185 Golders Green Road, London NW11

Enforcement Non-Compliance Action

PPMS were first instructed when London Borough of Barnet indicated that it was considering Enforcement Action.

An enforcement notice (1st Notice) required the demolition of the loft and ground floor extensions, permanently remove their constituent elements from the land, reinstate the roof with tiles to match the existing and reinstate the wall to match the existing building. A Section 174 appeal was made 8 March 2002 APP/N5090/C/02/1085995 under various grounds (a), (b), (c), (f) and (g). The grounds (b) and (c) referred to the single storey rear extension only.

The appellant being out of time to appeal ground (a) submitted an appeal under Section 78, the Planning Inspectorate incorporated this new appeal APP/N5090/A/02/1092202 with the first above. A hearing date of 17 September 2002 for the two appeals was listed.

On reviewing the matter 29 May 2002 **PPMS** invited the LPA to withdraw that part of the enforcement notice relating to the ground floor rear extension.

At a subsequent meeting 12 June 2002 with Mr Glen More (the Barnet Council enforcement officer) it was agreed that the LPA would amend the Notice to omit all reference to the ground floor, time would be allowed to complete the existing planning process and appeal both applications (should it be necessary) via Section 78 appeals. The appellant would then be given a further 12 months to commence work in the event that either or both appeals fail. Mr More promised to confirm this in writing.

Instead of proceeding as agreed, the LPA issued a 2nd Enforcement Notice (2nd Notice) 19 June 2002 effective 31 July 2002. PPMS were advised by the Planning Inspectorate to appeal the new Notice as quickly as possible in order to endeavour to preserve the hearing date 17 September 2002. Accordingly an appeal was submitted 20 June 2002. Appeal reference APP/N5090/C/02/1093343 was allocated.

On the same day, 20 June 2002 Mr Glen More's letter dated 14 June 2002 was received by PPMS. Accordingly, as agreed, the appeal for the 1st Notice was withdrawn[1], leaving the second appeal live.

26 June 2002 the LPA unilaterally wrote saying that the issue of the 2nd Notice was in error and accordingly is withdrawn. This of course had the effect of cancelling the 2nd Appeal. Under the Town and Country Planning Act 1990 (as amended) an

appeal, once withdrawn, cannot be re-instated. Accordingly the LPA's actions have disenfranchised the appellant from an appeal.

This is particularly relevant to an appeal under ground (f) which cannot be considered under either the existing Section 78 Appeal or any future Section 78 Appeal.

The only redress available to the appellant at the present moment is a Judicial Review and the Local Government Ombudsman.

PPMS, acting as agents for solicitors J Pearlman and Co, instructed **Alun Alesbury** of Counsel 2-3 Grays Inn Square to answer the summons non compliance in his written opinion he stated:

"The Enforcement Notice, which had been issued on 4th March 2002, related in its original form to the alleged erection without planning permission of a loft extension and a rear extension at 185 Golders Green Road. The time for compliance with the notice was *"3 months after this Notice takes effect"*. It was to take effect on 15th April 2002 *"unless an appeal is made against it beforehand"*.

In other words, if an appeal had not been made, the Notice would have taken effect on 15th July 2002 (not 2005 as the criminal proceedings assert). However it is my understanding that the Notice ***was*** appealed against, so it would ***not*** have taken effect on 15th April 2002, and therefore nor will the time for compliance have been 15th July 2002 (or indeed 2005).

What happened next was most puzzling. The Council realised that it did not in fact wish to have the ground floor extension demolished, and that an agreement was made with PPMS. A letter of 14th June 2002 was written by Mr Glen More, one of the Council's planning officers, which began by saying he had issued an instruction to the Borough Solicitor to amend the March 2002 Enforcement Notice. Later in the letter an extension of time appears to be agreed by the officer, who says *"We agreed this timescale* [12 months to start work] *with the proviso that the current appeal against the planning enforcement notice would be withdrawn"*. He continued *"I will notify the Planning Inspectorate that we have reached an agreement to amend* ***and withdraw*** *this notice through negotiation once the Council's letter indicating the amendment to the notice has been issued."*

On 19th June 2002 a new Enforcement Notice of that date, with a varied allegation and requirements, and a statement that it would take effect on 31st July 2002 (which was the date before which an appeal against it had to be made) was issued.

On the strength of this agreement PPMS withdrew the appeal against the first Enforcement Notice, because of the indication which had been given by the Council that it would be withdrawn on the emergence of the new one. The intention was to appeal against the new Notice before the end of July. However on 26th June 2002 the Borough Solicitor wrote saying that the Notice of 19th June was *"obviously issued in error"* and was now withdrawn; all she needed to do (she said) was waive some of the requirements of the March Notice (which she now suggested was ***not*** withdrawn) under ***s.173A*** of the ***1990Act***.

The immediate result of this mess was that the appellant had effectively been deprived of the right of appeal against what was now (again) said to be the relevant Enforcement Notice.

In the light of all this it is not surprising that the Council is recorded (in a Decision Letter dated 19 Nov 2002) by a Planning Inspector to have acknowledged at an inquiry in October 2002 (into a planning appeal by my client) that *"no action would be taken on the notice in its current form"*.

I have to say, even before considering other relevant matters, that it is astonishing to me that the Council should now be contemplating an enforcement prosecution based on that self-same notice, after all their previous errors and misrepresentations. In my view, based on a combination of their letters of 14th and 19th June 2002, and what they are recorded as having said to the Planning Inspector, there is a sound and winnable argument for saying that the Council are 'estopped' from now relying on the March 2002 Notice, or in the alternative that any decision to rely on it is unlawful."

On top of that, there have in fact been issued two subsequent planning permissions in relation to the roof extension at No.185. In both cases they seem to have related to compromises which would have allowed some of the loft extension to remain in place.

The planning permission of 25th September 2002 was for *"Retention of roof extensions, following amendment"*. There was a condition that *"this development must be begun within 6 months from the date of this permission"*. There was no condition relating to the time within which the works to amend the roof extension had to be completed, once they had been begun. It follows that if any work at all was done by my clients towards the implementation of this permission during the 6 months from September 2002, it remains in force without any obligation to complete the amendment work within a particular time.

The effect of ***Section 180*** of the ***Town and Country Planning Act 1990*** is that a later planning permission causes an enforcement notice to cease to have effect so far as inconsistent with that permission. It is difficult to see how the September 2002 planning permission could be anything other than completely inconsistent with the March 2002 Enforcement Notice, allowing as it did the retention of a large part of the roof extension, with amendment affecting the rest. It is not correct, in my opinion, to assume that the later planning permission somehow merely 'amended' the Enforcement Notice, so that it now only required the removal of those parts of the previous structure which would have been affected by the permitted amendment. A further new Enforcement Notice, based on a more competently worded set of planning conditions, would have been required for the Council to achieve that result, in my opinion. The March 2002 Notice had in my view been rendered wholly ineffective.

A further planning permission, dated 14th January 2004, was issued for *"Retention of roof extensions following amendment"*. I understand that the logic behind this was to sanction the retention of more of the roof structure than the September 2002 permission had envisaged, and to finish it off in a different way. This permission had a condition requiring the relevant amendment to be ***undertaken*** within three months from the date of the permission.

I do not know if any of the alterations envisaged under that permission were ever embarked upon, but even if they were the failure to 'undertake' them within the period set would be a completely different (arguable) breach of planning control from anything arising under the March 2002 Enforcement Notice.

In conclusion, Barnet Council have in my view made a complete mess of the handling of this matter throughout its entire history – to a quite extraordinary degree. In my opinion the latest prosecution they have chosen to launch is misconceived and seriously ill-advised. In practical terms the March 2002 Enforcement Notice has in my view become unenforceable, and my client stands a very good chance of defeating the prosecution on one or other of the grounds I have discussed.

Representations were made by **PPMS and J Pearlman and Co** to Barnet Council based on Counsel's opinion and all action was withdrawn.