

Planning

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Listening Learning Leading

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LPA REF: P21/S4749/LDP
PINS REF: APP/Q3115/X/23/3325922

31 October 2023

Dear Sir/Madam,

Appeal by: Taylor Wimpey West London

At: Thames Farm, Reading Road, Shiplake, Oxfordshire, RG9 3PH

Proposal: Application for a Certification of Lawfulness for Proposed Use or Development to establish that proposed ground stabilisation works, necessary to stabilise the areas of the site affected by dissolution and which are to be undertaken as part of the foundation works, and which comprise compaction grouting, surface ground compacting and associated works, are lawful pursuant to planning permission P16/S0970/O.

1. I refer to the above appeal. This letter forms the council's Statement to be passed to the Inspector.
2. The purpose of this Statement is to outline the council's position and where necessary provide a rebuttal of the appellant's Statement of Case (ASoC). The council's Statement should be read alongside the delegated report and decision notice which were provided with the council's appeal questionnaire. This Statement does not seek to repeat the information in the delegated report.
3. The appeal application has been determined in accordance with Section 192 of the Town and Country Planning Act 1990. The local planning authority were not provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the application. As such, the application for a lawful development certificate was refused.
4. The appellant has provided additional information in support of their appeal that was not submitted for consideration at application stage. The council has reviewed this additional information and it does not alter the council's position.
5. The council remain of the view that the proposed ground stabilisation works go beyond the scope of the outline planning permission granted for 95 dwellings at

the site (P16/S0970/O) and represent a separate and distinct engineering operation that requires planning permission.

6. The main issue is whether the council's decision to refuse to grant a lawful development certificate was well-founded. Planning merits form no part of the assessment of an application for a lawful development certificate, which must be considered in the light of the facts and the law.

Additional information submitted in support of the appeal

7. The appellant has submitted the following documents in support of their appeal:
 - Hydrogeological impact assessment for ground improvement works
 - Technical note – Traffic impact assessment of grouting exercise
 - Build programme
 - Indicative foundation construction method
 - The plans approved under outline planning permission P16/S0970/O
8. The council do not consider that any of these documents contain any information to alter the council's opinion that the proposed groundworks are of a scale and extent that they represent a separate activity of substance and are an engineering operation beyond the construction of foundations.

Hydrogeological impact assessment for ground improvement works

9. This document assesses the risk to the public water supply from the proposed grouting activities. The appellant has submitted the assessment with the aim of demonstrating that the ground stabilisation works will have no effect on the nearby groundwater abstraction borehole.
10. Given that planning merits form no part of the assessment of an application for a lawful development certificate, the conclusions of this report should have no bearing on the Inspectors decision. The document is useful in that it outlines the extent of the ground stabilisation works.
11. The matter of whether the ground stabilisation works are a separate matter of substance are a question of fact and degree. The hydrological impact assessment outlines that topsoil will be excavated and boreholes across an estimated 1.1 hectares of the site will be spaced at three metre intervals to inject a stiff grout. Dynamic compaction methods will then be used to recompact any soft spots in the upper three metres of soil across the site, and the topsoil will be replaced.
12. The council consider that the extent and nature of the groundworks are a separate activity of substance well beyond and entirely separate to the construction of foundations. The council is not aware of any sites where such a significant level of groundwork has been carried out before foundations are constructed and the appellant has also not provided any examples. Based on the method outlined in the hydrological impact assessment, the proposed ground stabilisation works are undoubtedly a separate engineering operation.

Technical note – traffic impact assessment of grouting exercise

13. The appellant has introduced this technical note to demonstrate that the ground remediation works will not have any materially greater effect on the environment which, in their opinion, suggests that they should not be treated as works of scale.
14. The relevance of this technical note to the determination of the appeal is not clear given that it focuses on the planning merits of the proposal in terms of the impact on the local highway network from construction traffic.
15. Notwithstanding this, the council notes that a Construction Traffic Management Plan (CTMP) was approved on 30 September 2019 under discharge of condition application P19/S0311/DIS. The approved CTMP does not include any references to the need for 1,338 to 1,783 lorry movements associated with the grouting works.
16. This discharge of condition application was submitted pursuant to condition 5 of the outline planning permission and this is a pre-commencement condition. Given that development on site has commenced, it would not be possible to agree an alternative CTMP given that the trigger for the approval of the CTMP has now passed.
17. The technical note states that *“the grouting works will need to be undertaken to prepare the ground for building”* and that *“Given the nature of the grouting exercise, this has to be completed in each part of the site prior to other construction activity commencing on the ‘house construction activities’.”* These references to the ground stabilisation and the housing development being two separate activities is at odds with the position outlined in the ASoC, where the ground stabilisation works are referred to as part of the construction of foundations.

Build programme

18. The appellant has submitted a build programme to show that other elements of ground works will take place in conjunction with the ground stabilisation works. The council take the opposite view in that the build programme clearly shows that the ground stabilisation works are a separate operation to the foundations.
19. The compaction grouting will take 20 weeks with the near surface compaction scheduled for eight weeks. The build programme shows that other groundworks do not commence until three months into the build schedule and work on the foundations are scheduled to start some six months after commencement on site.
20. The build programme demonstrates that the proposed ground stabilisation works, and the development permitted under P16/S0970/O are two separate and distinct operations each with their own separate programme of works.

Indicative Foundation Construction Method

21. The appellant has referred to this document as depicting the phasing of the foundation works including the ground stabilisation aspects. The council note that the five stages shown on the drawing will not happen simultaneously and as evidenced in the build programme, the piling will commence some four and a half months after the compaction grouting begins.
22. The information submitted demonstrates that the foundations will be built on the improved surface after the ground improvement works are finished. The ground stabilisation and the construction of the new homes are, in the council's opinion, two activities, each of substance.

The plans approved under outline planning permission P16/S0970/O

23. The appellant has referred to the outline planning permission as a “bare” permission and has included the plans approved at outline stage to demonstrate that none of the approved plans contain any material relevant to foundations. The council notes that the approved plans contain all the necessary information for an outline planning permission and the condition stating the approved plans was attached by the Planning Inspector who allowed the appeal.
24. Plans that are approved as part of an outline planning permission, or indeed any other type of permission, do not generally include any details of foundations. Foundations are in effect included in planning permissions for new buildings. The council's view is that the proposed ground stabilisation goes beyond the construction of foundations and is a separate activity of substance, which requires planning permission.
25. The council notes that the plans approved under the outline planning permission are not the only approved plans for the development of 95 homes at this site. The first condition of P16/S0970/O required the approval of reserved matters, and the subsequent reserved matters consent (P19/S0245/RM) includes a long list of approved plans. The decision notice for P19/S0245/RM is attached as **Appendix A**.
26. Included in the list of approved plans for the reserved matters consent are drawing numbers A253-RM-501 Rev P4, A253-RM-502 Rev P2, A253-RM-503 Rev P2 and A253-RM-504 Rev P2. These are drainage plans and are attached as **Appendix B**. These approved drainage plans show infiltration tanks and trench soakaways.
27. The drainage scheme shown on the approved plans cannot be implemented in conjunction with the proposed grouting. Given that the proposed ground stabilisation would render the approved scheme impossible to implement, this would suggest that the scale and extent of the ground stabilisation works go beyond the scope of the planning permission for 95 homes.

28. It is noted that the appellant has sought to agree an alternative method to deal with surface water drainage through the discharge of condition 11 of the outline planning permission. The appellant has submitted and subsequently withdrawn two requests to discharge the drainage condition. An alternative acceptable solution to drain the site has not yet been found.

Other matters

29. The ASoC refers to the court judgements that were presented with the application. As outlined in the delegated report, these did not persuade the council to accept the appellant's position. The council would like to bring one additional court judgement to the Inspector's attention - Eatherley v London Borough of Camden in 2016, which centred on whether engineering works were a necessary part of a basement development or a separate activity. This judgement is attached as **Appendix C**.
30. In this case the claimant challenged the decision by Camden Council to grant a certificate of lawful development for a single-storey basement extension under permitted development rules. The claimant argued that Camden Council had confused itself by believing that the engineering operations were "necessary" for the basement development to occur and would automatically fall within the scope of Class A of the General Permitted Development Order (GPDO).
31. The judge in the case found this approach to be inconsistent with case law, which stated that an activity could be a "separate activity of substance" even if necessary for, and integral to, the development authorised under the GPDO. In the council's view, the same applies to the appeal proposal. The ground stabilisation works are a separate activity of substance, even if necessary for the permitted homes to be constructed.

Conclusion

32. On the facts of the case and relevant planning law, the proposed ground stabilisation works described in the application would not have been lawful within the meaning of section 192 of the Town and Country Planning Act if begun at the time the application was submitted.
33. The proposed ground stabilisation works would be an extensive operation not permitted by the extant planning permission for 95 homes. The works amount to a different activity and that activity is of such substance that it is not merely ancillary to the works involved in providing foundations. The nature and scale of the ground stabilisation works amount to an engineering operation and the material planning impacts of that engineering operation should be properly assessed as part of the planning application process.
34. The council's refusal to issue a certificate of lawfulness in respect of the appeal proposal was well-founded and the appeal should not succeed. The council therefore respectfully request that the Inspector dismisses the appeal.

Yours faithfully,



Emma Bowerman
Principal Major Applications Officer

Appendices:

- A: Reserved matters decision notice P19/S0245/RM
- B: Drainage plans listed as approved plans for P19/S0245/RM
- C: Eatherley v London Borough of Camden

Appendix A

Reserved matters decision notice P19/S0245/RM

PLANNING

ELECTRONIC
VERSION

Planning Decision

P19/S0245/RM

Taylor Wimpey UK Ltd.
c/o Barton Willmore LLP
The Blade
Abbey Square
Reading
Berkshire
RG1 3BE

APPROVAL OF RESERVED MATTERS

Application No : **P19/S0245/RM**

Application proposal, including any amendments :

Reserved Matters for 95 dwellings (appearance, landscaping, scale and layout) pursuant to outline application P16/S0970/O

(as amended by plans and supporting documents received 18 April 2019, 14 May 2019 and 17 May 2019).

Site Location : **Thames Farm Reading Road Shiplake RG9 3PH**

South Oxfordshire District Council hereby gives notice that **approval is GRANTED** in respect of the Reserved Matters referred to above strictly in accordance with the description, plans and specifications contained in the application (as varied by any amendments referred to above) subject to any conditions imposed on the outline planning permission and to the conditions hereby imposed :

1. That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans,

Layouts

CB_81_152_000, CB_81_152_001 Rev J, CB_81_152_002 Rev E,
CB_81_152_003 Rev E, CB_81_152_004 Rev E, CB_81_152_005 Rev E,
CB_81_152_006 Rev E, CB_81_152_007 Rev E, CB_81_152_008 Rev E,
CB_81_152_907 Rev E, CB_81_152_908 Rev E,

Street scenes

CB_81_152_SS_01 Rev B, CB_81_152_SS_02 Rev B, CB_81_152_SS_03



Rev B, CB_81_152_SS_04 Rev B, CB_81_152_SS_05 Rev B,
CB_81_152_SS_06 Rev B, CB_81_152_SS_07 Rev B, CB_81_152_SS_08
Rev C, CB_81_152_SS_09 Rev B

Highways

157.0001.001 Rev F, 157.0001.002 Rev E, 157.0001.003 Rev E,
157.0001.004 Rev E, 157.0001.005 Rev F, 157.0001.006 Rev C,

Landscape and trees

1150_KC_XX_YTREE_TPP01 Rev B, 4049_100 Rev B, 4049_101 Rev B,
4049_102 Rev B, 4049_103 Rev B, 4049_104 Rev B, 4049_105 Rev B,
4049_106 Rev A, 4049_107 Rev B, 4049_108 Rev A, 4049_109, 4049_110,

Technical

A253_RM_101 Rev P5, A253_RM_111 Rev P6, A253_RM_115 Rev P4,
A253_RM_121 Rev P3, A253_RM_122 Rev P3, A253_RM_141 Rev P8,
A253_RM_161 Rev P5, A253_RM_171 Rev P2, A253_RM_501 Rev P4,
A253_RM_502 Rev P2, A253_RM_503 Rev P2, A253_RM_504 Rev P2,
A253_RM_511 Rev P1, A253_RM_520 Rev P4, A253_RM_530 Rev P2,
A253_RM_601 Rev P2, A253_RM_602 Rev P4,

Housetypes

CB_81_152_CV_HA_E01 Rev A, CB_81_152_CV_HA_E02 Rev A,
CB_81_152_CV_HA_P01 Rev B, CB_81_152_CV_HA_E03,
CB_81_152_CV_HA_E04, CB_81_152_CV_HA_P02 Rev A,
CB_81_152_CV_NA47_E01 Rev A, CB_81_152_CV_NA47_P01 Rev B,
CB_81_152_CV_NA47_E03, CB_81_152_CV_NA47_P02,
CB_81_152_CV_NA47_E04 Rev A, CB_81_152_CV_NA47_P03 Rev A,
CB_81_152_NA47_M4(2), CB_81_152_CV_NA45_E01,
CB_81_152_CV_NA45_E02, CB_81_152_CV_NA45_P01,
CB_81_152_CV_NA45_E03 Rev A, CB_81_152_CV_NA45_P02 Rev A,
CB_81_152_NA45_M4(2) CB_81_152_CV_NT31+_E01 Rev A,
CB_81_152_CV_NT31+_P01 Rev A, CB_81_152_CV_NT30+_E01,
CB_81_152_CV_NT30+_E02, CB_81_152_CV_NT30+_P01,
CB_81_152_CV_NT30+_E03 Rev A, CB_81_152_CV_NT30+_E04 Rev A,
CB_81_152_CV_NT30+_P02 Rev A, CB_81_152_CV_NA32+_E01,
CB_81_152_CV_NA32+_E02, CB_81_152_CV_NA32+_P01 Rev A,
CB_81_152_CV_NA32+_E03, CB_81_152_CV_NA32+_P02,
CB_81_152_CV_NA32+_P01, CB_81_152_CV_NT31_E01 Rev B,
CB_81_152_CV_NT31_P01 Rev B, CB_81_152_CV_NT31_M4(2) Rev A,
CB_81_152_CV_NA21_E01, CB_81_152_CV_NA21_E02,
CB_81_152_CV_NA21_P01, CB_81_152_CV_NA21_E03,
CB_81_152_CV_NA21_P02, CB_81_152_CV_NA21_M4(2),
CB_81_152_CV_NA22_E01, CB_81_152_CV_NA22_E02,
CB_81_152_CV_NA22_P01, CB_81_152_CV_NA22_E03,

CB_81_152_CV_NA22_P02, CB_81_152_CV_NA22_E04,
 CB_81_152_CV_NA22_P03, CB_81_152_CV_NA22_E05,
 CB_81_152_CV_NA22_P04, CB_81_152_NA22_M4(2),
 CB_81_152_CV_PA34+_E01, CB_81_152_CV_PA34+_P01 Rev A,
 CB_81_152_PA34+_M4(2) Rev A, CB_81_152_CV_2BCH_E01 Rev A,
 CB_81_152_CV_2BCH_P01 Rev A, CB_81_152_CV_1BF_E01 Rev A,
 CB_81_152_CV_1BF_P01 Rev A, CB_81_152_1BF_M4(2) Rev A,
 CB_81_152_FS_NT31_E01 Rev B, CB_81_152_FS_NT31_P01 Rev B,
 CB_81_152_FS_NT30_E01 Rev A, CB_81_152_FS_NT30_P01 Rev A,
 CB_81_152_FS_NA21_E01, CB_81_152_FS_NA21_P01, CB_81_152_
 FS_NA22_E01, CB_81_152_FS_NA22_E02, CB_81_152_FS_NA22_P01,
 CB_81_152_FS_NA22_E03 Rev B, CB_81_152_FS_NA22_P02 Rev B,
 CB_81_152_FS_NA22_E04, CB_81_152_FS_NA22_P03, CB_81_152_
 FS_NB32_E01 Rev A, CB_81_152_FS_NB32_P01 Rev A, CB_81_152_
 NB32_M4(2), CB_81_152_FS_NA34_E01, CB_81_152_FS_NA34_P01,
 CB_81_152_FS_NA34_M4(2), CB_81_152_WC_HA_E01 Rev A,
 CB_81_152_WC_HA_E02 Rev A, CB_81_152_WC_HA_E03, CB_81_152_
 WC_HA_E04, CB_81_152_WC_HA_P01 Rev B, CB_81_152_WC_HA_E05,
 CB_81_152_WC_HA_E06, CB_81_152_WC_HA_P02 Rev A, CB_81_152_
 WC_NA47_E02 Rev A, CB_81_152_WC_NA47_P01 Rev A, CB_81_152_
 WC_NA47_E03 Rev A, CB_81_152_WC_NA47_P02 Rev A, CB_81_152_
 WC_NT30+_E01 Rev A, CB_81_152_WC_NT30+_E01 Rev A, CB_81_152_
 GAR_E01 Rev B, CB_81_152_GAR_E02 Rev A, CB_81_152_GAR_E04,
 CB_81_152_GAR_E05 Rev A, CB_81_152_GAR_E06 Rev B, CB_81_152_
 GAR_E07, CB_81_152_GAR_E08, CB_81_152_GAR_E09 Rev A,
 CB_81_152_GAR_E10, CB_81_152_BIN_CYL_E01 Rev A, CB_81_152_
 SUB_E01, except as controlled or modified by conditions of this permission.

Reason: To secure the proper planning of the area in accordance with Development Plan policies.

2. Before occupation of any of the dwellings that have a private garden with landscaping on the boundary, a guide for future residents of these dwellings, outlining how to manage and maintain that landscaping, shall be submitted to and approved in writing by the Local Planning Authority. Within one month of occupation, the first residents of each dwelling shall be provided with a copy of the approved guide.

For the avoidance of doubt, the relevant plots are plots 53 to 61 (inclusive), plot 31 and plot 12.

Reason: To help to assimilate the development into its surroundings in accordance with Policies CSEN1 and CSQ3 of the South Oxfordshire Core Strategy 2027 and Policies G2, C9 and D1 of the South Oxfordshire Local Plan 2011.

3. The landscaping scheme as shown on the approved plans shall be implemented in accordance with Landscape Management Plan CSA/4049/01 and thereafter be maintained in accordance with this Plan. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Reason: To help to assimilate the development into its surroundings in accordance with Policies CSEN1 and CSQ3 of the South Oxfordshire Core Strategy 2027 and Policies G2, C9 and D1 of the South Oxfordshire Local Plan 2011.

4. Before occupation of any dwelling, a Travel Plan Statement and a Residential Travel Information Pack shall be submitted to and approved in writing by the Local Planning Authority. Within one month of occupation, the first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To promote the use of non car modes of transport in accordance with Policy CSM2 of the South Oxfordshire Core Strategy 2027.

5. Visibility splays of 2.4m x 25m at the junctions of the internal estate roads within the site shall be provided and maintained at all times. Within the visibility envelopes, no obstructions, inclusive of fencing and boundary walls etc. shall exceed 600mm in height and any planting shall be located outside and clear of the visibility envelopes.

Reason: In the interest of highway safety in accordance with Policy T1 of the South Oxfordshire Local Plan 2011.

6. Prior to occupation of any dwelling or the use of the proposed allotment area, the main vehicle access to the site as agreed under the outline planning permission reference P16/S0970/O shall be fully constructed and completed in accordance with the approved details.

Reason: In the interest of highway safety in accordance with Policy T1 of the South Oxfordshire Local Plan 2011.

NB: The development to which this permission relates is liable to pay the Community Infrastructure Levy (CIL) as set out in the South Oxfordshire District Charging Schedule. Upon planning permission, a Liability Notice will be issued to the nominated person/company liable for CIL. The person/company liable for CIL must submit a commencement notice to the Local Planning Authority BEFORE development commences (CIL Form 6). The Local Planning

Authority will send a Demand Notice to the person/company liable for CIL when the Commencement Notice is received. FAILURE TO FOLLOW THE CIL PROCEDURES COULD RESULT IN SURCHARGES AND THE LOSS OF ANY EXEMPTION RELIEF IF ENTITLED. Guidance on CIL is available on the planning portal website <http://www.planningportal.co.uk/cil> or the council's website <http://www.southoxon.gov.uk/cil> together with the process for paying CIL.

NB: This planning permission needs to be read in conjunction with an Agreement dated 19 June 2017 made under Section 106 of the Town and Country Planning Act 1990 between South Oxfordshire District Council, Claire Susan Engbers, Oxfordshire County Council, Thames Farm Developments Limited and Howard Presky. This Agreement will take effect when the planning permission is implemented.

NB: The Advance Payments Code (APC), Sections 219 -225 of the Highways Act, is in force in the county to ensure financial security from the developer to offset the frontage owners' liability for private street works, typically in the form of a cash deposit or bond. Should a developer wish for a street or estate to remain private then to secure exemption from the APC procedure a 'Private Road Agreement' must be entered into with the County Council to protect the interests of prospective frontage owners, which will be subject to technical approval.

NB: Where works are required to be carried out within the public highway, the applicant is advised not to commence such work before formal approval has been granted by Oxfordshire County Council by way of either:

- i. a Section 184 Notice under the Highways Act 1980, or
- ii. a legal agreement between the applicant and Oxfordshire County Council.

NB: It is the responsibility of the developer to ensure proper provision is made for the surface water drainage of the site to ground, watercourse or surface water sewer. To avoid foul sewer flooding, surface water must not be drained to a foul sewer. The use of sustainable drainage systems (known as SUDS) is very much encouraged. SUDS offer an alternative approach to traditional engineered drainage solutions by detaining run-off on site and releasing it slowly into watercourses or to ground (e.g. dry ditches/swales, detention/attenuation ponds, integrated wetlands). Source control techniques are also increasingly popular - e.g. the use of porous (as opposed to impermeable) paving and 'green roofs' which allow rainwater re-use. These techniques reduce the likelihood of flash flooding, result in greatly improved water quality, are often cheaper and easier to maintain than traditional engineered drainage solutions (i.e. involving seal-trapped gullies and petrol interceptors), and can provide wildlife habitats.

NB: The above permission/consent may contain pre-conditions, which require

specific matters to be approved by the Local Planning Authority before a specified stage in the development occurs. This means that a lawful commencement of the approved development/works cannot be made until the particular requirements of the pre-condition(s) have been met.

NB: This approval is specific to the details of the development as shown on the approved plans and other associated documentation. Unless otherwise agreed by the Council any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. As such the Council must be advised in writing of any proposed variations from the approved plans and other associated documentation at the earliest stage possible. A decision will then be made as to whether the changes can be dealt with as a minor revision to the approved details or whether a revised application is required.

This permission refers only to that required under the Town and Country Planning Acts and does not include any consent or approval under any other enactment, byelaw, order or regulation.

Reason for Decision

The principle of the development has already been established through the grant of outline planning permission on appeal. The access arrangements have also been approved under the outline consent. The only matters to be considered under this application relate to the details of the development in terms of appearance, landscaping, layout and scale.

Reserved matters approval is granted as the layout, scale, appearance and landscaping of the development are acceptable and the proposal complies with the relevant Development Plan Policies.

In accordance with paragraph 38 of the National Planning Policy Framework the Council takes a positive and proactive approach to development proposals. The Planning Service works with applicants/agents in a positive and proactive manner by offering a pre-application advice service and by advising applicants/agents of issues that arise during the processing of their application and where possible suggesting solutions to problems.

Note : A more detailed explanation is available in the officer's report, available in the application case file.

Key Policies

CS1	Presumption in favour of sustainable development
CSB1	Conservation and improvement of biodiversity
CSC1	Delivery and contingency
CSEN1	Landscape protection
CSG1	Green infrastructure
CSH1	Amount and distribution of housing
CSH2	Housing density
CSH3	Affordable housing
CSH4	Meeting housing needs
CSHEN1	The Strategy for Henley-on-Thames
CSQ4	Design briefs for greenfield neighbourhoods and major development sites
CSI1	Infrastructure provision
CSM1	Transport
CSM2	Transport Assessments and Travel Plans
CSQ3	Design
CSR1	Housing in villages
CSS1	The Overall Strategy
C4	Landscape setting of settlements
C6	Maintain & enhance biodiversity
C8	Adverse affect on protected species
C9	Loss of landscape features
D1	Principles of good design
D10	Waste Management
D12	Public art
D2	Safe and secure parking for vehicles and cycles
D3	Outdoor amenity area
D4	Reasonable level of privacy for occupiers
D6	Community safety
EP1	Adverse affect on people and environment
EP2	Adverse affect by noise or vibration
EP3	Adverse affect by external lighting
EP4	Impact on water resources
EP6	Sustainable drainage
EP7	Impact on ground water resources
EP8	Contaminated land
CON12	Archaeological field evaluation
H4	Housing sites in towns and larger villages outside Green Belt
G2	Protect district from adverse development
G3	Development well served by facilities and transport
G4	Protection of Countryside
R2	Provision of play areas on new housing development
R6	Public open space in new residential development

- T1 Safe, convenient and adequate highway network for all users
- T2 Unloading, turning and parking for all highway users

Note : The full wording of the above policies are available on our website or in the local plan documents, at our offices.



Head of Planning
23rd May 2019

STATUTORY INFORMATIVE

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for the Environment under sections 78 and 79 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so within **six months** of the date of this notice, using a form which you can get from :

The Planning Inspectorate
Customer Support Unit
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
Telephone : 0303 444 5000
www.planningportal.gov.uk
email: enquiries@pins.gsi.gov.uk.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by him.

Purchase Notice

If either the local planning authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council

(District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI, Chapter 1 of the Town and Country Planning Act 1990.

Compensation

In certain circumstances compensation may be claimed from the local planning authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

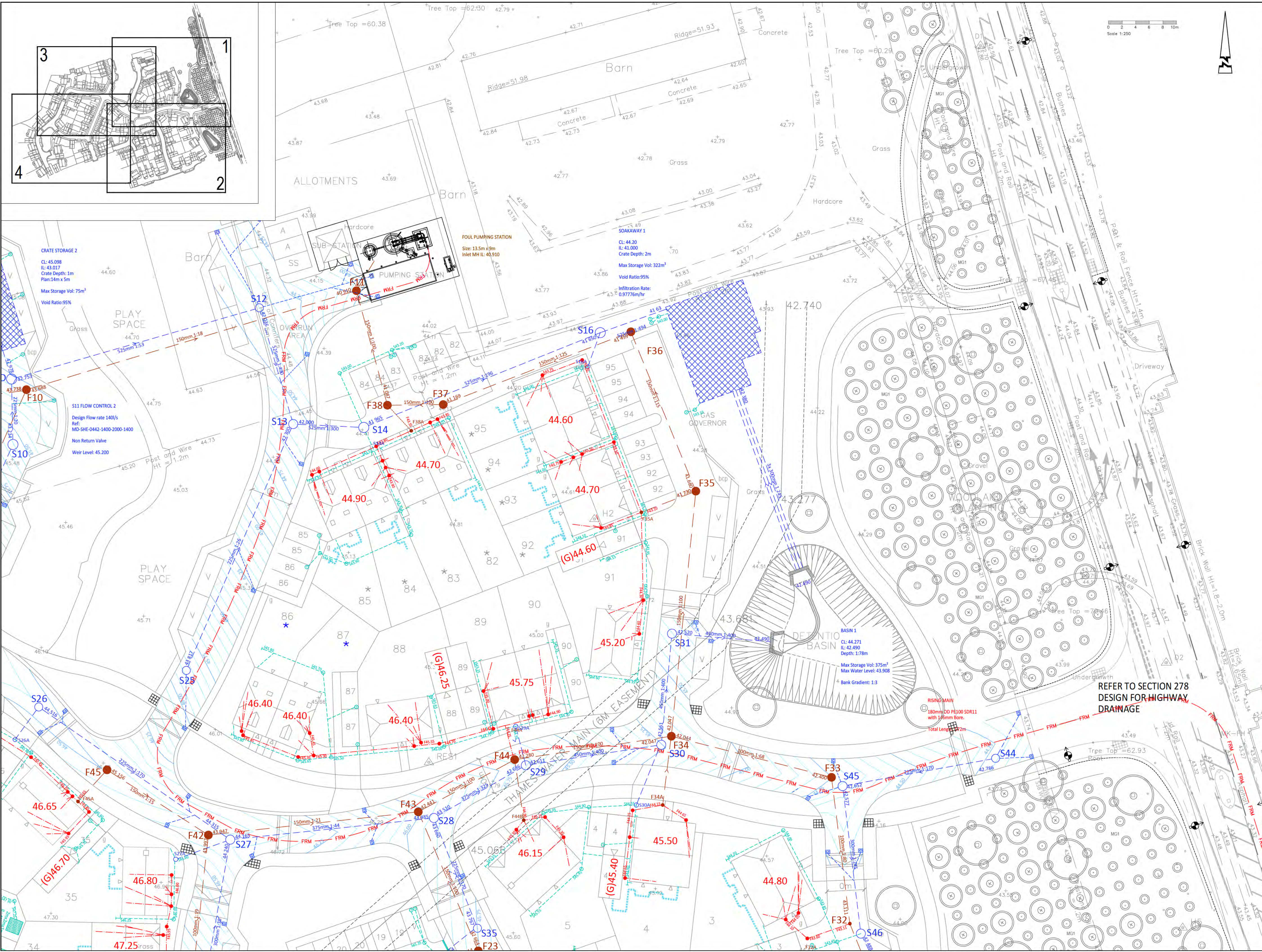
These circumstances are set out in sections 114 and related provisions of the Town and Country Planning Act 1990.

OTHER INFORMATION

The Planning Portal contains a wide range of helpful planning-related guidance and services. You may wish to view their website (www.planningportal.gov.uk).

Appendix B

Drainage plans listed as approved plans for
P19/S0245/RM



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DRAINAGE NOTES:

- Do not scale.
- Refer to all other Project Drawings.
- All adoptable drainage works to be constructed as detailed in Sewers for Adoption, 7th edition or as stipulated in the Water Authorities Addendum.
- All public sewers are to be the subject of a Section 104 agreement of the Water Industry Act 1991.
- Invert levels of existing manholes and sewers are to be checked on site before construction commences and results reported to engineers.
- All manhole ironworks to comply with BS EN124, and be stamped with ISI Kitemark. Covers to suit loading as below;
 - Carriageways and Roads - D400
 - Driveways and Verges - C250
 - Footways and Pedestrian Areas - B125
- All sewer pipes, up to, and including 225mm are to be vitrified clay to BS EN252. All sewer pipes 300mm diameter and above to concrete pipes to BS EN1916.
- All drainage shall be installed and tested strictly in accordance with the Manufacturers' printed instructions, BS EN 752, BS EN 1601, Local Water Authority requirements and the Building Regulations.
- All bedding shall be Class S unless noted otherwise.
- All trenches under existing and proposed public highways are to be backfilled with thoroughly compacted Type 1 granular sub-base material.
- Drainage laid beneath roads and areas of vehicular access (car parking etc) with less than 1200mm of cover shall be encased in concrete bed and surround with associated movement joints. Drainage laid beneath paths, footways and pedestrian areas with less than 900mm of cover shall be similarly treated.
- Chambers with outgoing pipes greater than 600mm diameter shall be fitted with guard bars, safety chains or other approved safety devices.
- The use of precast concrete products made with sulphate resisting cement is mandatory, unless a laboratory report proves such practices are not necessary.
- All gully connections to use a minimum diameter pipe of 150mm and to be surrounded by a minimum of 150mm of grade C8/C10 concrete over its full length (which should not exceed 15m) and its connection to the carrier system.
- Trees and shrubs of a large size or heavy canopy with a moderate or high water demand must not be planted within any sewer easement. Gullies within and adjacent to area of site works to be suction cleansed at commencement and completion of works.
- 1m deep root barrier of an approved type to be installed vertically along the back edging kerb of all areas of footway/demarcation to protect from both proposed and future plantation.

DRAINAGE STRATEGY KEY

FOUL **STORM**

- Proposed adoptable sewer & MH (manhole type 314) with Invert Level
- Adoptable Foul Water Rising Main
- Proposed adoptable highway gully and connection
- Proposed private drains
- Proposed private rodding eye
- Proposed private inspection chamber and invert level
- Proposed private highway gully
- Proposed private yard gully
- Proposed precast linear drainage channel
- Private Geo-cellular infiltration tank
- Private trench soakaway with dimension 2mx2mx1m
- Land Drain (Refer to A253-S24 for details)
- Primary Contour (0.25)
- Secondary Contour
- Proposed FFL
- Proposed Structural/Garage Level

Rev	Date	Description	Drawn	Checked
P4	05/19	Updated for Pump Station Design	FN	LPA
P3	04/19	Strategy Updated following soakage tests, and drawing set updated following planning comments	FN	LPA
P2	01/19	Minor Updates	FN	LPA

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Client: **TAYLOR WIMPEY**

Project: **THAMES FARM
READING ROAD
SHIPLAKE**

Title: **RESERVED MATTERS
APPLICATION DRAINAGE
LAYOUT SHEET 1**

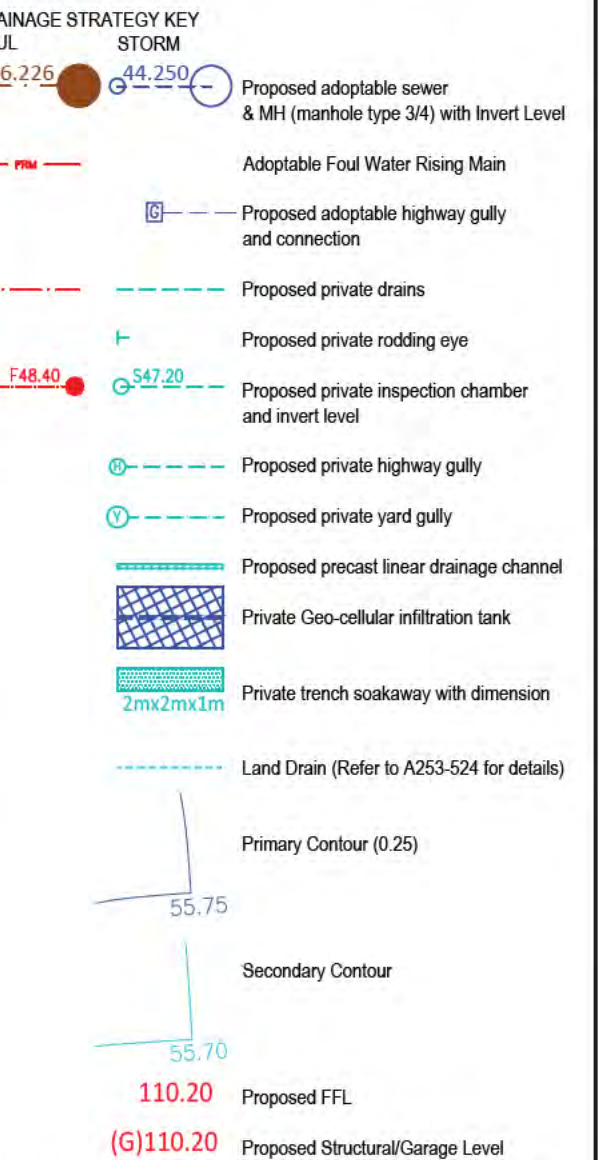
Status:

Scale	Date	Drawn	Checked
1:250 @ A1	APRIL 2019	FN	LPA

Drawing No	Revision
A253-RM-501	P4

DRAINAGE NOTES:

- Do not scale.
- Refer to all other Project Drawings.
- All adoptable drainage works to be constructed as detailed in Sewers for Adoption, 7th edition or as stipulated in the Water Authorities Addendum.
- All public sewers are to be the subject of a Section 104 agreement of the Water Industry Act 1991.
- Invert levels of existing manholes and sewers are to be checked on site before construction commences and results reported to engineers.
- All manhole ironworks to comply with BS EN124, and be loaded with BS1 Kitemark. Covers to suit loading as below:
 - Carriageways and Roads - D400
 - Driveways and Verges - C250
 - Footways and Pedestrian Areas - B125
- All sewer pipes, up to, and including 225mm are to be vitrified clay to BS EN295. All sewer pipes 300mm diameter and above to concrete pipes to BS EN1916.
- All drainage shall be installed and tested strictly in accordance with the Manufacturers' printed instructions, BS EN 752, BS EN 1601, Local Water Authority requirements and the Building Regulations.
- All bedding shall be Class S unless noted otherwise.
- All trenches under existing and proposed public highways are to be backfilled with thoroughly compacted Type 1 granular sub-base material.
- Drainage laid beneath roads and areas of vehicular access (car parking etc) with less than 1200mm of cover shall be encased in concrete bed and surround with associated movement joints. Drainage laid beneath paths, footways and pedestrian areas with less than 900mm of cover shall be similarly treated.
- Chambers with outgoing pipes greater than 600mm diameter shall be fitted with guard bars, safety chains or other approved safety devices.
- The use of precast concrete products made with sulphate resisting cement is mandatory, unless a laboratory report proves such precautions are not necessary.
- All gully connections to use a minimum diameter pipe of 150mm and to be surrounded by a minimum of 150mm of grade C8/C10 concrete over its full length (which should not exceed 15m) and its connection to the carrier system.
- Trees and shrubs of a large size or heavy canopy with a moderate or high water demand must not be planted within any sewer easement.
 - Gullies within and adjacent to area of site works to be suction cleansed at commencement and completion of works.
- 1m deep root barrier of an approved type to be installed vertically along the back edge of all areas of footway/ demarcation to protect from both proposed and future plantation.



P2	05/19	Updated for Pump Station Design	FN	LPA
P1	04/19	First Issue	FN	LPA
Rev	Date	Description	Drawn	Checked



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Client

TAYLOR WIMPEY

Project
**THAMES FARM
READING ROAD
SHIPLAKE**

Title
**RESERVED MATTERS
APPLICATION DRAINAGE
LAYOUT SHEET 2**

Status

Scale

1:250 @ A1

Date

APRIL 2019

Drawn

FN

Checked

LPA

Revision

P2

Drawing No

A253-RM-502

Scale

1:250

Date

APRIL 2019

Drawn

FN

Checked

LPA

Revision

P2

Drawing No

A253-RM-502

Scale

1:250

Date

APRIL 2019

Drawn

FN

Checked

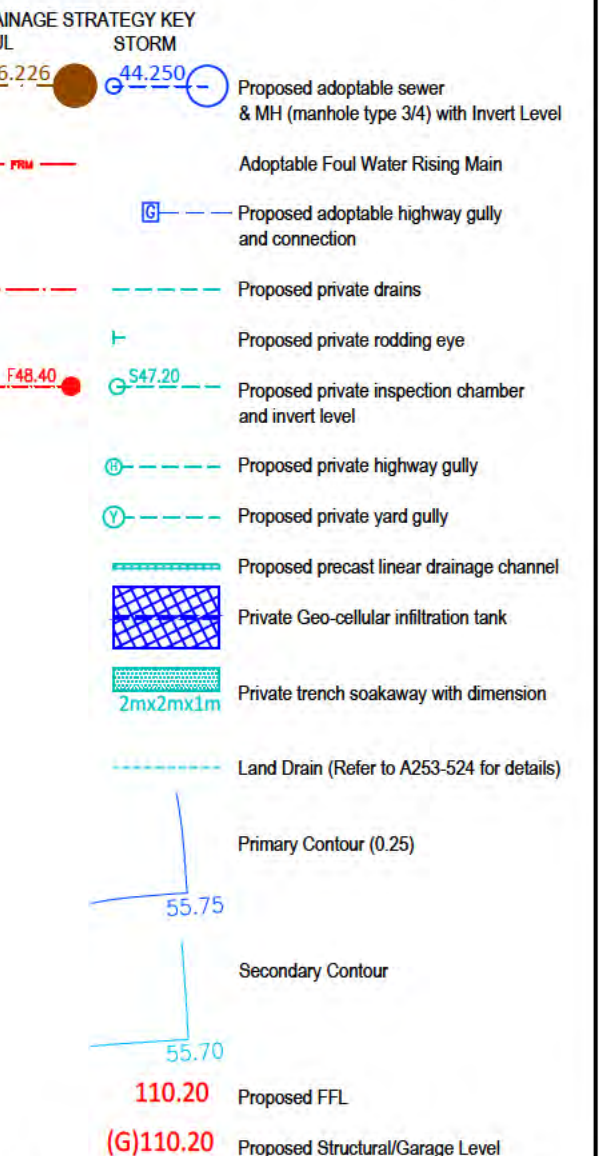
LPA

Revision

P2

DRAINAGE NOTES:

- Do not scale.
- Refer to all other Project Drawings.
- All adoptable drainage works to be constructed as detailed in Sewers for Adoption, 7th edition or as stipulated in the Water Authorities Addendum.
- All public sewers are to be the subject of a Section 104 agreement of the Water Industry Act 1991.
- Invert levels of existing manholes and sewers are to be checked on site before construction commences and results reported to engineers.
- All manhole ironworks to comply with BS EN124, and be stamped with BSI Kitemark. Covers to suit loading as below:
 - Carriageways and Roads - D400
 - Driveways and Verges - C250
 - Footways and Pedestrian Areas - B125
- All sewer pipes, up to, and including 225mm are to be vitrified clay to BS EN255. All sewer pipes 300mm diameter and above to concrete pipes to BS EN1916.
- All drainage shall be installed and tested strictly in accordance with the Manufacturers' printed instructions, BS EN 752, BS EN 1601, Local Water Authority requirements and the Building Regulations.
- All bedding shall be Class S unless noted otherwise.
- All trenches under existing and proposed public highways are to be backfilled with thoroughly compacted Type 1 granular sub-base material.
- Drainage laid beneath roads and areas of vehicular access (car parking etc) with less than 1200mm of cover shall be encased in concrete bed and surround with associated movement joints. Drainage laid beneath paths, footways and pedestrian areas with less than 900mm of cover shall be similarly treated.
- Chambers with outgoing pipes greater than 600mm diameter shall be fitted with guard bars, safety chains or other approved safety devices.
- The use of precast concrete products made with sulphate resisting cement is mandatory, unless a laboratory report proves such precautions are not necessary.
- All gully connections to use a minimum diameter pipe of 150mm and to be surrounded by a minimum of 150mm of grade C8/C10 concrete over its full length (which should not exceed 15m) and its connection to the carrier system.
- Trees and shrubs of a large size or heavy canopy with a moderate or high water demand must not be planted within any sewer easement.
- Gullies within and adjacent to area of site works to be suction cleansed at commencement and completion of works.
- 1m deep root barrier of an approved type to be installed vertically along the back edging kerb of all areas of footway/demarcation to protect from both proposed and future plantation.



P2	05/19	Updated for Pump Station Design	FN	LPA
P1	04/19	First Issue	FN	LPA
Rev	Date	Description	Drawn	Checked

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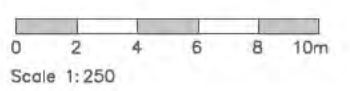
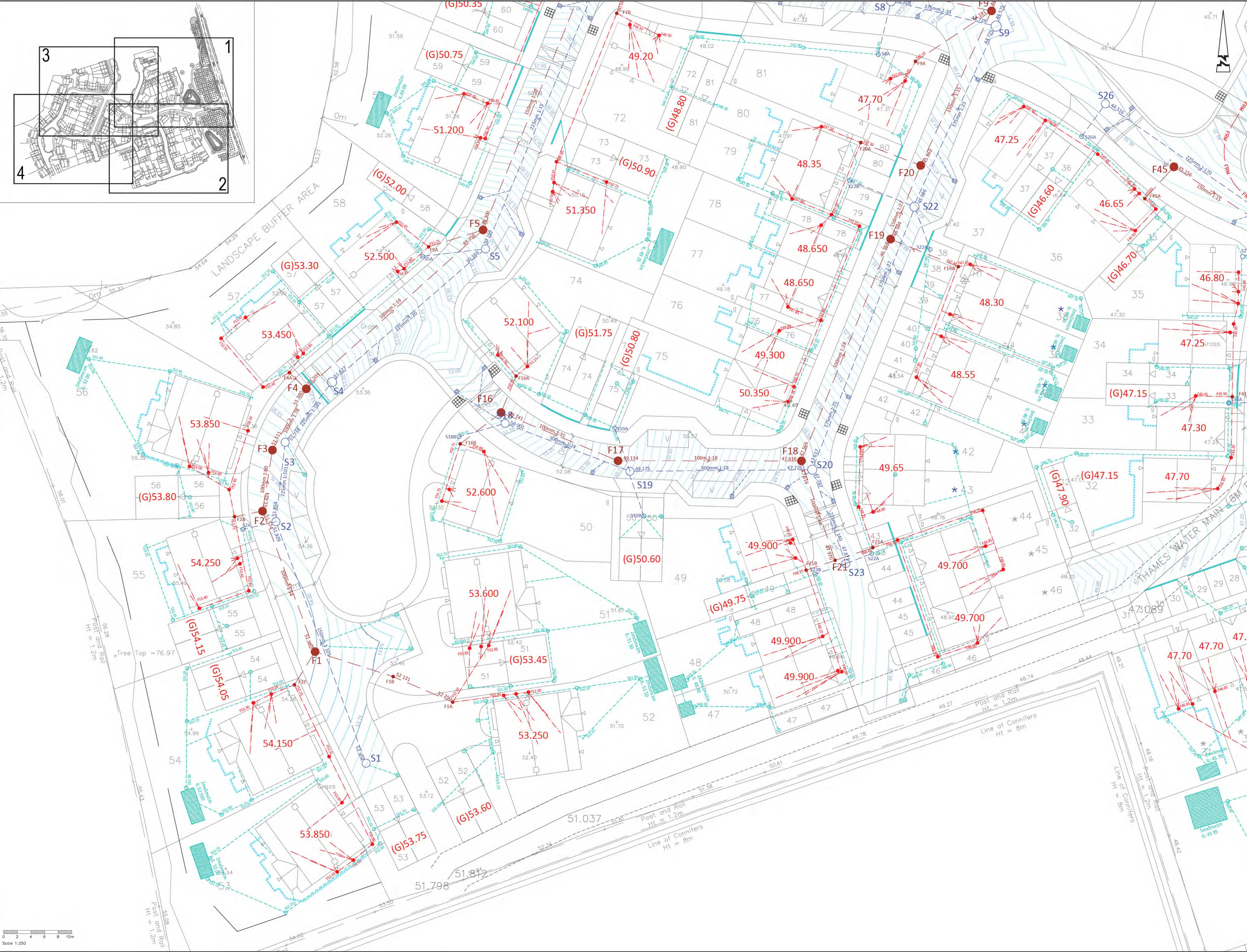
TAYLOR WIMPEY

Project
**THAMES FARM
READING ROAD
SHIPLAKE**

Title
**RESERVED MATTERS
APPLICATION DRAINAGE
LAYOUT SHEET 3**

Status

Scale	Date	Drawn	Checked
1:250 @ A1	APRIL 2019	FN	LPA
Drawing No	Revision		
A253-RM-503	P2		



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DRAINAGE NOTES:

- Do not scale.
- Refer to all other Project Drawings.
- All adoptable drain works to be constructed as detailed in Sewers for Adoption, 7th edition or as stipulated in the Water Authorities Addendum.
- All public sewers are to be the subject of a Section 104 agreement of the Water Industry Act 1991.
- Invert levels of existing manholes and sewers are to be checked on site before construction commences and results reported to engineers.
- All manhole ironworks to comply with BS EN124, and be stamped with ISI Kitemark. Covers to suit loading as below:
 - Carriageways and Roads - D400
 - Driveways and Verges - C250
 - Footways and Pedestrian Areas - B125
- All sewer pipes, up to, and including 225mm are to be vitrified clay to BS EN295. All sewer pipes 300mm diameter and above to concrete pipes to BS EN1916.
- All drainage shall be installed and tested strictly in accordance with the Manufacturer's printed instructions, BS EN 752, BS EN 1601, Local Water Authority requirements and the Building Regulations.
- All bedding shall be Class S unless noted otherwise.
- All trenches under existing and proposed public highways are to be backfilled with thoroughly compacted Type 1 granular sub-base material.
- Drainage laid beneath roads and areas of vehicular access (car parking etc) with less than 1200mm of cover shall be encased in concrete bed and surround with associated movement joints. Drainage laid beneath paths, footways and pedestrian areas with less than 900mm of cover shall be similarly treated.
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- All gully connections to use a minimum diameter pipe of 150mm and to be surrounded by a minimum of 150mm of grade C8/C10 concrete over its full length (which should not exceed 15m) and its connection to the carrier system.
- Trees and shrubs of a large size or heavy canopy with a moderate or high water demand must not be planted within any sewer easement. Gullies within and adjacent to area of site works to be suction cleansed at commencement and completion of works.
- 1m deep root barrier of an approved type to be installed vertically along the back edging of all areas of footway/demarcation to protect from both proposed and future plantation.

DRAINAGE STRATEGY KEY

FOUL

- Proposed adoptable sewer & MH (manhole type 34) with Invert Level
- Adoptable Foul Water Rising Main
- Proposed adoptable highway gully and connection
- Proposed private drains
- Proposed private rodding eye
- Proposed private inspection chamber and invert level
- Proposed private highway gully
- Proposed private yard gully
- Proposed precast linear drainage channel
- Private Geo-cellular infiltration tank
- Private trench soakaway with dimension
- Land Drain (Refer to A253-524 for details)
- Primary Contour (0.25)
- Secondary Contour
- Proposed FFL
- Proposed Structural/Garage Level

P2	05/19	Updated for Pump Station Design	FN	LPA
P1	04/19	First Issue	FN	LPA
Rev	Date	Description	Drawn	Checked

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Client

TAYLOR WIMPEY

Project

**THAMES FARM
READING ROAD
SHIPLAKE**

Title

**RESERVED MATTERS
APPLICATION DRAINAGE
LAYOUT SHEET 4**

Status

Scale	Date	Drawn	Checked
1:250 @ A1	APRIL 2019	FN	LPA

Drawing No

A253-RM-504

Revision

P2

Appendix C

Eatherley v London Borough of Camden



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England and Wales High Court (Administrative Court) Decisions

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales High Court \(Administrative Court\) Decisions](#) >> Eatherley v London Borough of Camden & Anor [2016] EWHC 3108 (Admin) (02 December 2016)
URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2016/3108.html>
Cite as: [2016] WLR(D) 649, [2016] EWHC 3108 (Admin), [2017] PTSR 288

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Neutral Citation Number: [2016] EWHC 3108 (Admin)

Case No: CO/3055/2016

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL
02/12/2016

B e f o r e :

THE HON. MR JUSTICE CRANSTON

Between:

EATHERLEY

Claimant

- and -

LONDON BOROUGH OF CAMDEN

Defendant

- and -

JAMES IRELAND

Interested Party

Mr Martin Westgate QC, Mr Gwion Lewis and Mr Matthew Fraser (instructed by Hodge Jones & Allen Solicitors) for the Claimant

**Mr Timothy Straker QC and Ms Sappho Dias (instructed by Mr Pritej Mistry) for the Defendant
Mr Meyric Lewis (instructed by Ashtons Legal) for the Interested Party**

Hearing date: 22 November 2016

HTML VERSION OF JUDGMENT 

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Mr Justice Cranston:

Introduction

1. This is a challenge to the decision of the London Borough of Camden ("the Council") to grant a lawful development certificate under section 192 of the Town and Country Planning Act 1990 ("the 1990 Act") to the interested party, Mr James Ireland. It was for a development described in it as the excavation of a single story basement under the footprint of what is a terrace house in north London. The challenge is brought by a neighbour, Mr Michael Eatherley.
2. The challenge is by means of a claim for judicial review and raises a question about the extent to which subterranean development can be carried out relying on the current regime of permitted development rights. The question is of general interest but arises particularly frequently in central London because of economic and social factors, in general terms, the increasing pressure for space. It is a matter of controversy in the planning world and there is a split between local planning authorities as to the correct answer: *Lisle-Mainwaring v. Royal Borough of Kensington and Chelsea* [2015] EWHC 2105 (Admin), [43]-[45], per Lang J.

Background

3. On 18 December 2015, Mr Ireland applied for a lawful development certificate for the formation of new basement accommodation. He had applied in November 2013 with a basement proposal including a front lightwell, but that application was withdrawn. An application for a lawful development certificate was made in March 2014, but that was rejected by the Council's development control (planning) committee in October 2014. An appeal against that decision was later withdrawn.
4. The December 2015 application was accompanied by a series of drawings and a design and access statement dated March 2014. The proposal was submitted under permitted development rights as set out within the Council's policy *CPG4 Basement and Lightwells* "which allows such applications that are not within Conservation Areas or subject to Article 4 Directions." The Council's director of culture and environment referred Mr Ireland's application to the planning committee.
5. The officer's report for the meeting of the planning committee recorded that the existing floor space of Mr Ireland's house was 128 square metres; the proposed floor space with the basement would be 161 square metres. The report described the site as comprising a two storey, mid-terrace, single family dwellinghouse with rooms in the roof located on the north side of the street. The site was not listed nor was it located within a conservation area. The proposal was outlined as follows:

"The proposed works comprise the excavation of a basement beneath the footprint of the existing dwellinghouse. The proposed depth of the basement is approximately 2.85m, with the width (side to side of the house) a maximum of 4.5m and length (front to back of house) a maximum of 7.5m. A single internal staircase is proposed to link the existing ground floor with the proposed basement. To clarify, the proposed basement does not include any lightwells or associated works which would allow natural light to this space."

6. The officer's report moved on to review the inspectors' decisions in two other basement cases in the borough, when appeals by applicants against the Council's refusals were allowed. It also mentioned three approvals of basements by the Council – one basement, one basement extension and one wine cellar below a basement. The officer's report stated that there were 15 objections from adjoining occupiers, including a petition with 32 signatories. Among the objections were that:
 - the construction work will be very disruptive to residents
 - as the street is so narrow the impact of the dirt and noise from the excavations is going to be exaggerated
 - road access will be limited due to the builders' vehicles, diggers, skips, etc.
 - the excavating of the ground, design of the retaining walls and propping arrangements are an "engineering operation"

- there will be a loss of parking for residents
- there will be structural damage to adjacent houses
- the works will create instability to the houses and street given the fragility of these mid-nineteenth century workers' cottages
- the creation of the basement will set a precedent and ruin an attractive street.

The ward councillor, Cllr Kelly, supported the residents.

7. The officer's report noted that what was involved was a legal determination. No account could be taken of policy or guidance within the Camden development plans or the planning merits of the scheme in terms of issues such as its impact on hydrogeology, structural stability, neighbour amenity, and transport.
8. Under the heading "Assessment", the report first noted that the Council had had a number of appeals allowed for the construction of a basement under permitted development rights. Costs had been awarded against it. The report then turned to consider in tabular form the limitations, conditions and exceptions of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, SI 2015 No 596 ("the GPDO"). It was satisfied that the proposal met them.
9. Under the sub-heading "Engineering", the officer's report considered whether the engineering activities associated with basement construction were within the Class A right. Earlier it had noted that the local residents' association had claimed that the proposals involved excavation works which, as a matter of fact and degree, constituted "an engineering operation" which did not benefit from any permitted development right under section 55 of the 1990 Act. After further discussion of the two recent appeal decisions by planning inspectors, and legal advice which had been given on the issue, the report reached an overall conclusion on the engineering aspects as follows:

"6.24 The proposals [are] for a new basement under the footprint of the house with a depth of 2.8m from ground floor to top of basement slab. The basement footprint would be c33sqm. No lightwells are proposed. The basement works will, by necessity, involve temporary engineering works associated with protecting the structural stability of the house and neighbouring building. However it is considered that these works would be entirely part of the basement works to [the house], and they do not constitute 'a separate activity of substance that is not ancillary to the activity that benefits from permitted development rights.'"

The quotation in the passage was from the inspector's decision in one of the two appeals.

10. The officer's report concluded that the proposal could be considered permitted development as it fell under Class A in the GPDO and that the committee should grant a certificate of lawfulness, subject to a section 106 legal agreement.
11. The section 106 agreement arose because Mr Ireland had offered to enter into it as a measure of goodwill to secure a construction management plan. The report had welcomed this and, on that basis, included it in the recommendation.
12. In the section 106 agreement the construction management plan is defined in terms of the construction phase of the development. It is to include details of the environmental protection, highway safety and community liaison measures proposed to mitigate potential impacts of the works; how the health effects and amenity of local residences and others are to be ameliorated and monitored; and traffic measures, including procedures for notifying residents in advance of major operations. Under the section 106 agreement, Mr Ireland agrees that, amongst other things, the Council will not approve the construction management plan unless it demonstrates to the Council's reasonable satisfaction that the

construction phase of the development can be carried out safely and with minimal possible impact and disturbance to the surrounding environment and highway network.

13. Once the section 106 agreement between the Council and Mr Ireland was in place, the Council granted the certificate of lawfulness dated 5 May 2016.
14. Meanwhile, the claimant, Mr Eatherley, had obtained a *Commentary on Mr Ireland's proposal* ("the Commentary") from a chartered civil engineer employed by the consultant engineers, Arup. In an overview of the nature of the engineering involved, the Commentary stated:

"A basement dug beneath an existing building within a terrace is one of the riskiest situations in which to construct a basement. Because the property shares its existing foundations with its neighbours and also because it provides lateral support to its neighbours, any movement of the existing house resulting from the works will directly impact on its neighbours."

The Commentary continued that construction of the proposed basement could not be considered simply as a building operation. Both the permanent and temporary works needed to be designed by a qualified civil engineer to ensure that the balance of forces in both directions was understood and controlled. There may be works involved in fitting out the basement which could be defined as building operations, it explained, but these would come later, once the permanent basement box and its permanent structural supports were in place.

15. There was then a discussion in the Commentary of the possible design of the basement and the potential ground movements and damage. Typically with basements, it said, an underpinning solution was adopted. Temporary and permanent lateral support measures had to be considered, the vertical loads on the existing foundations and bearing capacity needed assessing, and the design developed sufficiently "to result in a robust ground movement and damage assessment for the adjacent and nearby properties and any critical infrastructure...". In addition, said the Commentary, any impact on the groundwater flow and the drainage system local to the site had to be assessed as not significant.
16. There was also a section in the Commentary on the need to assess the impact of the construction on the street. The work would probably take several months to complete. Demolition material from the existing ground floor and any other internal demolition, and excavated ground from within the new basement area, would need to be removed. Excavation of the underpins and the internal basement space would lead to an in situ volume of ground of about 8m long x 5m wide x 3m deep = 120m³ being excavated. Allowing a typical bulking factor from in situ to back of lorry of 1.4 to 1.5, this would lead to a volume of excavated material of about 180m³. New materials and concrete would need to be brought in. The construction vehicles would need space to park on the street, at least for certain periods. There would be noise and potentially dust associated with the works. Public safety would need to be ensured.

The 1990 Act, the GPDO and case law

17. Planning permission is required for carrying out any development of land: Town and Country Planning Act 1990 ("the 1990 Act"), s.57(1). Section 55(1) of the 1990 Act defines "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land". Section 55(1A) defines "building operations" as including: (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. "Engineering operations" are not defined by the 1990 Act, except that in section 336 the term is defined to include "the formation or laying out of means of access to highways".
18. Section 55(2)(a) makes clear that works begun after 5 December 1968 for the alteration of a building by providing additional space in it underground constitutes development for the purposes of the 1990 Act. So far as relevant that section provides:

"(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which –

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground."

19. Certificates of lawfulness of a proposed development are dealt with in section 192 of the 1990 Act. If the local planning authority is provided with information satisfying it that the use or operations described would be lawful if begun at the time of the application, it must issue a certificate: s.192(2). The lawfulness of any use or operations for which a certificate is in force is conclusively presumed unless there is a material change in any of the relevant matters before the use or operations are begun: s.192(4).
20. Under the 1990 Act, planning permission may be granted in various ways, including by means of a development order made by the Secretary of State pursuant to section 59. Section 60(1) provides that permission granted by a development order may be subject to conditions.
21. One such development order made under section 59(1) is the GPDO. As the *Encyclopaedia of Planning Law and Practice* explains, general development orders had their origin in the Housing, Town Planning etc Act 1919. They were designed to give the local government board power to permit the development of estates and buildings to proceed, pending the adoption of a town planning scheme: para. 3B-1001.3. The idea behind such orders in the Town and Country Planning Act 1947 was that, being revocable, they could relax or tighten restrictions in such a way as to encourage forms of development which were from time to time the most necessary or desirable. The first such order under that Act in 1948 was replaced in 1950 by an order which broadened development rights so as to remove from the need to obtain express planning permission a number of minor operations. This had occupied an amount of time and resources out of all proportion to their importance to planning: para. 3B-1001.4.
22. The Explanatory Memorandum to the current GPDO states that it

"grants permission for a range of predominantly minor development, subject to certain limitations and conditions."
23. Article 3 of the GPDO provides for permitted development.

"(1) Subject to the provisions of this Order and regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2."

Generally speaking, Article 3 does not permit development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations"): Article 3(10).
24. The Secretary of State or a local planning authority may make directions under Article 4 of the GPDO so that what would otherwise fall within Article 3 may not be carried out unless specific planning permission is granted.

25. On 3 October 2016 the Council confirmed a direction made under Article 4(1) of the GPDO, covering the whole of the borough. From 1 June 2017 planning permission will be required for basements. The direction covers:

"The enlargement, improvement or other alteration of a dwellinghouse by carrying out below the dwellinghouse or its curtilage of basement or lightwell development integral to and associated with basement development, being development comprised within Class A, Part 1 of Schedule 2 to the Order and not being development comprised within any other Class."

26. Schedule 2 to the GPDO, "Permitted development rights", is divided into a number of parts. Part 1 covers "Development within the curtilage of a dwellinghouse". Class A of part 1 is entitled "enlargement, improvement or other alteration of a dwellinghouse". It provides, in part:

"Permitted Development"

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

Development not permitted

A.1 Development is not permitted by Class A if –

(a)...

(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(c) 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;

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

(e) the enlarged part of the dwellinghouse would extend beyond a wall which –

(i) forms the principal elevation of the original dwellinghouse; or

(ii) fronts a highway and forms a side elevation of the original dwellinghouse;

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would 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;

(g)...

(h) the enlarged part of the dwellinghouse would have more than a single 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;

...

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would –

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse; or

(k) it would consist of or include –

(i) the construction or provision of a verandah, 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.

...

Conditions

A.3 Development is permitted by Class A subject to the following conditions

...

(c) where the enlarged part of the dwellinghouse has more than a single storey, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse."

27. Class B of Part 1 deals with additions to the roof of a dwellinghouse, Class C with other alterations to its roof, Class D with porches, Class E with a building, enclosure, or swimming pool required for a purpose incidental to the enjoyment of the dwellinghouse, Class F with hard surfaces, Class G with chimneys, and Class H with antennae.

28. Part 2 to Schedule 2 provides for minor operations. Class A covers gates, fences and walls.

29. Part 6 of Schedule 2 is headed "Agricultural and forestry". Class A is concerned with agricultural development on units of 5 hectares or more. It provides in part:

"Permitted development

A. The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of –

(a) works for the erection, extension or alteration of a building; or

(b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.

Development not permitted

A.1 Development is not permitted by Class A if –

...

(c) it would consist of, or include, the erection, extension or alteration of a dwelling..."

30. *West Bowers Farm Products v. Essex County Council* (1985) 50 P & CR 368 concerned what was the counterpart to Part 6 of Schedule 2 regarding agricultural and forestry development in the 1977 GPDO. The farm's planning proposal in that case was for an irrigation reservoir on a farm of some 18 acres in extent and 6.5 metres in depth. The construction of the reservoir necessitated the extraction of large quantities of sand and gravel, which were to be sold. The issue was whether this extraction fell within permitted development in the GPDO or constituted the use of the land for the winning or working of minerals for which planning permission was required. Nolan J rejected the farmers' case that the proposal constituted only the carrying out of engineering operations requisite for the purposes of agriculture.

31. The Court of Appeal agreed. It held that whether a single process amounted for planning purposes to two activities was a question of fact and degree. Nourse LJ said that the test was objective, not subjective, so that the purpose and motive of the developer were irrelevant. What was needed was that the characteristics of a hybrid had to be recognisable in a substantial degree. The farm had submitted that the impossibility of constructing the reservoir without extracting the gravel demonstrated that the latter activity was an integral part of the former and there was one indivisible process. Nourse LJ said (at 374):

"I accept the premise of that submission but reject the conclusion. The planning legislation is not impressed by the indivisibility of single processes. It cares only for their effects. A single process may for planning purposes amount to two activities. Whether it does so or not is a question of fact and degree. If it involves two activities, each of substance, so that one is not merely ancillary to the other, then both require permission.

Applying that test to the facts of this case, I am left in no doubt that the construction of the reservoir will involve two activities, each of substance. The extraction of so much gravel will not merely be ancillary to the carrying out of the engineering operations, as it would usually be, for example, where foundations were dug for a bridge or a building..."

32. Neill LJ agreed, highlighting that the development would yield many thousands of tons of minerals. Sir John Donaldson MR said that purpose was a factor to be taken into account and added (at 378):

"It is a question of fact and degree in each case. Looking at the facts of this case, which involves the removal of so large a quantity of minerals, the only possible conclusion is that the development would consist of a mining operation followed by an engineering operation."

33. In *Wycombe DC v. Secretary of State for the Environment* [1995] JPL 223, Class F of the GPDO then in force was at issue. The front garden of a dwellinghouse in an elevated position on the north side of a road was almost totally excavated, leaving a hard standing for vehicles on level with the road - 6.8 metres wide, 4.5 metres deep and 2 metres in height at the rear. The Secretary of State decided on appeal that there was no breach of planning control because what was done was permitted under Class A.

34. In the High Court Nigel Macleod QC, sitting as a judge of the High Court, agreed that the proper approach to the application of Class F was to look first at what the order permitted, and then to

consider as a matter of fact and degree whether anything done or to be done beyond that specific permission was incidental to what was specifically permitted. He said (at 225-226):

"In the present case the Secretary of State had not determined what was incidental to the provision of a hard surface, but went straight to the purpose and the indivisibility of the operation. He had substantial regard to purpose. For example he referred to the "sole purpose of the excavations" and went on to find that "the removal of the necessary quantity of earth to achieve that aim took place as an integral part of the operation ...". In that way he had reached his overall conclusion...[T]he Secretary of State was fatally in error in omitting to consider the correct test, and in applying tests which were not appropriate."

Policy and policy development

35. Camden Planning Guidance, *CPG4 Basements and Lightwells*, July 2015, states that while basement developments can help to make efficient use of the borough's limited land, in some cases they may cause harm to the amenity of neighbours, affect the stability of buildings, cause drainage or flooding problems, or damage the character of areas and the natural environment. The guidance considers the principal impacts of basements in Camden such as groundwater flow, land stability, surface flow and flooding and the impacts on neighbours of demolition and construction.
36. The Department of Communities and Local Government's ("DCLG") website, the "Planning Portal", described as a one-stop shop for processing planning applications, includes guidance on various aspect of the planning system, including basements. It reads:

"Converting an existing residential cellar or basement into a living space is in most cases unlikely to require planning permission as long as it is not a separate unit or unless the usage is significantly changed or a light well is added, which alters the external appearance of the property.

Excavating to create a new basement which involves major works, a new separate unit of accommodation and/or alters the external appearance of the house, such as adding a light well, is likely to require planning permission."

37. The issue of permitted development rights for basements has been on the agenda of central government for some time. In 2007 the DCLG published *Housing Development Consents Review: Implementation of Recommendations* ("the Review"). That stated that the planning system was underpinned by the concept of "impacts". If the impact of a development proposal was acceptable it should proceed; if the impact was not acceptable, ways had to be found to mitigate it, failing which the proposal should not proceed. Such an approach, the Review said, could be applied equally to large and small development proposals. The way in which the planning system dealt with proposals to extend or otherwise alter dwellinghouses mirrored the impact approach. The Review continued:

"1.13 All additions to dwellinghouses, apart from very minor changes and purely internal alternations, are classed as 'development'. However, not all 'developments' require express planning permission, because many smaller additions to dwellinghouses are granted a "deemed" consent by the GPDO provided they comply with specific criteria relating to their size and position. This creates a situation whereby larger or more prominent additions to dwellinghouses are fully tested through the planning application process to discover whether adverse impacts occur; whilst smaller developments are deemed to be acceptable provided specific tolerances are complied with."

38. As to basements, the Review stated:

"7.2 Basement extensions are an increasingly popular method of extending houses, particularly in urban areas characterised by terraced houses where other forms of extension may not be possible. The excavation of basements is a form of development, but the GPDO is silent as to whether there are circumstances in which basements can be viewed as 'permitted development'. Notwithstanding this silence, the volume limitations imposed

by Class A of Part 1 are capable of being interpreted to include basement extensions, and anecdotal evidence suggests that many local authorities do this. A small minority of design guides published by local authorities contain guidance on designing basement extensions, suggesting that a set of tolerances to guide basement extensions could be designed."

39. The DCLG released a consultation paper 2, of the same year, *Changes to Permitted Development: Permitted Development Rights for Householders*, which stated that work was being undertaken to test possible limitations.
40. In November 2008 the Department published *Supplementary Reports: Basement Extensions*. It said that given that roof extensions were covered by a specific category, it was arguable whether basement extensions were simply overlooked when the GPDO was formulated. The document stated:

"[T]he overwhelming majority of local authorities (see questionnaire results below) interpret Part 1 of the GPDO to include underground extensions. Basement lightwells, on the other hand, being classed as an engineering operation rather than the enlargement of a dwellinghouse, do not benefit from 'permitted development' rights."

Later, the document recommended the creation of a new basement extensions class with limitations on length, breadth and depth, to resolve the anomalous situation in the current GPDO where, unlike roof extensions, basement extensions "are simply not referred to".

41. Most recently, in November 2016, the DCLG published *Basement Developments and the Planning System – Call for Evidence*. This noted that the permitted development rights for householder development allow limited alterations or extensions to dwellinghouses. That provided certainty for householders wishing to carry out development and helped to reduce the administrative burden on local authorities through a reduction in the number of planning applications coming forward. The document also said:

"Where it is considered that a smaller basement development falls within the specific limitations set out in the Order an application for planning permission is not required."

The arguments

42. The claimant's case is advanced on three grounds: (1) the proposed development includes a substantial engineering operation which is not within the permitted development right relied upon in the certificate; (2) the Council misdirected itself before concluding that the engineering works proposed were not a separate activity of substance, alternatively, if this was a question of planning judgment, the Council's judgment was infected by public law errors and/or in any event irrational; and (3) the interpretation of the Class A permitted development right as including the engineering works proposed in this case frustrated the legislative purpose of section 59 of the 1990 Act or the GPDO and was therefore ultra vires.
43. These grounds reduced in argument mainly to the correct interpretation of the 1990 Act and the GPDO, in particular to the meaning of the permitted development in Class A of Part 1, Schedule 2, "enlargement, improvement or other alternation of a dwellinghouse". In summary, Mr Westgate QC for the claimant contended that these words did not encompass this basement development because it involved a separate engineering development requiring separate planning permission. By contrast, both Mr Straker QC, for the Council, and Mr Lewis, for Mr Ireland, submitted that his basement proposal fell squarely within this description of permitted development: it constituted the enlargement, improvement and other alteration of his dwellinghouse.
44. Before turning to what, in my view, is the essential issue, let me consider five other issues between the parties as to the interpretation of this Class A permission, the "enlargement, improvement or other alternation of a dwellinghouse".
45. First, it was put to me that the question in interpreting a permission in the GPDO was how a reasonable reader would understand it, regard being had to any conditions and reasons for them. That was the approach to interpreting planning conditions adopted in *Trump International Golf Club Scotland*

Limited v. Scottish Ministers [2015] UKSC 74, [2016] 1 WLR 85, [34], per Lord Hodge (with whom the other judges agreed) and the authorities culminating in it such as *Barnett v. Secretary of State for the Communities and Local Government* [2009] EWCA Civ 476; [2010] 1 P & CR 8 [8], per Keene LJ; *R v. Ashford Borough Council, ex p Shepway District Council* [1999] PLCR 12, pp 19C-20B, per Keene J; and *Carter Commercial Developments Ltd v. Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1994; [2003] JPL 1048, [13], per Buxton LJ and [27], per Arden LJ.

46. Although in practice it may not matter, I do not accept this as the governing principle. These cases concerned permissions granted by planning authorities, not those laid down in a statutory instrument. It seems to me that in interpreting a permission in the GPDO one applies the ordinary rules of statutory interpretation. The words, their context and the statutory purpose are relevant to that task.
47. A second area of dispute concerned the purpose behind this development order. Mr Westgate's submissions were, in outline, that there was nothing to indicate that it was intended that the Class A right should extend to include substantial engineering activity. Not only did Mr Straker reject this specific submission, but he contended that the purpose of GPDOs has been expansive, to ensure development happens, thereby encouraging economic activity. It would not facilitate development if local planning authorities were clogged up with applications by householders for permission to build a basement. In any event, development orders were not confined to minor activities and could well have a wider ambit: for example, *R (on the application of the Licensed Taxi Drivers Association) v. Transport for London* [2016] EWHC 233 (Admin) (the cycle super highway in London).
48. The width of the GPDO (which Mr Straker conceded) to my mind makes the task of determining its overall purpose well nigh impossible. Mr Straker was undoubtedly correct in pointing to its coverage of aerodromes (defined in Article 2(1) of the order) and the specific provision in Article 3 for the Habitats and Species Regulations. That was to fortify his contentions that the GPDO extended beyond minor developments so that basements could fall within Class A of Part 1. Against that are the permissions in Part 1 of Schedule 1 addressed to chimneys and antennas, and to the minor operations covered in Part 2 with permissions for matters such as gates, fences and walls. To my mind, the GPDO covers a disparate collection of topics, minor and not so minor. One is driven to the words of each individual permission, its attendant conditions and, if it is possible to detect, its underlying purpose.
49. The next area of debate concerned the discussions in the various DCLG documents. Mr Westgate used the recommendation in the 2008 DCLG Supplementary Reports for a new basements class in the GPDO (which was never taken forward) to support his argument that the substantial engineering operation in this case was not within Class A. On the other hand, Mr Straker underlined the document's reference to the fact that, at the time, the overwhelming majority of local authorities interpreted the GPDO to include underground extensions. Mr Straker suggested that, by not making specific provision for basement development when it made the 2015 GPDO, Parliament could be taken to have endorsed that majority view.
50. In the absence of any indication as to Parliament's intention, for instance in an Explanatory Memorandum, there is no way that a Parliamentary intention can be divined from a failure to act. In this case all the documents show is that the issue of basements and permitted development rights has been on the political agenda for some considerable time but that for some reason (perhaps its controversial nature) no clear Parliamentary intention had ever been formulated. To my mind the DCLG documents are of no assistance in interpreting the GPDO, even if they do not fall within the category of extrinsic material which the courts should eschew in interpreting a statutory instrument.
51. A fourth area of contention was over the light thrown on the meaning of this Class A permission because the Council had recently made the direction under Article 4(1) of the GPDO, so that after June next year specific permission for basement developments in Camden will be required. Mr Straker contended that the direction would have been unnecessary if the claimant were correct.
52. To my mind the controversy about the subject over many years, and the differences of opinion, cannot give the making of this Article 4 direction the force Mr Straker suggested. The fact is that Camden, and I understand from Mr Straker other London boroughs, have seized the bull by the horns in the light of central government inactivity and local controversy to make such Article 4 directions.

53. Finally, there was debate about whether reading the Class A permission in the context of its exceptions, limitations and conditions assisted in the resolution of its meaning. Mr Westgate submitted that the limitations, exceptions and conditions to this Class A permission are directed to constraining above-ground building operations. That seems to me to be correct. Mr Straker's response that "storey" could be construed to include a basement does not seem to follow, especially when used in the context of the A.3 condition, quoted earlier in the judgment. However, acceptance of Mr Westgate's premise that none of the limitations, exemptions or conditions to Class A are suitable for basement development does not lead to any conclusions about its application to basements. Because they contemplate above ground development to my mind casts no light on the ordinary meaning of the words of this permitted development, namely, the enlargement, improvement or other alteration of a dwellinghouse.

The crucial issue

54. In my view the issue reduces to one of the meaning of the plain words of the planning permission: Article 3(1) of the GPDO provides that planning permission is granted for the classes of development described as permitted development in Schedule 2; Part 1 of Schedule 2 addresses development within the curtilage of a dwellinghouse; and Class A records as permitted development the enlargement, improvement or other alteration of a dwellinghouse. So, the issue is one of the meaning of the planning permission to enlarge, improve or alter a dwellinghouse.
55. For the Council, Mr Straker's submissions in this regard had an attractive simplicity. He proceeded as follows. Development as defined in section 55 covers underground development. Planning permission granted for development includes permission under the GPDO. The words of the permission in Class A of Part 1 of the GPDO are straightforward, English words intended to be understood and utilised by, amongst others, householders. The words embrace domestic basements in that a basement undoubtedly enlarges, improves, or alters a dwellinghouse. Thus when Mr Ireland asked the local planning authority to certify that the formation of new basement accommodation within the curtilage of his residential dwelling was lawful, he was asking for what he already had planning permission to do.
56. Mr Straker drew the analogy with a grant of planning permission for a house. Different parts of its construction may be labelled as building, engineering or other operations. In his submission, the essential point was that the permission to construct a house carries the implication that those operations necessary for its construction are permitted, be they engineering, building, or other works. The same, in Mr Straker's submission, applied here. The engineering operations for the basement are not gratuitous but necessary for the enlargement, improvement or other alteration of the house. They are part and parcel to the development which has planning permission. There is no separate activity for which planning permission is required, rather activity for the enlargement, improvement and alteration of the dwellinghouse.
57. To my mind the difficulty with these submissions with a basement development is the absence of any boundaries to the permission. Apart from the point about applying the storey limitations in Class A to basements, Mr Straker suggested none. Yet there must be a point where the excavation, underpinning and support for a basement for a dwellinghouse becomes an activity different in character from the enlargement, improvement and alteration of that dwellinghouse. For that reason, engineering operations for the basement are at some point different in character to those involved in the preparation of foundations for a house.
58. Although imprecise, the answer about boundaries drawn from the legal authorities is whether, as a matter of fact and degree, the single process of making the basement amounts to different activities, each of substance, so that the one is not merely ancillary to the other: *West Bowers Farm Products v. Essex County Council*, applied in *Wycombe District Council v. Secretary of State for the Environment*. Mr Lewis protested that to apply a "substantial engineering" test (to put it in broad terms) would be extra-statutory, but that is the law I must apply.
59. In the context of an original "two up two down" terrace house in suburban London, it seems to me that the development of a new basement, when there is nothing underneath at present, could well amount, as a question of fact and degree, to two activities, each of substance. There is the enlargement, improvement and alteration aspect, but there is potentially also an engineering aspect of excavating a space and supporting the house and its neighbours. That is the position, even though the latter is

necessary to achieve the developer's aim, indeed is indivisible from it. If there is this separate aspect in the development, it requires planning permission. The Class A right grants planning permission for one of the two activities of the development but not for the engineering aspect.

60. With this as background, let me consider the grounds advanced on the claimant's behalf.

Grounds

Ground 1: proposed development includes a substantial engineering operation that is not within the permitted development right relied upon.

61. Mr Westgate's argument on this ground was that what was involved here was the excavation of a large volume of ground and soil underneath the house, and the necessary underpinning and support, to enable the building works involved in constructing the basement to take place. The Council's decision to grant a certificate was an error of law because the Class A permission did not cover this.
62. In advancing this argument, Mr Westgate highlighted that the drawings Mr Ireland provided in support of the application showed only the space to be created through the building works, not the engineering works required to enable the excavation to take place, for example, the support required for party walls. The design and access statement was, as he pointed out, also silent on this. In Mr Westgate's submission, the Arup report demonstrated the true nature of the engineering works required. Extensive works of structural support would be required, in conjunction with the excavation of a considerable volume of ground and soil. In planning terms, the Arup report said, this was an engineering operation in its own right with its own material planning impacts in terms of noise, dust, visual impact, impact on groundwater and associated traffic movements, besides the planning impacts of the building works.
63. These were persuasive submissions. However, in my view this ground fails. This is a judicial review and it is not for me to decide whether as a question of fact and degree all this constituted a separate activity of substance to the making of the basement under the permitted development right. That was for the planning committee. It had the responsibility of considering the type of matters Mr Westgate raised and deciding whether the requisite engineering operation for the basement was a separate activity of substance requiring its own planning permission.

Ground 2: (a) The Council misdirected itself before concluding that the engineering works proposed were not a "separate activity of substance"; (b) Alternatively, if this was a question of planning judgment, the Council's judgment was infected by public law errors and/or in any event irrational.

64. At paragraph 6.24, quoted earlier in the judgment, the officer's report, advising the Council to grant the certificate, accepted that the basement works will, "by necessity", involve temporary engineering works associated with protecting the structural stability of the host and neighbouring buildings. However, it added, these would be "entirely part of the basement works", and did not constitute a separate activity of substance that is not ancillary to the activity that benefits from permitted development rights.
65. Mr Straker defended this formulation since the permission in Class A of Part 1 of the GPDO carries the necessary implication that operations for the making of the basement, be they engineering, building, or otherwise, are permitted. The engineering operations were, in his submission, part of the enlargement, improvement or alteration of the dwellinghouse. They were no more than necessary to carry into effect the permission. The planning committee were asked the correct question whether the construction of a domestic basement constitutes an enlargement, improvement or other alteration to enable them to grant a certificate of lawful development. To that question, he submitted, there was only one answer.
66. In my judgment the planning committee asked itself the wrong question with its focus on the works being "entirely part" of the overall development, which would "by necessity" involve engineering works. It concluded that because this was the case it followed that the works did not constitute a separate activity of substance. That is not the approach laid down in the authorities. The Council's conclusion that the engineering works were not a separate activity of substance followed from a misdirection. It should not have asked itself whether the engineering works were part and parcel of making a basement but whether they constituted a separate activity of substance. The Council needed

to address the nature of the excavation and removal of the ground and soil, and the works of structural support to create the space for the basement.

67. In other words, if the planning committee had asked itself the right question, it would have needed to assess the additional planning impacts of the engineering works to decide whether they amounted to a separate activity of substance. It would have been in a somewhat difficult position in undertaking that task without any description of the engineering works required in support of the application, although it may have been able to draw on its own experience of the common and predictable ramifications of this type of basement development with this type of terrace house in this area. It was only afterward, with the construction management plan secured by the section 106 agreement, that the Council gave attention to some of the impacts of the development. At that point it was too late. The issue was one of planning judgment, but since the planning committee misdirected itself as to the issue it never got as far as properly exercising that judgment.

Ground 3: An interpretation of the Class A right as including the engineering works proposed in this case would frustrate the legislative purpose of section 59 of the 1990 Act and/or the GPDO

68. Mr Westgate's argument here is that the overall purposes of the 1990 Act are that planning permission is required for development and that decisions about planning permission should be made based on relevant planning considerations. Given this, the exercise of the power to make a general permitted development order can only be compatible with the objects of the Act if the permission is limited to cases that, as a class, do not involve development impacts of a degree that demand individual consideration of the planning merits, as with this sort of basement.
69. Mr Westgate's premise is difficult to accept, given that section 59 allows the making of general development orders. In any event, as Mr Straker pointed out, this ground overlooks Article 4 of the GPDO, which enables local planning authorities to make a direction removing the grant of permission otherwise given by Article 3. As with the Council's recently made direction on basements, if thought necessary Article 4 can be used to require an individual application for planning permission. I am not persuaded by this ground.

Conclusion

70. For the reasons given I grant judicial review and quash the certificate of lawful development the Council granted Mr Ireland earlier this year.