

2 September 2013

Our ref:

Planning Policy Team  
RBKC  
The Town Hall  
Hornton Street  
London  
W8 7NX

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CHRISTIAN  
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Dear Sir/Madam

### **Basement consultation: July 2013**

I write to provide a response to the above document. I am an agent who has worked in the Royal Borough for over 15 years. I have provided advice on many projects concerning basements, including at listed buildings, and have worked with architects, surveyors, builders, householders, English Heritage and the Council Officers on these projects. I responded to previous consultations on basements.

My observations are as follows, with reference to the paragraph numbers and the criteria of the suggested new policy.

#### **34.3.49-52**

Concern is raised with the statement that *'the construction impact of basements is a significant material consideration in planning'*. Whilst there is little dispute that the impact of construction work should be minimised, RBKC is looking to influence this through the wording of the planning policy that affects the design and layout of a basement; legislation relating to construction matters should cover construction impacts, ie environmental health and protection and party wall matters. Paragraph 34.3.52 confirms that the purpose of limiting the size of basements is to protect living conditions during construction.

This gives rise to concern about the basis for much of the proposed Policy CL7. *R v Westminster CC ex-parte Monahan 1989* said that material considerations must be genuine planning considerations, ie they must be related to the development and use of land. The creation of a land use planning policy (ie proposed Policy CL7) that seeks to control the form and design of development in the interests of seeking to affect construction matters is thus not appropriate; it is not a genuine planning consideration that should be tackled by a planning policy.

There is no reason to single out basements for this type of policy that seeks to influence form of development in the interests of construction matters. Paragraph 34.3.50 refers to the multitude of basements that may occur and disrupt life. That may be true, but the tightly built-up area of Kensington will also experience multiple works in houses being renovated, side extensions, rear extensions, commercial building work, new housing, etc. Thus disturbance will occur from any such work, yet RBKC is not proposing any policy that limits other forms of development and extension on the basis of minimising construction disturbance. Thus, the imposition of Policy CL7 is inequitable and inappropriate in relation to established case law.



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### **34.3.54 and Policy CL7a**

This paragraph refers to gardens being informal and picturesque. That can be true, but recognition needs to be paid that many properties in RBKC have small courtyard areas as their rear ‘gardens’. These are – and always have been – entirely paved areas with no drainage, as that is part of the original character and original construction of such areas. Similar, such areas would never have larger scale planting. Eg tightly-built up terraces, some of the grander terraces that have always relied on communal squares for amenity areas, eg Thurloe Square, Kensington Gate. There would be little benefit from retaining at least half of such areas as having no basement, since such areas have always been hardstanding. The wording of the paragraph and the Policy should therefore be flexible enough to recognise that in some circumstances there may be a case where, with a small rear courtyard, there may be exceptions.

### **34.3.56-59 and Policy CL7b**

The attempt to restrict basements to single storey on the basis of ease of construction and associated disturbance is not justified. This is not a land use planning matter. Other legislation exists to control disturbance to neighbours, and the Council’s proposed hours of construction, and any planning conditions relating to construction, are sufficient to see such control insofar as planning legislation and control should be concerned. This is in fact covered later by paragraphs 34.3.70.

There is no reason why a second or double basement has definite structural risks (as indicated by paragraph 34.3.59). If a structural report shows there would be no harm, then there can be no objection in building the basement.

Basement construction is commonly associated with other changes to the property, eg internal renovation, etc. These all take a long time and are concurrent with basement work, and also go beyond the basement work. So the potential for disturbance will continue well beyond basement excavation work is undertaken in any event.

The prohibition on basements being more than one storey is not supported by any national planning guidance. It would be contrary to making more effective use of land. The stated objective – purporting to minimise construction impact – will be covered by other matters. This element of the policy must be dropped.

### **34.3.62-63 and Policy CL7f**

It may not always be the case that a basement beneath a listed building inevitably has an impact upon the hierarchy of a listed building, its integrity, scale, etc. Listed buildings differ and so a blanket ‘no’ to this is inappropriate. Similarly, a blanket objection to basements in the grounds of listed buildings is not correct; it is said this is to protect modifications to the foundations, but it cannot be simply said that is the case. A structural report may well prove no such – each case must be determined on its own merits –and similarly there may be no harm to the listed building. It is unacceptable to simply say there will inevitably be harm in every single case, without allowing any site-specific appraisal on the matter.

I trust you find these comments and observations helpful.

Yours faithfully,

**Christian Leigh**