



## **SUMMARY**

**of**

## **PROOF OF EVIDENCE**

**of**

**JACEK GABRIELCZYK**

**BSc(CivEng) Hons, CEng, MStructE, MICE, MIHT, MCIWEM, CWEM**

**Appeal against Refusals by Camden Council  
of Planning Permission and Conservation Area Consent  
for Redevelopment at 29 New End, Hampstead, London NW3 1JD**

**(Camden Refs: 2012/3089/P and 2012/3092/C)**

**Planning Inspectorate Ref: APP/X5210/A/14/2218243**

**on behalf of Karawana Holdings Limited**

**Summary of Proof of Evidence of Jacek Gabrielczyk  
BSc(CivEng) Hons, CEng, MStructE, MICE, MIHT, MCIWEM, CWEM**

- 1.00      Qualifications and Experience
- 2.00      Appointment and Scope of Evidence
- 3.00      Background Summary
- 4.00      Basement Impact Assessment – Purpose and Status
- 5.00      Rule 6(6) Parties' – Statement of Case – Overview
- 6.00      Conclusions

## **1.00 QUALIFICATIONS and EXPERIENCE**

- 1.01 My name is Jacek Gabrielczyk and I have approximately 34 years experience in the fields of structural and civil engineering, highway and transportation and water and environmental management.
- 1.02 My primary profession is Chartered Structural Engineer engaged in the design of new-build projects, modern and historic structural refurbishments together with associated temporary works and including the investigation of building movement and construction defects.

## **2.00 APPOINTMENT AND SCOPE OF EVIDENCE**

- 2.01 I appear at this inquiry in support of the Appeal Scheme to provide evidence of the adequacy of the Basement Impact Assessment (BIA) and its underlying analysis prepared by Taylor Whalley & Spyra Limited (TWS) with regard to structural/civil engineering matters raised by objectors in the Rule (6) Parties' Statement of Case dated 20th August 2014.

## **3.00 BACKGROUND SUMMARY**

TWS were appointed in November 2008 by the appellant Karawana Holdings Limited to provide structural engineering services for the development of the 29 New End site including a Basement Impact Assessment (BIA). Through a process of consultation with the London Borough of Camden Planning Department, public exhibitions and consultation with appropriate consultants, the original November 2008 scheme has evolved into the subject of this appeal. The documentation that makes up the BIA that forms part of this appeal has been incrementally amended to incorporate and cover suggestions made by the LBC Planning Department. The BIA was independently verified, recommended as acceptable by planning officers and accepted as such by the planning committee who did not raise a basement impact reason for refusal.

- 3.01 Although the BIA was accepted by LBC and is not a reason for refusal of the appellants planning application, Rule 6(6) Parties objecting to the appeal have also raised objection to matters within the BIA that have already been examined in depth and found to be acceptable by the planning authority who are very experienced and used to dealing with such submissions.

## **4.00 BASEMENT IMPACT ASSESSMENT – PURPOSE AND STATUS**

### **Purpose**

- 4.01 The BIA as defined in the LBC documents has evolved into a vehicle to "assess whether any predicted damage to neighbouring properties and the water environment is acceptable or can be satisfactorily ameliorated by the developer" (DP27.3 and CPG4 2.8) (please see Core Documents B3 and B7) by:

a) Screening

The identification of any matters of concern which should be investigated and thereby determining whether or not a full BIA is required.

b) Scoping

The identification of the potential impacts of the matters of concern identified in the Screening stage.

c) Site Investigation and Study

In order to develop an understanding of the site and its immediate surroundings. The degree of investigation varying depending upon the matters identified in the Screening and Scoping stages.

d) Impact Assessment

The evaluation of the direct and indirect implications of the proposed project including consideration of the implications of ground conditions and hydrogeological and hydrological factors to arrive at predicted ground movements and structural impact. Should the identified consequences not be acceptable then mitigation measures should be incorporated into the proposed scheme and the new net consequences determined.

e) Review and Decision Taking

This final stage is to be undertaken by LBC who conduct an audit of the total information supplied and decide on the acceptability of the impacts of the basement proposed.

In summary, the BIA should identify parameters and a method of construction for a basement proposal that will lead to its construction and use without unacceptable consequences. Consequences identified in CPG4 (please see Core Document B7) as being unacceptable are: a) predicted structural damage to neighbouring property greater than the Burland category of "slight" and b) predicted water ingress to neighbouring gardens or properties to be damaging to residential amenity.

The TWS BIA in this case shows the predicted structural damage to be no greater than "slight" and proposes a method for dealing with groundwater flow to avoid significant increases in flow velocities that would be likely to cause increased internal erosion. There is no indication that water ingress to neighbouring gardens or properties would result as a consequence of the proposed basement.

The TWS BIA is not the final design but is intended to demonstrate that each of the aspects of the design and construction have been carefully considered to a degree appropriate to the

grant of planning permission. All aspects will be subject to detailed design progression once planning is approved (TWS BIA Section 1.0).

### **Status**

- 4.02 The BIA proposed by Taylor Whalley & Spyra and accepted by LBC has evolved since its original issue to reflect changes and amendments to the architectural scheme and in particular in January 2010 the omission of a basement level and in April 2013 realignment of the basement wall further away from Grade 2 listed Lawn House so as to reduce the potential for harm to the existing masonry buttresses and adjacent wall.
- 4.03 The BIA was reviewed and found adequate by RKD Consultants Ltd (RKD) and Card Geotechnics Ltd (CGL) in independent assessments carried out at the instruction of Camden Development Management Planning Services as an independent verification of the BIA.
- 4.04 In addition to a review of the BIA, RKD and CGL addressed questions put by Camden Development Management Planning Services and neighbours (Stark Associates). The reports by both RKD and CGL confirm the BIA as adequate.
- 4.05 LBC accepts the BIA as adequate and satisfactory to discharge the criteria of DP27.3 (please see Core Document B3).

### **5.00 RULE 6(6) PARTIES' – STATEMENT OF CASE, OVERVIEW**

- 5.01 The Rule 6(6) Parties' Statement of Case relating to the BIA is in essence an allegation that the BIA documentation is not only not compliant with LBC planning policies but that adjacent structures would be at risk of "substantial harm". This allegation appears to be based on the objectors' own particular interpretation of the LBC planning policies.
- 5.02 The Rule 6(6) Parties detailed objections have a common theme that the BIA is alleged as being insufficiently detailed to show the development proposed at New End "will not" cause harm and that this alleged insufficiency of detail cannot be provided post-planning as the corollary of a grant of planning permission is confirmation of the sufficiency of detail because compliance with the requests of DP27 (please see Core Document B3) is a statutory requirement. This allegation does not stand up to scrutiny as the level of detail being asked for by The Rule 6(6) Parties at planning stage is covered by legislation: The Building Act 1984 states the Secretary of State's power to make regulations for the purposes of "securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings". This clearly covers the scope of detail suggested by The Rule 6(6) Parties as required at planning stage.
- 5.03 The regulations referred to in 5.02 above are The Building Regulations 2010 and in essence they require building work to be carried out at the requirements of Schedule A which requires the building to transmit loadings to the ground "a) safely, and b) without causing such

deflection or deformation of any part of the building or such movement of the ground, as will impair the stability of any part of another building".

- 5.04 In addition to the provisions of the Building Act 1984, the Party Wall etc Act 1996 gives adjoining owners the right to appoint a surveyor to resolve any dispute, require reasonably necessary measures to be taken to protect their property from foreseeable damage and for their security, not to be caused any unnecessary inconvenience, be compensated for any loss or damage caused by relevant works and ask for security for expenses prior to the commencement of work under the Act.
- 5.05 Compliance with the requirements of DP27 (please see Core Document B3) is compliance with matters of planning concerning the identification and assessment of factors that may affect construction of the development proposal and whether any predicted damage is acceptable or can be satisfactorily ameliorated and with regard to the BIA that statutory requirement has been met. The Rule 6(6) Parties assertion that the BIA must show that a development "will not" cause harm is incorrect and their allegation that there is insufficiency of detail is mistaken as the relevant statutory instruments for this are not planning law but the Building Act and Party Wall Act.
- 5.06 The alleged insufficiencies in detail in the BIA in essence stem from a difference in opinion between on the one hand The Rule 6(6) Parties/advisers and on the other hand the appellant/advisers together with the independent consultants instructed by LBC and the LBC planning officers. The level of detail required implied by The Rule 6(6) Parties is commensurate with that of a final design. Detailed investigations are both costly and time consuming and until construction commences and a monitoring regime installed they remain theoretical. At the post-planning stage it is not unusual to carry out not only additional investigations but also confirmatory works. At planning stage the sufficiency of detail in basement construction is that to arrive at a type and method of construction which will control ground and water movement in such a way as to ensure that the surroundings are protected. In my opinion the level of detail suggested as appropriate by The Rule 6(6) Parties is unjustifiable because adequate parameters for this stage have already been established.
- 5.07 There remains The Rule 6(6) Parties concern that the content of an approved BIA may not be followed in the construction phase and that Building Control Officers will be unable to sufficiently control activity on site and that the Party Wall etc. Act too cannot limit damage (Eldred report point 3) and they propose a draft Section 106 Agreement which is "predicated on the production of an acceptable BIA compliant with planning policies DP23, DP27 and CPG4" (please see Core Documents B3 and B7). However this offer lacks merit as there is no evidence offered by the Rule 6(6) Parties and no basis for their allegation that the content of the approved BIA may not be followed post-planning and also the measurement of "acceptability" implied is not clear. It is certainly not the same yardstick used by LBC and its instructed independent specialist reviewers. There may be scope for the appellant to enter in

a formal undertaking with LBC that the BIA will be complied with, i.e. the quite normal step of developing the planning permission into the final design stage.

## **6.00 CONCLUSIONS**

6.01 The Rule 6(6) Parties' detailed objectives are numerous and purport to have been produced by three independent experts. Two of the experts are confirmed to have collaborated in the preparation of their report and the experience and independence of the third is not confirmed. The numerous objections overlap and in essence represent two concerns:

- a) that there is insufficient information in the BIA at planning stage,
- b) there is no method of controlling the developer's adherence to the BIA post-planning.

The TWS BIA is acceptable and has been accepted by LBC, its technical officers, LBC appointed external independent reviewers RKD (reports of 27.9.12 and 15.8.13) and CGL (reports of Dec 12 and 8.8.13).

6.02 There is adequate information in the BIA for planning purposes and the acceptance of the BIA by LBC, well experienced and used to dealing with applications for basement developments, supports this view as does acceptance by the specialist reviewers of the BIA instructed by LBC to advise them on technical matters.

6.03 Progression of design to construction stage in the post-planning is covered by the Building Act 1984 and The Party Wall etc Act 1996 which are statutory instruments that provide control over construction.

6.04 The BIA, which was determined as acceptable by LBC, is a sound document and an appropriate base for Conditions and/or Sec. 106 obligations to manage construction effectively.

## **DECLARATION**

The evidence which I have prepared and provide for this appeal reference APP/X5210/A/14/2218243 in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinion.

JACEK R GABRIELCZYK

OCTOBER 2014