

# Trinity Planning

## **Representation to Lawful Development Certificate (Existing) application reference 2018/4683/P: 3 Fitzroy Square, London W1T 5HG**

### **Submitted by Trinity Planning on behalf of Mr & Mrs G. Rhys Jones, 2 Fitzroy Square, London W1T 5HF**

#### **Introduction**

- 1.1 This fourth representation follows the earlier Trinity Planning representations submitted on behalf of my clients Mr. and Mrs Rhys Jones who reside at 2 Fitzroy Square, which adjoins 3 Fitzroy Square. It responds to the submission by Ashfords LLP dated 16 January 2019.
- 1.2 The Ashfords submission incorrectly refers to two earlier representations by Trinity Planning - there have been three distinct representations, two of which were submitted in December 2018.
- 1.3 In referring to the Ashfords LLP submission by paragraph, the following comments are made;

#### **1.2**

- 1.4 The reference to my client's objection is a statement of fact in relation to the original application and not a comment on the current planning application.

#### **1.3/1.4**

- 1.5 Even if accepting that the photographed works occurred prior to permission expiry, none of the Ashfords supporting material establishes the work was; lawful (or authorised); relevant to the permission or; reflected a start to the development.
- 1.6 The earlier Trinity Planning representations and the Gorst letter (dated 03/12/2018) indicate the works were related to broken pipe replacement/repair.

#### **2.1**

- 1.7 The Council issued its PCN after visiting the works only some months after the permission expiry date. As Appendix 3 of the Ashfords supporting information clarifies, in issuing its PCN the Council still had significant concerns about a breach of planning control.
- 1.8 The paragraph also states the applicant/agent assumed that since the Council took no further action that the Council had accepted the works as being both lawful and a development start of the planning permission.
- 1.9 It is not understood why the applicant/agent failed to clarify with the Council at the time, and in writing, that the PCN matters had been addressed as a result of the applicant/agent's response, to the Council's satisfaction.

#### **2.2**

- 1.10 The purpose of the Trinity Planning representations is to demonstrate the Ashfords supporting material provides no substantive evidence to the claim that an authorised start of the permitted development commenced prior to the permission expiry.

- 1.11 However, the first Trinity Planning representation also provided a professional opinion which cast doubt that the works shown in the photographs related to the planning permitted development (engenuiti, 8 November 2018).
- 1.12 The applicant/agent appears to have still not responded to the opinion of engenuiti
- 1.13 The three previous Trinity Planning representations also demonstrated that the material later added to the website by the applicant/agent failed to provide substantive evidence to establish the start of the development (whether authorised or not and when) - meaning the undated plans/elevations, the contractor/subcontractor letters and the Gorst emails.
- 1.14 The Ashfords submissions still fail to rebut any of these matters.
- 1.15 In reality the LDC application claim that development started on the 12 February 2015 is dependent on the photographs.

### **2.3**

- 1.16 It is assumed this refers to the “Clean Jack” un-headed and hand-written invoices submitted in support of the application, which now seem to provide the key proof.
- 1.17 The “Clean Jack” invoices (as on the website) should be dismissed for the reasons provided in the second December Trinity Planning representation - paras. 2.1 to 2.6.
- 1.18 However a further point on the “Clean Jack” invoices relates to their dates of 23/01/2015 and 19/02/2015. The first involves “construction work” undertaken prior to the claimed development start date of 12/02/2015, so can only relate to work unrelated to the permitted development.
- 1.19 It can be reasonably speculated that the second invoice might well concern other unrelated work undertaken at 3 Fitzroy Square.
- 1.20 Given these doubts the Council should seek the formal record of the referred “instruction to carry out the works”; the work actually undertaken; the dates of the works; and demonstrating the works related to the planning permission. This information should be obtained from “Clean Jack” directly or from the records of the lead contractor (presumably AJA).
- 1.21 The Ashfords submissions have still to address these essential information requirements.
- 1.22 As above, the last sentence is not proven.

### **3.1/3.2**

- 1.23 The Ashfords submission refers to definitions of development which are considered inappropriate to the particular issue of what constitutes the start of an authorised planning permitted development.
- 1.24 The two December Trinity Planning representations instead turn to the relevant interpretation of what constitutes a start of development consented by a planning permission. The appropriate guidance is provided in ‘Planning Portal - Guidance on Renewing Planning Permission and Starting Development’, sub-heading ‘Starting to build where Full Planning permission or Reserved Matters has been granted’. It states;

“However, the following are useful examples of when the Department would accept that development has commenced in accordance with the approval.

Where an applicant has complied with conditions relating to works to be carried out before the commencement of other work<sup>1</sup> e.g. the construction of an access in accordance with the approved plans, **and**

- >> Where an applicant has commenced any work of construction in the course of the erection of a building, such as the digging of foundations and preferably pouring of concrete, driving of piles or other substantive works;
- >> The laying of any underground main pipe to the foundations or part of the foundations of a building;"<sup>2</sup>

1.25 The first Trinity Planning representation of December concludes that the claimed works do not represent a start of the permitted development in terms of the criteria of digging foundations and laying of pipes - in paras. 3.5 to 3.11. The second December representation re-iterates this in relation to pipework, in para. 3.5. No further information or evidence has since been provided by the applicant/agent to rebut this conclusion.

### **3.3/3.4**

- 1.26 The quoted cases are considered quite different to the issues at hand, whilst the supporting material fails to demonstrate that the photographed works related to the planning permission or that it constituted a start of the development. As such neither the initial supporting material submitted with the LDC application nor the items later posted on the Council website provide objective and persuasive evidence.
- 1.27 The latest submission by Ashfords LLP does not rebut the fundamental points raised in the three earlier Trinity Planning representations, whilst the validity of the only other piece of information dated from the claimed work (the "Clean Jack" invoices) has been shown to lack substance.
- 1.28 The applicant/agent's case continues to rely on the photos that do not demonstrate that the work was lawful; nor that it was related to the permitted development; nor that it constituted a start of the permitted development (whenever taking place).

1-the relationship to planning conditions may also be relevant but this is a matter for the Council to address, particularly given the original Ashfords LLP case raised claims relating to the submission of planning conditions.

2-the following paragraph of the guidance then advises that an applicant should retain proper records of work carried out "in case there is a need to produce these at a later date if there is any issue about the date of commencement". The Trinity Planning representations demonstrated that the applicant/agent has been wholly remiss in professionally following this well-known planning practice.

*Malcolm E D Inkster B.Sc.  
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