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Your Reference:

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URGENT

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The Planning Inspectorate
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Dear Sirs

Appeal in relation to 15 Gayton Crescent, London NW3 1TT - APP/X5210/X/16/3148353

We refer to the above matter and the Planning Inspectorate's decision to allow an appeal against the refusal of a service of a Certificate of lawfulness (existing) for; "Construction of a three storey rear extension (south-eastern corner of building)".

The Council contends that the above appeal should not be heard by the Planning Inspectorate for the following reasons:

A. There is an active enforcement notice in place upheld by the Secretary of State

1. This application is not capable of resulting in a certificate because of the effect of section 191(2)(b) of the Town And Country Planning Act 1990 (as amended), which states:

   (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.

2. 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. It means that even if an appeal is made against the Council's refusal, for which there is no time limit, **the certificate cannot be granted as a matter of law.**

3. The Appellants are aware of this and as we will see below, are using the appeal against the refusal of the Certificate of Lawfulness as means of delaying prosecution action by the Council.

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B. The subject of this appeal has already been heard at Planning Inquiry in 2014

4. This matter has already been heard following a 3 day planning inquiry, the attached Inspector's decision letters (DL) dated 19th December 2014 (Tab 1 and 2) shows the Inspector dismissing the appeal and upholding the enforcement notice at para 65:

   65. Within nine months of the date of this decision:

   (i) 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.

   (ii) 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.

5. The Appellants claims there were failings on the part of the Inspector and the Council. There is no error or defect in the Inspector's decision notice, if there was then the Appellants had the opportunity to make statutory appeals to the High Court under the relevant part of the Ac, but failed to do so.

6. It was for the Appellant to draw any evidence of fact that they sought to rely upon to the Inspector's attention at the time of the public inquiry. The Appellant should have raised arguments at the public inquiry that they now raise in this appeal. Crucially, they chose to withdraw this element of their appeal, as is noted by the Inspector in his DL at Para 1:

   1. When first submitted, appeal B included an appeal on ground (d) - that it was too late for the Council to take enforcement action. That ground of appeal was withdrawn before the inquiry.

7. As a result the Council succeeded in its application of a partial award of costs. The relevant costs decision states at paras 2 and 3:

   2. The Council's application was made in writing and is listed as an inquiry document. The application was made essentially on the basis of the appellant's late withdrawal of the ground (d) appeal. This meant that the Council incurred unnecessary costs in gathering evidence to show that the rear extensions had not been **substantially completed** more than four years before the enforcement notice was issued.

   3. In addition, the Council argues that the initial inclusion of ground (d) required the appeal to be heard by way of a public inquiry in order that evidence may be tested on oath. Without the ground (d) appeal, the case would have been dealt with by way of the much less costly written representations procedure (my emphasis).

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8. The Appellant have requested a public inquiry to allow the evidence 'to be tested', but all of this documentary information was available to them in 2014 and would have been able for review at the 2014 public inquiry, had they continued with this element of the appeal.

9. The Appellants have not produced any new evidence as to when the rear extensions were substantially completed and have not provided any first hand testimony about what was actually happening at their Property during that time. Instead, the Appellants have accused, made inferences and insinuations about the Council and third parties in relation to the interpretation of letters and unavailability of documents dating to 2008, in order to rehear arguments already raised at the previous inquiry.

10. It is clear from the decision letter that the Inspector at the time of the public inquiry looked carefully at the issue of permitted development and whether substantial completion (and not demolition) had been undertaken more than four years before the enforcement notice was issued. At paras 8 and 9, the Inspector states:

> 8. On re-measurement at a later date, the Council realised that the central staircase tower is less than 2m from the boundary, putting the rear extensions as a whole outside the 1995 GPDO permitted development limits. Information from neighbours also raised the question of whether the timing of the works would, in any event, have entitled the extensions to be assessed under the 1995 GPDO regulations, rather than the very different criteria of the amended GPDO that came into effect on 1st October 2008. **The extensions clearly do not meet the permitted development criteria of the 2008 GPDO**.
>
> 9. Lawful Development Certificate applications were made for each of the three rear elements and were refused, leading to the issuing of the enforcement notice in March 2014. **The appellant now accepts that the rear extensions are not within the permitted development allowances of either the 1995 GPDO or the 2008 amendments, and there is no appeal on ground (c)** (my emphasis).

11. The basis for this appeal is that the south east corner is part of a larger extension that falls under the provisions of the GPDO, however the Inspector did not come to any conclusion that the south east corner was a separate development because this was not raised by the Appellants at the public inquiry, as is confirmed from reading para 9 of the DL (see above).

12. The Appellant retained a leading planning QC and very experienced planning consultants to make representations on their behalf at the inquiry. It was for them and their advisors to put forward their case; they were well advised and knew the strengths of their appeal. Furthermore, the Appellants would have known full well about the repercussions of withdrawing any element of their appeal. The opportunity to make any and all submissions needed to have taken place during that three day public inquiry. Therefore there is no need to rehear the same evidence at another inquiry, which would be a substantial waste of time and expense for all parties and the Inspectorate.

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13. The Councils does not accept that any new evidence has been produced by the Appellants in support of this appeal. My client has responded very specificially in relation to these points raised by the Appellants. (See letter of Gary Bakall's LB Camden, dated 22nd June 2016 - Tab 3).

C. Appellants intent to delay the criminal prosecution

14. Following non-compliance by the Appellants with the enforcement notice upheld by the Inspector in the DL, the Council have now proceeded with prosecution proceedings.

15. It is the Council's opinion that this appeal was a deliberate attempt to delay the criminal prosecution.

16. It is no coincidence that the Appellants submitted this appeal to PINs on 14th April at approximately 4am. This is the same morning that the pre-trial review was listed at the Highbury Corner Magistrates Court. It is on this basis that the Appellants made representations to the Magistrates Court to inform that a planning appeal had been submitted and that criminal proceedings should now be adjourned. (See letter of Ian Trehearne, dated 25th July 2016 – Tab 4)

17. Whilst the pre-trial review listed on the 14th April to be heard on the 28th July 2016 at 10am at Highbury Corner Magistrates Court, however the Appellants have yet to produce evidence in compliance with court directions. (see email of Lilangi Cooke, LB Camden – Tab 5).

18. Also attached is a letter from Mr Trehearne to the Council dated 27 July 2016 (Tab 6) in relation to the criminal proceedings. Mr Trehearne advises that in light of the appeal to the Planning Inspectorate, mediation should be considered as a way of remedying the unauthorised development. In light of a lack of new evidence submitted since the last appeal, this appeal appears to be a way to delay and frustrate the criminal proceedings and therefore an abuse of the appeal process to the Planning Inspectorate.

19. The Council would be grateful if all correspondence in relation to the criminal proceedings is kept confidential.

D. Questioning the need for the appeal to be heard by public inquiry

20. The Council reiterates that the opportunity for reviewing and testing all evidence should have taken place during the three day inquiry in 2014, there is no need to waste further time and resources in re-hearing evidence that has already been made available for review by the Secretary of State.

21. The Council considers this appeal to be an abuse of process and procedure, and a deliberate attempt to delay enforcement action from taking place. No new evidence has been put forward by the Appellants, and their action is the cause of anger and frustration for local residents.

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22. However if an appeal is to take place then there appears to be no justification as to why PINS should allocate it to public inquiry. In correspondence with PINS (we note Craig Maxwell's email to the Appellant, dated 28th June 2016), he confirmed that the appeal would relate specifically to the Council's refusal notice. The Council's view is that if this is the case then what is the justification for this appeal to be heard by way of public inquiry?

23. The Council is most concerned by the way in which PINS has made a unilateral decision solely on the basis of comments sent by the Appellants, without formal consultation with the Council, and without adequate reasons being offered for a public inquiry.

24. Given that an inquiry decision relating to the same Property, the same development and to issues that have already been raised at a public inquiry less than 20 months earlier, the Council questions why further time and costs need to be expended on another inquiry. This departs from established PINS practice and the criteria set out in Annex K of the procedural guidance.

25. As the Council has stressed before and which PINs acknowledge (see email 28/6/16), this is a single issue appeal centring on the refusal of certificate of lawfulness, about a subject which has already been reviewed by an Inspector at inquiry very recently, to proceed with a public inquiry without clear reasons would be a waste of Council resources.

26. It was not rational decision to allocate this as a public inquiry given the departure from published procedure; the Council would be substantially prejudiced in having to expend further time and expense at another public inquiry and as a result cause further delay to its prosecution proceedings.

27. If an appeal needs to be heard about this refusal, then the Council considers that it should be by way of written representations in order to allow an Inspector to determine the strength of this appeal in light of the decision that has already been made.

28. The Council requests that PINS offers a full and transparent explanation of its considerations because the Council's representations were not sought about the decision to allocate this appeal as a public inquiry.

Conclusion

- Section 191(2)(b) of the Town And Country Planning Act 1990 prevents this certificate from being granted as a matter of law; there is no requirement for an appeal on this basis.
- A decision has already been made by the Secretary of State and this DL requires compliance by the Appellant. The Inspector's DL speaks for itself so there is no need for the Appellants to re-examine the respective evidence or delve behind the Inspector's reasoning at another appeal. There is no longer scope to review this decision nor re-run this appeal which is what the Appellants are seeking to do. The terms of the DL can and

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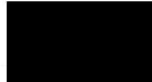
must be complied with. A planning inspector is an expert tribunal and able to form his own judgment as a matter of common sense; there is substantial case law in support of this position (see Kentucky Fried Chicken (GB) Ltd v. SSE [1997] JPL 727, DC and Westminster Renslade Ltd v. SSE [1983] JPL 454, QBD).

- Even if an appeal was thought necessary, it should not proceed by a public inquiry. This would be a significant waste of time and resources and the Appellants would undoubtedly seek a re-run of an inquiry heard not more than 20 months ago.
- There is concern that any further decision would jeopardise the validity of the DL. The Appellants are seeking to diminish the Inspector's DL and cause delay and hinder on-going criminal proceedings.
- Whilst this is not an avenue we wish to pursue at this stage as it is not conducive to any process, but a failure of the appeal process and/or compliance with the requirements of the law would likely to lead to the Council considering the prospects of challenging any ensuing decision.

We request that PINs reconsider this decision as a matter of urgency and confirm that an Inspector is informed about the Council's concerns.

We look forward to hearing from you.

Yours sincerely



Pritej Mistry
Planning Solicitor
For the Borough Solicitor

Enc.

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