

22 July 2014



Rachel Miller
Planning Officer
Development Management
Regeneration and Planning
Culture and Environment Directorate
London Borough of Camden, Town Hall Extension
Argyle Street
WC1H 8ND

Michael Eatherley
26 Quadrant Grove
London NW5 4JN

BY POST AND EMAIL

Dear Rachel

No.24 QUADRANT GROVE NW5

We are reluctantly coming to the conclusion that Camden have a policy of viewing basements of the kind proposed as permitted development under the GDPO of 1995. We now know that Camden, after repeated enquiries, have sought a legal opinion from Mark Beard of Pump Court to counter the one we obtained from Gwion Lewis. You have published Gwion Lewis's opinion on the website, could you now do the same with Mark Beard. However, before we all embark on an expensive judicial review of the case, could I ask you, please, to consider some of the consequences of the proposal.

I don't know if you have ever visited Quadrant Grove. Apart from significance of its survival to some extent unscathed from earlier times, it is very narrow with trees, old style lamp posts and residents cars parked half on the pavements. I have spoken to one of your Highways Management officers who says he knows Quadrant Grove well. He emphasized how difficult and disruptive it would be to build a basement under a house in the street. He says he has never had to deal with a basement construction in so narrow a street, that the traffic would be brought to a standstill, that there would be nowhere for waiting vehicles to park and that it would be very difficult to maintain the 3 to 3.5 metres required for emergency vehicles without damage to trees and the loss of a large number of residents parking bays.

You may like to look into the legal provisions on roads and traffic that might be appropriate for our particular conditions.

Further, since Camden is clearly finding it difficult to come to a decision in this matter, perhaps there is a case for referring the question to the Inspector of the Secretary of State?

Yours sincerely

A solid black rectangular box used to redact the signature of Mike Eatherley.

Mike Eatherley

Cc Louise McLaughlan Camden Legal officer
Alison Kelly Counsellor
Chris Sallon, Barbara Thorndick

31 July 2104

Rachel Miller
Planning Officer
Regeneration and Planning
Development Management
London Borough of Camden
Town Hall
Judd Street
LONDON WC1H 8ND

Barbara Thorndick
22 Quadrant Grove
NW5 4JN

Diana and Michael Eatherley
26 Quadrant Grove
London NW5 4JN

Dear Rachel

PERMITTED DEVELOPMENT FOR A BASEMENT BELOW NO. 24 QUADRANT GROVE

We know that you are required to make your recommendations for the issue of a Certificate of Lawfulness based on the legal provisions of the case set out in the Town and Country Act of 1990 (TCPA) and the Town and Country (General Permitted Development) Order 1995 as amended (GDPO). However the length of time taken suggests to us that you do not consider these provisions as clear cut and we would like to summarise again our objections to the proposal with some further legal points to consider that may persuade you that this development does not qualify as Permitted Development. We should add that we have now taken further legal advice.

1. It is disingenuous to apply for a Certificate of Lawfulness in place of a Planning Application for a very similar proposal which has met with almost universal objections from those who live in the street and because of severe deficiencies in the supporting documentation and Basement Impact Assessment. The objections included arguments about the provision of a light well which would damage the character of a largely unspoiled street. It is difficult to see how the current proposal can work as a habitable room without a light well. Access to build any new basement would involve excavating a large part of the front garden and it seems probable that a retrospective planning application would follow for a new light well.
2. The Department for Communities and Local Government publish a document entitled "permitted development for householders. Technical Guidance". There are number of revisions to this document, but what is of special relevance is that the October 2013 version which was sent to us from your legal department includes the following clause:

Class A covers the enlargement, improvement or alterations to a house such as rear or side extensions and the creation of basements, as well as general alterations such as new windows and doors, and from 30 May 2013 to 30 May 2016 a neighbour consultation scheme for larger rear extensions.

We have discovered that this version was almost immediately withdrawn and replaced by an amended version. The current version dated April 2014 has this clause:

Class A covers the enlargement, improvement or alterations to a house such as rear or side extensions as well as general alterations such as new windows and doors, and from 30 May 2013 to 30 May 2016 a neighbour consultation scheme for larger rear extensions.

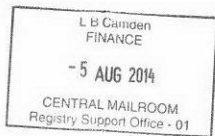
Note that references to basements are removed. As you know none of the diagrams that follow in the guidance has anything about basements.

3. The case against the granting a Certificate of Lawfulness is clearly set out in the legal Opinion we have obtained from Gwion Lewis and in two other Opinions we had access to which set out very similar arguments. Apart from the common English meaning of the words "Engineering Operations" as opposed to "Building Operations" further clarification is given in the two cases we have previously identified, perhaps the more significant one is Wycombe District Council v Secretary of State for the Environment and Trevor (1995) JPL 223. We would accept that the "digging of a trench which is to contain the foundations, or part of the foundations, of a building" might be regarded as a "building operation" where applied to a simple extension to a house in the back garden. However the methodology of underpinning of the walls of a house, safely excavating the ground, analysis, design of the retaining walls and propping arrangements is an "engineering operation" which must be carried out by a qualified civil or structural engineer with a knowledge of geotechnics and structural analysis and design. Building Control would certainly require this. The work itself would have to be undertaken by a specialized contractor under supervision of an engineer. We note that some Councils seem to regard forming a light well to be an "engineering operation" whereas forming a new basement, as opposed to converting an existing cellar to be "building operation". Such an opinion does not make any engineering, or for that matter any common sense; basement work under a house is obviously far more critical.
4. A further argument that we have expressed before concerns the immediate effect on the neighbours to no. 24. A new basement under a detached house away from the curtilage of the property would still fall foul, inter alia, of the arguments in 3 above, but it would have considerably less consequence for the neighbours. Apart from noise, disruption, loss of parking, restricted access for emergency vehicles our houses would be damaged by the work. It is well known that it is not possible to excavate soil, particularly clay soil without consequent ground movement that will damage the party walls and adjacent structures. The proposal shown on the submitted drawings shows new retaining walls to be constructed directly under the party walls. this means that the proposal is for a construction that extends beyond the footprint of the developer's house and includes half the thickness of the party walls to the adjacent houses, in other words on the neighbours' properties. We strongly object to this and do not consider it to be a matter for party walls surveyors to resolve. The Council should not issue a Certificate of Lawfulness in such a case. The TCPA clearly only applies to a single dwelling house; in this case three houses are directly involved.

Yours sincerely

Barbara Thorndick
Diana Eatherley
Michael Eatherley

Cc Counsellor Alison Kel
Priteji Mistry – Camden Legal Officer



9 Malden Place,
London, NW5 4 JL
3-8-2014.

Dear Ms Miller,

Re: Basement Construction in Quadant Grove, NW5.
I am writing to object against Application NO: 2014/2070/P.
There are two reasons for my objection to this application being granted.

Firstly, the basement construction works involved are major and entail engineering works, which is outside the remit of permitted development. Hence it is not valid to grant basement construction (where at present there is no cellar) under permitted development.

Secondly, basement development in such a small street as Quadant Grove will be disruptive (noise, dust, traffic, parking facilities). It would set a precedent and other residents will be encouraged to construct basements where there is no cellar at present. It would also have a major impact on the small community and change the character of the street.

The legal opinion given by Gwion Lewis for Quadant Grove residents also stressed the above points regarding permitted development. Also two other legal opinions provided by Hamming and Altaras for other residents associations support the view that basement developments excavations of this sort cannot be deemed permitted development.

Yours Sincerely,

