

[REDACTED]

From: English, Rachel
Sent: 26 November 2015 10:10
To: Planning
Subject: FW: Planning Application 2015/4053/P

Please log

From: tim owens [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: 25 November 2015 22:51
To: Beaumont, Elizabeth
Cc: Cooke, Mike; Wheat, Frances; Watson, Ed (C&E directorate); English, Rachel; Beales, Danny (Councillor); [REDACTED] Rea, Flick (Councillor); Currie, Tom (Councillor); Leyland, Claire-Louise (Councillor); Headlam-Wells, Jenny (Councillor); Olad, Awale (Councillor); Vincent, Sue (Councillor); Wood, Abi (Councillor); Johnson, Heather (Councillor); Freeman, Roger (Councillor); Pietragnoli, Lazzaro (Councillor); Kelly, Alison (Councillor); Siddiq, Tulip; Harrison, Adam (Councillor); Stark, Stephen (Councillor); Quadir, Abdul (Councillor); [REDACTED] Shah, Nadia (Councillor); Jones, Phil (Councillor); Apak, Meric (Councillor)
Subject: Planning Application 2015/4053/P

Dear Ms. Beaumont,

I understand that the council is reviewing pending basement applications that are seeking approval under the permitted development framework. I am very concerned about this and have sought legal advice on this matter. I am writing to you to reiterate my objections to the development 2015/4053/P proposed at 8 Pilgrim's Lane and to outline the legal challenges that an approval of this nature raises. In the meantime I reserve all of my rights.

Best regards

Tim Owens

The proposed basement development gives rise to precisely the same concerns raised by the original application (2012/5825/P). The applicant is fully aware of the engineering difficulties raised by the proposed basement. Existing analysis has highlighted many of the problems: the flying freehold, the substantial groundwater flows, the existence of contaminated soil and the Burland scale analysis of the impact on neighbouring properties to name a few. These illustrate the complications with the proposed development and the potential for damage to the neighbouring properties. The applicant appealed the decision but has withdrawn his appeal before it went to hearing.

The application being considered remains substantially similar to the application that has already been refused (and the prior application). As a matter of planning law it is within the power of the local planning authority to decline to determine an application that is similar to an application that has been refused within the last two years. These powers are granted under section 70A of the Town and Country Planning Act 1990. I urge you to invoke these powers. Failure to do so will result in an avalanche of applications that cynically refile under a PD application.

I understand the council are reviewing their policy regarding PD in light of the recent cases involving RBKC as well as the 20 Mackeson Road case. Neither of these cases can set a precedent for the work that is proposed at 8 Pilgrim's Lane for reasons below.

In the case of 20 Mackeson Road the application consisted of a modest extension to an existing extension (37 cubic metres). In the case of 8 Pilgrim's lane we are dealing with a substantial new basement whose volume I estimate to be closer to 150 cubic metres. Moreover the application also proposes to deepen the existing basement, a process that will involve excavation under the sensitive flying freehold. There can be no doubt that the scale of the new basement and the sensitive work underneath the flying freehold can only be considered an engineering operation. This interpretation based on scale and complexity is supported by a number of landmark cases that you will be familiar with (Fayrewood Fish Farms v. the Secretary of State for the Environment 1984 and Wycombe District Council v Secretary of State for the Environment and Trevor 1995). The case of 20 Mackeson Road is very different and, in summation of this case, the inspector was very careful to note that the situation regarding other basement cases referred to in the hearing *"involves a question of fact and degree and the facts in those cases were different, and therefore can be distinguished, from those in this appeal"*. In making this statement the inspector was explicitly making clear that her ruling should not set a precedent for other cases. In addition, it should also be noted that the 20 Mackeson Road case history did not involve repeated attempts to get planning permission for a similar scheme.

In the case of the RBKC ruling the issue under discussion was the terms of reference for Class A of the GPDO. This was the basis of the refusal of the application and thus formed the substance of the appeal. For 8 Pilgrim's lane I consider the primary issue to be one of scale and complexity and the engineering challenges posed by the development and the existing grounds for refusal. The complexity of the application is evident when you review the detailed structural engineering analysis that preceded this application. These issues are well documented.