

# APCAR SMITH PLANNING

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**PLANNING APPEAL BY  
ORNAN COURT LIMITED**

**ORNAN COURT, 2 ORNAN ROAD  
LONDON NW3 4PT**

**LPA REF: 2014/4206/P**

Our Ref: CA/2609

March 2015

*Principal: Carolyn Apcar BA Hons. MRTPI*

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### Appendices

- A.** Draft S106 Undertaking.
- B.** Land Registry Title Document.
- C.** Martin Redston letter of 10 March 2015.
- D.** Initial Construction Management Plan.

## **1.00 Introduction**

- 1.01 This Statement relates to an appeal against the failure of the London Borough of Camden to determine a planning application submitted in June 2014. The proposed development is for excavation at lower ground floor level with associated front and rear lightwells to create 2 x 3 bedroom self-contained flats.
- 1.02 The application was initially accompanied by a Lighting Report, Code for Sustainable Homes Report, Lifetime Homes Statement, Tree Survey and Basement Impact Assessment. A revised Basement Impact Assessment was submitted in January 2015. As is their normal practice the Local Authority required an independent review of the Basement Impact Assessment, funded by the Appellant. This was undertaken by LBH Wembley. Their independent review is submitted with the bundle of application documents.
- 1.03 When the application was submitted reference was made in the Planning, Heritage, Design and Access Statement to the Applicant's acknowledgement of the need to enter into a Legal Agreement to remove the rights of future residents of the two proposed flats to obtain parking permits. As the matter is now proceeding to appeal a Unilateral Undertaking to this effect is intended. A draft of this document is included at Appendix A. Also provided, in connection with this intended Undertaking, are Land Registry documents that demonstrate that the intended Undertaking will be signed by all with a legal interest in the property (Appendix B). The completed/signed Undertaking will be submitted together with our comments on any Appeal Statement the Local Authority may produce and third party representations in accordance with the normal appeal timetable for submission of documents.
- 1.04 As can be seen the intended Section 106 Unilateral Undertaking also makes reference to the submission of a Construction Management Plan. This is referred to as we had been notified, prior to lodging this non-determination appeal, by the Case Officer at LB Camden (Ms J Chivers), that the matters referred to in the LBH Wembley Independent BIA Review do not require the submission of any further documentation prior to the determination of the application but could all be conditioned and/or referred to in the intended Section 106 Agreement, should the Council grant planning permission.

- 1.05 Unfortunately the LPA Planning Officer has been unable to give any indication of timing as to when the application will be put forward for consideration. We are aware that the Council would have had to reported the application to Committee given the objections from third parties that have been received. We have been advised that the Committee agendas are full for March/April.
- 1.06 Given that there was an earlier application for a basement development at this site (referred to at Para 3.05 of the Planning, Heritage, Design and Access Statement submitted with the application the subject of this appeal) which went beyond its statutory time period for determination and was out of time for a non-determination appeal, it has been decided on this occasion that the non-determination appeal should be submitted whilst there is still that potential course of action available to the Appellant (in this respect the deadline for any non-determination appeal is 18 March 2015 – 6 months from the expiration of the 8 week statutory time period for determination). Hence it can be seen that the application the subject of this appeal has been left with the Local Authority for their determination for as long as is possible without losing the right to appeal and as the Local Authority can give no indication as to their intentions in respect of moving the application forward for determination the Appellant feels that this non-determination appeal is their only option.
- 1.07 The Planning, Heritage, Design and Access Statement submitted at application stage include a full consideration of the proposals together with all other relevant matters. The site and surroundings are described in Section 2 of that statement. The planning history described in Section 3. The Design Statement/description of the proposals is set out in Section 4. A Heritage Statement is incorporated at Section 5 (given the site's inclusion within a Conservation Area). The Access Statement is set out in Section 6. An assessment of the proposals in the context of planning policies is set out in Section 7. There have been no changes to adopted policies in the interim time period. Part of the consideration of planning policies refers to the recognised need for a Section 106 Obligation removing the rights of future residents to obtain car parking permits.

## **2.00 Matters Arising During the Consideration of the Planning Application**

- 2.01 Some 7 weeks after the application was validated by the Local Authority (ie; only 1 week before the 8 week statutory time period for determination expired) the Local Authority requested that the Applicant agree to fund the cost of an Independent BIA Review.
- 2.02 On 25 September 2014 this Practice as Agent for the application responded to the Planning Officer advising of the intention to provide an updated Basement Impact Assessment, that the Applicant agreed to cover the costs of the Independent BIA Review and also asking whether or not there were any other issues/concerns arising from the proposals.
- 2.03 We were advised in October 2014 that the Council's Tree Officer was reviewing the Arboricultural Report and that any outstanding issues or clarification required would be forwarded to us to address. Nothing has been received and thus it is assumed that the Council's Tree Officer is satisfied in all respects.
- 2.04 It was also assumed that the Council had no other concerns as there was no further response in 2014.
- 2.05 On 16 January 2015 an updated Basement Impact Assessment was submitted referring to the then Applicants awareness of need for the Independent Review of the BIA, reconfirming agreement to covering the costs and asking for quotations to be forwarded. Three quotations were received on 3 February 2015 and on 4 February 2015 this Practice as Agent for the application advised the Planning Officer which of the Independent Reviewers the then Applicant wished to proceed with. The chosen BIA Reviewer (LBH Wembley) had referred in their quotation to a 3 week turnaround. The Planning Officer instructed LBH Wembley on the same day and thus we were assuming that the LBH Wembley Independent Review would be available by no later than 25 February. It was received on 4 March 2015.
- 2.06 In her e-mail of 18 February 2015 the Planning Officer raised other issues that have since been responded to but we are surprised these matters were not raised until some 7 months after the application was validated. These related to further details of the ramp, further details in respect of Lifetime Homes matters and a reference to a Section 106

Agreement for a Construction Management Plan and car free development. The further details in respect of the ramp and Lifetime Homes details were submitted to the Local Authority on 19 February 2015 (Drwg No. 200 Rev 05).

- 2.07 Thus to the best of our knowledge the Local Authority are now satisfied with all aspects of the proposals. Additional and amended details have been submitted in response to requests received. No in principle or detailed concerns have been raised by the Local Authority during the lengthy period they have had available, prior to the lodging of this appeal, for them to consider the application.
- 2.08 Martin Redston Associates (Consulting Civil and Structural Engineers) have produced a letter dated 10 March 2015 which comments on the LBH Wembley Independent BIA Review (Appendix C). They have also produced an Initial Construction Management Plan (Appendix D). As they comment the additional information LBH Wembley refer to as being required would be incorporated into the detailed Construction Management Plan in due course, as is the normal course of events. The Local Authority have clearly been happy for the Construction Management Plan to be a requirement of the Section 106 Obligation and that remains the Appellants intention. As Martin Redston Associates comment in their letter, LBH Wembley have raised no issues that indicate that they do not agree with the submitted BIA. Thus it should be concluded that the proposed basement can be constructed in a way that will have no detrimental impact on neighbouring properties or the environs.

### **3.00 Conclusions**

- 3.01 As has been demonstrated by the application documentation the proposals comply with all relevant planning policies – at national, regional and local level – and supplementary planning guidance relevant to the development.
- 3.02 During their lengthy consideration of the application the Local Authority have not raised any concerns. There have been a few matters of detail as referred to in Section 2 of this Statement, all of which have been responded to.
- 3.03 A detailed Basement Impact Assessment was submitted with the application with this having been updated in January 2015. The Appellant has funded an Independent Review of this which has been undertaken by LBH Wembley for the Local Authority. They raise no concerns with the proposals. It is noted that they have referred to requirements for some additional information but these are all matters that would routinely be included within the Construction Management Plan.
- 3.04 A Section 106 Unilateral Undertaking has been drafted and submitted with the appeal papers. This includes reference to development not commencing until the above mentioned Construction Management Plan has been submitted to the Local Authority and agreed by them. It also refers to the removal of residents rights to obtain car parking permits.
- 3.04 It is considered that the proposed development is acceptable in all respects and it is thus hoped that the appeal against the Local Authority's failure to determine the application within the statutory time period will be allowed subject to the above mentioned Section 106 Undertaking.