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Town Planning - Planning Law

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9 August 2016

Craig Maxwell Esq

Planning Inspectorate

Room 3/23

Temple Quay House

2 The Square

Bristol BS1 6PN

Dear Mr Maxwell,

**Appeal Number APP/X5210/X/16/3148353**

**LB Camden Application Numbers 2008/4730/P, 2013/7388/P, 2014/1374/P and 2015/5288/P**

**15 Gayton Crescent London NW3 1TT**

**Mrs Wendy Galway-Cooper**

**Late Service of Letters from London Borough of Camden to PINS**

1. We have received a copy of Ms Pritej Mistry's letter to you dated 27 July 2016 although, despite being headed **Urgent**, London Borough of Camden did not send a copy of it to us until their email sent to us on 3 August 2016 at 13:24. We have asked London Borough of Camden for an explanation about this, however, they have failed to respond.
2. The covering email sent by Ms Pritej Mistry to you on 27 July 2016 at 17:49 and 1 August 2016 at 15:33 appears to have attached to it a letter headed *Without Prejudice Save as to Costs* sent by us to London Borough of Camden. Plainly, that letter is by the nature of its content and flagged up by the heading privileged and should not have been sent to you. We have asked for an explanation from London Borough of Camden, however, they have failed to respond. We would ask that it is deleted and not read by you.

### **Section 191(2) of the Town and Country Planning Act 1990**

3. In reply to Mrs Lilangi Cooke's letter to you dated 27 July 2016 we would respond as follows. 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.*

4. 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 30 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 such as the Application for a certificate of Lawful Existing Development number 2013/7388/P submitted on 18 November 2013 which has at all times been the subject of this Appeal. 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. We attach copies of these authorities. You are referred to paragraphs 22.1 to 22.5 and 23.1 to 23.5 of our client's Statement of Case.

### **The subject of this Appeal has not already been heard at the Planning Inquiry in 2014**

5. 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.

### **Alleged intention to delay the criminal proceedings by this Appeal**

6. 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.

### **Public Inquiry**

7. 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 obfuscatory 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.

#### **Advice of Savills**

8. London Borough of Camden are wrong to suggest that my client was advised to raise ground (c) in the Appeal against the Enforcement Notice and/or to appeal against the refusal to grant the Certificate of Lawful Existing Use. We attach to this covering email a copy of the Advice from David Whittington, Director of Savills, dated 24 March 2014 in relation to which privilege is waived. Savills advised that *it is not incorrect for the Council to have assessed the totality of the extensions together*, however, the Inspector subsequently determined that London Borough of Camden had been wrong to *assess the totality of the extensions together* and held that the extensions should be individually assessed. Similarly, the advice of Savills on that point turned out to be wrong. It is accepted that the adjoining 4 Storey Rear Staircase Extension does not comply with The Town and Country Planning (General Permitted Development) Order 1995, however, the 3 Storey Rear South Eastern Corner Extension does comply with The Town and Country Planning (General Permitted Development) Order 1995.
9. After the Inspector held that these two Rear Extensions should be separately assessed, and after he granted planning permission for the adjoining 4 Storey Rear Staircase Extension, its existence no longer made the 3 Storey Rear South Eastern Corner Extension. It is only following this decision of the Inspector that it became apparent that the 3 Storey Rear South Eastern Corner Extension was permitted because it complied with the provisions of The Town and Country Planning (General Permitted Development) Order 1995. Savills then unequivocally stated *I advise that you Appeal upon the following grounds only . . .* and the letter then lists and explains grounds (a), (f) and (g). My client reasonably followed that advice.

#### **Statement of Case**

10. In accordance with the Directions contained in your Start Letter dated 28 June 2016 we attach to this covering email a copy our client's *Statement of Case* together with a drawing showing a

red line demolition and copies of *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.

**Decisions against which the Appellant seeks to Appeal**

11. In reply to Mrs Lilangi Cooke's letter to you dated 28 July 2016 the Appeal Notice appealed against the refusal to grant the Application for a Certificate of Lawful Existing Development number 2013/7388/P and the Renewed Application for a Certificate of Lawful Existing Development number 2015/5288/P in relation to the same development known as the 3 Storey Rear South Eastern Corner Extension.
12. In addition, my client wishes to appeal against the refusal to grant the Application for a Certificate of Lawful Proposed Development number 2008/4730/P in relation to the same development known as the 3 Storey Rear South Eastern Corner Extension and the refusal to determine the Application for a Certificate of Lawful Proposed Development number 2014/1374/P in relation to a different development at the same property known as the 1 Storey Rear WC Extension. The basis of these appeals is set out in our client's Statement of Case.
13. Finally, we would note that a Public Inquiry of just 1 day is most unlikely to be sufficient and repeat our client's proposal that 3 days will be required. It may be that in due course London Borough of Camden will agree various facts and matters and, if they do so, that the time estimate then can be substantially reduced.

Yours sincerely



Ian Trehearne