

24 March 2014



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Dear Mr Galway-Cooper

***15 Gayton Crescent, Hampstead
Enforcement Issues***

I write respect of the above site and following our recent discussions. I set out my comments below

Refused Certificate Applications

There seems little point to me in appealing these refused applications. On the basis of the information supplied to me, it seems that there is insufficient reliable evidence to argue that the extensions have been in place for 4 or more years.

Furthermore, it is not incorrect for the Council to have assessed the totality of the extensions together. On this basis we would struggle greatly to demonstrate that the extensions area permitted development by virtue of their size and dimensions.

I note the issue that at least 1 of the extensions could constitute permitted development, but I shall address this issue below.

If these were to be Appealed, it can only be on the grounds that the extensions are permitted development. I do not see that you have a robust enough case on these 2 points at the present time. You would be at risk of costs being awarded against you if you fail to make a credible or robust case.

Enforcement Notices

These are effectively identical documents. The Council have issued 3 Notices to correspond to the 3 refused certificate applications. I can understand the Council's logic in doing this i.e. responding to the 3 refused Certificate applications.

I advise that all 3 Notices area Appealed as soon as possible. Certainly your Appeals must be with the Inspectorate by 16 April, i.e. before the date upon which the Notices take effect.

3 Appeals would need to submitted for the sake of completeness, but we would seek to have the Appeals rolled into a single Appeal process.

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East.

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Registered office: 33 Margaret Street, London, W1G 0JD



We would seek to have these Appeals handled by the Written Representations route.

Grounds of Appeal

I enclose a copy of the Planning Inspectorate Guidance notes for your reference.

I advise that you Appeal upon the following grounds only.

Ground (a) - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed).

This will effectively be asking that planning permission be granted. It is, in effect, the same process as seeking retrospective consent.

We would make the case that the rear extensions have no harm to any acknowledged interests, such as design, form, massing, effect upon the host building and the character and appearance of the Conservation Area. We would also assess that there is no harm to the neighbouring residents, nor to the setting of the adjacent listed building.

This would be the central part of the Appeal Statement.

We would make it clear that the Council had previously assessed these extensions to be permitted development and had reported this stance to the Planning Committee.

As you would be pleading Ground A, a fee is payable to the Council. On this basis, I would need 3 separate cheques (1 for each appeal) each in the sum of £172, made payable to the "London Borough of Camden". I would need these as soon as possible please.

Ground (f) - The Act says "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach";

This means that steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.

We would argue that in the event that the enforcement Notices are upheld, only part of the rear extensions need to be demolished.

We would argue that the W/C element (LPA ref 2013/7485/P) would be permitted development if it were not attached to the other 2 rear extensions. On this basis, we would argue that this elements could be kept and then there would be no breach of planning control, as this element in isolation, would constitute permitted development (paragraph 3.7 of the officer's report).



Ground (g) – That the time given to comply with the notice is too short.

In the event that the Appeal is lost and the Notices upheld you would be required to remove the extensions. The Notice sets a period of 3 months for this to take place.

We would seek to argue that a period of 6 months is more realistic and could allow for a further planning application process to resolve the issues with alternative extensions.

This Ground would be made on a without prejudice basis, in that it does not that we agree with the requirements of the Notice in the first instance.

I would note that there can never be a guarantee of success at Appeal. Notwithstanding, I feel that we can make a credible and robust case in favour of the proposals under Ground A.

This is however a subjective judgement and it will be for the Inspector to make this assessment

Role as Planning Consultant

I would anticipate acting as lead consultant in respect of this matter. I would envisage our role as planning consultant as comprising the following key elements:

- *Preparation and Submission of Appeal Documents including detailed Written Representations Statement(s);*
- *Reviewing and providing written commentary upon the Council's Appeal Statement; (their committee report and other documents)*
- *Reviewing and providing written commentary upon any third party (neighbours) representations received during the appeal;*
- *Liaison with the Planning Inspectorate and management of all aspects of the Appeal process;*
- *Attendance at Inspector Site Meeting*
- *Review and comment upon the Appeal Decision Notice once issued.*

Additional Applications

You have stated that you would like to submit a further Certificate Application which would be to create the maximum envelope allowed under the current PD regulations. Our first assessment of this, suggests that this would be to a height of 3m to eaves with a parapet atop.

This would be a Certificate of Lawful (Proposed Development). Any description of development for this application would; have to make clear that it would only be permitted development following the demolition of the current extensions.

If this were to be granted by the Council prior to the Appeals above being heard, I could then refer to this as a viable fall back position. However, the Inspector could simply say that the only matters before him are the subject of the 3 rear extensions. He may not place great weight on this, as the fall back extension does not directly related in scale or form to those extensions already in place, i.e. you would have to remove the existing extensions in any event, to create the fully permitted development compliant single storey (3m) scheme.



Fees

I propose a fixed fee of £4,500 for the work as described above.

3 appeals would be submitted, but in essence, the Appeal Statement for each of the 3 appeals would be the same.

If you wish to have our involvement on additional applications or matters other than the Appeals (i.e. future development strategies outside the immediate Appeal work) , then I would charge on an hourly rate basis. My hourly rate is £250. Assistants vary from £90-120 per hour.

Should there be any change in Appeal Route or other unforeseen issues beyond our control, then you agree that additional fees will be due to cover such additional work. We would advise you of this should such matters arise.

All fees are exclusive of VAT and disbursements. I enclose a copy of our Terms of Business

Disbursements will include, *inter alia* items such as reprographic costs, travel and costs associated to the acquisition of information and documents necessary and relevant to the appeal process. At this stage, I would not anticipate these to be significant.

Our fee will be invoiced after the submission for the appeal documents, and is payable regardless of the outcome of the appeal.

In order to proceed, I would be grateful if you can confirm your acceptance of the proposed fees and our Terms and Conditions. Can you also confirm the name and address of the person / party that would be instructing me and the address to which invoices would be sent. I assume this would be you at your home address.

I look forward to hearing from you.

Yours sincerely



David Whittington
Director

TERMS OF BUSINESS CONSULTANCY



Savills (UK) Limited's standard terms of business are set out below. The accompanying engagement letter (the Letter) may vary these terms. The Letter and the terms of business will together form our Terms of Appointment and, as required by The Estate Agents Act 1979 also constitute the written terms of business which, along with their fees, agents are required to confirm to their clients. When you have read and understood the Letter and these Terms, you should sign and return the copy of the Letter to us to record your acceptance of them. If you fail to return the copy to us or fail to acknowledge your acceptance in writing (including by email), but continue to instruct us in relation to the Services, you will be deemed to have accepted these terms and the conditions set out in the Letter.

In this agreement, any reference to "we", "our" or "us" is to Savills (UK) Limited, reference to "you" is to the client to whom the Letter is addressed and references to the "Appointment" is to our appointment under the Terms of Appointment. In these terms the singular includes the plural and the masculine includes the feminine.

1.0 Our Responsibilities

1.1 Our role and responsibilities as agent and/or consultant, as appropriate, are set out in the Letter.

1.2 We undertake to comply with the terms of the Estate Agents Act 1979, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), the Business Protection from Misleading Marketing Regulations (BPRs) and other legislation where relevant to our Appointment as agent and/or consultant.

2.0 Fees

2.1 Responsibility for Payment of Fees, Costs & Charges

2.1.1 The person or company identified in the Letter as the client is responsible for payment of our fees, costs and charges. If more than one party is to be responsible, the Letter should be signed by all relevant parties and their liability will be joint and several.

2.1.2 From time to time we may pay commission to third parties who introduce new clients or new business to us. This may include an introduction made to you or in respect of business that we conclude for you. We pay commission out of revenue earned from the relevant introduction.

2.2 Calculation of Fees

2.2.1 Our fees for the Appointment are set out in the Letter.

2.2.2 Unless otherwise agreed in writing, our fees are exclusive of any other specialist consultants' advice that may be required e.g. service engineers. We will advise you of the need for such advice as necessary. When the Appointment of another specialist consultant is required, we will undertake responsibility for the co-ordination and integration of such specialist consultant's work, but the appointment will be made directly between you and the other specialist consultant, and will form a separate contractual relationship. Unless otherwise agreed in writing, we have no responsibility for such other specialist consultant's performance of your instructions. Where you approve the appointment of a specialist consultant, you hereby authorise us to enter into a contract with such consultant on your behalf.

2.3 Expenses

2.3.1 In addition to the fees quoted above, reasonable disbursements will be charged. Travel and subsistence, photography, printing, photocopying, binding, postage and couriers are all charged as disbursements.

2.3.2 Until we receive written authority to proceed in connection with incurring disbursements, we reserve the right not to proceed with the consultancy.

2.4 Timing of Payment

2.4.1 Unless otherwise specified in the Letter, we shall raise invoices for our fees on a monthly basis.

2.4.2 Subject to clauses 2.1 to 2.3 above, our fee and any outstanding expenses are due and payable within 14 days following receipt of invoice.

2.5 VAT

2.5.1 All our fees, costs and charges are exclusive of Value Added Tax, which (where applicable) will be paid by you to us in addition to the sums due.

2.6 Interest and Recovery of Fees

2.6.1 Interest will be payable at 4% above the Barclays Bank base rate from time to time on any invoice that remains unpaid for 14 days after payment is due.

2.6.2 If we find it necessary to use solicitors or other parties to recover agreed fees, costs or charges, you agree to pay any reasonable costs incurred by us in this respect.

3.0 Suspending and Terminating Instructions

3.1 You or we may at any time terminate the Appointment by giving not less than 28 days' written notice (unless otherwise agreed in the Letter). Notice by either side does not detract from our right to charge fees under clause 2.0 above.

3.2 Either party may terminate this Appointment immediately upon giving notice in writing to the other party if (in the reasonable opinion of the terminating party) any one of more of the following events occurs or is likely to occur:

3.2.1 a party making any voluntary arrangement with its creditors, entering administration or going into liquidation; or

3.2.2 a security holder taking possession, or a receiver or administrative receiver being appointed, over all or any part of the property or assets of a party; or

3.2.3 any other similar or analogous event in any jurisdiction;

3.2.4 the other party commits a material breach of these Terms of Appointment.

3.3 We may suspend performance of our obligations under these Terms of Appointment without liability if you fail to pay any sum when due and fail to rectify such breach within seven days of receiving notice of non-payment.

3.4 If this Appointment is terminated or suspended for any reason under clause 3.0 above, you shall pay all fees and expenses due, commensurate with the services performed, including time spent in closing down the instruction. We reserve the right to invoice for all disbursements incurred to date and the greater of the time-charge for the work carried out or:-

3.4.1 Lump-sum fixed fees: pro-rata the fee by reference to the stage that work has reached;

3.4.2 'Success' fees: a reasonable percentage of the anticipated fee, by reference to the stage in negotiations that has been reached;

4.0 Limitation of Liability

4.1 Neither party will be liable for any loss of profit (other than in respect of our fees, costs or charges), loss of business or goodwill, or for any special, indirect or consequential loss or damage suffered by the other (including as a result of an action brought by a third party), save that nothing in these Terms of Appointment will exclude or restrict any liability which either party may have for (i) death or personal injury arising out of negligence, (ii) fraudulent misrepresentation or (iii) any other liability which cannot be restricted or excluded by law.

4.2 We will not be liable for any loss as a result of your receipt of any information, data or communications supplied or sent by us electronically, where through no fault of our own the relevant information, data or communication has been corrupted or otherwise modified as a result of it being supplied or sent electronically. You will be responsible for ensuring that any materials you provide or send us by any electronic medium and/or by computer disk are, and remain, virus free.

4.3 Subject to clauses 4.1 and 4.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Appointment or otherwise under the Terms of Appointment, unless otherwise agreed in writing, shall be limited to £5.0m.

5.0 Indemnity

5.1 Subject to clause 4.0 above you will indemnify and keep us indemnified on an after tax basis against all losses, damages, costs and expenses suffered or incurred by us, arising out of or by virtue of your instructions to us or arising out of any act, omission or default by you, any joint agent or any other third party instructed by you, other than any losses, damages, costs and expenses arising by virtue of our default or negligence.

5.2 During the term of the Appointment and for a period of 6 years thereafter, we will maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £5.0m and shall, on your request, produce confirmation from our insurance broker giving details of cover and that the current year's premium has been paid.

6.0 Compliance

6.1 The CPRs and BPRs

6.1.1 Under the CPRs and BPRs it is a criminal offence for an agent to make inaccurate or misleading statements about property whether in sale particulars, adverts, photographs or verbal statement. This includes making statements that might give the wrong impression about a property and includes omitting facts. You will be asked to verify certain information and must assist to the best of your knowledge.

6.1.2 You will ensure that you advise us of all material facts relevant to us acting as agent and that all information provided by you and/or your professional advisers is and remains complete, accurate and not misleading, for example:

6.1.2.1 you will inform us of any unusual or onerous encumbrances, restrictions, easements, outgoings or conditions attaching to the property; and

6.1.2.2 you will inform us if the property does not comply with all relevant statutory requirements or if the property has not been constructed or is occupied in contravention of or is to be sold or let without valid planning permissions and building regulation and all other approvals required by regulation; and

6.1.2.3 you will check all marketing materials and promptly notify us if any part of those materials is or becomes incomplete, inaccurate or misleading.

6.1.3 We will notify you as soon as reasonably practicable if we become aware that any information provided by you is incomplete, inaccurate or misleading. You will be responsible for any additional costs subsequently incurred by us to ensure that the circulation of incomplete, inaccurate or misleading information is rectified, whether by the reissue of amended marketing materials or otherwise.

6.2 Money Laundering

6.2.1 We are obliged to identify our clients in accordance with the requirements of the Money Laundering Regulations 2007. We are likely to request from you, and retain, some information and documentation for these purposes and/or make searches of appropriate databases electronically. For the avoidance of doubt, searches may also be conducted on directors and "beneficial owners" of the client as required by the legislation. If satisfactory evidence of your identity is not provided within a reasonable time, there may be circumstances in which we are not able to proceed with the instruction.

6.2.2 The provision of our services is a business in the regulated sector under the Proceeds of Crime Act 2002 and, as such, we are required to comply with this legislation which includes provisions that may require us to make a money laundering disclosure in relation to information we obtain as part of our normal work. It is not our practice to inform you when such a disclosure is made or the reasons for it because of the restrictions imposed by the "tipping off" provisions of the legislation.

6.3 Data Protection

6.3.1 In the course of providing services to you, we may collect or receive personal information relating to you and (where the client is a company) your employees, officers and shareholders or (where the Client is an individual) members of your family. We will use such personal information for the purpose of providing services to you in accordance with our Appointment. We will also use personal information for related purposes, such as updating our client records, carrying out identity checks in accordance with money laundering requirements (as further set out above in clause 6.2.1) and carrying out credit checks. We may use third party data processors to carry out such activities on our behalf. Data processors may be located in any part of the world. We will ensure that data processors take adequate steps to protect your personal information.

6.3.2 Where we use your personal information to carry out credit checks and anti-fraud checks your details will be passed to credit reference or fraud prevention agencies, who may keep a record of your information and the checks carried out.

6.3.3 If you provide personal information to us relating to another person, you must ensure that you are permitted to pass such information to us and that the individual concerned is aware that you are passing their personal information to us.

6.3.4 We may contact you from time to time by email, post or telephone about products and services that we think may interest you. If you would prefer not to receive such communications please let us know by sending an email to data@savills.com.

6.3.5 We may also pass your personal information to our holding company Savills plc, other members of the Savills group and our associated companies ("Group Companies") to enable them to contact you by telephone, post or email about their products and services. Information that may be passed to Group Companies includes contact details, information about services provided to you by us and other Savills contacts known to you. Group Companies may be located anywhere in the world. For a full list of Group Companies please contact the Company Secretary. By instructing us, you

consent to us passing your information to Group Companies and to Group Companies using your contact information to send marketing materials to you, including by email.

- 6.3.6 If you have any queries about how we use your personal information or if you would like to see a copy of our data protection policy please contact the Company Secretary at 33 Margaret Street, London W1G 0JD, or compliance@savills.com.

6.4 Equality Act 2010

- 6.4.1 We are committed to promoting equality and diversity in all our dealings with clients, suppliers, third parties and employees and require that you co-operate with this approach. If you would like to see a copy of our equality and diversity policy please contact the Company Secretary at 33 Margaret Street, London W1G 0JD, or compliance@savills.com.

6.5 Anti-Corruption

- 6.5.1 You shall comply at all times with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

7.0 Health and Safety

- 7.1 You are responsible for all health and safety, and environmental obligations in accordance with all relevant laws, enactments, orders, codes of practice and regulations in relation to our Appointment.

- 7.2 You must ensure that we are notified of and provided with all relevant information relating to risks to health and safety and any documentation and/or measures in place to manage those risks. This includes any relevant information to ensure that any viewings or visits are conducted safely.

8.0 Confidentiality

- 8.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clauses 8.2 and 8.3 below.

- 8.2 Each party may disclose the other party's confidential information:

- 8.2.1 to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under Terms of Appointment ("Permitted Recipients"). Each party shall ensure that its Permitted Recipients comply with this clause 8; or

- 8.2.2 with the other party's prior consent; or

- 8.2.3 as may be required by law, court order or any governmental or regulatory authority.

- 8.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under these Terms of Appointment.

- 8.4 The provisions of this clause shall survive any termination of this Appointment.

9.0 Use of Information

- 9.1 Subject to our confidentiality obligations under clause 8, information provided to us by you, or relating to our instructions may be published or otherwise used by us for marketing purposes either before or after the expiry or termination of our Appointment.

- 9.2 All advice and services produced for you ("Work") is to be regarded as confidential to the party to whom it is addressed and is intended for the use of that party only. Consequently, in accordance with current practice, no responsibility is

accepted to any third party in respect of the whole or any part of the Work. Before the Work, or any part of it is reproduced, our written approval as to the form and context of such publication must be obtained.

10.0 Intellectual Property Rights

- 10.1 All Intellectual Property Rights and all other rights in all reports, drawings and accounts and other documentation created, prepared or produced by us in relation to our Appointment shall be owned by us. Subject to 10.2 below, we license all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of such reports, drawings and accounts and other documentation.

- 10.2 You acknowledge that, where we do not own any pre-existing materials, your use of rights in pre-existing materials is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.

11.0 Complaints Procedure

- 11.1 In accordance with the Royal Institution of Chartered Surveyors' Rules of Conduct, we operate a formal procedure to deal with complaints from clients and others. Details of this procedure are available from the Complaints Handling Officer (complaints@savills.com).

- 11.2 For unresolved business to business complaints there are provisions for matters to be referred to mediation or arbitration as appropriate. We are also members of the 'Ombudsman Services: Property' for the resolution of any consumer complaints that are not satisfactorily resolved between the parties.

- 11.3 Your right to pursue any dispute through the courts is not affected by the option to resolve a dispute through the complaints procedure or arbitration.

12.0 Third Party Rights

- 12.1 We are a member of the group of companies whose ultimate holding company is Savills plc. These Terms of Appointment, including any written variation, may be enforced by any member of the Savills Group pursuant to the Contracts (Rights of Third Parties) Act 1999, but otherwise the Provisions of the Contracts (Rights of Third Parties) Act will not apply.

- 12.2 Notwithstanding that these Terms of Appointment may be enforced by Savills Group, the Terms of Appointment may be varied or the Appointment may be suspended or terminated in accordance with the Terms of Appointment or by mutual consent, in each case without the consent of any such third party.

13.0 Assignment

- 13.1 You shall not be entitled to assign, sub-contract or otherwise dispose of any of your rights or obligations under these Terms of Appointment without our prior written consent.

- 13.2 We may at any time and without seeking your consent, assign or sub-contract our rights and obligations under these Terms of Appointment to another company within the Savills Group (the "Transferee"). On condition that the Transferee undertakes for your benefit to perform with effect from the date of assignment all of our obligations under these Terms of Appointment in our place, you shall accept such performance and shall release us from any and all obligations and liability under these Terms of Appointment arising on or after the date of assignment.

14.0 Order of Priority

- 14.1 The Letter and these terms are to be read together as a single document which make up the Terms of Appointment. In the event of any conflict, the terms of the Letter will prevail

Force Majeure

- 14.2 We reserve the right to delay performance or to cancel the Appointment (without liability to you) and we will not be liable to you for any delay in performing or failure to perform our obligations under the Terms of Appointment where that delay or failure is caused by any circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or your default provided that, if the event in question continues for a continuous period in excess of 10 days, you shall be entitled to give notice in writing to us to terminate the Appointment.

15.0 Severability

- 15.1 If any provision of the Terms of Appointment (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Terms of Appointment, and the validity and enforceability of the other provisions of the Terms of Appointment shall not be affected. If a provision of these Terms of Appointment (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.0 Entire Agreement

- 16.1 The Terms of Appointment constitute the entire agreement and understanding of the parties as to the subject matter of the Terms of Appointment. They supersede any prior agreement or understandings between the parties and no variation of the Terms of Appointment will be binding unless agreed in writing.

17.0 Applicable Law and Jurisdiction

- 17.1 These Terms of Appointment and any dispute or claim, including a dispute or claim of a non-contractual nature, arising under or in connection with these Terms of Appointment shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 The parties to these Terms of Appointment irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising under or in connection with these Terms of Appointment. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 17.3 Where relevant, the Terms of Appointment will be subject to both the 2008 edition of the RICS *'Surveyors acting as Expert Witnesses'* and *'Surveyors acting as Advocates' Practice Statement and Guidance Notes'* and the Civil Procedure Rules and Pre-Action Protocols that came into force in April 1999. A judicial or quasi-judicial body in the United Kingdom may rely upon our subsequent Expert Evidence. A copy of the RICS *'Surveyors acting as Expert Witnesses and Advocates Practice Statement and Guidance Notes'* can be supplied to you on request.

18.0 Provision of Service Regulations

- 18.1 Under the Provision of Service Regulations 2009, we are required to make certain information available to customers to whom we are providing services. This information can be found at the following web address:
<http://www.savills.co.uk/footer/provision-of-services-regulations.aspx>