

IAN TREHEARNE

Town Planning - Planning Law

20 New End Square

London NW3 1LN

0207 794 5250

The District Judge

Highbury Corner Magistrates Court

51 Holloway Road

London N7 8JA

25.7.2016

Dear Madam

Pre-Trial Review on 28 July 2016
London Borough of Camden
Wendy Galway-Cooper
Philip Galway-Cooper
15 Gayton Crescent London NW3 1TT

We act on behalf of Mrs Wendy Galway-Cooper and Mr Philip Galway-Cooper, who are the Defendants in this matter, which is due to come up for Pre-Trial Review on 28 July 2016 at 10:00 am.

The case arises out of non-compliance with a single enforcement notice dated 5 March 2014 issued by the London Borough of Camden which required the demolition of three rear extensions which had been constructed at their home at 15 Gayton Crescent London NW3 1TT. Mrs Galway-Cooper appealed to the Secretary of State against this enforcement notice on ground (a), planning merit. Following a Public Inquiry, the Planning Inspector appointed by the Secretary of State granted planning permission for two of the three extensions, however, the Planning Inspector refused the appeal, on planning merit, in relation to the third extension referred to as the rear south eastern corner extension.

Subsequently, my clients have obtained evidence that has been in the possession and control of neighbours and also of London Borough of Camden which shows that the development of the south eastern extension was commenced no later than 15 September 2008 and, therefore, that it is statutorily permitted by The Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO 1995"). We would explain that on 1 October 2008 the provisions of the GPDO 1995 were amended by The Town and Country Planning (General Permitted Development) (Amendment) (England) (No 2) Order 2008 which restricted the permitted height of any erection construction of which was commenced on or after 1 October 2008. Accordingly, the date when demolition works were commenced, therefore, is critical in determining the lawfulness of this development.

On 16 September 2015 Mrs Galway-Cooper made an application for a certificate of lawful existing development. Initially, London Borough of Camden purported to exercise their power under section 70A of the Town and Country Planning Act 1990 to refuse to determine the application, however, in a letter attached to an email sent on 19 October 2015 Mrs Galway-Cooper argued that the power under section 70A does not apply to an application for a certificate of lawful development. The Council then accepted that they did not have such a power to refuse to determine the application. On 10 December 2015 London Borough of Camden issued a decision purporting to determine the merits of the application but ignored the evidence submitted by Mrs Galway-Cooper attached to the email sent on 19 October 2015 and refused to grant the certificate.

On 14 April 2016 Mrs Galway-Cooper issued an appeal to the Secretary of State against the decision by London Borough of Camden refusing to grant the certificate of lawful existing development to which, the evidence indicates, that she is entitled. Despite lengthy submissions in correspondence from London Borough of Camden, the Planning Inspectorate have determined that Mrs Galway-Cooper is entitled to appeal this decision and have issued what is known as a *Start Letter* dated 28 June 2016, a copy of which is attached. The appeal is to be determined following a Public Inquiry. A date for this is yet to be fixed, however, it is likely to be in about February 2017. The appeal is at an early stage: appeal statements of both our client and of London Borough of Camden are due on 9 August 2016.

The significance of this is that although the Planning Inspector only quashed the enforcement notice in relation to the first two rear extensions, and the enforcement notice remains in force in relation to the rear south eastern extension, the Planning Inspector appointed by the Secretary of State has yet to determine whether the development of the south eastern extension was in fact permitted by statute and, therefore, did not require planning permission from London Borough of Camden. If the certificate of lawfulness is issued there would be no proper ground for enforcement proceedings in this Court to be continued.

Moreover, if any proceedings for the trial in this Court were to go forward then very substantial costs would be wasted on Counsel's fees, solicitors fees, planning consultant's fees, professional fees in the case of an expert structural engineer and an expert surveyor in relation to the difficulty and cost of endeavouring to comply with the enforcement notice. Similarly, London Borough of Camden probably will waste a great deal of Council officers' time and taxpayers' funds on legal costs. Further, a great deal of Court time, Judicial and administrative resources would also be wasted.

Finally, if our clients are convicted and then the Inspector appointed by the Secretary of State following the Public Inquiry determines that rear south eastern extension was lawfully constructed, then they an appeal against convictions will be complex and expensive and, in any event, cannot undo the damage that the convictions will do to their personal and professional reputations.

These points have been put to London Borough of Camden but they have taken the view that the Pre-Trial Review should go forward. I attach the correspondence with Camden.

We have instructed Stephen Morgan of Landmark Chambers to attend the Pre-Trial Review, however, we would invite the Court *without a hearing* to adjourn these proceedings pending the determination of the Public Inquiry in order to save the costs of the Pre-Trial Review.

Yours faithfully

A large black rectangular redaction box covering the signature of Ian Trehearne.

Ian Trehearne