

**ICINI PROJECTS LIMITED
ON BEHALF OF MR MARK GOLINSKY**

6 ALBERT TERRACE, LONDON, NW1 7SU

**DECISION NOTICE REFERENCE 2017/2819/P
CONSTRUCTION OF CAMDEN BASEMENT POLICY**

OPINION

1. I am asked to provide an opinion regarding the proper construction and application of the London Borough of Camden (**'Camden'**) Local Plan Policy AB5 (Basements) in the context of Camden's decision, dated 13 October 2017, to refuse planning permission pursuant to reference 2017/2819/P for development described as,

“rebuilding of side extension and boundary wall, extension to existing lower ground level and creation of basement level to residential dwelling with 2no. Sky lights, including associated plant, landscaping and other alterations” (**'the Development'**).

Summary of Advice

2. In summary, I am of the opinion that the ground level of the site is the floor level of the present lowest floor of 6 Albert Terrace. Consequently, the Development would not involve building under an existing basement and would satisfy criterion (g) of Policy A5 of the Camden Local Plan.

Background

3. Mr Mark Golinsky is the freehold owner of 6 Albert Terrace, London, NW1 7SU (**'6 Albert Terrace'**). 6 Albert Terrace comprises a semi-detached five storey Italianate Villa,

including existing 'lower ground level' that is used as a single residential welling (Class C3) within a curtilage of approximately 0.045 hectares. It is situated on the corner of Albert Terrace and Regent's Park Road. It is not a listed building but falls within the Primrose Hill Conservation Area ('the CA') and the setting of a number of Grade II listed heritage assets. It is recognised within the Conservation Area Statement as a building which makes a positive contribution to the special character and appearance of the CA.

4. Camden refused Mr Golinsky's application for planning permission by way of a decision notice dated 13 October 2017. The reasons for refusal included:

- (1) The proposed basement extensions would consist of more than one storey, be under an existing basement, and not be subordinate to the host building contrary to Policy A5 (Basements) of the Camden Local Plan 2017.

5. This Opinion concerns the construction and application of Policy A5.

Legal Principles

6. The generally applicable legal principles include:

Construction of the Development Plan

- (a) The construction of planning policy is a matter of law for the court. Policy statements should be interpreted objectively in accordance with the language used, read in its proper context. They should not be construed as statutory or contractual provisions. Many of the provisions of the development plan are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of local planning authorities, subject to challenge on *Wednesbury* grounds. However, planning authorities do not live in the world of Humpty Dumpty and cannot make the development plan mean what they want (per Lord Reed in Tesco Stores v Dundee City Council [2012] UKSC 13 at [18]-[21]).
 - (b) In determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for development and use of land in the area. The supporting text consists of descriptive and explanatory matter in

respect of policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. A development that accords with the policies in the local plan cannot be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. (per Richards LJ in R (Cherkley Campaign Limited) v Mole Valley DC [2014] EWCA Civ 567 at [16]).

Basement Development

(c) In R (Kent) v RBKC [2016] EWHC 2809 (Admin) Hickinbottom J (as he then was) held in the context of the Royal Borough of Kensington and Chelsea (**'RBKC'**) basement policy that:

(i) In determining and applying the construction of RBKC's basement policy, the terms used from time-to-time to describe a particular storey of a building are not likely to be helpful: and so the fact that a party refers to the lowest floor in a house as the "lower ground floor", or that some planning application document refers to it as a "basement" is of no assistance (see para. 28(i)).

(ii) Whether the relevant storey of accommodation is or is not below the "prevailing ground level" is a fact-specific question involving the exercise of planning judgment, so that in any particular circumstances there is a range of legitimate responses. In Kent it would have been open to RBKC to consider the prevailing ground level and to have found it to be the floor level of the lower ground floor, so that the lower ground floor as a storey would not have been below that level and therefore not a basement for the purposes of RBKC's basement policy (see para. 31).

Relevant Local Plan Policy

7. Policy A5 of the Camden Local Plan includes the words:

“The siting, location, scale and design of basements must have minimal impact on, and be subordinate to, the host Building and property: Basement development should:

- f. not comprise more than one storey
 - g. not be built under an existing basement;
 - h. not exceed 50% of each garden within the property;
 - i. be less than 1.5 times the footprint of the host building in area;
 - j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;
 - k. not extend into or underneath the garden further than 50% of the depth of the garden
 - l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and
 - m. avoid the loss of garden space or trees of townscape or amenity value
- Exceptions to f. to k. above may be made on large comprehensively planned sites.”

8. The supporting text reads:

“6.107 With a shortage of development land and high land values in the borough, the development of basements is a popular way of gaining additional space in homes. Basements are also often included in development in the Central London part of Camden and used for various purposes including commercial, retail and leisure uses, servicing, and storage.

6.108 Basement development and other development that involves excavation changes the ground and water conditions of the area which can potentially lead to Ground instability or flooding. Basement development can also have significant construction impacts due to the need to remove spoil and the general complexities of excavation. The Council recognises the need to protect the environment and adjoining neighbours properties and buildings from these impacts.

6.109 When this policy refers to basement development this includes basements, light-wells and other underground development.

6.110 A basement is a floor of a building which is partly or entirely below ground level. A ground or lower ground floor with a floor level partly below the ground level (for example on a steeply sloping site) will therefore generally be considered basement development.”

(1) Construction of Policy A5 Basements

The Principles

9. As the decision in Kent makes clear at 28(i), the application of nomenclature such as “lower ground floor” and “basement” is of little assistance in determining whether or not

a particular storey of a building constitutes a basement or not. I shall therefore refer to the “bottom floor”.

10. The Oxford English Dictionary definition of basement is “a room or floor below ground level”.
11. The supporting text to Camden Local Plan Policy A5 puts a slight gloss on this by referring to a floor of a building which is “*partly* or entirely below ground level” (emphasis added). On this basis, the explanatory text goes on to refer to the fact that a ground or lower ground floor with a floor level partly below the ground level will be considered basement development.
12. Whether or not a storey constitutes a “basement” is a question of fact and degree. It is a matter of planning judgment.
13. The supporting text at 6.110 may assist with reaching a determination regarding whether a storey is a basement. When construing policy, the objective must be to interpret the meaning the words used were intended to carry. Thus a basement should be read as meaning a floor of a building which is partly or entirely below ground level. However:
 - (a) There is no explanation of what is meant by ground level.
 - (b) It is clear from the wording of paragraph 6.110 of the supporting text and, in particular, the use of the word “generally” that even where a floor is partly below ground level it will not necessarily constitute a basement. Whether it is a basement or not is ultimately a question of judgment.
14. Central to determining whether a floor is a basement or not will be determination of the ground level. This too is a matter of planning judgment. In Kent Hickenbottom J (as he then was) was clear that a decision maker may rationally take the view that the “ground level” is the floor level of the “lower ground floor” of a property (see para. 31).

(2) Application to the Facts

15. I note at the outset that in this case the description of development, accepted by Camden, includes the extension of the “existing lower ground level” and the construction of a basement beneath that.
16. Camden therefore appears to accept that there are at least two ground levels, a lower ground level (being the floor level of the bottom floor) and some other ground level.
17. In my opinion, the 6 Albert Terrace is situated such that the approach taken in Kent should apply. The ground level for the purposes of Policy A5 is the floor level of the bottom floor.
18. I have appended to this opinion the approved plans for the permission granted in Kent. These demonstrate that the relationship between the bottom floor in Kent and other levels is not dissimilar from that in the present case. A comparison between section reference 265-DWG-112-CC for the Development and Drawing No. P_300 Rev TP.01 in Kent shows that, if anything, the reasoning in Kent applies *a fortiori* to the floor level of the extant Bottom Floor of the 6 Albert Terrace, since that level appears more strongly to represent the overall ground level.
19. This accords with common sense. The bottom floor of 6 Albert Terrace is not a ‘basement’.

Conclusion

20. I am therefore of the opinion that the proposed Development would not involve building a basement underneath an existing basement, and would therefore satisfy criterion (g) of Policy A5.

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