

Haringey Council
Planning Regeneration and Economy

By email only

Our Ref: NMB/ORN
Your Ref: HGY/2023/0850

8 July 2024

By email to josh.parker@haringey.gov.uk

Dear Sirs

139 Cranley Gardens – HGY/2023/0850

We are instructed on behalf of Dora Belford and Jeremy Ornstin who live at 137 Cranley Gardens.

Our clients' property is next door to 139 Cranley Gardens and consequently directly affected by the subject application.

This letter is sent further to previous correspondence and submissions objecting to the application made by on behalf of our clients and other residents. There are very substantial concerns about how this consultation process has been conducted both in terms of disclosure and the legitimacy and speed of the process.

The development for a double basement swimming pool is itself frankly extraordinary.

Haringey's Development Management policy DM 18 provides that developments of this nature will only be permitted where:

- i) It will not affect the structural stability of the application building, neighbouring buildings or *other infrastructure* having regard to local geological conditions
- ii) It does not increase the flood risk to the property
- iii) It avoids harm to the appearance or setting of the property and the established character of the surrounding area
- iv) It will not adversely impact of the amenity of adjoining properties
- v) It will not affect the local and historical environment.

The real issue with which we are concerned here is that the project unquestionably affects local infrastructure as the public sewer is located under the ground which is proposed to be excavated. As such, unless a diversion can be found with Thames Water, the application cannot satisfy DM18 i), ii) and iv) and must be refused.

History of BIA Audit

In response to the initial consultation, on 12 June 2023, LBHGEO undertook a review of the Applicant's BIA, prepared by Symmetrys. The LBHGEO review:

- a) Confirmed the presence of a serious overland surface water flood route through the Applicant and neighbouring properties. The review concluded that the "site lies within a critical drainage area". The development would stop the flow of flood water driving it eastwards and exacerbating the risk in the Park Road area, and
- b) Raised issues about damage to infrastructure, environment and amenity.

In August 2023, the Applicant commissioned a drainage survey.

In September 2023 LBHGEO conducted a further review. Its report, referring to the drainage survey, highlighted the fact that the Applicant's property had been "built on top of an existing shared public drainage system which is connected to at least two neighbouring properties on either side". LBHGEO quite rightly pointed out that this public combined drain is the responsibility of Thames Water.

In October 2023, the Council commissioned an independent audit of the Applicant's BIA.

In March 2024 the BIA audit was uploaded onto the portal. It only then emerged, that a preliminary audit had been conducted in November 2023 and that the BIA audit was deficient in 12 areas. None of this was made public until the Council was forced to upload the relevant material after it had to be reminded by solicitor's letter of its obligations to ensure full and fair disclosure relevant documentation¹.

In March 2024, Thames Water provided its response to the issues raised. The wording of its response clearly shows that it had not been provided with all the relevant material to give an informed response.

The Drainage Issue

The conclusions of the LBHGEO April 2024 report make stark reading. The public sewer, the existence of which has been known about since August 2023, runs right through the middle of the proposed development. The Applicant's project is 'unbuildable'. This is illustrated below from p10 of their report

¹ See, for example, *R (on the application of Joicey) v Northumberland County Council* [2014] 4 EWHC 3657

6.3 | Swimming Pool and Mezzanine Gym from Pool



The LBHGEO report in April 2024 also questioned whether Thames Water was aware of the full facts and raised concerns about what material it had actually been provided with. Note that Thames Water merely says, “the proposed works will be **in close proximity to** underground sewerage utility infrastructure”

This strongly suggests:

- i) Thames Water is currently unaware that the sewer pipe runs right through the middle of the proposed development; and
- ii) The public sewer is part of the local infrastructure and hence its disruption or diversion places the development directly in breach of DM18.

Our clients are understandably concerned that an unbuildable application has been given continued oxygen based upon material which has not been disclosed timeously and particularly after their consultants drew these issues to the Council’s attention. This renders the Council’s decision-making process defective.

In *Harrison v Secretary of State for Levelling Up Housing and Communities and others* 2023 EWHC 16 it was held that where there is a mistake of fact which makes a material part in any decision then that mistake will render the decision ‘ultra vires’. Patently, it would be a mistake of fact to permit development in circumstances where there would be damage to the local infrastructure in the form of the public sewer *and* an increased flood risk directly in breach of the Council’s own policy.

Conclusion

It is more than 10 months since the Applicant and the Council were made aware of these facts. Resolution of the issue relating to the sewer pipe is fundamental to the entire development project and critical to the requirements set out in DPD DM18. Neither the Applicant nor his agents have been able to provide a solution. In these circumstances the application must be refused.

Failing that, we require full disclosure of all material held by Haringey that relates to the Applicant's consultation with Thames Water. We require disclosure of any application to Thames Water for a sewer diversion, proposed plans and all reports and correspondence in the Council's possession, which contain the Applicant's proposals to address this issue.

If not, we fail to see any grounds justifying further extension of time of the consultation.

Yours faithfully

A handwritten signature in black ink that reads "BWLLP".

BRETT WILSON LLP