

**9 Downshire Hill Hampstead NW3 1NR**  
**Appeal APP/X5210/E/10/2129689 and /2129688**  
**Camden Planning reference 2009/0056/L**

**Case study of a Party Wall Award being legally required as part of a section 106 by both a Planning Inspector and Camden Head of Legal Services.**

## **1- Overview**

A local authority can legally require a signed Party Wall Award (PWA) to be part of the Detailed Construction Plan, the Council's approval of which is included as a condition for an associated s106. This condition was imposed in 2010 as part of an appealed planning application by a Developer for a super deep basement at 9 Downshire Hill NW3 1NR (ref 2009/0056/L).

Both the Planning Inspector, John Papworth, and Camden's legal department gave their official seal of approval on the matter. On Camden's side, Andrew Maughan, head of legal services, formally signed off such an s106 agreement on 21<sup>st</sup> December 2010.

This note has been written by S D Ainger, the owner of the immediately adjacent property, 8 Downshire Hill.

## **2-Background information**

On May 11<sup>th</sup> 2010 Camden council rejected an application to demolish a Grade 2 listed Georgian house in order to construct a neo-Georgian house with a double basement plus pool (in total 28ft below ground level meaning an excavation to ca 32ft). The main grounds for refusal was likely damage to neighbouring listed homes which were immediately adjacent (1 cm away).

The Developer went to Appeal and asked for a full hearing which was heard by John Papworth on 12<sup>th</sup> October 2010. Papworth published his decision on 13<sup>th</sup> January 2011.

The Inspector reversed Camden's decision and allowed the construction to go ahead. However even though he allowed the building, he included a signed Section 106 (dated 21<sup>st</sup> December 2010) in his final decision in order "*to ensure that the development is carried out to pre agreed standards by pre agreed methods to safeguard the interests of the subject of the main issues in this Decision*"

The s106 was drafted at the time of the Appeal and signed off formally by Camden legal department (Andrew Maughan, Head of legal services), the Developer, and the mortgage company, on 21<sup>st</sup> December 2010.

In the s106 agreement, and as usual, a Detailed Construction Plan was required to be approved by the Council before construction could start. The Detailed Construction Plan however also specified that the construction had to incorporate the Arup Structural report which was the entire proposed construction sequence, plus monitoring, method statement of construction, risk assessments etc and “a copy of the Party wall Awards in respect of the Development covering the buildings located at numbers 8 and 10 Downshire Hill together with any condition surveys undertaken by the Owner in relation to 7 and 11 Downshire Hill”.

The s106 goes on to state that the Construction Plan had to be sent to the Council for approval before the implementation date and that “the Owner acknowledges that the Council will not approve the Detailed Construction Plan unless it demonstrates to the council’s reasonable satisfaction that the Development can be constructed safely in light of the ground conditions and will not cause any structural problems with the neighbouring properties nor the development itself”.

### **3- Pre Construction.**

Therefore, before they could start work, the Developer had to have an approved Detailed Construction Plan, including a Party Wall Award (PWA) signed by the neighbours. This allowed my checking engineer, before he could endorse the PWA, to examine the final construction sequence etc. and agree that the construction plan would do the least possible damage to my home.

A PWA was agreed and submitted to the Council as part of the Detailed Construction Plan. The contractor chose their structural engineer to do this design work and then gave the details to their contractor once they had been selected. Work went ahead and the new house was completed in 2016.

### **4- What happens without a suitably drafted s106 draft**

It could be argued that the PWA was not needed within the DCP as all this could be handled within Party Wall Legislation

Papworth clearly understood that, if this were the case, the Developer could ask the Council to approve the DCP, but the Council in all likelihood, would not have the time or money or the detailed engineering expertise to evaluate any changes to the agreed detailed structural method statement. Without such conditions imposed by the Council (i.e. a signed PWA requirement as part of the S106) then once approved the Developer could go ahead and start work, telling the neighbour that as the DCP had been approved the PWA had to accept it. If the neighbour wanted to halt construction in order to amend the DCP the only way to do this would be via an injunction and the Third Surveyor process.

Going to the Third Surveyor has the risk that they might find the injunction disproportionate since the DCP has been approved by the Council and a PWA is underway. Should this be the case the neighbour would be liable to substantial costs (hundreds of thousands in my case) as the project could be delayed.

Many neighbours cannot take the risk, no matter how small the risk was, and the Developer knows this.

The Detailed Construction Plan with PWA and s106 allows the Party Wall Legislation to work as it gives equal power to neighbours and developers in the early stage of construction to ensure the construction sequence is done in a way that minimises damage to neighbours. This can all be done by the Developer's structural engineer and the Party Wall checking engineer well before the contractor is selected. Not including the PWA in the DCP undermines the ability of the neighbours to use party wall legislation.

Having the PWA in the Detailed Construction Plan was the only way to hold the Developer to account in the vital early stages of structural design and certainly worked with 9 Downshire Hill and I would strongly support the principle to be adopted in future deep and/or complex Basement Developments.

### **5- Conclusion:**

My case clearly shows that it is legal for Camden, or any local authority, to require a condition that the PWA must be signed by the neighbours before the s106 is deemed to be fulfilled.

The Planning Inspector, John Papworth, by requiring a signed PWA to be part of the Detailed Construction Plan within a section 106 found a practical and efficient way of ensuring among other things that the approval of the application abides by some the 12 principles of the Core planning principles

Furthermore, one could also argue that such a mechanism ensures that the principle of sustainable development is properly complied with.

S D Ainger

9<sup>th</sup> October 2016