accordance with the Technical Guidance published by The Department of Communities and Local Government was lawful.
- 30.7 Accordingly, a Certificate of Lawful Proposed Development should have been granted in relation to Application number 2014/1374/P and the Appeal against the refusal of London Borough of Camden to grant this should be allowed.
- 30.8 Mr David Stone, of 40 Willow Cottages, a Solicitor and Partner of Simmons & Simmons, has submitted about 500 pages of documents in relation to the Property to London Borough of Camden which they have chosen to disclose.
- 30.9 Mr David Stone submitted about 37 pages of representations in relation to the Application for a Certificate of Lawful Existing Development Number 2013/7330/P causing the grant of that Certificate to be unlawfully delayed for 1 year.
- 30.10 It must be noted that the Inspector, in his Decision dated 19 December 2014, did not refer to the evidence of Mr David Stone given at the Public Inquiry, from which it must be presumed that his evidence was rejected.