**A live example of a case demonstrating the justification for the policies set in chapter 5 regarding basements in the Hampstead Neighbourhood Plan: 8 Pilgrim’s Lane, London NW3 1SL.**

This ongoing case clearly demonstrates the need for all the items in the policies regarding basements in the Hampstead Neighbourhood Forum plans to be fully approved in their entireties. It especially clearly demonstrates the need for Policy BA2 paragraph 4 which requires all technical issues to be resolved to the fullest extent possible, prior to determination rather than being deferred to a Section 106 agreement.

**Background:**

1st application: The absentee owner/developer of 8 Pilgrim’s Lane filed a first application, in September 2010, for a large basement together with a swimming pool right in the middle of Hampstead village amidst a row of old terraced houses set along a narrow one way street. There were numerous written objections from local residents to this application. This was purely a desktop application with no site or ground investigations. As a result of strong local objections and negative feedback from the planning department, the applicant withdrew its application.

2nd application: Undeterred the applicant filed for a similar and second application in 2011 with some, albeit incomplete, ground investigations. The applicant who lives most of his time overseas also categorically refused to meet the residents in order to address their concerns and contrary to Camden Planning guidance. The planning department rejected the application.

3rd application: In November 2012, the applicant filed a new and third application for a slightly modified scheme. This third scheme was again for a very large basement extending significantly beyond the footprint of the house, with lots of inconsistent and missing information, that failed to demonstrate that the neighbouring properties would not be at risk of significant damages. The neighbours hired expert engineering consultants, who, during the course of one and half years, repeatedly asked for additional information from the applicant’s consultants. They repeatedly refused to provide the requested information in a satisfactory, forthright and comprehensive manner. Shockingly, the planning officer at Camden recommended the application for approval, together with some planning conditions for the many outstanding and important issues to be resolved after approval under a section 106. There was then a Development Control Committee (DCC) where the immediate neighbours demonstrated to the members of the DCC that the scheme was an overdevelopment, inherently dangerous, and grossly incomplete and inconsistent in its content. The DCC resolutely overturned the Planning Officer’s recommendations and rejected the application.

1st appeal: Undeterred the applicant decided to file for a written appeal during the summer 2014, subsequent to the rejection by the DCC. The applicant argued that the case was a simple matter and that therefore a hearing format was not necessary.

2ND appeal: Due to the complexity of the application and the many engineering challenges related to it, the neighbours asked for the written appeal to be escalated to a hearing. The applicant objected, but thanks to the intervention of their local Councillors and their expert consultants, the neighbours managed to convince the Inspectorate to have the hearing escalated to a two-day hearing. The Inspectorate, contrary to what the applicant had argued all along, wrote on several occasions that due to the complexity of the case, a hearing was indeed necessary. The Inspectorate scheduled a hearing for January 2015, but decided to postpone the hearing notifying the residents that “the engineering and geological evidence in this case is voluminous and complex, with the appellant, interested parties and the Council all having submitted very technical evidence” and that the inspector that they had initially appointed thought the case be was too complicated for his technical abilities. The hearing was accordingly postponed and finally took place in June 2015. At the end of the first day of the hearing, the Inspector decided that they were too many conflicting opinions and that the case was for far too technical and complex for her to make a decision during the course of the two-day hearing, and, instead, decided to adjourn the hearing and escalate the matter to a full enquiry with cross examination.

3rd appeal: The Inspectorate decided on a full 6-day enquiry with cross examinations, to take place in early 2016. Subsequently several months later, the applicant decided to withdraw from the appeal in October 2015.

Application for a Certificate of Lawfulness: The applicant applied for a Certificate of Lawfulness for a smaller scheme. The neighbours objected to the recommendation for approval by Camden and asked for the matter to be referred to a DCC with Camden. This was nevertheless approved in a DCC in May 2016.

Party Wall Notice: Subsequent to the approval by Camden of the Certificate for Lawfulness, the applicant served a party wall notice to one of the neighbours on September 2016. It was clear to the neighbour that the scheme was highly deficient, missing vital information, and clearly threatening the integrity of his house despite the applicant’s refusal to admit the deficiencies and incomplete information inherent to his proposed scheme. The affected neighbour had to engage several lawyers and engineers to prove his points during 6 months of legal and technical arguments. The applicant, having failed to convince the resident that the proposed Party Wall Agreement could be justified, decided eventually as a result of the neighbour’s campaign to protect his property eventually withdrew his notice in February 2017.

New scheme: Undeterred the applicant decided to start a smaller scheme in the spring of 2017. totally refusing to give the neighbours any information or assurance regarding the potential damages that this could inflict on their houses, or to enter into a new Party Wall Agreement. As of this day, the work is still pending and the neighbours do not know when the work will start.

**Conclusion:**

Had the basement policies recommended by the Hampstead Neighbourhood Forum been in place in 2010, a huge amount of lost time, money and stress would not have been inflicted on the neighbours and their families with school-age children. In addition, the resources of the Council would not have been wasted on a succession of inadequate applications that clearly and repeatedly violated the sustainability aspects of the National Planning Policy Framework, and did nothing to resolve the shortage of housing, let alone affordable housing.

Over the last 7 years, the neighbours have wasted in excess of one full year of their working lives fighting off successfully a succession of 3 planning applications, three appeals, and one certificate of lawfulness. Furthermore, they are out of pocket in excess of £50,000 through hiring countless technical experts, planning consultants and lawyers. The work has not even started in earnest yet and the residents in the best case scenario can expect, at any point, 2 years of building hell. In addition, damages to their properties could occur and costly legal battles for remedies could drag on for a long time.