

## **Basements – Publication Planning Policy**

### **Partial Review of the Core Strategy**

#### **Royal Borough of Kensington and Chelsea**

This is the response on behalf of The Markham Square Association to the RBKC Basements Publication Planning Policy dated July 2013. The Association represents the residents of 50 houses in the Square. We have welcomed the opportunity to participate in the consultation process: we have commented upon the two draft policies (dated December 2012 and March 2013), attended the question and answer sessions which RBKC organised and participated in four Working Group sessions held in February 2013.

We welcome many aspects of the policy. However, we believe that the policy is in places unsound because it does not go far enough in meeting the genuine and serious concerns of residents and, in some regards, may not prove effective. Our particular concerns relate to the process of construction of basements, the impact upon neighbours and neighbouring properties of the construction works and the relative enormous environmental and nuisance costs as against limited private benefit. Historically, we believe that the Council has not taken these concerns sufficiently seriously, or has felt unable to act upon them.

We have experience in Markham Square of the particular problems caused by the grant of planning permission for a very large basement at 44 Markham Square (one of the case studies in the 2010 Eight Associates Report), granted despite almost unanimous opposition from residents, the imposition of a pre-condition requiring a Construction Traffic Management Plan to be approved in writing by RBKC, the process of approval of the CTMP, its practical implementation, its breach and the service of an enforcement order on the developer and freeholder by RBKC. The grant of permission on this scheme was followed swiftly by another, at 36 Markham Square, and a further scheme is currently proposed, all within a short stretch of the narrow one-way road that runs round this narrow garden square. In each of these schemes the management of traffic, plant and equipment is proving to be a nightmare. We have seen the effects of multiple basement schemes in narrow streets nearby, such as in Burnsall Street and Smith Terrace.

### **REASONED JUSTIFICATION**

#### **34.3.46**

We are pleased to note that the policy will apply to all basement proposals: extensions and new buildings, across all land uses. If the new policy is not applied to all basement proposals, and in particular is not applied to basement proposals that proceed by way of CLOPUD applications or in some way other than by means of a full planning application, the new policy will not be effective and will be even less effective than the current policy.

The Basements Development Data paper, paragraph 1.13, reveals that a high and growing number of basements are built as “permitted development” and that there may be more that the Council does not know about.

For a number of reasons we consider that the statement “a single level basement under an existing dwelling and extending [3/4 metres into the garden] is considered permitted development” is entirely misleading and wrong. In Markham Square we have seen how the threat of a “permitted development” scheme can be used to confuse and browbeat neighbours. We know of other examples, one of which we describe below under paragraph 34.3.70.

We are concerned about the definition of basement. We suggest the deletion of the word “completely” and its replacement by the words “50% or more” below the prevailing ground level of the back gardens within the immediate area.

#### **34.3.47**

We believe that the first sentence should instead read “Basements are a way of increasing space in homes and commercial buildings.”

#### **34.3.48**

We believe that the first sentence should instead read “Basement developments have been the cause of great concern to residents and have had a major impact upon the living conditions of neighbours.” This wording is justified by residents’ responses to the two consultations and is certainly justified by our own experiences.

#### **34.3.49**

The Markham Square Association strongly supports this conclusion. As we mention above, several basement developments are threatened in Markham Square, which is a prime example of the many tight-knit streets of terraced houses within the Borough. Access is very narrow and from the busy King’s Road. Issues such as the impact on neighbours and the removal of spoil are directly relevant, as in much of the Borough.

#### **34.3.50**

We strongly agree with the concerns as to the impact of the quality of life upon neighbours and the effect of multiple excavations in streets, although the latter concern is not directly addressed in the policy.

#### **34.3.51**

Our contention has always been that there is no right or entitlement to build a basement under any part of a house or garden, and that any stated dimension or proportion should serve only as a maximum, and not a norm. We agree that there should be a limit upon the percentage of garden under which the construction of a basement is permitted and believe that a reduction in that percentage is sound. However, we take issue with the proposed reduction to 50% (which seems to be a completely arbitrary percentage) which we believe to be unsound. We strongly believe that **no basement development should be permitted under gardens**. We base this view upon serious concerns as to flooding, the duration and extent of construction and the enormous volume of soil which has to be excavated. We note that this view is supported by Thames Water in its letter of 31 January 2013, which expressed concerns as to the sheer scale of subterranean development in the Borough, and stated that the depth of some of the basements makes them highly vulnerable to

many types of flooding. We note also that the neighbouring Borough of Hammersmith and Fulham has decided to permit no basement development under gardens. We believe that the Council is obliged under EU and UK legislation to work with others, including neighbouring local authorities, to *reduce* the risk of flooding and certainly not to risk increasing it. The risk has been identified by a statutory undertaker qualified to form the view that it did. The Council has said that it should not change its policy in the absence of actual evidence of flooding. We do not think that this stance is justified. Given that basement developments are cumulative, permanent and irreversible, we consider that a precautionary approach should be taken.

#### **34.3.52 and 34.3.53**

We strongly support these reasons for limiting the size of basements. Carbon emissions should be a principal reason and justification for limiting the scale of basements. The data provided in the Eight Associates Report justifies very clearly and strongly the proposal to limit the scale of basements. The report also describes the differences in construction methods used in above-ground and below-ground schemes. Basement construction, unlike most above-ground construction in this Borough, entails significant excavation and extensive engineering works in addition to normal building work (section 4.1). Excavation and engineering processes have much greater impacts than ordinary building activities, primarily noise and vibration. These impacts also include far greater numbers of heavy vehicle movements. It also appears to us that in this Borough basement extensions are frequently larger than above-ground extensions, square metre by square metre, because the latter are constrained by both plot size and planning provisions.

#### **34.3.54**

We strongly support the comments about gardens and very much welcome this as a factor in this policy. We also agree with the definition of “garden” and agree that each garden should be assessed separately and include unpaved and paved areas.

#### **34.3.55**

If our primary contention, that there should be no basement development under gardens, is nevertheless regarded as sound, we agree that the unexcavated area of a garden should be in a single area, generally at the end of the garden furthest from the building. We also submit that any restriction on the percentage of basement excavation should be regarded as an absolute maximum area, to be reduced where appropriate, rather than be regarded as a minimum, as we fear will become the case.

#### **34.3.57**

We strongly support the limit upon the depth of the basement to one storey. However we do not agree that the height of one storey at basement level is generally about 3 to 4 metres floor to ceiling. This is unsound. A basement height of no more than 3 metres (or less) is the norm. We suggest an amendment to this effect. We do not agree that the “small extra allowance” for proposals with a swimming pool should be permitted. However, if there is to be such an extra allowance, it should be clearly specified. As part of a sound policy, the new size limits must be carefully formulated, strictly applied and recognised as not creating any right or entitlement. Some projects are sometimes simply too big for a site and/or location.

#### **34.3.59**

We believe this policy, preventing the development of further basements, is sound, although all depends upon the definition of basement in 34.3.46. The Alan Baxter report indicates that deeper basements have greater structural risks and complexities: it is not simply the number of storeys that is important

#### **34.3.60**

We welcome the comments with regard to trees, which we believe are of great environmental value within the Borough, and consider that this policy is sound.

#### **34.3.61**

We welcome the comments about heritage assets but believe they should be expressly defined in the text of the policy.

#### **34.3.62 and 34.3.63**

We agree with this but it should be more strongly worded: basements under listed buildings must not be permitted. Indeed, this does not go far enough since the effect of demolition and excavation work can affect more than just the listed property and immediate neighbours.

#### **34.3.64**

This does not go far enough: the same policy should apply to conservation areas.

#### **34.3.66**

We repeat our comments with regard to heritage assets at point 34.3.61 above; this applies even more to non-designated heritage assets.

#### **34.3.67**

We agree with this policy and consider it to be sound.

#### **34.3.70**

The effect of basement construction is seriously understated: it is our experience that basement construction **inevitably** causes considerable nuisance for neighbours and others in the vicinity. We welcome these provisions as to the impact of the work. Construction Traffic Management Plans must be carefully scrutinised and must be strictly enforced. This has not always been the case.

The Markham Square Association does not accept that the levels of noise, dust and vibration may be "acceptable" merely because they conform to levels specified in the relevant acts and guidance. They are not appropriate in densely developed residential areas and these impacts should be kept well under those limits.

We believe that the Council should acknowledge that there will be some circumstances where basement schemes must be refused on grounds of traffic management and/or highway safety.

We believe that the content and quality of the Construction Traffic Management Plan is of the utmost importance and that it should be fully enforceable by way of conditions in planning consents.

We have been shocked by attempts by developers of houses in the Square to avoid the requirement for a Construction Traffic Management Plan supported by an appropriate condition - and other conditions and requirements - by proposing to construct basements under the permitted development regime. As we note above in our remarks on paragraph 34.3.46, we do not believe that such schemes can or do comprise permitted development and have been conducting our own research.

For an illustration outside Markham Square of how this route is being used by developers and why the Council needs to address it as part of this review, we would ask the Inspector to consider the multiple applications submitted in respect of proposed basements (and an above ground extension) at 2 Crescent Place, SW3 2EA - a terraced house in a quiet cul-de-sac serviced by a narrow road.

Between 18 July and 12 August 2013, seven separate applications were registered. Two of them are CLOPUD applications, the first (18 July) for "a proposed single-storey basement beneath the existing building footprint, and partially extending beyond the rear elevation of the property" (CL/13/04023) and the second (1 August) for a "proposed single-storey basement beneath the existing footprint only" (CL/13/04343). Four are full planning applications, advertised on the railings of the house next door, covering, variously, the excavation of basements below the footprint of the house, the front garden, the driveway, part of the rear garden and lightwells. Each planning application is accompanied by an identical traffic management plan (relating presumably solely to the scheme described in the particular application) and an identical letter from the developer to the Duty Planning Officer explaining that the traffic management plan submitted is "an integral part of the application" and that they "do not want it to be subject to a planning condition". The developer also asks that the details of the overseeing structural engineer do not become subject to a planning condition.

It appears that the applicant proposes to obtain permission to build basements under the house, garden and driveway without a traffic management plan or plans supported and enforceable by any conditions - or perhaps in respect of the most complex part of the works, the basement under the house - no traffic management plan at all (or engineering construction method statement, preliminary hydrological, temporary works, etc).

There is another current Planning Application for a basement under 9 Crescent Place, which is immediately opposite no 2.

### **34.3.71**

We welcome the acknowledgement that "Basement development can affect the structure of existing buildings" and the requirement that the applicant must carry out thorough investigation and preparatory work as described. Such requirements are more than justified by the evidence there now is of damage to neighbouring buildings and, no less, the failings identified by the Health and Safety Executive in respect of a high proportion of basement schemes in the Borough in its twice-yearly reports. These requirements will be irrelevant however, and this part of the policy

totally ineffective, if developers can simply avoid them.

Our experience is that the building regulations and the party walls legislation provide inadequate protection for neighbouring owners and occupiers and none at all for some who are nevertheless affected by it.

#### **34.3.72**

We believe this policy is sound.

#### **34.3.73**

We believe this policy is sound, but it will not be effective if applicants do not provide full and entirely accurate information to neighbours and it will be totally ineffective if outline schemes discussed with the Council at pre-application stage are subsequently waved through by the Planning Applications Committee.

#### **POLICY CL7**

a A reduction in the permitted amount of garden under which a basement may be constructed is sound. However, we believe there should be no basement development under gardens: this part of the policy is unsound.

b We agree with the restriction of one storey: this policy is sound. We believe that the height of the storey should be specified as no more than 3 metres, and possibly less.

c We agree that there should be no building under an existing basement: this policy is sound.

d We agree: this policy is sound.

e We agree, but heritage assets should be clearly defined.

f We agree.

g We agree.

h We agree.

i We agree.

j We agree.

k We agree.

l We agree.

m We strongly support this policy but ask (as we have throughout the consultation procedure ) that the words "be designed to" are omitted. This provision should be governed by (the whole of) the first sentence in the policy: "All basements must be designed, constructed and completed to the highest standard and quality".

n We agree.

## **MISCELLANEOUS**

We wish to appear at the Examination on all these matters in order to oppose the policy as drafted on point a and to support it on the remaining points.

We consider it worth mentioning that it is important that the maximum permitted allowances do not over time become the accepted norms, or even the accepted minimums, as tends to be the case.

We are also concerned that more vigilant enforcement of planning requirements and conditions is required.

The Markham Square Association

2 September 2013