

[REDACTED]

From: [REDACTED]
Sent: 22 September 2015 18:18
To: Planning
Cc: [REDACTED]
Subject: ref 2015/4157/P
Attachments: extensive basement work.pdf; Basement excavation close to critically sensitive column which solely supports 10 Pilgrim's Lane.pdf; example of depth of the proposed basement.pdf; right of support.pdf

Dear Rachel,

I should be grateful if you would ensure that the email below and the four attachments are displayed on the Planning Portal .

Thank you in advance

Yours sincerely

Oliver

From: Oliver Froment [REDACTED]
Sent: 21 September 2015 00:09

[REDACTED]

Subject: URGENT: Members Briefing report erroneous, misleading and without merit ref 2015/4157/P Updated version

Updated report superseding dispatch of Saturday 19th September

Members Briefing report erroneous and misleading 2015/4157/P

Dear Rachel,

This follows our telephone conversations of Friday 18th September.

I strongly contest the content of the Delegated Report prepared for Members Briefing and consider it, in my opinion, erroneous, not factual, and very misleading and without merit.

1-Basement

Contrary to what is stated in point # 5 of the Members Briefing Report, this application does involve the excavation of a basement and excavation for the purpose of laying the foundation of walls. Furthermore the proposed excavations for the basement are located next to the highly sensitive southern column on which the flying freehold of 10 Pilgrim's Lane squarely rests. Please note that this is an issue at the chore of a forthcoming 6 days inquiry due to take place on January 26th 2016.

I enclose herewith evidence that we are dealing with a proposed and significant basement project. One will notice, for example, that on the first enclosed PDF ("Proposed basement"), we are dealing with a basement on several counts:

-the applicant proposes to excavate a basement significantly outside the footprint of the house (I have marked this in red hatches in the above enclosure).

-furthermore as part of the proposed basement, the applicant proposes the demolition of several substantial walls inside the property.

- The applicant proposes to excavate furthermore at a depth exceeding 0.7 meter + slab thickness + foundation in front of the patio. This would create further engineering complications in terms of securing the surrounding to the column at 10 Pilgrim's Lane as shown in the second enclosure ("Engineering –foundations").

- The depth of excavations varies between ap 0.30 to over 1.5 meter depending on the location.

- The excavations for the purpose of the basement are located in many areas of the property.

-worryingly the proposed excavations and demolitions of walls are located just next to the highly sensitive column upon which 10 Pilgrim's Lane solely rests. The very sensitive nature of this pivotal column has been extensively explained and was at the core of the issues of application 2012/5825/P which was comprehensively refused by the DCC in April 2014 and which is the subject of an inquiry due to take place in January 2016.

-the proposed new wall next to the highly sensitive column supporting 10 Pilgrim's Lane will need foundations. This is not mentioned either.

-there is I believe currently a step(s) leading from the southern part of the house down to the utility area and this is not mentioned in the plan provided by the applicant and therefore potentially gives a misleading impression of the actual basement depth. A site visit would be necessary in order to ascertain what the depth of the proposed basement utility would be and what the facts are.

- when I looked through the window located in the driveway, the floor of the utility room gave me the distinct impression to be significantly below the level of the inner court. This is one of the other reasons that I suspect we are dealing with a fully fledged basement application. A site visit is also necessary on this point to establish precisely the facts.

-The drawing supplied by the applicant appears inaccurate, as for example, it shows that the stairs leading from the proposed excavated patio (79.22 meter to the existing floor plan ref 79.92 meter) are going down when in fact they should go up.

-The plans supplied by the applicant appear, in my view, misleading and inaccurate as the floor inside the house in the utility room is I believe below the existing ground level of the inner court. A site visit is also required to check the facts.

2- Engineering Operation

This is an engineering operation and this is also denied in the Delegated report. Hereunder is a list of some of the evidence that we are indeed dealing with a challenging engineering operation:

-The proposed excavations next to the column and the excavation of foundations for a new proposed wall located next to the critically sensitive column, on which the lying freehold 10 Pilgrim's Lane solely rests, as well as the weakening of the walls support as a result of their proposed demolitions necessitate demanding and precise engineering solutions. Complex and precise engineering proposals would need to be demonstrated in order to attempt to prove that one can properly secure the southern column so as to avoid any risk of damages and especially structural damages to the properties and hence abide to DP 27.

-The methodology to attempt to secure the foundation as well as to safely support the column will require a qualified civil engineer so as to propose a detailed engineer process and the monitoring of its execution.

- This may necessitate both temporary and permanent engineering works.

- This will also require calculations and methodology on how the applicant intends to secure the surrounding of the southern column on which the flying freehold of 10 Pilgrim's Lane squarely rests. Only a properly qualified engineer can address these issues.

-Extensive material was provided by our expert consultants during application 2012/5825/P that shows that we are dealing with a very demanding set of engineering variables e.g. water found at a depth of 0.9 meter next to the column under dry weather conditions, claygate nature of the ground with a high sand component hence very demanding ground conditions.

- During a site in July 2014 of the trial pit next to the column on which 10 Pilgrim's Lane rests, Michael Eldred, my expert structural engineer noticed the presence of underground water at 0.9 meter below the surface just along the southern column. We have pictures that prove this fact. This means that a flood risk mitigation mechanism will have to be proposed in all likelihood.

- The BIA prepared by Arup acknowledges some of the engineering and geological risk of the site and notably the sandy component of the ground. The independent assessor, CGL and the planning officer recommended a very high number of conditions of an engineering nature in the previous application. A number of these conditions would still apply to this application.

- The driveway, located at a very close distance to the extended extension acts as a funnel for rain water converging at the intersection of two slopes, further increasing the flood risk.

- In applications 2012/5825/P several hundred pages of technical reports were exchanged between the applicant's and the neighbours' experts focusing on the engineering challenges on how to attempt to properly secure the southern column.

-It was highlighted, for example, in application 2012/5825/P by our consultants that grouting around the southern column is not a viable proposition and the applicant has yet to propose a satisfactory engineering solution. This is one of the engineering topics to be debated in the forthcoming inquiry for application 2012/5825/P. The challenges in this application are similar in respects to those of application 2012/5825/P regarding the feasibility of securing proper support of the foundation of the column.

-the proposed basement excavation will necessitate the extraction of significant amount of ground and material.

This also applies to application 2015/4053/P

3- Engineering Operation does not benefit from any permitted development right

Paragraph 1.8 of CPG4, Camden, of July 2015 explicitly removes PD rights for engineering operations.

The law states that Planning permission is required for carrying out any "development" of land: section 57, Town and Country Planning Act 1990 ("the TCPA 1990"). Section 55(1) of the TCPA 1990 defines "development" as "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".

Section 55(1)(A)(d) of the Act defines building operations as including "operations normally undertaken by a person carrying on business as a builder". Section 55(2)(a)(ii) further provides that building operations "are not works.....begun after 5th December 1968 for alteration of a building by providing additional space in it underground." It therefore follows that that the construction of a basement of the kind proposed falls outside the definition of building works as set out in the Act.

In the absence of any statutory definition of an engineering operation either in the Act or in the Country Planning (General Permitted Development) Order 2013, ("GPDO") [see below] the generally agreed definition of an engineering operation is taken from the judgment of the Court in *Fayrewood Fish Farms v. the Secretary of State for the Environment* 1984 JPL 2676 :

'In the absence of a definition, the term "engineering operations", in my judgment, should be given its ordinary meaning in the English language. It must mean operations of the kind usually undertaken by engineers, i.e. operations calling for the skills of an engineer. In relation to land, the engineering skills are likely to be those of a civil engineer, but I do not think that the phrase is limited to that branch of the profession. The definition in the Act shows that the operations of traffic engineers may come within the phrase, and there may be other specialist engineers who apply their skills to land. This does not mean that an engineer must actually be engaged on the project, simply that it is the kind of operation on which an engineer could be employed which would be within his purview.'

I will also refer to the:

Appeal to the Planning Inspectorate: Wildwood Lodge 9, North End London NW3. Ref: Appeal D Ref APP/X5210/F/14/22191118 Date of decision: 16th March 2015. Here, the appellant argued that the works relating to additional excavation and extension of a basement area in his property concerned the enlargement, improvement or alteration of a dwelling house, and thus constituted permitted development under the GPDO. After visiting the site, the Inspector concluded that as a matter of fact and degree, the excavation works constituted an engineering operation that fell 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." Although the Inspector accepted that the works had resulted in enlargement and alteration, he observed that "there is nothing in the GPDO to indicate that such engineering operations can constitute permitted development. There is no permission in place for these works and I

can only conclude, therefore, that in carrying out the development, there has been a clear breach of planning control” judgment: Appeal D fails on ground (c)

In view of the above, I stress that this is an “engineering operation” as outlined in my above paragraph 2 (Engineering Operation) and therefore it requires planning permission and is not eligible for Permitted Development (“PD”) status.

Camden’s CPG4, July 2015 edition in paragraph 1.8, page 6 states that Permitted Development will be removed “for works classified as “engineering operations””.

Furthermore, the current version of the Department for Communities and Local Government Technical Guidance for Householders contains illustrations of works, which are permitted under the GPDO. There are no examples of basements. It is significant that for a short period in October 2013 the word “basements” appeared in the guidance only to be omitted three weeks later without explanation. Both the Planning Portal and the Technical Guidance strongly reinforce our contention that there is no intention for the GPDO to permit basements.

Please also note that the basement is disqualified from permitted development rights on the ground that it fails to comply with the GPDO Schedule 2, Part 1 “Development within the curtilage of a dwelling house, Class A Permitted Development.”

The above also applies to application 2015/4053/P

4- Shared structure with two dwellings.

Another reason why Permitted Development status cannot legally apply to this application is that you are dealing here with the situation of two dwellings. PD only applies to single dwellings and contrary to what is written in the report, this is not the case here. The southern column around which the applicant proposes to make excavations clearly supports the very sensitive structure of 10 Pilgrim’s Lane. As a matter of fact the legal deed of 8 Pilgrim’s Lane at the land registry explicitly and clearly states that 10 Pilgrim’s Lane has “a right of support” upon 8 Pilgrim’s Lane (enclosure document from the Land registry). This is further evidence that we are in the presence of a shared structure with 2 dwellings.

This also applies to application 2015/4053/P

The above four reasons clearly justify a comprehensive and thorough redrafting of the Members Briefing Report. Furthermore this application clearly does not fall under permitted development.

Please also note that a TPO tree may be also endangered.

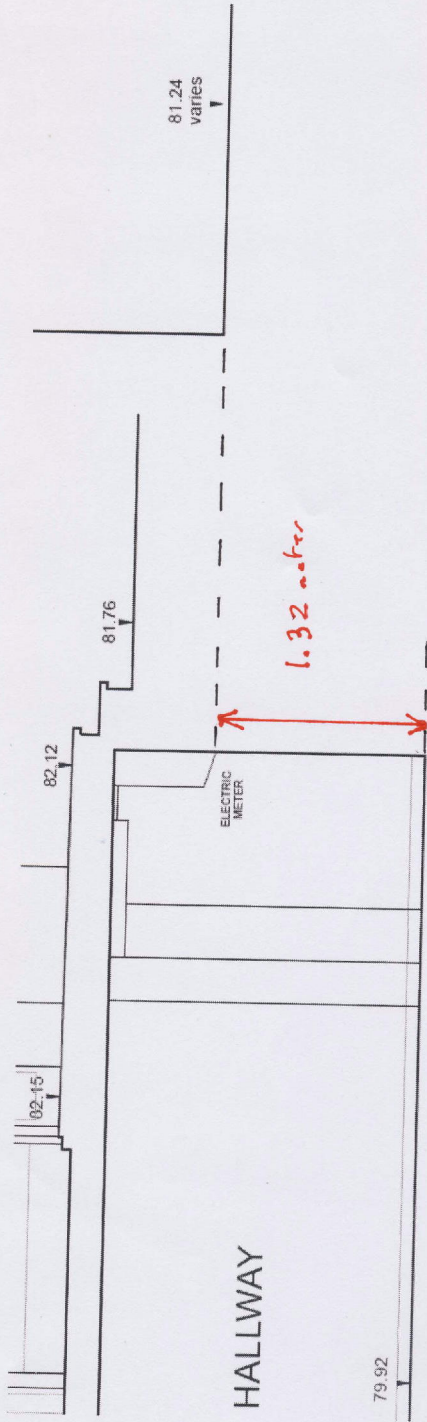
Please acknowledge.

Waiting to hear from your prompt reply.

Thank you

Regards,

Oliver



PROPOSED BASEMENT DEPTH: 1.32 meter +

Source: EDI SURVEYS SECTION C-C JUNE 2010

Land Registry
Official Copy
This copy may not be the
same size as the original.

NGL379077

£14,200 1/4
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19/9

H.M. LAND REGISTRY - LAND REGISTRATION ACTS 1925 - 1971

INLAND REVENUE
18 SEP 1997
F.L. 15:31
WORKING OFFICE 7

TRANSFER OF WHOLE

TITLE NUMBER : NGL379077
PROPERTY : 10 Pilgrims Lane
Hampstead, London NW3
DATE : 1st September 1997



In consideration of the sum of SEVEN HUNDRED AND TEN THOUSAND POUNDS (£710,000) the receipt whereof is hereby acknowledged INGEBORG LACEY of 8 Pilgrim's Lane, Hampstead, London NW3 ("the Transferor") hereby transfers to BICKENHALL ENGINEERING CO LIMITED care of 3 Coach House Yard, Hampstead High Street, London NW3 ("the Transferee") the land abovementioned with full title guarantee

The Transferor hereby grants to the Transferee and its successors in title in perpetuity a right of support for the property hereby transferred against the wall of the Transferors adjoining property at 8 Pilgrims Lane, Hampstead, London NW3

The Transferor covenants not to unreasonably object to any alteration to the front entrance to the property hereby transferred or to any planning application made in respect thereof

The Transferor hereby grants to the Transferee and its successors in title a right for the Transferee and its said successors from

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guarantee

INGEBORG LACEY of 8 Pilgrims Lane, Hampstead, London NW3 ("the Transferor") hereby transfers to BICKENHALL ENGINEERING CO LIMITED care of 3 Coach House Yard, Hampstead High Street, London NW3 ("the Transferee") the land abovementioned with full title



TITLE NUMBER : NG1379077
 PROPERTY : 10 Pilgrims Lane, Hampstead, London NW3
 DATE : 1st October 1987

LAND REGISTRY - LAND REGISTRATION ACTS 1925-1971
 16 SEP 1987
 P.L. 1.37
 WORKING PRICE 7

TRANSFER OF WHOLE

NG1379077

19/9
 £14,200
 1/4

Land Registry
 Official Copy
 This copy may not be the same size as the original.