##  Legal Services

## Law and Governance

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**Date:** 2nd February 2018

**Your Reference:**

**Our Reference:** CLS/PM/1800.583

**Enquiries to:** Pritej Mistry

Edward Randall

Flat 3

37 Platt’s Lane

London NW3 7NN

**BY EMAIL AND POST**

Dear Sir

**JUDICIAL REVIEW PRE-ACTION PROTOCOL - LETTER BEFORE CLAIM**

We refer to your letter dated 14 December 2017, that was resent to the Council on the 5th January 2018. We apologise for the delay in responding substantively to your letter, however it was necessary to investigate the background to this matter so that a full and detailed response could be offered.

We note that your letter states that it is a ‘letter before action’ however the Council considers the timeframe for your filing a claim for judicial review has passed. This letter seeks to respond to the individual points raised in your letter. Although it is drafted in the form of a standard pre-action response, you should not consider this to be a confirmation of your legal challenge having been accepted by the Council. We reiterate that any claim in relation to this matter is considered to be time-barred under the relevant procedure rules.

1. **The Proposed Claimant**

Edward Randall, Flat 3, 37 Platt’s Lane, London NW3 7NN (“the Property”)

1. **The Proposed Defendant**

London Borough of Camden, Town Hall, Judd Street, London WC1H 9LP (“the Council”)

1. **Reference details**

CLS/PM/1800.583 - please quote this reference in correspondence

**(4)** **The details of the matter being challenged**

Your letter is unclear as to the specific matter or decision of the Council being challenged.

As you will know, trees and shrubbery were felled and removed from the Property on the 7th April 2017 by the adjoining flat owners at the Property. Thereafter you entered into email correspondence with Council officers, the responses from the Council included:

* Emails from Nick Bell, Tree and Landscape Officer on the 24th April 2017, 17th May 2017, 14th July 2017 and 6th September 2017
* Email from Gary Bakall, Planning Enforcement Manager, on the 3rd November 2017 to the Proposed Defendant.

These emails sought to explain and inform you of the decision-making that officers were taking following the felling of the trees at the Property. You have not set out which of these decisions you are seeking to challenge. In any respect we consider that the time permitted by the courts to bring forward the judicial review claim has passed and we consider that it is now no longer possible for you to pursue a claim against the Council.

**(5) Response to the proposed grounds of challenge**

Whilst you have not specified the decision of the Council being challenges, the general argument of your letter was that Council has acted illegally and unfairly for the following reasons:

Ground (a) - failure to prosecute the Owner for removal of trees in a conservation area;

The Council were informed on the [X date 11/04/2017] that [ 3-5 (we don’t know exactly how many trees were removed)] trees were felled on the Property located within the conservation area, without the submission of a notice under S211 of the Town and Country Planning Act 1990 (as amended) (“the Act”).

This led to an enforcement case being opened by enforcement and tree and conservation officers to investigate the breach of planning control. Officers wrote to the relevant owners of the Property on the 16th May 2017 confirming that unauthorised tree removal had taken place at the Property.

Following a site visit to the Property, officers assessed the breach that had taken place and considered the enforcement action required to be undertaken. As a part of this assessment, officers reviewed the significance and harm that the loss of these trees had impacted the amenity of the public. Although parts of these trees had been visible from the public highway on Briardale Gardens, officers did not consider the trees to have been of sufficient prominence or significance to the character of this part of the Conservation Area to warrant protection by the service of a TPO. Officers were of the view that if a S211 notice had been served on the Council then it would not have objected to their felling by serving a TPO to preserve them – a step required to be undertaken under the Act.

However, the Council was concerned about the manner in which trees had been felled within the Redington and Frognal Conservation Area, and took steps to request that the relevant owners replace the trees under S213 of the Act to mitigate the loss. The owners agreed to comply with these steps and the Council have been monitored compliance and we understand that planting of trees is presently taking place at the Property.

Given the officers assessment about the unexceptional nature and significance of the felled trees to the conservation area and the subsequent steps that have been taken by the owners, officers were of the view that it was not expedient for the Council, acting in its capacity as the Local Planning Authority, to seek a prosecution of the owners for the felling of the trees without service of the S211 notice.

It is the discretion of the Council to assess how it should enforce breaches of planning control, which need to be undertaken in a reasonable and proportionate manner (in accordance with the Council’s other public law duties) alongside its duty to use public money prudently.

We understand that you were informed of the Council’s decision in an email sent by Nick Bell on the 24th April 2017, and therefore we consider that the timeframe for challenging this decision has since passed.

The Council does not accept that there had been a failure in relation to this ground.

Ground (b) - failure to not encourage the Owner to comply with the provisions of section 213(1) of the Act;

Ground (c) - failure in not issuing a tree replacement notice to the Owner.

Officers wrote to the relevant owners of the Property on the 7th June 2017 to confirm the enforcement requirements that needed to be undertaken at the Property. As has been stated, officers had been of the opinion that the felled trees were neither good examples nor forms of their species to warrant preservation under a TPO.

The trees had been growing in close and overbearing proximity to each other in the garden, which had prevented the trees from developing their typical form. For these reasons, officers did not consider that the loss of these trees to be significant enough to require trees of a similar size and species to be replanted at the same place. In the interests of biodiversity and to improve the species and quality of the trees in the conservation area, officers specified its enforcement requirements and that the owners plant a *Taxus baccata* (yew tree)(this tree is yet to be planted) toward the western corner of a select standard girth size of 10-12cm in accordance with the relevant BSI planting standards. In addition, the owners have planted [ x y and z trees – NICK please confirm 1no. Arbutus unedo, 1no. Camellia sasanqua, 1 no. Cornus kousa, 1no. Eriobotrya japonica, 1no. Ficus carica, 1no. Magnolia grandiflora, 1no. Olea europaea] at the Property, and 1no. Taxus baccata to be planted imminently

From your letter, you have demanded that trees of a similar size and species be planted at the Property however the Council does not consider this to be a rationale step to be taken in this instance. The trees were not of good quality and replacing of the same type was nonsensical, particularly as the Council would have permitted their felling had an appropriate S211 notice been served. Secondly, we consider the cost of relocating mature trees to the Property is not a necessary step given the unexceptional type of tree that was originally present. Finally, the replanting of mature trees is difficult and would be disproportionately expensive to the loss of the original trees, with the additional risk that mature trees may not readily take root and establish themselves. Overall, the steps that were taken were considered to be proportionate to the original breach; it should be noted that the owners still retain the ability to serve a S211 notice to fell any trees on the Property, including those recently replanted.

The Council is required to set out relevant and defensible enforcement steps, subject to public scrutiny and defensible at any subsequent appeal to the Secretary of State. Given the nature of the existing trees it was not considered appropriate or necessary for trees of the same size and species to be replanted at the Property. The Council considers the steps taken in replacing these trees with younger, healthier trees with the potential to grow fully are in the best interests of the public amenity and the benefit of the conservation area.

Although you have raised concerns about the loss of privacy at the garden, this is not a consideration that can be taken into account when determining impact to the amenity of the conservation area. However officers have continued to monitor the replanting of trees at the Property and have been informed that [7] number of trees have been planted, at considerable expense to the owners. We note that additional [11] shrubs have been planted to provide visual amenity at the rear of the Property. Given the steps that have been stated here which have been undertaken at the Property, the Council did not consider it necessary to serve a Tree Replacement Notice.

The Council do not accept that there had been any failure by the Council in relation to these two grounds.

1. **ADR Proposals and other matters**

The Council considers that you are time barred from making a claim for judicial review given that the decisions of the Council were made in April 2017. You are urged to carefully to consider making a legal challenge given the reasons set out in this letter and we request that you take legal advice because we do not consider there to be any prospect of success in this matter.

1. **Response to requests for information and documents**

We enclose copies of correspondence in relation to this matter with this letter, including copies of letters sent to an owner (Victoria Barclay) of the Property by the Council.

1. **The address for reply and service of court documents**

Borough Solicitor, Legal Services (c/o Aidan Brookes), London Borough of Camden, Town Hall, Judd Street, London WC1H 9LP

Please note the Council does not accept service by email, although an electronic copy of documents is useful.

Yours faithfully



Pritej Mistry

Lawyer

**for the Borough Solicitor**

Enc.