

**Dike, Darlene**

---

**From:** Rupert McNeil gmail [REDACTED]  
**Sent:** 01 September 2014 15:09  
**To:** Planning  
**Cc:** Hope, Obote; McDougall, Alex; PS davis;  
[REDACTED]

**Subject:** Fwd: Lawfulness of application 2014/5117/P  
**Attachments:** mark up of existing plan (31 Briardale).pdf; Mr Keppler's objection.pdf; Ms Watson's objection.pdf; Ms Bayurina's objection.pdf; Mr and Mrs Lee's objection.pdf

Dear Planning

I understand that Mr Obote is out of the office until 4th September. Please find my email to Mr Obote below, in his absence.

With kind regards

Rupert McNeil

Begin forwarded message:

**From:** Rupert McNeil gmail [REDACTED]  
**Subject:** Lawfulness of application 2014/5117/P  
**Date:** 1 September 2014 13:47:47 BST  
**To:** "Hope, Obote" [REDACTED]  
**Cc:** "McDougall, Alex" [REDACTED] PS davis  
[REDACTED]

Dear Mr Hope

Thank you for your reply.

I am asserting that it would be unlawful and in breach of Camden's stated policy for conservation areas for a Certificate of Lawfulness in respect of application 2014/5117/P to be granted.

I will reiterate the reasons set out in my email to you of 28th August 2014, where I wrote:

***"Trees impacted in Conservation Area:***

*Firstly, this is a house in a Conservation Area (and one of a number of houses specifically referenced in the Conservation Area Statement). The work would impact trees in this Conservation Area, as is clear from the arboricultural report submitted as part of the active planning permission request (2014/3668/P). I note Camden's Guidance Note ('New Basement Development and Extensions to Existing Basement Accommodation'), which states at Paragraph 5 that "Permitted Development' rights are removed within a*

Conservation Area if there are any trees which will be affected by the development". This includes a magnolia tree in the back garden (where the report mentions that tree reduction will be required), but also to other trees, including street trees. I have copied Vicky Harding of the Heath & Hampstead Society, who has responded to 2014/3668/P in respect of the impact on local trees of the proposed work. The report and her response are attached.

The arboricultural report does not cover the potential impact on other trees in other gardens and the risk from, in particular, mixing of toxic materials in their vicinity. We are commissioning our own arboricultural report which we will send to you and to Mr McDougall.

**Nature of work is an 'engineering operation' and therefore not within Permitted Development:**

Secondly, we do not believe that the excavation of a basement is covered by permitted development, given it is an 'engineering operation'. The significant engineering issues of this site are covered in our structural engineer's comments on the plans, which form part of our objection to the active planning permission request. We are also taking legal advice on this and will revert with this in due course."

**In addition** there are a number of other points I would draw your attention to:

### **National guidance**

I draw your attention to the national planning portal guidance, which states that while "Converting an existing residential cellar or basement into a living space is in most cases unlikely to require planning permission", "Excavating to create a new basement which involves major works, a new separate unit of accommodation and/or alters the external appearance of the house, such as adding a light well, is likely to require planning permission". It is clear from the existing plans that this proposal must fall into the latter category. Excavation is involved to extend a small cellar area into a fully equipped basement floor.

### **Inaccuracies in the applications**

I also draw your attention to the guidance that states that in submitting an application "the emphasis is on the applicant to convince the local authority that a certificate should be issued. Therefore, the evidence submitted should be clear and convincing".

I draw your attention to the applicants statement in section 8 of their application form that they propose "To extend the existing basement which occupies 40% of the footprint of the existing house, to occupy 100% of the footprint of the existing house and to lower the floor level by 650mm. The proposals will not extend beyond the footprint of the existing house."

**This statement is not correct.** I have attached a mark up of the plans that I believe demonstrates that the area of the current basement is significantly less than this states. By my calculation, measuring in cm off the plan, the total area is ~ 35.25 square centimetres. The proposed area of basement as shown is ~ 10.8 square centimetres. This represents only 31% of the existing footprint, and not 40% as they suggest. If one discounts the areas on my mark up shown as (D) and (F), a passageway and an external accessed space respectively, this percentage falls to 24%. Neither of these qualify, I suggest, as part of the 'existing basement'. The applicant's statement is incorrect and/or misleading.

Please note also that we are taking technical and legal advice as to whether the plans contain further omissions, in particular, the absence of required information on the impact on the foundations (and work required on these) under the adjoining property at number 29 Briardale Gardens. We are also taking legal advice on another misrepresentation, in the parallel planning application, where the BIA states that "As the site is located away from water features such as underground rivers/ culverts the input of a hydro geologist

is not deemed to be necessary." It also answers the standard question "Is the site within 100m of a water course, well (used/disused) or potential spring line?" with "no". As we and others have pointed out in our objections to that application, from the publicly available Thames Water map (and from our own knowledge of the area) there is a culvert running down the back of the the gardens between Briardale Gardens and Pattison Road. The culvert is just a few meters away from the excavation site. Thames Water have now been made aware of the application.

There is a pattern of inaccuracies with this application which mean that following receipt of my legal advice I will be making formal complaints to the professional bodies of the engineering and architectural advisors.

#### **Date of registration**

Regarding the time available for comment, I draw your attention to the planning portal, where the date of registration is shown as 21st August. The date for comments must be an error as it is dated before this date (6th August), and the date for comments should run from the date of registration, I believe.

Notwithstanding this, my understanding is that that the normal statutory period for determining an application such as this is 8 weeks from the date of receipt. The application form is dated 30/07/2014. If the 8 week period runs from the 30/07/2014, I understand that you have until the 24 September to make a decision. Given the level of concerns expressed, I hope you will agree that it is beholden on the Council to consider all representations, including that of legal opinion, before coming to determination on this application.

#### **Additional objections**

I have also attached signed objections from:

Mr and Mrs Lee of 10 Briardale Gardens;  
Ms Bayurina of 37 Briardale Gardens;  
Ms Watson of 2 Pattison Road; and  
Mr Kepler of 8 Pattison Road.

Including the objections from my wife and me at 33 Briardale Gardens and from Ms Davis at 29 Briardale Gardens, this is a total of six. I am sure you will consider this in your deliberations and making your determination (and my understanding is that you will consider any submissions relevant to your determination up to the point at which you make it).

As I mentioned in my last email, I will share the legal advice we receive from Landmark Chambers and the expert arboricultural advice from Mr Hollis as soon as this is available.

Thank you for giving this your attention.

I have copied this to Ms Stopard, Ms Byrne and Cllrs Baillie, Freeman and Spinella who are all aware this matter. I have also copied it to the CAAC and Heath & Hampstead Society.

With kind regards

Rupert McNeil

On 1 Sep 2014, at 07:51, Hope, Obote [REDACTED] wrote:

Dear Rupert McNeil,

Thank you for your email in regards to the above site I have forwarded your objection to be logged and can confirm that today is the last day to make comments/objections on the above application as the statutory expiry date of the 28/08/2014 has elapsed including an extra week that was allowed for comments/objections. I have made some comments below which should give you a better idea on how we consult and how we would determine Application for Certificate of Lawfulness for Proposed use (LDC)

Permitted Development for proposed use' the law says that a local authority does not have to take into consideration factors other than those set out in the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development)(Amendment)(No2)(England) Order 2008 ("GPDO"). Therefore, There is no statutory requirement to consult on this application as it cannot be assessed as a normal planning application and can only have a legal determination of its lawfulness.

It is important that you are aware of the procedure involved with the submission of this application as the application is assessed under "Part 1 of the GPDO. The 2008 legislation does not refer to underground extensions to dwellinghouses. However, Class A, which permits "the enlargement, improvement, or other alteration of a dwellinghouse", is capable of being interpreted as covering basement extensions, provided they do not exceed the tolerances laid down for extensions, namely volume and proximity to a highway. Given that roof extensions are covered by a specific category, it is arguable whether basement extensions were simply overlooked when the GPDO was formulated. Whilst there is a case that the silence of the GPDO implies that all basement extensions require planning permission, the overwhelming majority of local authorities....interpret Part 1 of the GPDO to include underground extensions. Basement lightwells, on the other hand, being classed as an engineering operation rather than the enlargement of a dwellinghouse, do not benefit from "permitted development" rights.

It is clear that the proposed excavation of a basement would fall under operational development as specified. The neighbouring properties in Elsworth Road and the objection received from residence consider the proposal to be an "engineering operation" therefore would not constitute permitted development. The objectors consider that, the proposed the proposed impact of the terrace if the new foundation is laid with potential movement, impact with noise, trees, party wall agreements, pollution and traffic movements. Would form a material consideration for the proposed basement works are sufficient as a matter of fact and degree. And as such, would require planning consent and assessed against councils policies i.e. Basement Impact Assessment (BIA). However, the specifics of the land in terms of its stability, subsidence and any potential damp associated with the proposed basement being built would not provide grounds for the refusal of this application that as the proposed basement would be considered under GPDO 2008.

I hope this helps with your enquiry

Regards

Obote Hope

Planner | Advice and Consultation Team | Regeneration and Planning | London Borough of Camden | Town Hall Extension | Argyle Street | London | WC1H 8ND

Please note that the information contained in this email represents an officer's opinion and is without prejudice to further consideration of this matter by the Development Management

section or to the Council's formal decision.

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

From: Rupert McNeil gmail [REDACTED]

Sent: 29 August 2014 17:14

To: Hope, Obote

Cc: McDougall, Alex; PS davis; jeremypeter

Subject: Update re 2014/5117/P

Dear Mr Hope

I am writing to update you and let you know that we have:

(a) engaged Mr Gwion Lewis, Barrister at Landmark Chambers, for a legal opinion on the permitted development matter; and

(b) engaged Mr Adam Hollis of Landmark Trees. Mr Hollis is a Fellow & Trustee of Arboricultural Association and a Chartered Surveyor.

We have asked Mr Hollis to produce his report quickly so that we can send this to you on 8th September, and we will also share Mr Lewis' advice as soon as this is available.

Could you please also confirm that you have received the email that I sent you yesterday?

With kind regards

Rupert McNeil

This e-mail may contain information which is confidential, legally privileged and/or copyright protected. This e-mail is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer.