

SPEAR'S

Wealth Wednesday

Super-basements hit rock bottom

Richard Manyon, Payne Hicks Beach, Wednesday, 14th August 2013



The past five years have seen unprecedented proposals for subterranean development by Londoners. In a city where space is limited and prime property prices are soaring, multi-storey ballrooms, spa centres, bowling alleys and climbing walls have been conceived in an effort to more than double the size of a property, without being restricted by the stringent planning rules governing above-ground building work.

According to local authority statistics around 20 per cent of basement developments have been built using Permitted Development Rights, which can avoid the need for planning permission altogether. Other basements have been passed by local authorities who have had their hands tied by historic planning rules which were not originally drafted with a view to multi-storey basement extensions.

But the times are changing. In early 2014, both Kensington & Chelsea and Westminster councils intend to bring in new planning policies designed to specifically target and restrict basement development, and other councils may follow suit. These policies will make substantial basement extensions far more difficult as excavations deeper than one storey will only be allowed in exceptional circumstances and basement extensions covering more than 50 per cent of the garden of the property will generally not be allowed.

Already prospective development owners are moving quickly to try to take advantage of the old rules and Kensington & Chelsea are reporting a spike in planning applications involving basement development. In 2012, 307 applications were made in Kensington & Chelsea and in the 5 months to June 2013 166 applications have already been made. When compared to 2011 where 186 applications were made and 2001 where only 46 applications were made, the increase is substantial.

Carpe diem

For any person looking to take advantage of the existing rules, planning is just the beginning of many challenges to be faced, mainly brought about by disgruntled neighbours who will put up whatever obstacles in their power to prevent super basements being developed.



Pictured above: An example of a super-basement

In order to avoid unnecessary early obstacles, property Deeds should be thoroughly checked to ensure that any development cannot be stymied by restrictive covenants (freehold or leasehold) or right of way issues.

Next, party wall matters need be dealt with. The developing owner will not only have to pay for their own surveyors, but also those of any neighbouring owner who is likely try and use delaying tactics and ramp up expenses in order to make the project too costly and time-consuming to commence.

The party wall surveyors will decide the permitted nature and extent of the works, and will ascertain whether the works cause any damage to the neighbouring properties (which is frequently the case). The developing owner will be responsible for all damage caused by his works. The costs of any remedial steps can be high and are a potential source of dispute, albeit one that is usually ultimately resolved between the party wall surveyors, at the cost of the developing owner.

In theory the owner might look to their contractor or architect to recover the costs of such damage to neighbouring properties. In practice this can be difficult. This is because this type of damage is so foreseeable that contractors will try to avoid liability. They will argue that it is necessary to prove some kind of negligence or error on their part. In many cases this may not be possible (or economical).

Article by Richard Manyon, Dispute Resolution associate at Payne Hicks Beach first published on 14 August 2013 in Spear's Magazine online <http://www.spearswms.com>

Prospective development owners therefore need to build a substantial provision in their budget to deal with party wall issues and damage to neighbouring properties. The prudent owner will also obtain non-negligent insurance in order to fill the gap between a project which causes damage and one where a contractor has been negligent.

What a nuisance!

One further problem which can be encountered is that neighbours may threaten or attempt nuisance claims in relation to the noise and dust which can be created by a basement development. They may even try to seek injunctions in order to stop work. Such applications will face substantial challenges of their own but they will create unnecessary distraction and cost nonetheless. Careful planning with contractors and engagement with neighbours is required to manage this issue and prevent problems from arising.

There are therefore complex hurdles awaiting the prospective super-basement developer. Although manageable with careful planning and support, these are only likely to get harder once new rules come in. Nonetheless, depending on the location of the property and the way the project is handled, the rewards can still be substantial and these developments and the disputes surrounding them look set to continue for some time.

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