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Craig Maxwell  
The Planning Inspectorate  
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Dear Sir,

**Town and Country Planning Act 1990**  
**Appeal by Mr James Ireland**  
**Site at 24 Quadrant Grove, London, NW5 4JN**

**1.0 Summary**

1.1 I refer to the above appeal against the Council's refusal to grant a lawful development certificate (proposed) for "Basement extension to dwellinghouse".

1.2 The site comprises a single family dwellinghouse located on the north side of Quadrant Grove (see appendix 2 for photographs of the site). The site is not located in a conservation area and the building is not listed. The proposed basement works comprise the excavation of a basement beneath the footprint of the existing dwellinghouse. The proposed depth of the basement is approximately 2.85m, with the width (side to side of the house) a maximum of 4.5m and length (front to back of house) a maximum of 7.5m. A single internal

staircase is proposed to link the existing ground floor with the proposed basement. The proposed basement does not include any lightwells or associated works which would allow natural light to this space.

1.3 The lawful development certificate (LDC) was refused on 30/10/2014 following Development Control Committee, for the following reason:

*“The proposed basement, by virtue of it being development involving significant excavation and engineering works necessitating the engagement of a specialist engineer, would as a matter of fact and degree, constitute an ‘engineering operation’ of a scale and complexity requiring a separate grant of planning permission and would exceed the scope of (and hence fall outside) of any permitted development right outlined in the Town and Country Planning (General Permitted Development) Order 1995 as amended.”*

## **2.0 The Council’s case**

2.1 The LDC application was submitted to the Council on 20<sup>th</sup> March 2015. No consultation letters were sent out as there is no statutory requirement to consult on LDC applications. However the Council received 13 objections from neighbouring properties with concerns that the proposals were not permitted development and concerned about the construction of the basement, structural stability and noise and disturbance. As numerous objections were received Officers took the application to the Members Briefing Panel on 18<sup>th</sup> August 2014 with the recommendation that the lawful development certificate be granted.

2.2 The role of the Members Briefing Panel is to consider the nature and extent of any outstanding objections to the application. At the meeting the three Councillors on the panel recommended that the decision be made by the Development Control Committee instead.

2.3 The application was heard at Development Control Committee on 23<sup>rd</sup> October 2014 with the recommendation of approval (see Appendix 1 for DCC

meeting minutes and Appendix 4 for DCC report). The application was assessed on whether or not it constituted “development” under S55 of the Town and Country Planning Act 1990 which sets out the meaning of “development”. Given the nature of the proposed works the part of the GPDO that the proposed works were considered against were Class A, which involves the enlargement, improvement or other alteration of a dwellinghouse within the curtilage of a dwellinghouse.

2.4 The local residents objecting to the application sought their own legal opinion of Gwion Lewis of Landmark Chambers (see appendix 3 for the full view) which was fundamental to the decision made by Councillors at the DCC meeting. Committee members agreed with third parties objecting to the application that since the proposed basement works would require the involvement of a qualified civil or structural engineer, the works would constitute an engineering operation, and in line with the Gwion Lewis opinion, the application should be refused. It was considered that the “engineering” component involved in the proposed basement could not be properly brought within the permitted development right bestowed by Class A when the permitted development right relied upon only considers “building operations”. The decision to refuse was taken by a majority vote of 5 – 4 against the officer’s recommendation.

2.5 The legal opinion of Gwion Lewis concluded that the proposal could not be considered as Permitted Development for the following reasons:

- “The proposal is considered an “engineering operation” that does not benefit from any permitted development right.”
- The proposed basement does not fall under Class A of GPDO as it involves the “excavation and taking away a substantial volume of ground and soil from the site to create space for the basement”
- “The excavation to be carried out here would not be *de minimis*”
- “whether the extent of excavation works involved in a development proposal is sufficient to constitute “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

- Planning permission is required for the works as it would have its own material planning impacts in terms of noise, visual impact on the streetscene and associated traffic movements.
- Planning permission is required for carrying out any “development” of land: section 57, Town and Country Planning Act 1990”
- “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”

2.6 Whilst the Council obtained its own advice from external Counsel who considered that engineering operations did not form part of the exceptions and qualifications listed in the GPDO, Gwion Lewis felt that “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 improve or alter existing built development” (Gwion Lewis para. 8). The basement works included within the proposal, it was considered, would fit within neither category, being to excavate and take away a substantial volume of ground and soil from the site to create 34sqm of additional subterranean floorspace. Councillors followed the view of Gwion Lewis in making their recommendation of refusal.

2.7 The Council considers that the excavation works involved to enable the basement construction would constitute an engineering operation that should be overseen by a suitably qualified engineer. The impact of the works would be substantial in terms of noise, traffic movements on the narrow Quadrant Grove and potential impacts on the structural stability of the adjoining occupiers. For excavation works requiring planning permission then a full Basement Impact

Assessment is required to be submitted in accordance with Council policy DP27 of the Local Development Framework Development Policies. Supplementary planning document CPG4 (Camden Planning Guidance 4) states that evidence will be required to show that the structural stability of adjoining or neighbouring buildings is not put at risk. The Council will expect this work to be undertaken by a person or persons of the necessary qualifications, namely a qualified civil or structural engineer with knowledge of geotechnics and structural analysis and design (CPG4 2.11 and 2.39-2.40). Due to the extent of the proposed works they would be required to be overseen by a structural engineer. Whilst no assessment of basement impact has been submitted, nor indeed may be required for the purposes of this lawful development certificate application, the policy and its supporting background guidance does support the Council's stance that the proposed development is of an engineering operation in nature and has impacts requiring consideration via an application for planning permission.

### **3.0 Relevant applications and appeals**

3.1 An appeal was submitted to the Planning Inspectorate relating to a certificate of lawful development application at 20 Mackeson Road NW3 2LT within the London Borough of Camden (ref APP/X5210/X/14/3000342). The decision at 20 Mackeson Road has yet to be issued by the Inspectorate (see appendix 5 for the Council's appeal statement). The appellant for 20 Mackeson Road appealed on the grounds of non-determination of the application within the 8-week period however the Council would have refused the application for same reason as 24 Quadrant Grove i.e: *"The proposed basement, by virtue of it being development involving significant excavation and engineering works necessitating the engagement of a specialist engineer, would as a matter of fact and degree, constitute an 'engineering operation' of a scale and complexity requiring a separate grant of planning permission and would exceed the scope of (and hence fall outside) of any permitted development right outlined in the Town and Country Planning (General Permitted Development) Order 1995 as amended."*

3.2 Another relevant appeal outstanding in Camden is 45 Redington Road NW3 7RA (ref APP/X5210/X/15/3006433). An application for a certificate of lawful development for 'installation of a swimming pool at lower ground floor level, following the approval under planning permission 2014/2054/P for: creation of lower-ground floor under the footprint of the original property' was refused on 13/02/2015 for the same reason as 20 Mackeson Road and 24 Quadrant Grove and the Council await the decision of the Planning Inspectorate.

3.3 There other various other appeal and high court decisions which support the Council's case. Local residents of Quadrant Grove highlighted various decisions at the DCC meeting. The following decisions are relevant to this appeal and can be found in Appendix 6:

3.4 In the case of *Wycombe D.C. v Secretary of State for the Environment* [1994] E.G.C.S. 61 (QBD) it related to the excavation of a sloped site in front of a house to create a level hardstanding. The judge found that the excavation works would constitute a separate engineering operation which went beyond anything which could be reasonably regarded as incidental to the works in regard to the creation of the hardstanding itself. In arriving at this judgement reference was made to the following passage in a previous High Court decision (*West Bowers Farm Products v. Essex County Council* 1985) stating that "A single process may for planning purposes amount to two activities. Whether it does so or not is a question of fact and degree. If it involves two activities, each of substance, so that one is not merely ancillary to the other, then both require planning permission." It was therefore considered that the works of earth removal were not permitted under the GPDO and thus the whole operation was unauthorised. The judge considered that the logical and proper approach under the GPDO was to look first at what the GPDO permitted and then to consider as a matter of fact and degree whether anything done or to be done beyond that specific permission was incidental to what was specifically permitted.

3.5 The planning appeal at Land at “Stocks”, Mayes Lane, Sandon, Chelmsford (ref APP/W1525/X/06/2029232) considered the non-determination of an application for a certificate of lawful development for replacement detached garage with gym/games room, shower and store above. Due to the steep bank on the south boundary of the site and the natural ground level the Inspector considered that there would need to be considerable excavation to accommodate the proposed building. The appeal decision discusses the subject of engineering operations by saying: “Wycombe DC v Secretary of State for the Environment & Trevor [1995] JPL 223 is authority for the proposition that Part 1 of Schedule 2 to the GPDO does not operate to permit engineering operations on a significant scale to be carried out without planning permission in order to bring into effect the development permitted by the Order.” The Inspector concluded that due to the excavation of an existing topographical feature that would require planning permission to effect the building’s construction it would mean that the proposed garage with games room and shower over would require planning permission. As a result the appeal was dismissed.

3.6 The appeal of 4 Turneville Road (ref APP/H5390/X/09/2099326) located in the London Borough of Hammersmith and Fulham was against refusal of a CLD for excavation to create rooms beneath a rear garden. The Inspector dismissed the appeal on the grounds that “as a matter of fact and degree, in the circumstances of this case this amounts to an engineering operation that falls within the definition of development set out in section 55(1) of the Act. Moreover, there is nothing in the GPDO to indicate that such an operation is permitted development”.

3.7 An appeal decision dated 16<sup>th</sup> March 2015 against refusal of planning permission at Wildwood Lodge, 9 North End NW3 7HH is also relevant to this current appeal (ref APP/X5210/C/14 2219114). Planning permission was refused on 14<sup>th</sup> April 2014 for “Variation of condition 7 (approved plans) to planning permission granted 19/09/2011 (ref:2010/4924/P) (for Renewal of planning permission (ref 2007/2895/P) granted on 1/10/2007 for excavation of additional

basement level to provide a swimming pool and ancillary plant..”. The appellant considered that the works relating to additional excavation and extension of the basement area constituted permitted development under Class A of the GPDO. The Inspector concluded that “as a matter of fact and degree, the excavation works constitute an engineering operation that falls within the definition of development as set out in Section 55(1) of the Act. This is because it involved the removal of significant volumes of earth which lay between the underpinning structure and what would have constituted the walls to the originally approved basement area. This earth would either have had to be transported away from the site or taken to another part of the site. Whilst accepting that the works have resulted in the enlargement and alteration to the listed dwelling, there is nothing in the GPDO to indicate that such engineering operations can constitute permitted development.”

#### **4.0 Appellant’s grounds for appeal**

4.1 The appellant has argued three grounds of appeal (*in italics below*):

*The proposal does amount to development under section 55 of the Act*

4.2 The appellant is arguing that the proposed works would be classed as “development” as set out in Section 55 of the Town and Country Planning Act 1990. In the Council’s reason for refusal the Council considers the proposals to be “*development involving significant excavation and engineering works ..... requiring a separate grant of planning permission*”. The definition of development within section 55 is stated as ““development,” means 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. This includes building operations such as structural alterations and engineering operations however categories such as these constitute development require planning permission.



*The proposal is permitted by the Town and Country Planning Act (General Permitted Development) Order 1995 (as amended)*

4.3 The appellant considers that the proposal is permitted development. The Council contests this as set out in section 2 above.

*The local planning authority's planning officer & chief planning officer recommended to Committee that the proposals did not amount to development as referred to in the above Section 55 of the Act and confirmed their recommendation to Committee that the proposals were Lawful.*

4.4 Whilst Officers took the view that the proposals did fall under Class A of the GPDO the Councillors on Planning Committee took the different view in line with the opinion of Gwion Lewis that the proposed works were an engineering operation.

## **5.0 Conclusion**

5.1 I ask the Inspector to refer to the above statement and attached appendices and uphold the Council's decision by dismissing this appeal.

5.2 If you would like to discuss this matter further please contact Rachel English on 020 7974 1343.

Yours sincerely  
Rachel English  
Senior Planning Officer

### Appendices

- 1 – Minutes of DCC meeting
- 2 – Photographs of the site
- 3 – Legal view of Gwion Lewis

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4 – DCC report for 24 Quadrant Grove

5 – 20 Mackeson Road appeal statement

6 – Relevant appeal and High Court decisions