Raymond Yeung

Planning Officer

Planning Department

London Borough of Camden

23rd December 2015

Dear Mr Yeung,

**Planning Application 2015/7208/P: 24 Quadrant Grove London NW5**

My attention has been drawn to a renewed application by or on behalf of the occupants of 24 Quadrant Grove London NW5 for a Certificate of Permitted Development for the construction of a basement. It would appear that the application was registered today and was posted on Camden’s planning website this afternoon, and that you are the planning officer dealing with the matter. The Quadrant Grove Residents Association wishes to raise the strongest possible objections to this application and for reasons upon which I shall elaborate, invite you to refer the matter to Camden’s Development Control Committee [‘DCC’] for its decision, or alternatively to refuse it. The Grounds of Objection are set out below paragraph 21 below.

You may be familiar with the history of this matter, but I summarise it below for your convenience:

Chronology

1. In Late 2013, Mr James Ireland (‘the Applicant’) applied to Camden for planning permission to construct a basement under his small terrace house at 24 Quadrant Grove. The application was supported by a civil engineer’s report.

2. In March 2014 the application was withdrawn after civil engineers appointed by Camden questioned the qualifications of the applicant’s engineers and identified a number of problems with the proposed construction.

3. The applicant then applied to Camden Council Planning Department for a lawful development certificate confirming that the addition of a basement to his property would be ‘permitted development’ falling within the provisions of the Town and Country Planning (General Permitted Development) Order 1995, and so would not require a separate grant of planning permission.

4. The Quadrant Grove Residents Association, which I chair, opposed the application, and relied on an Opinion obtained from Gwion Lewis of Landmark Chambers dated 21st May 2014, who advised that, as a matter of fact and degree, the proposed development involved an “engineering” operation of a scale and complexity which required a separate grant of planning permission and would exceed the scope of (and hence fall outside) of any development right outlined in the GPDO 1995. The Association’s arguments were also supported by the views of a geotechnical engineer Tim Chapman, Director of Ove Arup and a recently elected Fellow of the Royal Academy of Engineering.

5. Despite this, on 15th August 2014 Camden’s planning officers concluded that the proposed work did come within the Permitted Development scheme, and recommended that a lawful development certificate should be granted. They maintained that their views were based on an opinion from another planning barrister, Mark Beard of 6 Pump Court, but they refused (and continue to refuse) to disclose it, claiming legal professional privilege.

6. The application was duly referred to a Members Briefing which (somewhat unusually) decided to refer the matter to the DCC.

7. On 13th November 2014, at a well attended hearing in the Town Hall, the DCC, by a majority, rejected the arguments of the planning officer, their Counsel Mark Beard, and Planning Consultant Ian Trehearne on behalf of the applicant, and refused to approve Permitted Development.

8. On 15th May 2015, the applicant lodged an appeal to the Planning Inspectorate against Camden’s decision. It would appear that at that time the Council’s Planning Officers were proposing to oppose the appeal. In doing so, the Council would necessarily have had to adopt the Association’s arguments and would have sought to rely on the opinion of Gwion Lewis in support of its position.

9. Following the High Court decision of Mrs Justice Patterson in *RBKC v Secretary of State for Communities and Local Government [[1]](#footnote-1)*, delivered ex tempore on 17th June 2015 but published at some time during July, and a Planning Inspectorate decision in respect of 20 Mackeson Road NW3[[2]](#footnote-2) on 20th August 2015[[3]](#footnote-3), the Council sought further legal advice from barrister Giles Atkinson, who is also a member of chambers at 6, Pump Court. In a written Opinion dated 2nd October 2015, he concluded (based on the Mackeson Road decision) that the stance taken by the Council following the 24 Quadrant Grove overturn in refusing similar Lawful Development Certificates, was ‘misguided’ but warned that it was crucial for the Council ‘to continue to assess each case on the merits and to carefully assess each against the relevant parts of the relevant GPDO.’[[4]](#footnote-4)

10. On or about 9th October 2015, the Planning Inspectorate, doubtless concerned about the important legal and public interest issues at stake, announced that the Quadrant Grove appeal would proceed by way of a Public Inquiry.

11. On 13th October 2015, the applicants in the Quadrant Grove matter withdrew their appeal.

12. In the interim, it would appear that members of the Council’s Planning and/or Legal Department, mindful of Giles Atkinson’s opinion, approached Councillor Phil Jones, Cabinet Member for Regeneration, Transport and Planning, to conduct a basement training seminar for all councillors, aimed at reversing the Council’s more restrictive new policy on permitted development rights which followed the Quadrant Grove overturn, and to revert to a more permissive approach towards those seeking Lawful Development Certificates.

13. On 28th October 2015, Councillor Jones emailed all Councillors, inviting them to attend a meeting the next day, to ‘consider counsel’s advice.’ He drew their attention to so-called ‘key factors’. These were:

i) *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.*

14. This appears to have been a reference to the High Court judgment in *RBKC v Secretary of State for Communities and Local Government* (*ibid*).

*ii) The Planning Inspectorate decision in relation to 20 Mackeson Road London NW3*

15. Councillor Jones claimed that this decision had “fundamentally [called] into question our [Camden Council’s] line following 24 Quadrant [Grove], that basement excavation is not pd where the extent of the excavation works constitute an engineering operation.”

*iii) The City of Westminster’s decision to apply for an Article 4 Direction seeking to remove pd rights in respect of basements; and*

*iv) Camden’s own advice from Counsel in the light of these  decisions.[[5]](#footnote-5)*

16. Councillor Jones concluded his email by claiming that “given the clear facts and financial risks, our approach to determining applications under pd rights must regrettably change.” Significantly, neither Giles Atkinson in his advice, nor Councillor Jones made reference to the decision of Mrs Justice Lang in the case of *Zipporah Lisle-Mainwaring v RBKC* [2015] EWHC 2105 (Admin)which was delivered on 23rd July 2015, it does not appear to have been considered by Giles Atkinson in his Opinion dated 3rd October.

17. On 29th October 2015, a “basement training seminar” with councillors took place. Mr Atkinson delivered a power point presentation, and notes which had been prepared by Campbell Reith, Camden’s Basement impact Auditors, were circulated.

18. Following Camden’s policy change, a further Opinion from Gwion Lewis was jointly sought by residents in Quadrant Grove and Briardale Gardens[[6]](#footnote-6) on the lawfulness of prospective renewed applications from the householders in those areas. Specifically, Mr Lewis was asked to advise whether the views that he expressed in his original opinions still stood in the light of the legal developments outlined above, as well as Giles Atkinson’s Opinion dated 3rd October, the power point slides, and the Council’s apparent change of policy.

19. We attach Mr Lewis’s further Opinion dated 14th December 2015 in which he reaches the following conclusions:

i) Neither of the High Court judgments relied upon in RBKC v Secretary of State for Communities and Local Government [2015] and Zipporah Lisle-Mainwaring v RBKC [2015] determined the fundamental point of whether the substantial excavation works involved in virtually all basement developments are outside the scope of the relevant permitted development right by virtue of being “engineering operations”.

ii) That although the appeal decision relating to 20 Mackeson Road determined that fundamental point against the Quadrant Grove objectors, the Inspector’s reasoning was brief and wrong in law, and that other appeal decisions by inspectors, such as the appeal dated 16th March 2015 relating to Wildwood Lodge, 9, North End, Hampstead; and the earlier decision dated 27th August 2009, relating to 4 Turnville Road London, which have determined the point in our favour.

iii) The City of Westminster’s decision to apply for an Article 4 direction in respect of basement development does not appear to be based on accepting that the works involved amounted to an “engineering operation” which fell within the scope of the permitted development right. Whatever might be the City of Westminster’s basis for applying for the Article 4 direction, that point was still at large and not in any event determined definitively in law by any decision made by that authority; and

iv) So far as Camden Council’s change of stance was based on the two High Court judgments mentioned above, it was unsound. So far as a change of stance following the 20 Mackeson Road decision was concerned, Mr Lewis pointed out that Planning Inspectors are not judges, and their interpretation of the law is not binding.

v) Although Mr Lewis conceded that the point of interpretation was not without difficulty, he remained of the view that there are good prospects that a court would reject the construction of the permitted development right placed by the Inspector in the Mackeson Road appeal, and prefer the construction that he set out in his previous opinions and also preferred by other Inspectors.

20. We are also aware of the Inspector’s appeal and costs decisions in respect of 45 Reddington Road NW3, dated 27th November 2015 allowing the appeal and awarding costs against the Council. We invite you to disregard the Inspector's ill-considered and improper suggestion that because Mr Lewis’s original Opinion dated 21st May 2014 was obtained by the residents of Quadrant Grove, it lacked neutrality and should be ignored by the Council. More importantly we suggest that in any event, this decision should be distinguished from the issues in the Quadrant Grove application since:

i) In the Reddington Road matter, the Inspector was only required to determine the interpretation of the Class E PD right for swimming pools, and not Class A. The relationship of Classes A and E and the importance of separating them were stressed by Mr Lewis in his original Opinion.

(ii) The inspector actually contemplated the scenario in which the engineering work was so substantial as not to be ancillary to the building work. This is precisely the point made by Mr Lewis in his latest opinion.

Objections by the Quadrant Grove Resident’s Association to the renewed application

21. We once again adopt and rely on the objections previously raised by Michael Eatherley and Barbara Thorndick at the time of the original applications, namely that:

* Camden is required to consider each case on the merits and to carefully assess each against the relevant parts of the relevant GPDO.
* In the case of the renewed application, the proposals involve excavation works which, as a matter of fact and degree constitute “an engineering operation” and which do not benefit from any permitted development right as governed by section 55 of the Town and Country Planning Act 1990. The application is therefore unlawful.
* Basement construction of the kind and extent contemplated are contrary to government and local authority guidance on permitted development. (See e.g. Planning Portal provisions of “Permitted Development for Householders” published by Dept for Communities and Local Government, and Technical Guidance dated April 2014 in which previous references to basements have been omitted.)
* The operation, contrary to the terms of the current application, is likely to involve the construction of a lightwell in the front garden (as set out in the original planning application). This is because a large part of the small front garden would have to be excavated to facilitate the various engineering operations involved: underpinning of party walls, removal of spoil from under the house, construction of retaining walls and slab. In these circumstances it is difficult to imagine that the temptation to convert a dark cellar into a more useable space would not prevail. PDCs should not be granted where works involve building of lightwells. Camden is therefore ‘on notice’.
* The application is no more than a fast track procedure which attempts to overcome problems identified by Camden’s engineers in an independent BIA, and to defeat the more rigorous requirements of a (potentially problematic) planning application.
* To grant a PDC in such circumstances would be illogical and unreasonable.

Camden’s current approach to PD rights and consultation.

22. Given the history of this matter which I have set out above, we wish to register our deep concern about the way in which Camden policy and decision making in this area is evolving. First, there is a real perception that the Council is not adopting an entirely even-handed approach between applicants and objectors in this area. It may well be that the close proximity in time between the decision by Mr Ireland to withdraw his appeal to the Inspectorate on 13th October, and the decision by the Council to change its policy and to ‘retrain’ councillors shortly thereafter was mere co-incidence, but the decision to register and post this renewed application on your website two days before Christmas, when most people are away or pre-occupied, is extremely cynical. Moreover, to advise that those who wish to comment upon the matter had until 18th December ( four days before the application was registered) has caused considerable confusion. I note your email to Mr Eatherley today in which you state that you have now changed the date on the website, although you do not clarify whether the original date was a mistake, nor do you specify the newly published date.

23. Secondly, it has become apparent from a number of recent cases, that instead of deciding each renewed application on its merits, the Council has adopted a pro-forma rubber stamp approach which tends to favour applicants, and which, owing to 40% cuts by central government, is wholly cost driven.

Conclusion

24. We urge you to consider and give weight to our renewed objections and the clear and objective analysis of the law provided by Gwion Lewis in his most recent Opinion; to come to an independent decision based upon the individual circumstances of our case, and to recommend that this application is refused. The position is not nearly as clear cut as some would like to believe, and if this case has to be litigated, the Council will necessarily incur costs that its recent policy changes had hoped to avoid.

25. We therefore ask you, if you have not already done so, to extend the consultation period to take account of the realities of Christmas and the New Year. Should the applicants or their developers decide to embark on the proposed basement construction before a decision is reached, we would ask the Council to issue both an urgent “stop notice” pursuant to the Town and Country Planning Act 1990 to prevent any further unlawful operations, and an enforcement notice in respect of any operations already carried out.

26. Lastly, I submit that in circumstances where the applicant has renewed his application in terms identical to the original application, and where the DCC, fully constituted, has already decided to reject the Planning Officer’s recommendation and to refuse the application, it would be constitutionally and procedurally incorrect for the matter to be decided at a Members Briefing.

27. I would be grateful if you would acknowledge safe receipt of this email and the attached document, and take this opportunity to wish you a Happy Christmas and New Year.

Yours sincerely,

Christopher Sallon

Chairman, Quadrant Grove Residents Association.

1. [2015]EWCH 2458 (Admin) [↑](#footnote-ref-1)
2. APP/X5210/X/14/3000342 [↑](#footnote-ref-2)
3. See paragraph 15 below) [↑](#footnote-ref-3)
4. Opinion of Giles Atkinson 2nd October 2015 paragraph 13 [↑](#footnote-ref-4)
5. This is a reference to the Giles Atkinson opinion dated 3rd October 2015. [↑](#footnote-ref-5)
6. An application for Permitted Development by the occupants of 31 Briardale Gardens was the subject of an Opinion dated 11th September 2015. The application was subsequently refused by Camden Council). [↑](#footnote-ref-6)