Re: Application for a lawful development certificate, 24 Quadrant Grove, London, NW5

OPINION

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1. I am asked to advise a group of residents of Quadrant Grove, London, NW5, who are concerned about an application for a lawful development certificate made on 20 March 2014 by Mr James Ireland of 24 Quadrant Grove to the London Borough of Camden (**"the Council"**). The application seeks a certificate confirming that the addition of a basement storey to their property would be permitted development and so would not require a separate grant of planning permission.

2. In my judgment, the only lawful response to the application would be to refuse it because, as a matter of fact and degree, the proposal would involve an "engineering operation" that does not benefit from any permitted development right. The application is misconceived because it claims that "no special engineering works are involved such as a lightwell" (section 7 of the application form). It is unlikely that the provision of a lightwell alone would have involved any significant engineering works, but the excavation works required to create the proposed basement are sufficient, as a matter of fact and degree, to comprise an engineering operation that requires a separate grant of planning permission. The application cannot lawfully be granted.

The law

3. Planning permission is required for carrying out any "development" of land: section 57, Town and Country Planning Act 1990 (**"the TCPA 1990"**). Section 55(1) of the TCPA 1990 defines "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

4. Section 55(1A) defines "building operations" as including:

   "(a) demolition of buildings;

   (b) rebuilding;

   (c) structural alterations of or additions to buildings; and

the basement. Certainly, there is nothing to indicate that it was intended that the Class A right should also extend to include this type of significant engineering activity. The right might extend to the building works themselves once the ground and soil has been excavated, but I am not satisfied that it covers the excavation unless, possibly, it is *de minimis* in character. The excavation to be carried out here would not be *de minimis*.

9. This interpretation is consistent with the definition of "building operations" in section 55(1A) of the TCPA 1990 as including a series of activities, all of a type ultimately described in s. 55(1A)(d) as "operations normally undertaken by a person carrying on business as a builder". Underground development that requires the instruction of a specialist structural engineer is not "normally undertaken by a person carrying on business as a builder". That is why section 55(1) distinguishes between "building operations" and "engineering operations".

10. As they are "development", both "building operations" and "engineering operations" require a separate grant of planning permission unless they benefit from a permitted development right. Whether the extent of excavation works involved in a development proposal is sufficient to constitute an "engineering operation" requiring planning permission is a question of fact and degree. In my judgment, the extent of excavation works that would be involved in Mr Ireland's basement proposal would be such that they would constitute an "engineering operation" and it would be arguably irrational to conclude otherwise. As this "engineering operation" would not benefit from the Class A permitted development right, a separate grant of planning permission would be required for this development as a whole if it were to be lawfully implemented. This means that the application for a lawful development certificate in the terms sought must be refused.

11. I am fortified in this view by s. 55(2), which states that works begun after 5 December 1968 for the alteration of a building by providing additional space in it underground is not within the exception to the definition of "development". Whilst the building operations involved in such a project might well constitute the "alteration" of a building within the scope of the Class A permitted development right, there is a significant prior stage, namely the substantial excavation of ground to enable those underground building operations to be carried out. This stage of the project would obviously have its own material planning impacts in terms of noise, visual impact on the street scene and associated traffic movements. This is precisely why for development projects generally, Parliament has distinguished the

(d) other operations normally undertaken by a person carrying on business as a builder".

5. Section 55(2)(a) adds, so far as relevant (emphasis added):

> "(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –
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> (a) the carrying out for the maintenance, improvement or other alteration of any building of works which –
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> (i) affect only the interior of the building, or
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> (ii) do not materially affect the external appearance of the building,
>
> and are not works for making good war damage **or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground**."

6. Planning permission may be granted by a development order made pursuant to section 59 of the TCPA 1990. The Town and Country Planning (General Permitted Development) Order 1995 (**"the GPDO"**) is one such order, granting planning permission in the form of a series of permitted development rights. In the present case, Mr Ireland appear to rely on the permitted development right granted by Schedule 2, Part 1, Class A of the GPDO, namely: "The enlargement, improvement or other alteration of a dwellinghouse".

7. Development is not permitted in reliance on the Class A right if it falls foul of several criteria in paragraph A.1 relating *inter alia* to the total area of ground that would be covered, the location of the proposed enlargement in relation to the existing dwellinghouse, and the height of parts of the dwellinghouse. Further conditions for the exercise of the right, not directly relevant to this application, are set out at paragraphs A.3 and A.4.

Discussion

8. In my judgment, the permitted development right granted by Class A ("the enlargement, improvement or other alteration of a dwellinghouse") is apt to cover "building operations" as defined by s. 55(1A) of the TCPA 1990, but cannot properly be interpreted as including any other types of operations. Reading the paragraphs in Class A as a whole, the various exclusions and conditions can only sensibly be applied in relation to proposals to add more built development, or to improve or alter existing built development. They cannot sensibly be applied to another significant element of Mr Ireland's proposal, namely the excavation and taking away of a substantial volume of ground and soil from the site to create space for

"engineering" component from the "building" component. The engineering component requires separate analysis such that it would be wrong in law to accede to the applicant's request to certify as lawful, without the need for further planning permission, the "**formation** of basement extension to Single Family Dwelling" (emphasis added). That is to elide the "building" and "engineering" components of the project together when the permitted development right relied upon only properly includes the "building" operations.

12. At the very least, Mr Ireland's proposed approach carries substantial legal risk. I have advised on basement developments in London for several years and I have not come across a local planning authority that has been content to deal with projects of the scale proposed here by way of lawful development certificate. In my experience, it has been accepted consistently that the "engineering" component of such developments means that they cannot properly be brought within the permitted development right granted by Class A of the GPDO.

13. I hope that this is a helpful discussion of the relevant law. If I can assist further, please do not [redacted]

GWION LEWIS

Landmark Chambers

London

21 May 2014