

## **2 Hermit Place London NW6 4BT – first floor storage unit - "the building"**

The appeal is made that for the reasons set out below, the London Borough of Camden failed to deliver the response to the applicant within 56 days and the Inspector should confirm that the change of use of the building from storage use to dwelling house without conditions as by virtue of Section 336(4A) of the 1990 Act on the deemed date of 28 December 2016 the Council did not have the power to refuse the application as the purported decision, received by us on 28 December 2016 was void and of no effect and so the permission granted under the GPDO had already accrued to the applicant and the Council had no further power to determine the application.

An appeal for costs is made, for the reasons set out below, that the applicant was treated unreasonably in the application process and further correspondence, that the London Borough of Camden was twice given the opportunity to address its failures and void its purported decision, that the applicant tried to avoid the costs and delays of making an appeal but was left with no other choice given the unreasonable stance taken by the London Borough of Camden.

### **Timing of the appeal to PINS**

We were not aware of a six month time limit to make this appeal.

PINS confirmed they would consider the appeal despite being over six months if we can provide evidence that the local authority did not provide the required right of appeal notice with their decision.

The decision notice (attachment A) sent to us failed to provide the required right of appeal notice. We pointed this out in our letter to the London Borough of Camden dated 10 August 2017 (attachment C).

London Borough of Camden responded to this point in their email dated 5 September 2017 (attachment F) confirming that they did NOT provide the required right of appeal notice with their decision.

*I can advise that we previously amended the text on all our decision notices to direct people to our website. Unfortunately it appears that this text was not included on your decision notice, and I apologise for this. I have looked into this matter to ensure it does not reoccur.*

### **1. Description: The application and London Borough of Camden's failure to respond within 56 days**

On 28 October 2016 an application (ref: 2016/5931/P) was made under Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 295 to the London Borough of Camden for development consisting of a change of use of the building from storage use to dwelling house.

So that the application was registered and validated without delay, we enclosed with the posted application letter (by Royal Mail Special Delivery Guaranteed) the Planning Portal Notification B8/C3 form, site and property plans, and a cheque for £80 to cover the fee. We also emailed this information on the same day to [planning@camden.gov.uk](mailto:planning@camden.gov.uk) along with the detailed reports and appendices. The

London Borough of Camden Planning Website correctly records the received date of 28 October 2016 (the undisputed signed confirmation is available if required).

Paragraph W(11)(c) of Part 3 of the GPDO provides that development (for which the application is made) must not begin before the expiry of 56 days following the date on which the application was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. The expiration of 56 day period provided by Paragraph W(11)(c) therefore occurred on 23 December 2016. However the email attaching the purported decision of the Council was sent via email on Friday 23 December 2016 outside our business hours.

Section 336(4A) of the Town and Country Planning Act 1990 provides that:

*where*

*(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act and*

*(b) the communication is received by that person outside that person's business hours,*

*it shall be taken to have been received on the next working day which is not a Saturday, Sunday, Bank Holiday or other public holiday.*

The business hours of Grosvenor Square Estates on the last working day, in this case a Friday, before Christmas, in common with very many professional businesses and government offices, were 9am-3pm. The purported decision email was sent at 16.27 hours and therefore outside of our business hours. By way of Section 336(4A) of the Town and Country Planning Act 1990 the deemed date of receipt was therefore 28 December 2016.

As is made clear by the Court of Appeal in *Murrell v Secretary of State [2012] P&CR 6* (see in particular paragraph 28 of the judgement of Richards LJ) after the expiry of the 56 day period on 23 December 2016, the permission granted under the GPDO had already accrued to the applicant and the Council has no further power to determine the application.

In a letter to London Borough of Camden on 10 August 2017 (attached) we set out the above facts and pointed out that the principal of receipt during the applicant's business hours has been tested ref **Appeal Decision APP/E5900/C/12/2182746** with virtually identical timing (1632 hours on Friday 23rd December) with the Inspector allowing the appeal.

We asked London Borough of Camden, in the circumstances, to acknowledge that by virtue of Section 336(4A) of the 1990 Act on the deemed date of 28 December 2016 the Council did not have the power to refuse the application and that the purported decision, received by us on 28 December 2016 was void and of no effect.

## **2. Factors to consider in the response from London Borough of Camden**

The response from London Borough of Camden (5 September 2017, attachment F) with respect to the delivery time of the notice states:

*"the Council is aware of the Inspector's decision letter (APP/E5900/C/12/2182746) that you have relied upon, however you will [sic] aware that Inspector's decisions do not set a precedent that are required to be followed.*

*The Council's primary concern is that the resultant effect of your interpretation would be to reduce the 56 day period which is set out in legislation and seeks to allow Local Planning Authorities a specified timeframe to make the appropriate determination under this process; therefore we do not consider your approach to be reasonable as it does follow the correct intent of the law.*

*You will be aware that officers had no ability to know that your offices were operating with reduced hours on the afternoon of that day, or if the offices were expected to be shut the whole day or the whole week before the Christmas holidays. Whilst an acknowledgement letter was sent to you when the application was validated which included the date the application was due to be determined by, the Council had received no notification as to what your operating hours were expected to be during this period and neither had you publically stated this, just as other firms and institutions do when their offices [sic] are reduced from standard. It should not be for a layperson to second guess as what your operating hours might be.*

*The effect of this is that this approach offers absolutely no certainty for the purposes of service and communication from the Council, and the cumulative result is that the 56 day timeframe of the prior approval process as set out in the General Permitted Development Order has been circumvented. The period for determination is essentially being shortened from 56 days to an unknown period being entirely dependent on your discretion as to when your offices are expected to be open. Clearly, this is not the intention of 336(4A) of the Act and a reasoned interpretation needs to be followed. It should be clear from other areas of the law, where service of documents (such as in civil litigation) is fundamental that allowing for such as an unknown variable (such as your perceived business hours), would not be allowed.*

We consider their response to be factually incorrect for the following reasons:

(i) The London Borough of Camden relies solely on the fact that a validation acknowledgement email purportedly sent (no date given) refers to the determination date (also not given) and that on receipt we should have stated our working hours. We did not receive any acknowledgement and note that as of the date of appeal this has not been given to us by the London Borough of Camden despite asking twice (emails of 6 and 13 September 2017) for it to be sent.

(ii) We were concerned that we had heard nothing from the London Borough of Camden since the application was sent 28 October 2016. We contacted the general planning help line at the London Borough of Camden. We were told that the available information could be found on their planning website. The site stated that consultation would end 29 December 2016 and the decision deadline was 1 February 2017 (attachment B). Relying on this information, and having had no contact whatsoever from the London Borough of Camden we therefore had no expectation that a decision would be sent late afternoon on the Friday before Christmas, a day when it is extremely common for offices to close early to allow people to return to their families and prepare for the holiday.

(iii) We note that the response from the London Borough of Camden in respect of the Inspector's decision letter (APP/E5900/C/12/ 2182746) states that they don't take the Inspector's findings into consideration, but provide no rational explanation why the inspector's clear reading of the legislation should not apply in this scenario which is virtually identical save a time difference of only five minutes.

The failure of the London Borough of Camden to send us a validation acknowledgement, requiring us to rely solely on the information on the dates page of their website, and their failure to attach the appeal information should be considered along with issues raised in (3) below.

### **3. London Borough of Camden process irregularities and disparaging remark**

During our preparation of evidence for an appeal against the decision of the London Borough of Camden we saw that a planning officer had sent us the officer's report along with an email discussion about our case. A disparaging remark was made by an officer against us along with process irregularities which persuade us that we were unreasonably treated in the application process.

The full text of our letter sent to the London Borough of Camden on 30 August 2017 and the email discussion it refers to are attached (attachments D and E).

(i) We were shocked to learn that email comments between planning officers state: *"The Agent has been very evasive and we made the decision just to refuse the application without consulting"*. [sent 21/12/16 at 18.30]

We have examined our own email records and not found any enquiry from the London Borough of Camden during the consideration of the application. Were we asked for further information about any aspect of the application we would have been happy to arrange access for a visit and provide additional documentation.

This is also despite the fact that the website "Dates Page" still states the consultation expiry date to have been 29 December 2016. The 1 February 2017 decision date has been deleted and is now blank.

It seems that the London Borough of Camden ran out of time, both with contacting their own officers internally, the applicant or anyone else, and rushed the decision notice out after our and many other businesses and government offices closure for the Christmas holidays, with the officer's report being made available only 28 days later.

This information was refuted by the London Borough of Camden on 5 September 2017 who say their process was entirely in order although concede that the wrong ("a later") date was entered onto their website.

### **4. Application for Costs**

It is regrettable that this appeal is required, given the failure to provide a response within 56 days and the process failures in the consideration of the application. We gave considerable opportunity for the London Borough of Camden to agree that the notice sent was void and that change of use was permitted. Accordingly, due to the unreasonable behaviour cited, all advice costs in relation to this appeal should be borne in full by the London Borough of Camden.

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List of attachments:

- A Decision Notice (deemed received 28 December 2016)
- B Screen shot of London Borough of Camden planning website Dates Page
- C GSE letter to Camden 10 August 2017
- D GSE letter to Camden 30 August 2017
- E Copy of email chain referred to in GSE letter to Camden 30 August 2017
- F Camden email to GSE 5 September 2017