

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2016/5650/P
<b>Officer</b>		<b>Expiry date</b>	
Helaina Farthing		09/12/2016	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
44 Shirlock Road London NW3 2HS			
<b>Conservation Area</b>		<b>Article 4</b>	
Mansfield Conservation Area		None applicable	
<b>Proposal</b>			
<p>The proposal relates to the excavation of basement within footprint of existing dwelling. The proposed basement would have a ground to floor ceiling height of 2.6m and a depth of 16.88m.</p> <p>The Ground Internal Area of the basement is calculated to be 67.76 sqm and the external footprint of the basement is 82.77sqm. The proposed basement will not extend beyond the existing footprint of the dwelling house.</p>			
<b>Recommendation:</b>		Refuse Certificate	
<b>Site Description</b>			
<p>The property is a three-storey dwelling house located on the eastern side of Shirlock Road. The building is not listed, although is located within the Mansfield Conservation Area.</p>			
<b>Relevant History</b>			
<p>Mr Justice Cranston in <i>R (Eatherley) v Camden Council</i> [2016] EWHC 3108 (Admin), in his judgment handed down on Friday 2<sup>nd</sup> December 2016 deemed that basement development is not authorised under Class A permitted development rights in circumstances where the engineering operations that are required before building the basement, such as excavation and structural support, amounts to a “separate activity of substance”.</p>			
<b>Policies and Legislation</b>			
<p>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”) (as amended)</p> <p>This is to determine whether the proposed scheme is permitted development and hence can go ahead without the specific 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 a legal determination.</p> <p>The determination of this application can only be made by assessing whether the scheme is lawful as defined by the volumetric/dimensional/locational criteria set out in the GPDO and whether the proposal would constitute ‘development’ (as defined under S55 of the TCPA 1990).</p> <p><u>It should be emphasised that this is a legal determination</u> and no account can be taken of policy or advice within the Camden development plans (LDF) or the planning merits of the scheme in terms of issues such</p>			

as its impact on hydrogeology, structural stability, neighbour amenity, transport impact, etc.

## Assessment

The Council has determined the planning application 2016/5650P seeking the grant of a Certificate of Lawfulness (Proposed) under Class A in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (SI 2015 No. 596) ("the GPDO") for development involving the enlargement, improvement or other alteration of a dwellinghouse.

Under S192 of the Town and Country Planning Act 1990 (as amended) ("TCPA") an application for a proposed operation described in the proposed Certificate of Lawfulness seeks to certify that on the balance of probabilities and following interpretation of relevant planning law and judicial authorities, whether the proposed development would be lawful and immune from enforcement action.

Following the recent judgement in Eatherley v London Borough of Camden [2016] EWHC 3108 (Admin), Mr Justice Cranston specified that it was incumbent upon local planning authorities to review the nature and extent of the engineering operations being sought under applications for Certificates of Lawfulness to determine whether such engineering operations to form a basement constituted a separate activity of substance, under the relevant part of the GPDO.

Given the nature of the excavation, the removal of the ground soil, and the works of structural support to create the space for the basement, being proposed under this application 2016/5650P it is the Council's opinion that the proposed engineering operations, would constitute such separate activity of substance.

However, under S192 of the TCPA the lawfulness of such engineering operations as a separate activity of substance under the GPDO cannot be conclusively presumed and the Council considers that such material planning considerations need to be considered as a part of an application for planning permission.

As a result of these considerations, the Council refuses to grant application 2016/5650/P for the Certificate of Lawfulness (Proposed) and considers that such operations require an application for the grant of planning permission.

**Recommendation:** Refuse Certificate - The proposed basement extension is not considered permitted development as it would necessitate works of excavation, structural support and other such engineering operations, which are considered to be a separate activity of substance therefore falling outside of Class A, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2016 (as amended) and would therefore entail development requiring permission.