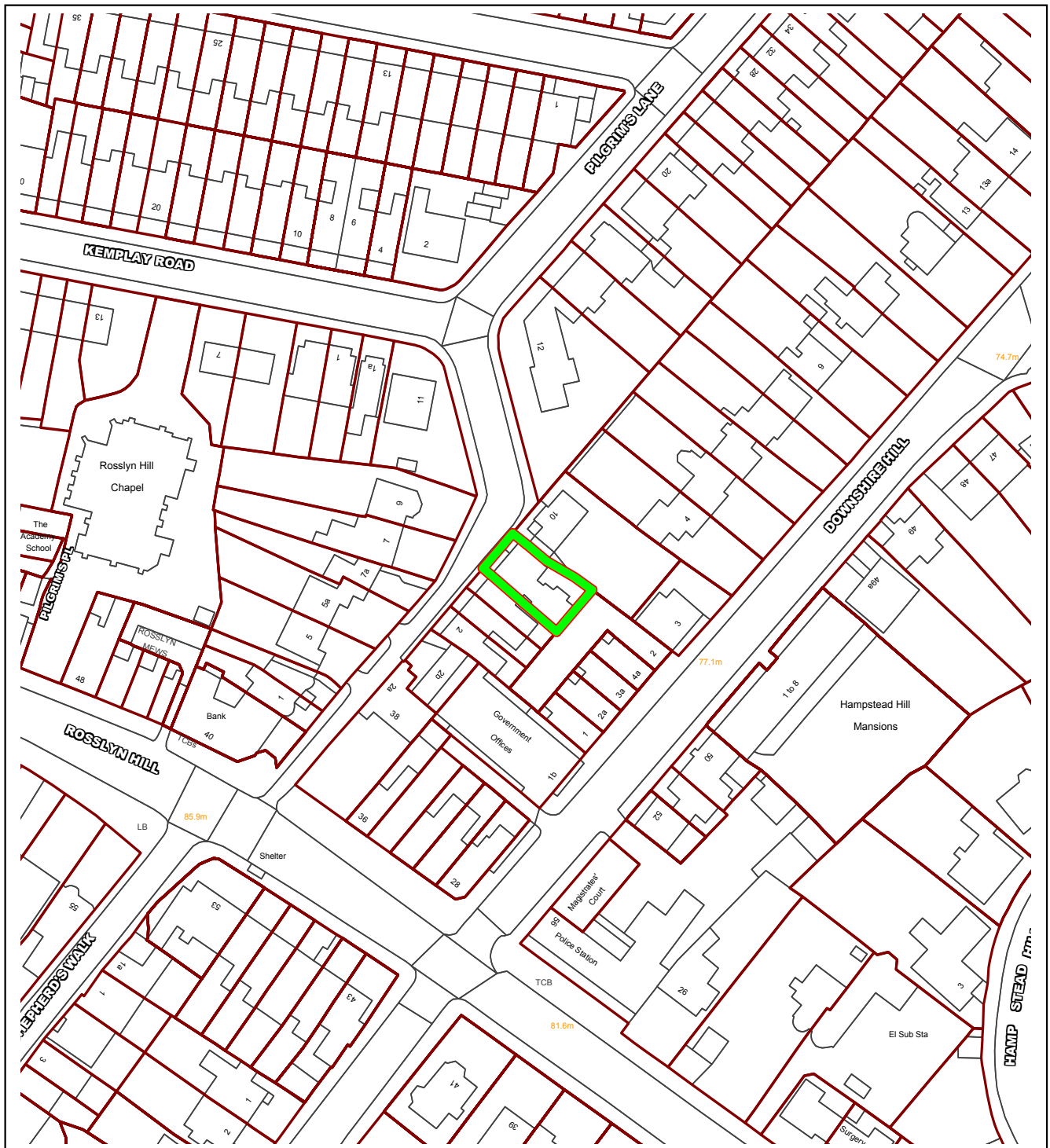


2015/4053/P - 8 Pilgrim's Lane, NW3 1SL



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1. View from garden of rear of application site



2. Front elevation



Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:	09/09/2015
		N/A / attached		Consultation Expiry Date:	N/A
Officer			Application Number(s)		
Ian Gracie			2015/4053/P		
Application Address			Drawing Numbers		
8 Pilgrim's Lane London NW3 1SL			See decision notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Lowering floor level of existing basement to front of property and associated internal layout changes, but with no external alterations. Formation of a new basement to the rear of the property entirely within footprint of existing building and with no external alterations.					
Recommendation(s):		Grant certificate subject to a s106 Legal Agreement			
Application Type:		Certificate of Lawfulness (Proposed)			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	15	No. of objections	15
Summary of consultation responses:	<p>NOTE- There is no statutory requirement to consult on this application as it cannot be assessed as a normal planning application and can only have a legal determination of its lawfulness (see policy section below).</p> <p>Objections were, however, received from members of the public on the following points:</p> <ul style="list-style-type: none">• The proposal cannot be considered permitted development;• The decision should be put on hold until the outcome of the appeal;• The proposal would constitute over development;• The proposal does not accord with policy;• I am concerned that the basement will extend beyond the footprint of the existing house;• Flooding;• Structural stability;• Impact on groundwater flows, the existence of contaminated soil, and impact on neighbouring properties;• Complex engineering operation which does not benefit from permitted development;• It would compromise the stability of the adjoining properties;• Absence of a Traffic Management or Construction Management Plan;• It is a repeat application which should be refused;• Decision to grant permission would be unlawful;					
CAAC/Local groups* comments: *Please Specify	<p><u>CRAAC – The Camden Residents Association and Action Committee</u></p> <ul style="list-style-type: none">• The proposal involves very sensitive engineering operations.• The faulty construction, geotechnical, and geological approaches as well as the other issues that were present in applications 2012/5825/P are still entirely relevant for this application.• The proposed scheme would put my house and that of the neighbour at 6 Pilgrim’s Lane at a very high risk of severe damages as well as fully compromise the stability of my house.					

Site Description

The application relates to a large Arts and Crafts single family dwellinghouse dating from the 1880's. It is located on the east side of Pilgrims Lane. The footprint of the existing building remains from its original construction in the 1880's.

At the front, the house is double fronted and two storeys high with a lightwell to an existing basement. It is constructed in red brick and white render with hanging tiles at first floor level and a ship's figurehead and plaque commemorating William Johnson Cory at ground floor level. At the rear the house contains three storeys, with a terrace leading down to the garden. Due to the topography of the site, which slopes down in a south west direction, the garden is approximately 3m lower than street level. The site is L-shaped, so rather than being behind the house, the garden extends to the north east in between the rear gardens of nos. 10 Pilgrim's Lane and 3 Downshire Hill.

The building lies within sub-area 3 of the Hampstead Conservation Area and is identified as making a positive contribution to the character and appearance of the Conservation Area. The site is subject to an Article 4 direction.

Relevant History

2015/4157/P - Alterations to rear and side windows, installation of rooflights to rear side roofslope, installation of new patio at lower garden level and replacement of balustrade at rear. **Certificate of lawful development granted on 30 September 2015**

2015/4179/P - Erection of roof extension within existing valley roof. Alterations to the front elevation including reinstatement of glazing and door details, new boundary wall and perimeter railings. Replacement of existing driveway gates and wall to rear of building. **Planning permission granted on 15 September 2015**

2012/5825/P - Excavation to create new basement level at rear with ground floor rooflight, erection of a roof extension, installation of 3x rooflights to rear roofslope, and alterations to fenestration, railings and front boundary walls of dwelling house. **Refused on 08/04/2014. Appeal Withdrawn 16/10/2015.**

The primary reasons for refusal were:

1. In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the structural stability of the application site and adjacent properties.
2. The removal of the TPO tree would be harmful to the visual amenity it provides and harmful to the character and appearance of the conservation area.
3. The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building.
4. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and hazards for pedestrians, cyclists and other road users and would be detrimental to the amenities of the area generally.
5. The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and

vehicles.

6. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Impact Plan, could have significant adverse impacts on the structural stability of the application site and adjacent properties.

2011/0526/P Excavation of basement extension with ground floor roof light, raising the ridge of the existing roofline to the south west elevation and erection of boundary wall and railings to front elevation as well as alterations to the fenestration and associated alterations to existing dwelling house (Class C3). **Refused 01/04/2011**

The primary reasons for refusal were:

1. In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavation would not have significant adverse impacts on the structural stability of the application site and adjacent properties, drainage and the local water environment.
2. The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building.
3. The proposed development, in the absence of a legal agreement to secure contributions to ensure a highway contribution to mitigate against the impact of development.
4. The proposed development, in the absence of a legal agreement to secure the provision of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users.

2010/4644/P Erection of two storey rear extension at basement and ground floor levels, a roof infill extension, erection of front boundary wall and railings and excavation at the rear to extend the existing basement to incorporate an internal swimming pool to existing dwelling house (Class C3). **Withdrawn 11/11/2010**

Relevant policies

The scheme can only be assessed against the relevant planning legislation which is the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) ("GPDO").

This is to determine whether it is permitted development and hence can go ahead without the express grant of planning permission from the local planning authority. An assessment of its planning merits as to its acceptability under current policies is therefore not relevant or possible here, as it is purely a legal determination.

The determination of this application can only be made by assessing whether the scheme is lawful as defined by the criteria set out in the GPDO and whether the proposal would constitute 'development' (as defined under S55 of the TCPA 1990).

It should be emphasised that this is a legal determination and no account can be taken of policy or guidance within the Camden development plans (LDF) or the planning merits of the scheme in terms of issues such as its impact on hydrogeology, structural stability, neighbour amenity, transport impact, etc.

The question of whether basement development, such as is proposed in this case, benefits from

permitted development has been the subject of much contention in Camden lately, with objectors to similar schemes producing counsel opinion in support of their argument, essentially, that these sorts of schemes cannot benefit from permitted development because they are engineering operations that fall outside the scope of PD.

Following adverse decisions taken previously where the Council has failed to defend a refusal to grant CLEUDs, and having taken its own advice from counsel, the Council takes the view that basement development such as is proposed in this case is capable of benefiting from permitted development and an assessment of the proposal against the relevant sections of the GPDO 2015 therefore follows.

Appendix A summarises two recent decisions in Camden where the argument that is advanced by objectors to this and other basement development as PD has been rejected by Inspectors, in one case (45 Redington Road) with costs awarded against the Council.

Assessment

1. Proposal

1.1 The application seeks to ascertain whether the proposed alterations to lower the floor of the front part of the existing house by 400mm and 600mm and create a new basement under the rear section of the house with a depth of 3.6m can be constituted permitted development under Class A Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) ("GPDO").

2. Assessment

Class A – The enlargement, improvement or other alteration of a dwellinghouse.

If yes to any of the questions below the proposal cannot be considered permitted development.	Yes/No
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A.1 (a)	Has planning permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M (A1 or A2 to C3), N (sui generis to C3), P (B8 to C3), or Q (agricultural buildings to Cs) of Part 3 of this Schedule (changes of use)?	No
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Comment: See section above on relevant planning history.

A.1 (b)	As a result of the works, will the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)?	No
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Comment: The proposed basement is beneath the footprint of the existing building only.

A.1 (c)	Will the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse?	No
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Comment: The proposal is for the excavation of a basement and does not exceed the highest part of the roof.

A.1 (d)	Will the height of the eaves of the part of the dwellinghouse enlarged,	No
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	improved or altered exceed the height of the eaves of the existing dwellinghouse?	
Comment: No eaves are proposed as part of this proposal.		
A.1 (e)	Will the enlarged part of the dwellinghouse extend beyond a wall which (i) forms either the principal elevation, or (ii) fronts a highway and forms a side elevation of the original dwellinghouse?	No
Comment: The proposed basement is beneath the footprint of the existing building only.		
A.1 (f)	Will the enlarged part of the dwellinghouse have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height?	No
Comment: The proposed basement will be a single storey, would not extend beyond the rear wall of the dwelling and would not exceed 4 metres in height (the proposed depth is 3.6 metres).		
A.1 (g)	For a dwellinghouse not on Article 2(3) land nor on a site of special scientific interest, will the enlarged part of the dwellinghouse have a single storey and- (i) extend beyond the rear wall of the dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height?	N/A
Comment: The site is located within a Conservation Area but would not extend beyond the rear wall of the dwelling.		
A.1 (h)	Will the enlarged part of the dwellinghouse have more than one storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse?	No
Comment: The proposal is for a single storey basement only.		
A.1 (i)	Will the enlarged part of the dwellinghouse be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part exceed 3 metres?	No
Comment: The proposal is for the excavation of a basement and has no eaves.		
A.1 (j)	Will the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and either (i) exceed 4 metres in height, (ii) have more than one storey, or (iii) have a width greater than half the width of the original dwellinghouse?	No

Comment: The proposed basement extends beneath the footprint of the existing building only.

A.1 (k)	Would it consist of or include either (i) the construction or provision of a veranda, balcony or raised platform, (ii) the installation, alteration or replacement of a microwave antenna, (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (iv) an alteration to any part of the roof of the dwellinghouse?	No
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Comment: The proposal is for a basement extension.

Is the property in a conservation area? If yes to any of the questions below then the proposal is not permitted development

A.2 (a)	Would it consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles?	No
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Comment: No work to the exterior is proposed.

A.2 (b)	Would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse?	No
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Comment: The proposed basement extends beneath the footprint of the existing building only.

A.2 (c)	Would the enlarged part of the dwellinghouse have more than one storey and extend beyond the rear wall of the original dwellinghouse?	No
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Comment: The proposed basement has a floor to ceiling height of 3 metres and extends beneath the footprint of the existing building with no extension to the rear.

Conditions. If no to any of the below then the proposal is not permitted development

A.3 (a)	Would the materials used in any exterior work (other than materials used in the construction of a conservatory) be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse?	N/A
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Comment: No work is proposed to the exterior of the building.

A.3 (b)	Would any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed?	N/A
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Comment: No work is proposed to the exterior of the building.

A.3 (c)	Where the enlarged part of the dwellinghouse has more than one	N/A
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	storey, would the roof pitch of the enlarged part, so far as practicable, be the same as the roof pitch of the original dwellinghouse?	
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Comment: The proposal is one storey (floor to ceiling height of 3 metres) and extends beneath the footprint of the property.

3. Planning Obligations

- 3.1 Planning obligations are not a statutory requirement of the GPDO and, as such, planning obligations cannot be attached to this permission.
- 3.2 However, the applicant has offered to enter into a Section 106 Legal Agreement to secure a Construction Management Plan as an obligation. This is welcomed by the Council.

4. Recommendation

- 4.1 It is considered that the proposal can be considered permitted development as it falls under Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) ("GPDO").
- 4.2 Grant certificate subject to the signing of a Section 106 Legal Agreement.

DISCLAIMER

Decision route to be decided by nominated members on 18th January 2016.
For further information please click [here](#)

APPENDIX A

Class A Permitted Development Background and Update (Basements) – November 2015

20 Mackeson Road (Appeal Ref: APP/X5210/X/14/3000342)

An appeal was received against the non-determination of an application for a Certificate of Lawfulness (proposed) for a single storey basement at 20 Mackeson Road.

Class A permitted development rights are described as ‘development within the curtilage of a dwellinghouse’ and are not confined to building operations alone by any of the specified conditions, exceptions and limitations; nor are engineering operations specifically excluded from permitted development rights in Class A.

This application was refused by the Council for reasons that the ‘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 development right outlined in the GPDO 1995 as amended.’

In dismissing the appeal, the Inspector found that ‘the Council’s deemed refusal to grant a certificate of lawful use or development in respect of a new basement was not well-founded and that the appeal should succeed’.

27 November 2015: Appeal Decision for 45 Redington Road – Allowed (Appeal Ref: APP/X5210/X/15/3006433)

The appeal was allowed for the installation of a swimming pool on the lower ground floor.

The Inspector found that the creation of an enlarged basement with a swimming pool would be permitted development under Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596).

Costs were awarded against the Council in this case, the Inspector finding it unreasonable for the Council to have relied on the argument advanced by the objectors that basement development amounts to an engineering operation and therefore is outside the scope of PD.

Doyle Town Planning & Urban Design
86-90 Paul Street
London
EC2A 4NE

Application Ref: **2015/4053/P**
Please ask for: **Ian Gracie**
Telephone: 020 7974 **2507**

4 January 2016

Dear Sir/Madam

FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION

Town and Country Planning Act 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Certificate of Lawfulness (Proposed)

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Lowering floor level of existing basement to front of property and associated internal layout changes, but with no external alterations. Formation of a new basement to the rear of the property entirely within footprint of existing building and with no external alterations.

Drawing Nos: 999/S01; 999/S02; 999/S03; 999/S04; 999/S05; 999/S06; 999/S07A; 999/S08; 999/S09; 999-AP3-02CC; 999-AP3-03CC; 999-AP3-11CC.

Second Schedule:

**8 Pilgrim's Lane
London
NW3 1SL**

The Council has considered your application and decided to grant the certificate of lawfulness subject to the successful conclusion of a Section 106 Legal Agreement.



The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Reason for the Decision:

- 1 The single storey basement excavation is permitted under Class A of Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Culture & Environment

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.