

Gentet, Matthias

From: English, Rachel
Sent: 01 December 2015 11:51
To: Planning
Subject: FW: Attention: Rachel English and Camden Planning Department: important email on Permitted Development
Attachments: Planning Inspectorate 15_01_2015.pdf; Shorten statement of case Reference PIN 2015 .doc; Evidence of flood problem by long term resident of 8 Pilgrim's Lane.docx; architect 8 Pilgrim's Lane testimony on the presence of water.pdf; Surface Water Risk - Homecheck 8_Pilgrims_Lane_HCF_1 (4).pdf; Ground Stability Report(GGS) (537379).pdf; 11 Pilgrim's Lane -very significant ground problems-.pdf; 11 Pilgrim's Lane-major ground remedial works.pdf

Please log with 2015/4053/P – 8 Pilgrims Lane

Rachel English
Senior Planning Officer

Telephone: 020 7974 1343

We want to hear your views on the changes we are proposing to how we consult on planning applications. To find out more and have your say visit www.camden.gov.uk/sci. Consultation closes on the 20 January 2016.

From: Oliver Froment [mailto:oliver.froment@blueyonder.co.uk]
Sent: 24 November 2015 22:16



Development

[Application 2015/4053/P – 8 Pilgrim's Lane NW31SL](#)

Dear Elizabeth Beaumont,

Thank you for your email of Thursday 19th November. In the light of what I understand may be the Council's intended new policy or approach on Basements as Permitted Development "pd", I am writing about Application No. 2015/4053/P for Permitted Development that has been pending since July 2015.

I have now had the opportunity to take senior expert legal advice and opinion on the matter. My legal expert, Andrew Smith, Partner at Child and Child and a specialist in property litigation, has advised me that it would be unlawful to authorize this application under pd. On the basis of what I have learned, I would also ask you to take account of the following comments when you review this case.

Application 2012/5825/P was appealed in August 2014. **The Planning Inspectorate in its letter of 15th January 2015 (enclosure) states that it is concerned that "the engineering and geological evidence in this case is voluminous and complex"**. Furthermore, at the hearing of 18th June 2015, the Inspector decided that due to the technical complexity and diverging technical opinions of the case, the matter should be escalated to a full (6 days) inquiry. The

appeal was recently withdrawn by the applicant, but there is no doubt that the complexity of the proposal lies beyond the remit of a normal builder.

The proposed work at 8 Pilgrim's Lane in this new application 2015/4053/P involves a very sensitive engineering operation and a significant volume of excavation as well as the excavation of new rooms and should not therefore be classified Permitted Development. There are number of High Court Decisions which clarify this matter.

The current application has many similarities with the application reference 2012/5825/P that was refused in April 2014. Within the footprint of the building, the scale and scope of the proposed engineering works and excavations, to all intents and purposes, are the same to the one that were refused in April 2014. In particular, the impact on the very sensitive columns on which the flying freehold of 10 Pilgrim's Lane solely rests remains a major issue in respect to the stability of my house. There is also known surface flood risks at this location (please see new additional evidences and a new additional enclosed independent report, e.g. page 8: high risk in the vicinity). The presence of claygate strata close to the convergence of downward sloping streets, further complicates the geotechnical and engineering challenges inherent in this application (please also see new enclosed additional independent report, e.g. page 8: moderate to high potential for natural ground subsidence, and new additional evidences enclosed herewith).

The BIA and subsequent reports that were produced for the earlier planning application contained several hundred pages of technical documents that have been exchanged for nearly two years between the applicant's engineers and the neighbors' geotechnical and geological experts. They are clear evidences that the current application is substantially complex and of an engineering nature.

The many faulty construction, geotechnical, geological approaches as well as other issues that were present in application 2012/5825/PI are still entirely relevant for the current application 2015/4053/P. These are summarized in the enclosed extract from my statement of case that I had prepared for the appeal that was due to take place in January 2016.

This statement of facts outlines why **our expert consultants have clearly and fully demonstrated that the proposed scheme would put my house and that of my neighbour at 6 Pilgrim's Lane at a very high risk of severe damages, as well as fully compromise the stability of my house. The same dangers still apply in the current application 2015/4053/P.**

On a separate note, the Council's new intended policy seems to be based on three factors, each of which is unjustified and unreasonable as reasons for change.

1. The recent High Court Case concerning The London Borough of Kensington and Chelsea. The judgment does not in fact do anything much more than clarify RBKC Council's unique interpretation of a small section of the GPDO and accompanying Guidance which was wrong. RBKC had refused the two single story basement applications solely because they did not comply with the new interpretation it accorded to paragraph A.1.f ii of Part 1, Class A and the accompanying Technical Guidance from November 2013, in particular the meaning of "enlarged part". In each case, that was the only reason for refusal. No other Council adopted that interpretation. In particular, Camden did not adopt it. In fact, the judgment has no bearing on the engineering operations arguments. It does not mention them and the Council's barrister did not raise them and nor did anyone else.
2. The Appeal at 20 Mackeson Road is far from conclusive. The work involved a relatively small extension to an existing cellar, which the Inspector is careful to distinguish from other cases in terms of "fact and degree".
3. The fact that Westminster Council may be intending to introduce an Article 4 direction to stop basement constructions under permitted development rights is not the result of a prior legal decision and does not imply that all basement excavations fall within pd rights either. There are plenty of examples of Technical Guidance that give the opposite opinion. One of these is the Department of Communities and Local Government Technical Guidance on Basement Construction. Some small scale basements with no engineering content may, in some instances, fall under pd. One cannot however generalize that all one story basements within the footprint of a house irrespective of their engineering content or scale are currently pd as implied in your email, as this is just not the case.

I would like also a copy, by return email, of Counsel's advice that you refer to in your email below, of 19th November 2015.

I must urge you to decline granting a Legal Development Certificate for this case. I am sure we both want to avoid an expensive legal judgment, which the Council would very likely lose.

In the meantime, I reserve all of my rights.

Regards,

Oliver Froment and family.

Chair of CRAAC.

CRAAC, the Camden Residents Association and Action Committee consist of 30 Resident Associations and related organizations throughout most of the wards of the borough of Camden. We are apolitical and aim to protect residents' homes from unwarranted damages caused as a result of aggressive and inconsiderate basement developments.

From: Beaumont, Elizabeth [mailto:Elizabeth.Beaumont@Camden.gov.uk]

Sent: 19 November 2015 12:57

To: Oliver Froment; English, Rachel; Watson, Ed (C&E directorate); Wheat, Frances; Cooke, Mike

Dear Mr Froment

Thank you for your email. I am sorry for the delay in coming back to you.

I do understand that you are concerned about the issues and I can reassure you that Camden members and officers recognise the level of public concern about the Government's "pd" legislation

However as a public authority the Council has a duty to act reasonably and lawfully within the national legalisation, having regard to all the relevant circumstances including established case law and planning decisions. If we do not give effect to this duty it is very likely we will be challenged and have costs awarded against the Council at a time when there is already massive pressure on our funding.

There have been three recent events which have led the Council to review the issue of basement development under permitted development rights. These are as follows:

- **A High Court decision** rejecting the Royal Borough of Kensington and Chelsea's challenge against the Planning Inspectorate's decision to allow two appeals on the basis that the single storey basements were permitted development (thereby did not need planning permission). The Judge concluded it made no difference when assessing proposed works against permitted development (pd) rights whether the rooms added are above or below ground level. RBKC were criticised for their change in its interpretation in these cases as it previously considered basements could fall under pd rights. The Judge

firmly agreed with the Planning Inspector and awarded full costs due to their 'unreasonable behaviour'.

- **A Planning Inspectorate decision (20 Mackeson Road)** fundamentally calling into question Camden's approach following the 24 Quadrant Grove decision: namely that basement excavation is not pd where the extent of excavation works constitute an engineering operation - the Inspector concluded that in considering basement proposals 'there is a fine line between building and engineering operations and that both types of operations can be included in works that are permitted [under pd rights]'. The Inspector states that pd rights are not confined to just 'building operations' nor are engineering operations specifically excluded from pd rights. The Inspector concludes that works to provide additional space below ground would be considered as development but also would also fall within pd rights.
- **City of Westminster's decision to apply for an Article 4 Direction** seeking to remove pd rights in respect of basements which is an acknowledgement by Westminster that basement excavation does fall within pd rights (The effect of the Direction will be to ensure planning applications are necessary for all basement excavation.)

As a result of these events we sought further Counsel advice. Counsel has been unequivocal in asserting that we should move forwards by assessing each Certificate of Lawfulness application against the relevant criteria and conditions under permitted development rights.

I am aware you want to submit additional Counsel opinion on this matter and have asked that the Council does not make any decision until we receive this. I must advise you that the Council is in a very difficult position with the outstanding Certificates which are waiting for a decision. We consider that we must move forwards with assessing each case on its merits, or we are at risk of costs for further delays.

Your email was sent on the 4th November with a follow up sent on the 11th advising we would have the opinion by the end of this week.

I must therefore ask that your further comments are received by no later than Wednesday 25th November. If we do not receive the comments by this date please be advised we will be moving forward with the assessment of all outstanding applications. If we do receive your comments by this date we will of course review them with an open mind and advise you whether there are any issues raised that would alter our proposed approach. However we do not want to mislead in any way so I would mention again (as noted above) there are decided cases which appear to indicate Camden's approach following the 24 Quadrant Grove decision is now unsustainable.

Please do not hesitate to contact me if you have any comments or questions.

Regards,

Elizabeth

Elizabeth Beaumont
Appeals and Enforcement Team Manager

Telephone: 020 7974 5809

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planning applications. To find out more and have your say visit www.camden.gov.uk/sci. Consultation closes on the 20 January 2016.

From: Oliver Froment [mailto:oliver.froment@blueyonder.co.uk]

Sent: 04 November 2015 09:25

To: English, Rachel; Watson, Ed (C&E directorate); Beaumont, Elizabeth; Wheat, Frances; Cooke, Mike

Subject: Attention: Rachel English and Camden Planning Department: important email on Permitted Development

Dear Rachel and colleagues,

I have been made aware of documents circulated last week within Camden (ref: Basement training: 29th October 2015 3rd paragraph "update on basement permitted development rights" and update on permitted development Phil Jones email of 28th October 2015 at 14.24 re; update on permitted development rights) whereby Camden commented on recent judgments (20 Mackeson Road Appeal Decision, RBKC High Court decision) leading Camden to decide to change its approach to PD.

I and many other residents are of the firm opinion that the comments and coverage of these judgments are improper, incomplete and highly misleading and that the intended change of approach is wholly unjustified and based on a totally faulty analysis. I have made some contacts with legal professionals that support my view. Within a fortnight, and perhaps as early as the end of next week, an important legal opinion by at least one senior lawyer on behalf of resident(s) is anticipated to be released and communicated to Camden which we believe will legally clearly demonstrate to Camden that its change of policy is ill founded and unlawful. Until such time as Camden has considered that opinion(s), no decision on any cases of PD should be decided. Doing otherwise would be, in our clear view, a breach of natural justice and proper procedures as well as a breach of legitimate expectations and therefore unlawful.

Please confirm that Camden will make no decision on PD cases until it has received and consider the opinion. In the meantime, I reserve all of my rights in this matter.

Thank you

Regards,

Oliver Froment and family

This e-mail may contain information which is confidential, legally privileged and/or copyright protected. This e-mail is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer.