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7 February 2006

RECEIVED
09 FEB 2006
LAW & ADMINISTRATION



The Commission for
Local Administration in England

Mr D Myers
Town Clerk & Chief Executive
Royal Borough of Kensington & Chelsea
The Town Hall
Hornton Street
London
W8 7NX

Tony Redmond
Local Government Ombudsman

Peter MacMahon
Deputy Ombudsman

Our ref: 05/A/03437/PBM
(Please quote our reference when contacting us)

If telephoning contact: Pat Moriarty on 020 7217 4641
or, if using e-mail, send to: p.moriarty@lgo.org.uk

Dear Mr Myers

We have received a complaint against your Council from Professor PJ Ciclitira of 25 Penzance Street, London W11 4QX. I enclose a copy of the written complaint together with a copy of a letter to the complainant explaining why it seemed we should not pursue the complaint.

The complainant replied to that letter but said nothing which would lead the Ombudsman to pursue the complaint further.

Yours sincerely

Patrick Moriarty
Investigator

Enc: Complaint dated 27 May 2005
Letter to complainant dated 17 January and 7 February 2006

The Commission will include this complaint in the published figures for the year ending 31 March 2006. We will record the decision as: No or insufficient evidence of maladministration (without report)

10th Floor Millbank Tower
Millbank London SW1P 4QP
Tel 020 7217 4620 Fax 020 7217 4621

DX 2376 Victoria 1

Neena Patel

From: Mila Labar Weintrop [mila.labar_weintrop@kcl.ac.uk]
Sent: 31 May 2005 16:56 ✓/2 notd
To: A4 Support Staff
Cc: Paul J Ciclitira
Subject: FW: Ref No. 04/A16180/PBM/NP - From Professor Ciclitira: To Ms Neena Patel

Dear Ms Patel,

Please find enclosed letters to Mr Tony Redmond from Professor Ciclitira (Ref. No. 04/A16180/PBM/NP) . We have sent you a hard copy by registered post which also includes the original letter from Mr French, Director of Planning and Conservation Office, Kensington and Chelsea. Unfortunately, I am unable to attach it with this e-mail as we do not have a scanner.

I would be grateful if you could bring the letters to Mr Redmond's attention.

Yours sincerely,

Mila Labar Weintrop
PA to Paul J Ciclitira
Professor of Gastroenterology
The Rayne Institute
4th Floor Lambeth Wing
St Thomas' Hospital
London SE1 7EH

Tel 0207 620 2597
Fax 0207 261 0667



Letter to Local Gov Ombudsman ... Letter to Dir Planning Office ...

-----Original Message-----

From: Mila Labar Weintrop [mailto:mila.labar_weintrop@kcl.ac.uk]
Sent: 25 May 2005 15:22 PM
To: a4@lgo.org.uk
Cc: Paul J Ciclitira
Subject: Ref No. 04/A16180/PBM/NP - From Professor Ciclitira: To Ms Neena Patel

Dear Ms Patel,

Thank you for your letter of 20th May 2005. I confirm that Professor Ciclitira will respond to your letter in due course.

Yours sincerely,

Mila Labar Weintrop
PA to Paul J Ciclitira
Professor of Gastroenterology
The Rayne Institute
4th Floor Lambeth Wing
St Thomas' Hospital
London SE1 7EH

Tel 0207 620 2597
Fax 0207 261 0667

Paul J Ciclitira
Professor of Gastroenterology

All Correspondence to:
The Rayne Institute
4th Floor Lambeth Wing
St Thomas Hospital
London SE1 7EH

Academic Secretary:
Tel 1: 0207 620 2597
Tel 2: 0207 18 82494
Fax: 0207 261 0667

paul.ciclitira@kcl.ac.uk
mila.labar_weintrop@kcl.ac.uk (sec)
<http://www.profpauciclitira.co.uk/>

By fax, e-mail and registered post

Date: 27 May 2005

Mr Tony Redmond
Local Government Ombudsman
The Commission for Local
Administration in England
10th Floor
Millbank Tower
London SW1P 4QP

Your reference: 04/A/16180/PBM/NP

Dear Mr Redmond,

**Re: 25 Penzance Street, London W11 4QX
Formal Complaint Against Planning Office Kensington & Chelsea**

Thank you for your letter of 20th May 2005 and subsequently processing my complaint against the Planning Office at Kensington & Chelsea Town Hall.

I enclose a copy of a letter received from Mr J French, Executive Director of Planning and Conservation, and my reply. You will see that I repudiate the contents of his letter.

I confirm that I would be grateful if you would be willing to pursue further my complaint against the Kensington & Chelsea Planning Office.

Thank you for your continued help in dealing with this.

With best wishes and kind regards.

Yours sincerely,

Paul J Ciclitira
Professor of Gastroenterology

Enc.

Paul J Ciclitira
Professor of Gastroenterology

All Correspondence to:
The Rayne Institute
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St Thomas Hospital
London SE1 7EH

Academic Secretary:
Tel 1: 0207 620 2597
Tel 2: 0207 18 82494
Fax: 0207 261 0667

paul.ciclitira@kcl.ac.uk
mila.labar_weintrop@kcl.ac.uk (sec)
<http://www.profpauciclitira.co.uk/>

Date: 25 May 2005

Mr M J French
Executive Director
Planning and Conservation
The Town Hall
Hornton Street
London W8 7NX

Your reference: EDPC/MJF/PP

Dear Mr French,

**Re: Formal Complaint
25 Penzance Street**

Thank you for your letters of 14th March and 11th April 2005 relating to my complaint of 31/01/2005 to the Local Government Ombudsman regarding planning permission for a rear extension at 25 Penzance street, W111.

You advise that *"there has been a protracted process involving your property, including a number of planning applications."* You advise that in summary that I am aggrieved that despite recurring advice from officers of your department on several applications my sequence of planning applications has met with repeated refusals to grant planning permission. This means that, from my point of view, a good deal of expenditure that I state is (£ 21,000) upon professional fees and planning fees have not resulted in any positive outcome.

You note "from the planning history to this property, that planning permission was refused for a rear extension at first floor level in July 2001, again in March 2002 and then again in January 2004. In the meantime, in March 2002, permission was also refused for a neighbouring property no. 26 for similar development. Notwithstanding the fact that the Officers recommended refusal in each of these cases over three years, you suggest that I based my application on each occasion upon Officer advice that such an application might be considered favourably. You imply, it would seem, that you would not have submitted repeated applications, or chosen to go to appeal by means of a full Public Inquiry, had you not been in some way encouraged by Council Officers to do so."

"You focus in particular on Derek Taylor, Team Leader for the North area development control team, within which area your property at Penzance Street is included. You state that you were 'repeatedly advised by Mr Derek Taylor...' to re-apply for planning permission". You also state that you were 'advised to re-apply twice for the extension which was turned down on appeal findings. Mr Taylor has now changed his mind.' You conclude that 'Derek Taylor's actions have cost me in excess of "£ 21,000."

You state that "as the sequence of events concerning your attempts to gain planning permission for an extension have directly involved at least six planning Officers, including three different Case Officers, as well as three separate professional consultants, and an Appeal Inspector, it would seem to me unrealistic to attribute all of your costs to the "actions" of one Officer, however, I will not draw conclusions on your assertion before running through the detailed history of events."

My first application (ref PP/01/1349) refused on 27/07/2007

I confirm that this application was submitted on 11/06/2001 for which I employed Carl Falk Associates to act as my agents. I note the case officer for this application was Mr Paterson, A Senior Planning Officer within the North Area Team and not Miss Gentry as I suggested in my letter dated 31/01/2005. I not only did not believe Miss Gentry was the case officer but can confirm that I have never met or spoken to Miss Gentry. You state that Mr Paterson took into account the fact that four of the seven properties in this group did not have extensions at the second floor level, the fact that three did which were permitted in the early 1980s was against the earlier planning policies and old enough not to carry much weight. Due to the fact that a similar proposal had already been refused against the current UDP policies in respect of no. 20 in 2000, as well as objections raised by a neighbour, Mr Paterson prepared a report under delegated powers, recommending that planning permission should be refused for the extension. This report was approved and countersigned by the Head of Development Control Ms Wyatt-Jones, on 23/07/2001 and yourself, as Executive Director of Planning & Conservation. Apparently Mr Taylor was on leave on 23/07 and played no part in the process of refusing my first application.

I note that looking at the case file for this application, you are satisfied that the correct policies and other material considerations were taken into account, the correct procedures properly followed, and the appropriate conclusions fairly and properly reached. You state that you understand I will have been disappointed to meet with the refusal of a planning permission but that in itself does not, to your mind, give any reasonable grounds for complaint.

You note that "shortly before refusing planning permission for the rear extension at the second floor level, this Authority has granted a Certificate of Lawful Proposed Development in respect of a single storey ground floor rear extension which would have constituted "Permitted Development", on 23/07/2001."

Your letter fails to include the fact I was informed by Carl Falk Associates that they were allegedly advised that planning permission would be granted on condition that some minor changes be made to the architectural drawings.

My second application (Ref PP/02/0267) refused on 25/03/2002

You note that for the second application, submitted some six months after the previous refusal, on 24/01/2002, I again employed Carl Falk Associates. It is this application to which Miss Gentry, another Senior Planning Officer within the North Area Team, was appointed as case officer, as opposed to my "initial application" as described in my letter. This application was made concurrently with a similar one for no 26 adjacent to no 25.

I also state that I was "led to believe that from the Planning Officer who came to visit the property that there would be no problems pertaining to this", but that "the application was declined for the second time."

You advise that Miss Gentry, the officer who came to visit me was the case officer for my second application. I reiterate that I have never met nor spoken to Miss Gentry so that

this must be a misunderstanding. I understand that Miss Gentry assessed my second application against the same planning policies that had been considered in the context of my first application you advise that the case file presents a different impression of proceedings from mine, particularly with regard to my assertion that I understood "there would be no problems" pertaining to my application. On 14/02 Miss Gentry met with Mr Falk, who was acting for me, to discuss the proposal. Her file record of that meeting reads "Advised concern re: height of extension, recent refusal. Would not be subordinate to existing building. If acceptable in principle, remove parapet. Will check previous refusal + speak to AP (previous case officer) + design (meaning the Conservation & Design officer) + get back to him". On 20/02 an objection was received from the resident of no. 27, referring to over development and in reference to the other application for no. 26, loss of light.

The Conservation and Design officer provided written comments on the proposal for both 25 and 26 advising that:

"The principle of extending the closet wings of these two properties up to second floor level is not acceptable and is contrary to CD41. The existing rhythm of closet wing extensions within the terrace rise to first floor level only, with the unfortunate exception of three properties which clearly illustrate how harmful such extensions are to the appearance of the building/terrace."

"The proposed extension, rising up to and above the main rear eaves, would result in a bulky, over-dominant rear extension, which would obscure the major part of the main rear elevation and would not be subordinate to the main building. In addition, the proposed roof terraces at second floor level add unwelcome visual clutter."

"The proposal would be detrimental to the appearances of the building and to the character and appearance of the terrace and the conservation area."

You go on to state that "on 26/02/2002 a formal objection was received from the local conservation society, the Norland Society, raising their concern that the proposal would be "an over-development of a restricted site" and that the application should be refused. On 27/02, without waiting for Miss Gentry to respond following her further consultations as she advised on 14/02, revisions were received including amendments to the parapet as referred to above. The architects thus prepared and submitted these revisions to details, without any indication from the case officer that the proposal could be accepted in principle."

You report that the day after these were revised, the plans were received, Miss Gentry advised the architect, Mr Carl Falk, that she considered the proposal unacceptable. The file record of that telephone conversation reads:

"I explained that I have been surprised to receive the revised drawings since at the site meeting we had agreed that I would discuss with Andrew Paterson and then contact C Falk to advise him whether the principle would be acceptable and if so, revise drawings. When I tried to do this yesterday, I was told revised drawings had been submitted."

"C Falk disputed that I had ever suggested that the proposal might be refused. I said that I had clearly expressed doubts about the principle of the extension but wanted to look at the previous refusal and discuss with AP. This was because C Falk thought that the previous refusal was refused because of amenity impact on neighbours and if both applications were submitted together they would be acceptable. This did not tally with my recollection with the previous reason for refusal."

"I asked whether C Falk wished the application to be determined on the basis of the original or revised drawings. He did not answer but said he would contact his Councillor."

"Presumably Mr Falk had read the Notice of Refusal issued to him following his previous application. The Reason for Refusal was based entirely upon bulk and townscape impact, and did not refer at all to amenity impact upon neighbours. "

You advise that *"Miss Gentry proceeded, on 28/02/2002, to write her report concerning the application. She took into account the history of the first application, the relevant planning policies of the UPD, and the objections from third parties, as well as the improvements in certain details carried by the revised drawings, and concluded that planning permission should be refused. She completed her report on 28/02 and passed the draft report and case file to the Area Team Leader, (and her line manager) Mr Taylor on 01/03/2002 for him to approve and sign."*

You state that there is no record on Council files as to exactly when, but between 01/03/2002 and 05/03/2002, I telephoned Mr Taylor, appealing to see him to discuss my application with him. He agreed to meet with me in your Planning Offices on Friday 08/03/2002 at 12:00 noon. I sent written confirmation of this by letter dated 05/03/2002, referring in my letter to the application being modified *"for the third time"*. I note you state that this is inaccurate, as in fact my architects had only submitted one revision. Unfortunately, there is no record of my discussion with Mr Taylor in the Planning Office on 08/03/2002. Mr Taylor's recollection is that, I was clearly appealing for a change of mind and recommendation regarding the application for nos. 25 and 26, but that he saw no justification to differ from the conclusions of the case officer and the Conservation and Design Officer, or to do anything other than to refuse the applications. He recalls that he advised that he would not pass the files through immediately, but would check further into the history of the terrace before doing so. He did this, but did not see any reason to change the course of action. It is clearly unfortunate that my memory of this conversation is at variance with that supplied by Mr Taylor, who I reiterate expressed the view that permission should have been granted. He inferred that his views had been overruled by his colleagues and that Miss Gentry was a member of his planning team.

Following my first refusal I confirm that I contacted the planning department to seek advice as to how I might proceed. I spoke with Mr Taylor, who agreed to meet with me at my property. I previously asserted that, in Mr Taylor's opinion, the refusal of planning permission *"was a mistake"* and that he advised me *"to re-apply, possibly with a concurrent application with no. 26"*. You state that Mr Taylor has advised you that he thinks it highly unlikely that he would have described a planning decision taken by his own team only weeks earlier as *"a mistake"*. However, I understand that there is no note of this conversation with you to demonstrate either way. Moreover, checking Mr Taylor's 2001 and 2002 diaries does not reveal any appointment to meet at my property between the first refusal in July 2001 and the second in March 2002.

You state that *"Mr Taylor, the Head of Development Control, Ms Wyatt-Joes, and myself as Executive Director, approved and countersigned Miss Gentry's report recommending refusal of planning permission. Notice of Refusal was issued on 25/03/2002. The Reason for Refusal was virtually identical to that of the first application, namely relating to harm to the character and appearance of the terrace and Conservation Area."*

You state that it is clear to you, that by the end of March 2002, a very consistent planning history had built up concerning second floor rear extensions along this group of buildings. Whatever misunderstandings occurred between my agents, myself and the officers, however, you had construed their advice, *"it must have been clear to yourself and your advisers that a history of refusal in 2000 (for no. 22), refusal in 2001 (for no. 25) and refusals in 2002 (for no. 25 and no 26) indicated that this Council found a strong and consistent objection in principle to such rear extensions."*

I wish to confirm my comment that when Mr Taylor attended the property he previously advised that, in his opinion, despite his having signed the refusal as stated above the refusals to provide planning permission were "a mistake". I also confirm that he had advised that the logical thing to do was for me to make a further application and should this application be refused to apply to an appeal, as this would undoubtedly be successful. I note that Mr Taylor now not contradicts this, which is clearly unfortunate but also denies visiting my property around that time which I find extraordinary.

My third application (Ref PP/03/2526) refused on 28/01/2003

Some twenty months later, on 28/11/2003, I lodged another application for a rear extension to no. 25. You noted that it differed from the previous refusal only in railing design but was otherwise almost identical to the bulk and form of those previously refused.

Notwithstanding, with the clear history now in place, you say that I had employed another consultant, John Langley of Tectus Ltd. who subsequently telephoned Mr John Wade and received advice that it would be sensible to proceed with the submission. Mr Langley is willing to confirm this conversation with Mr Wade from notes he made at that time.

You state that *"Whatever Mr Langley's interpretation of that phone call, it seem to be surprising that, on the basis of a telephone call, Mr Langley could have concluded that a consistent history over three years was about to be overturned. At the very least, before embarking upon another planning submission, it would have been prudent to have obtained a written view from a local planning authority as to whether any factors had changed that might now lead to an approval rather than a further refusal, and one would expect that any consultant would have sought this."* It is relevant that I had been previously advised by members of your team that they would be unwilling to provide written confirmation of any of their conversations with me.

However, apparently on the basis of one telephone conversation with Mr Langley, my third consultant applied for an extension that differed in only a minor way from the previous refusals. I reiterate that on discussion this with Mr John Wade, the latter confirmed that he saw no problem with the application's successful outcome that planning permission would be granted.

You advise that Mr Taylor had allocated this application to a third planning officer, his Deputy Team Leader, Mr John Wade. Mr Wade carried out his own visit to the property on 10/12/2003 at 09:30 AM to assess the application. According to me, he *"expressed the view that he saw no problem with the application being successfully processed"* By this it was meant, and this was already understood by Mr Wade that the applications would not only be successfully processed but also with a recommendation to grant planning permission. Mr Wade's memory apparently differs from mine; he recollects saying that *"he would of course take into account the three extensions nearby, but fails to see how that reasonable advice could be construed to have the meaning I gave to it."*

I once again reiterate that Mr Wade made it quite clear that he saw no problem to processing of the application in view of the clear precedent involving the three extensions having been built on nearby properties on either side of no. 25. There was no confusion to suggest that it was merely the processing of the application and that the outcome would be positive in view of the precedent of the three previous extensions having been built on adjacent properties on either side of no. 25.

You state that that Mr Wade proceeded to process the application. He took into account the near by extensions, the relevant planning policies, and all other material considerations including two objections from neighbours, and concluded that there were

sound reasons to refuse planning permission. His recommended reason for refusal was, given the similarity between the applications, very similar to those previously refused. Mr Taylor, Ms Wyatt-Jones, and yourself, in sequence approved and countersigned Mr Wade's report, and Notice of Refusal was issued on 28/01/2004.

"You state that Mr Taylor advised you to 'proceed to an appeal as in his opinion this would most certainly result in planning permission being granted.' Mr Taylor disputes this statement completely. He neither advised you to appeal, nor suggested that any appeal would almost certainly be granted (which would anyway have been bizarre in view of the fact that he had previously agreed, for the second time, that there were sound and reasonable grounds for planning permission being refused. Mr Taylor's recall of his view as being that whilst an Inspector would certainly take the older nearby extensions into account, it would be most unlikely that an Inspector would give them such weight as to use them to justify allowing an appeal. Mr Taylor concludes he may well have advised that the only possible course you could take would be to try an appeal; very different from actually recommending you should do so, or that you would "almost certainly" succeed on appeal."

I reiterate that I strongly contest Mr Taylor's and Mr Wade's versions of events. I remain mystified as to why your officers give consistent advice then change their minds and deny their original conversations.

"Your last paragraph is hotly disputed by all concerned. You state that Miss Gentry, Mr Taylor and Mr Wade each advised that permission 'should be formality in view of seeking an extension on a house in a terrace of seven of which three of the properties have already had such extensions.' Not one of these officers recalls giving any such advice, each unequivocally stating that they neither held such a view nor offered such a statement. In fact the opposite was the reality. Each officer in succession considered that permission should be refused notwithstanding their presence. You and your agents were advised on different occasions, and in different words, that the three existing extensions were examples of how not to extend a property and how to compromise the appearance and the integrity of a property through ill-considered extensions. Mr Taylor last gave you this advice at your house on 24/01/2005, using these very words." May I suggest you contact Mr John Langley of Tectus Ltd who is prepared form his notes to confirm that the information is provided by at least one of your officers Mr John wade is simply untrue.

Your Conclusion

You state that "In responding to you letter, I have come across absolutely no evidence to support the assertions in your letter that successive officers somehow supported your proposals but then mysteriously ended up recommending refusal. Each one of them has advised me to the contrary, and they do not know how you could consistently misinterpret their advice. I clearly do not know what precise words my officers did say to you or your agent, or how you and your agent chose to interpret what was said other than the statements in you letter and the note from Miss Gentry regarding Mr Falk in February 2002. You have not shown me any written opinion provided to you, as far as I am aware you or your agents have never asked for one, and I have no reason to assume that officers ever tried to offer anything less than their best verbal advice."

"However, the final advice of any officer is interpreted, the submission of a formal planning application will always be the final test, and this test was engaged in three times over three years with the same results; four times, if the neighbouring property is included and five if no. 22 in 2000 is included. As described above there were different case officers involved (four, if we include no 22 in 2000), all of whom arrived at the same conclusion regarding a rear first floor extension. The Conservation and Design officer concluded likewise in 2002. There would certainly seem to be a great deal of consistency in the officers' approach."

You state that "I do not know how much the public inquiry cost you, but clearly it must have been several thousand at the least. I do not know if it was yourself, or your agents, who opted for by far the most expensive appeal procedure, but to my mind the merits of the case certainly did not warrant a public inquiry. You will be aware of the correspondence between the parties of April 2004, where not just this Council but the planning Inspectorate too offered the view that an inquiry would not be warranted. The Planning Inspectorate, in their letter of 01/10/2004, advised of their view, shared by this Council, that a full Public Inquiry was 'not suited or necessary in order for this case to be fully and fairly examined and for an informed decision to be reached by the Inspector.' Despite both this council and the Inspectorate agreeing that the costly public inquiry procedure was not necessary, you exercised your right under the Act to insist upon it."

If the officers had been unfair or inconsistent in their decision making, then that might be expected to be revealed in a decision by the inspector to allow your appeal. However, it is quite evident that the Inspector agreed with the Officer's view that the height and massing of the existing extensions to nos. 23, 24, and 27 paid little regard to the scale or form of the host properties, and that the proposed development would be harmful to the integrity of the terrace. It seems to me that the Planning Inspector's conclusions were consistent with the five Council decisions regarding nos. 22, 25 and 26 over four years."

You state that "I fully understand that you feel frustrated after such persistence over a long period of time. However, I have not found any evidence at all to indicate that the Council's decision-making process was in any way inconsistent or unfair, as ultimately borne out by the inspector's decision. In my view all of the correct procedures were adhered to at each stage of the history described in this letter, and there has neither been misadministration nor injustice at any stage. I have not found anything to suggest that Mr Taylor or any of the other officers involved misled you, attempted to mislead you, or in any way acted unreasonably, unfairly or unprofessionally."

I note all the points that you make above. However, I am still left with the problem my architect Carl Falk alleged that Miss Gentry advised that permission would be granted and asked for further drawings. I have met Mr Derek Taylor in my property, as well as at the Town Hall. He clearly stated that the refusal to provide planning permission was initially and subsequently, in his opinion, a mistake. Does Mr Derek Taylor maintain that he did not visit my property, as this is quite simply a lie. I remember clearly my conversation with Mr Taylor who advised me that there was a disagreement in your office relating to permission, however, in his view, the rear elevation of the terrace was like "a set of false teeth" for which a gap needed to be filled in to provide symmetry. I agree with you that this seems extraordinary since you advise me that he countersigned a refusal to provide planning permission. In relation to the second application, he not only advised again that this was a further mistake but also strongly advised that the application from 26 Penzance Street should be submitted concurrently, as this would significantly strengthen the chance of both applications having a successful outcome. I also find it surprising that Mr Taylor has allegedly denied his clear statements on this matter and his clear vision that the application should and would be successful for both numbers 25 and 26 Penzance Street. I again reiterate that at a further discussion with Mr Taylor, he again said that the refusal to provide permission was a mistake. I can only comment that I find this extremely bizarre, as you have advised me that he countersigned the refusal to provide permission. I regard it as most unfortunate that he states that he did not meet me at the property to confirm this view. It is also extraordinary that Mr Langley of Tectus Ltd. spoke to Mr John Wade, and not Mr Taylor, who confirmed the conversation he had had with me that the third application would be successful, as it did not present a problem in view of the precedent of three previous identical extensions on either side of 25 Penzance Street. I would be grateful if you

check with Mr Derek Taylor that he still maintains that he did not visit my property with this advice as if this is the case, it is quite simply untrue.

Thus, I confirm that pertaining to my original application that my professional advisors alleged that the initial application would be successful if modified. Mr Taylor repeatedly advised that the failure to grant planning permission was "a mistake". It is therefore on his advice that the second application with a parallel application for no. 26 was made. It was again on his specific advice that a third application was not only made but also appealed "as it would undoubtedly be successful, as the previous refusals were a mistake". I acknowledge the information that no written record was kept of this conversation between Mr Taylor and myself. I re-confirm the conversations that both Mr Langley and I had with Mr John Wade in which he ascertained that there should not be a problem in processing the application to be successful.

Thus, in conclusion I have clearly shown that the information provided in your letter is factually incorrect.

Please can you advise why Mr John Langley, an architect, of Tectus Ltd. has been able to confirm that yours and Mr John Wade's version of events is simply untrue.

I am at a loss to know why your officers have misled you and your colleagues in this way.

I look forward to an early reply in relation to the above.

Yours sincerely,

Paul J Ciclitira
Professor of Gastroenterology

CC Mr Derek Horne, Derek Horne Associates
 Local Government Ombudsman

Paul J Ciclitira
Professor of Gastroenterology

St Thomas' Hospital
 Lambeth Palace Road
 London SE1 7EH

All Correspondence to:
 The Rayne Institute
 4th Floor Lambeth Wing
 St Thomas Hospital
 London SE1 7EH

Academic Secretary:
 Tel 1: 0207 620 2597
 Tel 2: 0207 18 82494
 Fax: 0207 261 0667

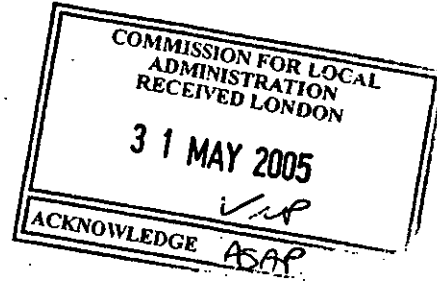
Tel: 020 7188 7188

paul.ciclitira@kcl.ac.uk
mila.labar_weintrop@kcl.ac.uk (see www.guysandstthomas.nhs.uk)
<http://www.profpauciclitira.co.uk/>

By fax, e-mail and registered post

Date: 27 May 2005

Mr Tony Redmond
 Local Government Ombudsman
 The Commission for Local
 Administration in England
 10th Floor
 Millbank Tower
 London SW1P 4QP



Your reference: 04/A/16180/PBM/NP

DP 5878 0163 8GB

Dear Mr Redmond,

Re: 25 Penzance Street, London W11 4QX
Formal Complaint Against Planning Office Kensington & Chelsea

Thank you for your letter of 20th May 2005 and subsequently processing my complaint against the Planning Office at Kensington & Chelsea Town Hall.

I enclose a copy of a letter received from Mr J French, Executive Director of Planning and Conservation, and my reply. You will see that I repudiate the contents of his letter.

I confirm that I would be grateful if you would be willing to pursue further my complaint against the Kensington & Chelsea Planning Office.

Thank you for your continued help in dealing with this.

With best wishes and kind regards.

Yours sincerely,

Paul J Ciclitira
Professor of Gastroenterology

Enc.

Paul J Ciclitira
Professor of Gastroenterology

All Correspondence to:
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 4th Floor Lambeth Wing
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 Tel 1: 0207 620 2597
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paul.ciclitira@kcl.ac.uk
mila.labar_weintrop@kcl.ac.uk (sec)
<http://www.profpaulciclitira.co.uk/>

St Thomas' Hospital
 Lambeth Palace Road
 London SE1 7EH

Tel: 020 7188 7188
www.guysandstthomas.nhs.uk

Date: 25 May 2005

Mr M J French
 Executive Director
 Planning and Conservation
 The Town Hall
 Hornton Street
 London W8 7NX

COPY

Your reference: EDPC/MJF/PP

Dear Mr French,

**Re: Formal Complaint
 25 Penzance Street**

Thank you for your letters of 14th March and 11th April 2005 relating to my complaint of 31/01/2005 to the Local Government Ombudsman regarding planning permission for a rear extension at 25 Penzance street, W111.

You advise that *"there has been a protracted process involving your property, including a number of planning applications."* You advise that in summary that I am aggrieved that despite recurring advice from officers of your department on several applications my sequence of planning applications has met with repeated refusals to grant planning permission. This means that, from my point of view, a good deal of expenditure that I state is (£ 21,000) upon professional fees and planning fees have not resulted in any positive outcome.

You note *"from the planning history to this property, that planning permission was refused for a rear extension at first floor level in July 2001, again in March 2002 and then again in January 2004. In the meantime, in March 2002, permission was also refused for a neighbouring property no. 26 for similar development. Notwithstanding the fact that the Officers recommended refusal in each of these cases over three years, you suggest that I based my application on each occasion upon Officer advice that such an application might be considered favourably. You imply, it would seem, that you would not have submitted repeated applications, or chosen to go to appeal by means of a full Public Inquiry, had you not been in some way encouraged by Council Officers to do so."*

"You focus in particular on Derek Taylor, Team Leader for the North area development control team, within which area your property at Penzance Street is included. You state that you were 'repeatedly advised by Mr Derek Taylor...' to re-apply for planning permission". You also state that you were 'advised to re-apply twice for the extension which was turned down on appeal findings. Mr Taylor has now changed his mind.' You conclude that 'Derek Taylor's actions have cost me in excess of "£ 21,000."

You state that "as the sequence of events concerning your attempts to gain planning permission for an extension have directly involved at least six planning Officers, including three different Case Officers, as well as three separate professional consultants, and an Appeal Inspector, it would seem to me unrealistic to attribute all of your costs to the "actions" of one Officer, however, I will not draw conclusions on your assertion before running through the detailed history of events."

My first application (ref PP/01/1349) refused on 27/07/2007

I confirm that this application was submitted on 11/06/2001 for which I employed Carl Falk Associates to act as my agents. I note the case officer for this application was Mr Paterson, A Senior Planning Officer within the North Area Team and not Miss Gentry as I suggested in my letter dated 31/01/2005. I not only did not believe Miss Gentry was the case officer but can confirm that I have never met or spoken to Miss Gentry. You state that Mr Paterson took into account the fact that four of the seven properties in this group did not have extensions at the second floor level, the fact that three did which were permitted in the early 1980s was against the earlier planning policies and old enough not to carry much weight. Due to the fact that a similar proposal had already been refused against the current UDP policies in respect of no. 20 in 2000, as well as objections raised by a neighbour, Mr Paterson prepared a report under delegated powers, recommending that planning permission should be refused for the extension. This report was approved and countersigned by the Head of Development Control Ms Wyatt-Jones, on 23/07/2001 and yourself, as Executive Director of Planning & Conservation. Apparently Mr Taylor was on leave on 23/07 and played no part in the process of refusing my first application.

I note that looking at the case file for this application, you are satisfied that the correct policies and other material considerations were taken into account, the correct procedures properly followed, and the appropriate conclusions fairly and properly reached. You state that you understand I will have been disappointed to meet with the refusal of a planning permission but that in itself does not, to your mind, give any reasonable grounds for complaint.

You note that "shortly before refusing planning permission for the rear extension at the second floor level, this Authority has granted a Certificate of Lawful Proposed Development in respect of a single storey ground floor rear extension which would have constituted "Permitted Development", on 23/07/2001."

Your letter fails to include the fact I was informed by Carl Falk Associates that they were allegedly advised that planning permission would be granted on condition that some minor changes be made to the architectural drawings.

My second application (Ref PP/02/0267) refused on 25/03/2002

You note that for the second application, submitted some six months after the previous refusal, on 24/01/2002, I again employed Carl Falk Associates. It is this application to which Miss Gentry, another Senior Planning Officer within the North Area Team, was appointed as case officer, as opposed to my "initial application" as described in my letter. This application was made concurrently with a similar one for no 26 adjacent to no 25.

I also state that I was "led to believe that from the Planning Officer who came to visit the property that there would be no problems pertaining to this", but that "the application was declined for the second time."

You advise that Miss Gentry, the officer who came to visit me was the case officer for my second application. I reiterate that I have never met nor spoken to Miss Gentry so that

this must be a misunderstanding. I understand that Miss Gentry assessed my second application against the same planning policies that had been considered in the context of my first application you advise that the case file presents a different impression of proceedings from mine, particularly with regard to my assertion that I understood "there would be no problems" pertaining to my application. On 14/02 Miss Gentry met with Mr Falk, who was acting for me, to discuss the proposal. Her file record of that meeting reads "Advised concern re: height of extension, recent refusal. Would not be subordinate to existing building. If acceptable in principle, remove parapet. Will check previous refusal + speak to AP (previous case officer) + design (meaning the Conservation & Design officer) + get back to him". On 20/02 an objection was received from the resident of no. 27, referring to over development and in reference to the other application for no. 26, loss of light.

The Conservation and Design officer provided written comments on the proposal for both 25 and 26 advising that:

"The principle of extending the closet wings of these two properties up to second floor level is not acceptable and is contrary to CD41. The existing rhythm of closet wing extensions within the terrace rise to first floor level only, with the unfortunate exception of three properties which clearly illustrate how harmful such extensions are to the appearance of the building/terrace."

"The proposed extension, rising up to and above the main rear eaves, would result in a bulky, over-dominant rear extension, which would obscure the major part of the main rear elevation and would not be subordinate to the main building. In addition, the proposed roof terraces at second floor level add unwelcome visual clutter."

"The proposal would be detrimental to the appearances of the building and to the character and appearance of the terrace and the conservation area."

You go on to state that "on 26/02/2002 a formal objection was received from the local conservation society, the Norland Society, raising their concern that the proposal would be "an over-development of a restricted site" and that the application should be refused. On 27/02, without waiting for Miss Gentry to respond following her further consultations as she advised on 14/02, revisions were received including amendments to the parapet as referred to above. The architects thus prepared and submitted these revisions to details, without any indication from the case officer that the proposal could be accepted in principle."

You report that the day after these were revised, the plans were received, Miss Gentry advised the architect, Mr Carl Falk, that she considered the proposal unacceptable. The file record of that telephone conversation reads:

"I explained that I have been surprised to receive the revised drawings since at the site meeting we had agreed that I would discuss with Andrew Paterson and then contact C Falk to advise him whether the principle would be acceptable and if so, revise drawings. When I tried to do this yesterday, I was told revised drawings had been submitted."

"C Falk disputed that I had ever suggested that the proposal might be refused. I said that I had clearly expressed doubts about the principle of the extension but wanted to look at the previous refusal and discuss with AP. This was because C Falk thought that the previous refusal was refused because of amenity impact on neighbours and if both applications were submitted together they would be acceptable. This did not tally with my recollection with the previous reason for refusal."

"I asked whether C Falk wished the application to be determined on the basis of the original or revised drawings. He did not answer but said he would contact his Councillor."

"Presumably Mr Falk had read the Notice of Refusal issued to him following his previous application. The Reason for Refusal was based entirely upon bulk and townscape impact, and did not refer at all to amenity impact upon neighbours. "

You advise that "Miss Gentry proceeded, on 28/02/2002, to write her report concerning the application. She took into account the history of the first application, the relevant planning policies of the UPD, and the objections from third parties, as well as the improvements in certain details carried by the revised drawings, and concluded that the planning permission should be refused. She completed her report on 28/02 and passed the draft report and case file to the Area Team Leader, (and her line manager) Mr Taylor on 01/03/2002 for him to approve and sign."

You state that there is no record on Council files as to exactly when, but between 01/03/2002 and 05/03/2002, I telephoned Mr Taylor, appealing to see him to discuss my application with him. He agreed to meet with me in your Planning Offices on Friday 08/03/2002 at 12:00 noon. I sent written confirmation of this by letter dated 05/03/2002, referring in my letter to the application being modified "for the third time". I note you state that this is inaccurate, as in fact my architects had only submitted one revision. Unfortunately, there is no record of my discussion with Mr Taylor in the Planning Office on 08/03/2002. Mr Taylor's recollection is that, I was clearly appealing for a change of mind and recommendation regarding the application for nos. 25 and 26, but that he saw no justification to differ from the conclusions of the case officer and the Conservation and Design Officer, or to do anything other than to refuse the applications. He recalls that he advised that he would not pass the files through immediately, but would check further into the history of the terrace before doing so. He did this, but did not see any reason to change the course of action. It is clearly unfortunate that my memory of this conversation is at variance with that supplied by Mr Taylor, who I reiterate expressed the view that permission should have been granted. He inferred that his views had been overruled by his colleagues and that Miss Gentry was a member of his planning team.

Following my first refusal I confirm that I contacted the planning department to seek advice as to how I might proceed. I spoke with Mr Taylor, who agreed to meet with me at my property. I previously asserted that, in Mr Taylor's opinion, the refusal of planning permission "was a mistake" and that he advised me "to re-apply, possibly with a concurrent application with no. 26". You state that Mr Taylor has advised you that he thinks it highly unlikely that he would have described a planning decision taken by his own team only weeks earlier as "a mistake". However, I understand that there is no note of this conversation with you to demonstrate either way. Moreover, checking Mr Taylor's 2001 and 2002 diaries does not reveal any appointment to meet at my property between the first refusal in July 2001 and the second in March 2002.

You state that "Mr Taylor, the Head of Development Control, Ms Wyatt-Joes, and myself as Executive Director, approved and countersigned Miss Gentry's report recommending refusal of planning permission. Notice of Refusal was issued on 25/03/2002. The Reason for Refusal was virtually identical to that of the first application, namely relating to harm to the character and appearance of the terrace and Conservation Area."

You state that it is clear to you, that by the end of March 2002, a very consistent planning history had built up concerning second floor rear extensions along this group of buildings. Whatever misunderstandings occurred between my agents, myself and the officers, however, you had construed their advice, "it must have been clear to yourself and your advisers that a history of refusal in 2000 (for no. 22), refusal in 2001 (for no. 25) and refusals in 2002 (for no. 25 and no 26) indicated that this Council found a strong and consistent objection in principle to such rear extensions."

I wish to confirm my comment that when Mr Taylor attended the property he previously advised that, in his opinion, despite his having signed the refusal as stated above the refusals to provide planning permission were "a mistake". I also confirm that he had advised that the logical thing to do was for me to make a further application and should this application be refused to apply to an appeal, as this would undoubtedly be successful. I note that Mr Taylor now not contradicts this, which is clearly unfortunate but also denies visiting my property around that time which I find extraordinary.

My third application (Ref PP/03/2526) refused on 28/01/2003

Some twenty months later, on 28/11/2003, I lodged another application for a rear extension to no. 25. You noted that it differed from the previous refusal only in railing design but was otherwise almost identical to the bulk and form of those previously refused.

Notwithstanding, with the clear history now in place, you say that I had employed another consultant, John Langley of Tectus Ltd. who subsequently telephoned Mr John Wade and received advice that it would be sensible to proceed with the submission. Mr Langley is willing to confirm this conversation with Mr Wade from notes he made at that time.

You state that *"Whatever Mr Langley's interpretation of that phone call, it seem to be surprising that, on the basis of a telephone call, Mr Langley could have concluded that a consistent history over three years was about to be overturned. At the very least, before embarking upon another planning submission, it would have been prudent to have obtained a written view from a local planning authority as to whether any factors had changed that might now lead to an approval rather than a further refusal, and one would expect that any consultant would have sought this."* It is relevant that I had been previously advised by members of your team that they would be unwilling to provide written confirmation of any of their conversations with me.

However, apparently on the basis of one telephone conversation with Mr Langley, my third consultant applied for an extension that differed in only a minor way from the previous refusals. I reiterate that on discussion this with Mr John Wade, the latter confirmed that he saw no problem with the application's successful outcome that planning permission would be granted.

You advise that Mr Taylor had allocated this application to a third planning officer, his Deputy Team Leader, Mr John Wade. Mr Wade carried out his own visit to the property on 10/12/2003 at 09:30 AM to assess the application. According to me, he *"expressed the view that he saw no problem with the application being successfully processed"* By this it was meant, and this was already understood by Mr Wade that the applications would not only be successfully processed but also with a recommendation to grant planning permission. Mr Wade's memory apparently differs from mine; he recollects saying that *"he would of course take into account the three extensions nearby, but fails to see how that reasonable advice could be construed to have the meaning I gave to it."*

I once again reiterate that Mr Wade made it quite clear that he saw no problem to processing of the application in view of the clear precedent involving the three extensions having been built on nearby properties on either side of no. 25. There was no confusion to suggest that it was merely the processing of the application and that the outcome would be positive in view of the precedent of the three previous extensions having been built on adjacent properties on either side of no. 25.

You state that that Mr Wade proceeded to process the application. He took into account the near by extensions, the relevant planning policies, and all other material considerations including two objections from neighbours, and concluded that there were

sound reasons to refuse planning permission. His recommended reason for refusal was, given the similarity between the applications, very similar to those previously refused. Mr Taylor, Ms Wyatt-Jones, and yourself, in sequence approved and countersigned Mr Wade's report, and Notice of Refusal was issued on 28/01/2004.

"You state that Mr Taylor advised you to 'proceed to an appeal as in his opinion this would most certainly result in planning permission being granted.' Mr Taylor disputes this statement completely. He neither advised you to appeal, nor suggested that any appeal would almost certainly be granted (which would anyway have been bizarre in view of the fact that he had previously agreed, for the second time, that there were sound and reasonable grounds for planning permission being refused. Mr Taylor's recall of his view as being that whilst an Inspector would certainly take the older nearby extensions into account, it would be most unlikely that an Inspector would give them such weight as to use them to justify allowing an appeal. Mr Taylor concludes he may well have advised that the only possible course you could take would be to try an appeal; very different from actually recommending you should do so, or that you would 'almost certainly' succeed on appeal."

I reiterate that I strongly contest Mr Taylor's and Mr Wade's versions of events. I remain mystified as to why your officers give consistent advice then change their minds and deny their original conversations.

"Your last paragraph is hotly disputed by all concerned. You state that Miss Gentry, Mr Taylor and Mr Wade each advised that permission 'should be formal in view of seeking an extension on a house in a terrace of seven of which three of the properties have already had such extensions.' Not one of these officers recalls giving any such advice, each unequivocally stating that they neither held such a view nor offered such a statement. In fact the opposite was the reality. Each officer in succession considered that permission should be refused notwithstanding their presence. You and your agents were advised on different occasions, and in different words, that the three existing extensions were examples of how not to extend a property and how to compromise the appearance and the integrity of a property through ill-considered extensions. Mr Taylor last gave you this advice at your house on 24/01/2005, using these very words." May I suggest you contact Mr John Langley of Tectus Ltd who is prepared from his notes to confirm that the information is provided by at least one of your officers Mr John Wade is simply untrue.

Your Conclusion

You state that "In responding to your letter, I have come across absolutely no evidence to support the assertions in your letter that successive officers somehow supported your proposals but then mysteriously ended up recommending refusal. Each one of them has advised me to the contrary, and they do not know how you could consistently misinterpret their advice. I clearly do not know what precise words my officers did say to you or your agent, or how you and your agent chose to interpret what was said other than the statements in your letter and the note from Miss Gentry regarding Mr Falk in February 2002. You have not shown me any written opinion provided to you, as far as I am aware you or your agents have never asked for one, and I have no reason to assume that officers ever tried to offer anything less than their best verbal advice."

"However, the final advice of any officer is interpreted, the submission of a formal planning application will always be the final test, and this test was engaged in three times over three years with the same results; four times, if the neighbouring property is included and five if no. 22 in 2000 is included. As described above there were different case officers involved (four, if we include no 22 in 2000), all of whom arrived at the same conclusion regarding a rear first floor extension. The Conservation and Design officer concluded likewise in 2002. There would certainly seem to be a great deal of consistency in the officers' approach."

You state that "I do not know how much the public inquiry cost you, but clearly it must have been several thousand at the least. I do not know if it was yourself, or your agents, who opted for by far the most expensive appeal procedure, but to my mind the merits of the case certainly did not warrant a public inquiry. You will be aware of the correspondence between the parties of April 2004, where not just this Council but the planning Inspectorate too offered the view that an inquiry would not be warranted. The Planning Inspectorate, in their letter of 01/10/2004, advised of their view, shared by this Council, that a full Public Inquiry was 'not suited or necessary in order for this case to be fully and fairly examined and for an informed decision to be reached by the Inspector.' Despite both this council and the Inspectorate agreeing that the costly public inquiry procedure was not necessary, you exercised your right under the Act to insist upon it."

If the officers had been unfair or inconsistent in their decision making, then that might be expected to be revealed in a decision by the inspector to allow your appeal. However, it is quite evident that the Inspector agreed with the Officer's view that the height and massing of the existing extensions to nos. 23, 24, and 27 paid little regard to the scale or form of the host properties, and that the proposed development would be harmful to the integrity of the terrace. It seems to me that the Planning Inspector's conclusions were consistent with the five Council decisions regarding nos. 22, 25 and 26 over four years."

You state that "I fully understand that you feel frustrated after such persistence over a long period of time. However, I have not found any evidence at all to indicate that the Council's decision-making process was in any way inconsistent or unfair, as ultimately borne out by the inspector's decision. In my view all of the correct procedures were adhered to at each stage of the history described in this letter, and there has neither been misadministration nor injustice at any stage. I have not found anything to suggest that Mr Taylor or any of the other officers involved misled you, attempted to mislead you, or in any way acted unreasonably, unfairly or unprofessionally."

I note all the points that you make above. However, I am still left with the problem my architect Carl Falk alleged that Miss Gentry advised that permission would be granted and asked for further drawings. I have met Mr Derek Taylor in my property, as well as at the Town Hall. He clearly stated that the refusal to provide planning permission was initially and subsequently, in his opinion, a mistake. Does Mr Derek Taylor maintain that he did not visit my property, as this is quite simply a lie. I remember clearly my conversation with Mr Taylor who advised me that there was a disagreement in your office relating to permission, however, in his view, the rear elevation of the terrace was like "a set of false teeth" for which a gap needed to be filled in to provide symmetry. I agree with you that this seems extraordinary since you advise me that he countersigned a refusal to provide planning permission. In relation to the second application, he not only advised again that this was a further mistake but also strongly advised that the application from 26 Penzance Street should be submitted concurrently, as this would significantly strengthen the chance of both applications having a successful outcome. I also find it surprising that Mr Taylor has allegedly denied his clear statements on this matter and his clear vision that the application should and would be successful for both numbers 25 and 26 Penzance Street. I again reiterate that at a further discussion with Mr Taylor, he again said that the refusal to provide permission was a mistake. I can only comment that I find this extremely bizarre, as you have advised me that he countersigned the refusal to provide permission. I regard it as most unfortunate that he states that he did not meet me at the property to confirm this view. It is also extraordinary that Mr Langley of Tectus Ltd. spoke to Mr John Wade, and not Mr Taylor, who confirmed the conversation he had had with me that the third application would be successful, as it did not present a problem in view of the precedent of three previous identical extensions on either side of 25 Penzance Street. I would be grateful if you

check with Mr Derek Taylor that he still maintains that he did not visit my property with this advice as if this is the case, it is quite simply untrue.

Thus, I confirm that pertaining to my original application that my professional advisors alleged that the initial application would be successful if modified. Mr Taylor repeatedly advised that the failure to grant planning permission was "a mistake". It is therefore on his advice that the second application with a parallel application for no. 26 was made. It was again on his specific advice that a third application was not only made but also appealed "as it would undoubtedly be successful, as the previous refusals were a mistake". I acknowledge the information that no written record was kept of this conversation between Mr Taylor and myself. I re-confirm the conversations that both Mr Langley and I had with Mr John Wade in which he ascertained that there should not be a problem in processing the application to be successful.

Thus, in conclusion I have clearly shown that the information provided in your letter is factually incorrect.

Please can you advise why Mr John Langley, an architect, of Tectus Ltd. has been able to confirm that yours and Mr John Wade's version of events is simply untrue.

I am at a loss to know why your officers have misled you and your colleagues in this way.

I look forward to an early reply in relation to the above.

Yours sincerely,



Paul J Ciclitira
Professor of Gastroenterology

CC Mr Derek Horne, Derek Horne Associates
 Local Government Ombudsman

17 January 2006

Professor PJ Ciclitira
25 Penzance Street
London
W11 4QX

Our ref: 05/A/03437/PBM
(Please quote our reference when contacting us)

**If telephoning contact: Pat Moriarty on 020 7217 4641
or, if using e-mail, send to: p.moriarty@lgo.org.uk**

Dear Professor Ciclitira

Your complaint against the Royal Borough of Kensington and Chelsea

Thank you for your letter of 9 January 2006. We have since spoken by telephone. I am writing to you now to give you my provisional view of your complaint.

When we spoke I confirmed that because of the provisions of S.26(4) of the Local Government Act 1974, I am unable to consider events before February 2004. This is because this section of the Act says that normally the Ombudsman may not investigate a complaint unless the complaint was made to him or to an elected member within twelve months of the complainant knowing that something had happened which affected him or her. You first made your complaint to us in February 2005 and so I may not normally consider any part of the complaint relating to injustice of which you were aware twelve months earlier. I have some discretion to go beyond this twelve months but because of the passage of time I do not consider there are any grounds which would lead the Ombudsman to decide to consider this early part of your complaint now.

It seems to me that this means that I am unable to consider any of the events that led to you making your planning application PP/03/02526 and the advice that was given to you by the Council at that time. And you are already aware that I am unable to consider the decision which was made on this planning application because you have used your right of appeal to the Planning Inspectorate.

We discussed the advice which was given to you more recently by Mr French. You said that you had a meeting with him on 21 November 2005. You say you took new proposals with you to the meeting and that these were considered by Mr French. As I understand it, Mr French told you that in his opinion, the drawings you showed him would not be acceptable to the Council. He told you that for any scheme to be accepted by the Council it should accord more closely with the Planning Inspector's decision on your previous application.

It seems to me this is reasonable advice. And if you think the advice is wrong, it is open to you to submit a full application to the Council, and if that is refused to appeal against the Council's decision to the Planning Inspectorate.

So, on the information I have so far, it is my provisional view that the early part of your complaint (that relating to events prior to February 2004) is outside the jurisdiction of the Ombudsman. And I have seen no administrative fault in the advice which has been given to you by the Council's Officers subsequent to that date. I am sorry I cannot be more helpful but for these reasons it is my view that we should not pursue your complaint further.

However, if you have evidence in support of your complaint which I have not yet seen, or comments which you think may be relevant, please send them to me within the next three weeks and I will consider them. If I do not hear from you by 7 February 2006 we will discontinue our investigation and, as required by the 1974 Act, I shall send a copy of this decision letter to the Council's Chief Executive.

Yours sincerely

Patrick Moriarty
Investigator

Pat Moriarty

From: Mila Labar Weintrop [mila.labar_weintrop@kcl.ac.uk]
Sent: 06 February 2006 12:54
To: Pat Moriarty
Cc: Paul J Ciclitira
Subject: Letter from P J Ciclitira: Your reference: 05/A/03437/PBM

Paul J Ciclitira
Professor of Gastroenterology

25 Penzance Street
London
W11 4QX

Tel/fax: 0207 565 0415
Tel/fax: 0207 603 3594
E-mail: paul.ciclitira@kcl.ac.uk

Mr P Moriarty
Investigator
Local Government Ombudsman
The Commission for Local
Administration in England
10th Floor
Millbank Tower
London SW1P 4QP

Your reference: 05/A/03437/PBM

Dear Mr Moriarty,

Re: 25 Penzance Street, London W11 4QX
Formal Complaint Against Planning Office Kensington & Chelsea

Thank you for your letter of 4th and 17th January 2006, replying to mine of 16th and 21st December 2005. I confirm that the meetings I have had with the Council proved fruitless and thus I wished you to pursue my complaint.

My complaint is that the Council gave me wrong advice concerning a proposed extension to my property, encouraging me to submit modified drawings which it indicated would be favourably received. I allege that documents pertaining to meetings are missing from the planning file and a professional document analyst alleges that at least one of the documents on the file has been altered.

You spoke with me first about my complaint on 23/02/2005. You enclosed a note of the conversation which you made at that time. You explained that "you were not able to consider any complaint about the refusal of planning consent by the Council or the subsequent appeal to be Planning Inspectorate. This was because the Local Government Act 1974 specifically states that the Ombudsman may not investigate a complainant when the complaint has the right to appeal to a Government Minister. You have such a right because you could appeal to the office of the Deputy Prime Minister (through the Planning Inspectorate) against the Council's decision to refuse your planning application. Because you used that right I have no discretion to consider the part of your complaint and cannot do so."

"However, I am able to consider the advice which you were given at the time which you say led

you to additional expense. However, the investigation of this aspect is also hampered by the terms of the Local Government Act 1974. The Act says that the Ombudsman may not investigate a complaint unless it was made to him or to an elected member within twelve months of becoming aware that he had suffered injustice because of the actions of a council. You will see this is covered by the final paragraph of my telephone note. (The relevant section of the Act is 26(4))."

"You may wonder about the significance of the hand written 'Oh, but it's 26 (5)' on the note. Clause 26 (5) of the Act says that before the Ombudsman may consider a complaint, a Council must have had the opportunity to consider it and reply to it. I realised, following my conversation, that the Council had not had such an opportunity and so, irrespective that parts of the complaint were outside my jurisdiction, the Act required me to send the complaint to the Council and ask it to be put through its complaints procedure. I wrote to you explaining this on 25 February 2005."

"The Council responded to this complaint on 11 April 2005 and you have said that you are not satisfied by its response. But it seems to be that the restrictions placed on me by the Act mean that I can only consider the advice which you were given but the Council after February. At that time your application PP/03/02526 had been refused and so it seems that I cannot consider any of the advice which you received on that application."

"I understand you have had recent discussions with Mr French and that further drawings have been submitted. If you believe that there was fault in the advice given to you in this round of discussions or otherwise after February 2005 please send me the details and I will consider the matter further."

I am concerned that you agreed to investigate the earlier problems pertaining to:

- 1) Alleged removal of documents from the file;
- 2) A report from a forensic document analyst that at least one of the documents has been altered which provides evidence of malfeasance in public office.
- 3) One of the officers not only denies visiting the property but the records of this meeting have been removed from the file;
- 4) This Council officer denies not only advising me and two of my architects to re-apply with my next door neighbour as this would overcome any problems but also to apply for a third time with an appeal as this would undoubtedly be successful.

You previously advised that you proposed to use your discretion to investigate all of the above. I understood this was to investigate an ongoing matter retrospectively. I am concerned that after you advised me that you are a personal friend of Councillor Tim Ahern, Chairman of the K&C Planning Office, you no longer propose to investigate the allegations above.

I would be grateful for your comments on the above and in particular whether the matter should be passed to one of your colleagues, particularly in view of any potential conflict of interest.

Yours sincerely,

Paul J Ciclitira
Professor of Gastroenterology

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06/02/2006

7 February 2006

Professor PJ Ciclitira
25 Penzance Street
London
W11 4QX

Our ref: 05/A/03437/PBM
(Please quote our reference when contacting us)

**If telephoning contact: Pat Moriarty on 020 7217 4641
or, if using e-mail, send to: p.moriarty@lgo.org.uk**

Dear Professor Ciclitira

Your complaint against the Royal Borough of Kensington and Chelsea

Thank you for your letter of 6 February 2006 received by e-mail. I have considered very carefully what you have to say. I am writing to you now to give you my decision on your complaint

In my letter of 17 January 2006 I explained that it was my view that your complaint broke into two parts, events before February 2004, and events after that date. I explained that it was my view that I should not investigate the earlier events because they were caught by the provisions of S.26 (4) of the Local Government Act 1974 – the twelve month rule.

You say that I agreed to investigate four aspects of your complaint relating to the period before February 2004. I am sorry to say that there is nothing on the file to substantiate what you have to say, and indeed the file clearly shows this is not the case. I see no reason why I should exercise the discretion available to me to investigate any of the events prior to February 2004.

You will recall that I sent you a copy of my note of our telephone conversation on 25 February 2005. I explained at that time that the early part of your complaint was caught by the twelve month rule. Subsequently, I decided that your complaint was premature, and asked the Council to put it through its complaints procedure.

You were not satisfied with the Council's response and asked us to consider the complaint again. We spoke on 1 September 2005 and you told me that you had seen documents which led you to believe some of the papers on the Council's files had been altered. You told me that you intended to have a meeting with Mr French and Mr Ahern, the Chairman of the Planning Committee. At that time I advised you that I

knew Mr Ahern, as we had been in University together. I offered to have the case reallocated to a different investigator but you said that would not be necessary. You asked me to await the outcome of your meeting with Mr French and Mr Ahern before deciding if I should investigate the complaint. I wrote to you on 16 September confirming that you had asked me to take no further action for the time being.

You wrote to me again about the meetings with the Council but as nothing concrete had happened by the beginning of December, I wrote to you by e-mail suggesting that you withdraw your complaint. You replied that you would prefer to wait to see if the Council was prepared to accept revised drawings which you had submitted to it.

You wrote to me again on 16 and 21 December 2005. You explained that you had not been able to reach any agreement with the Council and so you wished me to proceed with the consideration of your complaint. I replied to you on 4 January 2006, reiterating my view which has been consistent from the outset, that I am unable to look at events prior to February 2004 because of the provisions of S.26(4) of the Local Government Act 1974. I said that if you thought there was fault because of the Council's actions after that date, to let me know the details, and I would consider if we should investigate these later events.

You wrote to me on 9 January 2006 and I telephoned you in response on 13 January. In that call I again said that it was my view that I should not look at events prior to February 2004. You confirmed that it was before this date that you received what you considered to be poor advice and also when you believed the documents were altered. I said again that I could look at later events if you gave me information to support your view that you had been given poor advice by the Council about proposals after February 2004. We agreed that I should write and confirm this. I wrote to you setting out my provisional view on 17 January 2006.

I am disappointed that you now say that I have in the past said I would exercise discretion to investigate the four aspects of your complaint prior to February 2004 and, by implication, say that I have changed my mind because of my friendship with Councillor Ahern. For the record, you should know that I was in the same faculty and year as the councillor but I have not seen him or contacted him since I left university in 1969. I had spoken to my line manager about this in September 2005 when you told me that you intended to have a meeting with Councillor Ahern. She agreed that my relationship with him was so distant as to require no further action. I have spoken to her again about the matter and she has decided that there is no conflict of interest and that I should reach a final decision on your complaint. If you are not satisfied that I have acted impartially, you may ask for my decision to be reviewed by a senior officer.

So, for the reasons set out in my letter of 17 January and above, I confirm that part of your complaint lies outside the jurisdiction of the Ombudsman, and there are not sufficient grounds to pursue that part which is in our jurisdiction. The Ombudsman's investigation will now be discontinued.

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The Local Government Act 1974 requires the Ombudsman to inform the Council of the decision on your complaint and so I am sending a copy of my previous letter and this letter to the Council's Chief Executive.

Yours sincerely

Patrick Moriarty
Investigator