

Response Form

Partial Review of the Core Strategy for the Royal Borough of Kensington and Chelsea with a focus on North Kensington

Development Plan Document policies

All representations **must** express a view regarding the soundness or legal compliance of a planning policy. If the representation does not comment on soundness or legal compliance, or deal with how a policy can be altered to make it sound the representation will **not** be valid.

Name: Terence Bendixson

Company/Organisation: Chelsea Society

Representing: Hon Sec. Planning

Please complete the form and email it or send it to:

The Executive Director of Planning and Borough Development
f.a.o The Policy Team
The Royal Borough of Kensington and Chelsea
The Town Hall,
Hornton Street,
London W8 7NX

Email address: planningpolicy@rbkc.gov.uk

State planning policy or paragraph number to which you are referring

Policy CL 7.

Yes

No

Do you consider the planning policy to be sound?

-/ but

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

The Chelsea Society, which has taken an active part in the very professional consultation exercise underpinning this review, strongly supports the Borough Council's desire to update its basement policies.

We support the general thrust of the arguments in the 'reasoned justification', but believe that they need selective strengthening and, in the case of Policy CL7 WE BELIEVE THAT THE REASONING (BOTH NOW AND WITH OUR SUGGESTED ADDITIONS) JUSTIFIES GREATER LIMITS ON BASEMENT CONSTRUCTION.

We say below that we consider aspects of the proposed policy are unsound. This does not mean we want to see the policy rejected as a whole. We support what the Council is seeking to do but also put forward revisions to some clauses of Policy CL7 which we hope can be agreed at the EIP and become part of Borough Policy.

Turning to the reasoned justification, we consider that it should:

- a) Take greater account of, and quote, evidence submitted to the Council by Thames Water. This evidence indicates the extent of the loss of permeable land already suffered in Kensington & Chelsea and the need to reduce risk of flooding in the future by limiting basement development to the footprint of buildings.
- b) Quote the recently agreed basement policy in neighbouring Hammersmith & Fulham (this limits excavation to the footprint of buildings – see APPENDIX below), set out why it is a 'reasonable alternative', and incorporate it into CL7, an
- c) Use evidence from estate agents such as Knight Frank to indicate the extent to which houses in Kensington & Chelsea are being bought, and extended, by foreign buyers seeking, in times of inflation and great uncertainty in global financial markets, both a safe haven for their money, AND CAPITAL APPRECIATION. This international financial factor should be part of an

assessment of 'development requirements' needed to satisfy the 'positively prepared' test. It should be singled out and discounted because it does not indicate local housing demand.

In view of these qualifications the Society will put forward revisions to Policy CL7 designed to:

- i) Limit all basement excavations to the footprints of existing or proposed buildings.
- ii) Protect listed buildings and their gardens, irrespective of size, from basement excavation.
- iii) Ensure that, in large residential and commercial developments, existing naturally drained land is not lost but retained as a drainage resource.
- iv) reduce, from present unacceptable levels, the noise, vibration, dust and diesel fumes from construction machinery.

These revisions are set out in greater detail below.

Please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared Justified Effective Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

Please attach additional pages as required

State planning policy or paragraph number to which you are referring

Policy CL 7 a. Basement development should not exceed a maximum of 50% of each garden.

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

Please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

CL7a

CL 7a is not positively prepared because it does not, as required, objectively assess development requirements.

It is not justified because it is founded on unbalanced evidence and is inappropriate when compared with the alternative adopted by the London Borough of Hammersmith & Fulham.

DEVELOPMENT REQUIREMENTS

What are housing development requirements in K&C? Local estate agents say that a high proportion of house purchases are by foreign buyers. Knight Frank Chelsea (352 King's Road, SW3 SUU – 020 7349 4300 - Chelsea@knightfrank.com), in research issued in early 2013 report that, for Chelsea alone, 63 per cent of buyers were not English of which 36 percentage points were French, Greek, Italian, Russian, South African, Swedish and the

U.A.E. (This research will be tabled at the EIP.)

Given acute global financial uncertainties, such wealthy foreign buyers see London property as a safe haven and K&C as a place promising the additional advantage of capital appreciation. Estate agents and basement contractors then advise them to add basements as a way of further increasing the value of their purchases.

Established residents in K&C too, faced by uncertain stock markets, low bond yields, inflation due to quantitative easing, and negative interest on bank savings, likewise, see investment in basements as a way of preserving and augmenting their capital.

Finally, property investment companies buy houses and add basements to them as a way of increasing square footage and expanding the return from the sale of the property.

The reasoned justification to CL 7 fails to assess and discount these non-local causes of demand. The Council therefore exaggerates the need to allow basement expansions and is over-generous in allocating 50% of gardens to them.

DISPROPORTIONATE EVIDENCE

The Council's reasoned justification, while demonstrating the huge dis-benefits of basements - impacts from construction, from traffic and from the movement of adjoining structures (34.3.38 et al.) - overlooks the extent that the cause of these problems is international flows of hot money and domestic financial anxiety. Paragraph 34.3.47 says only that 'basements are a useful way to add extra accommodation...'

In the view of the Chelsea Society the Council's basements policy is not founded on a proportional evidence base.

Careful analysis shows basement construction is more a way of making money, or finding a safe home for it, than a useful way of adding to accommodation. Policy CL7a is therefore not sound and needs to be modified.

ALTERNATIVE POLICIES

The London Borough of Hammersmith and Fulham, faced by comparatively little international financial pressure for basement development, but with comparable construction impacts and comparable flood risk, has 'objectively assessed development requirements' and opted to confine underground excavation to the footprint of houses. (See APPENDIX)

This is a 'reasonable alternative' which the Borough Council does not consider in its reasoned justification. Why not?

Furthermore the contrast between the approach of the adjoining Boroughs

clarifies the extent to which CL7a is unsound. Soundness could and should be introduced to the K&C policy by confining new basements to building footprints.

CONCLUSIONS

The Borough Council, in disregarding the effect of global financial uncertainty on promoting house purchase and basement development in K&C, has incorrectly assessed the requirement for basement excavation.

The Council has correctly identified the impacts on neighbours that flow from basement construction but, in proposing a 50% of garden limit, has underweighted the impacts in balancing them with demands for basement construction. Its evidence is not proportionate.

Finally, in not considering the new basement policy of Hammersmith & Fulham, with its limitation of excavation to the footprint of buildings, the Council has not taken into account this reasonable alternative.

Policy CL7a is therefore unsound in its present form but could be justified if basement construction was confined to building footprints. It should be redrafted as follows.

'Basement development should:

'not exceed the footprint of existing buildings or new buildings for which planning permission has been granted. Basement construction that is related to large commercial developments should, likewise, be confined to building footprints so as to conserve existing naturally drained land. Exceptions to this last rule will be made only where the promoters of a commercial development show that the limitation would stop all development from taking place.'

Please attach additional pages as required

State planning policy or paragraph number to which you are referring

Policy CL7 b. Exceptions (to one storey basements) may be made on large comprehensively planned sites.

Yes

No

Do you consider the planning policy to be sound?

 -/

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

Please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

| Positively prepared | Justified | Effective | Consistent with national policy |
|--------------------------|--------------------------|--------------------------|---------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

PL7b

Paragraphs 34.3.49 and 50 of the reasoned justification set out the un-neighbourly side-effects of basement construction. Paragraph 34.3.52 makes clear that the bigger the excavation the greater the strength of those negative side-effects or impacts. Paragraph 34.3.53 says that creating basement rooms creates more carbon emissions than building comparable rooms above ground.

This would seem to be a very strong argument against large basements yet, in Paragraph 34.3.58, the Council suggests that 'larger comprehensively planned sites' may qualify for 'greater garden coverage' and excavation greater 'than one storey'.

It may be that the Council intends this policy to apply only to large commercial housing, hotel or retail developments. The Society's concern is that it could be used to make a case for very large scale basement excavation under the gardens of large private houses.

Work still under way at Sloane House and Sloane Lodge in Old Church Street, Chelsea, demonstrates the extraordinary scale of some domestic excavations. A combination of very large scale civil engineering equipment, a very deep hole

and a very lengthy construction process (two and a half years to date) has led to extreme impacts on neighbours in a quiet residential area. (The Society will produce photographs at the EIP.)

The Council offer no evidence that such extreme development, with its huge tally of carbon emission, is sustainable or that its extreme impacts (leading to innumerable enforcement actions), are justified.

The Chelsea Society proposes the following modification to Policy CL7b.

Basement development should:

not comprise more than one storey. Exceptions may be made for large comprehensively planned commercial sites but not for large houses.

Please attach additional pages as required

State planning policy or paragraph number to which you are referring

Policy CL7 c. Basement development should:
Not be built under an existing basement.

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

CL7c

The Chelsea Society welcomes this clause of Policy CL7 but we would like to see it modified and clarified. Our concern is that it is open to varied interpretations. The 19th century houses, of which Chelsea is predominantly composed, already have basements. They are reached via steps from the pavement to a front area and at the back often have a small yard which was once occupied by an outdoor privy. Steps again lead up from this back yard to

the garden.

Estate agents, those masters of euphemism, call rooms at this level either a 'lower ground floor' or a 'garden floor'.

Given that virtually all such houses in Kensington as well as Chelsea are either listed or in conservation areas, and are therefore heritage assets, it is important to be certain that they are unambiguously protected. In the Chelsea Society's view the most dependable way of doing this is to regard their lowest existing floors as basements within the scope of Policy CL7c.

In order to make this clear the Society proposes the following modification to CL7c. Basement development should:

not be built under an existing basement or under the 'lower ground floor' of 18th and 19th century houses

Please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

Please attach additional pages as required

State planning policy or paragraph number to which you are referring

Policy CL7f. Basement development should not involve excavation under a listed building (including pavement vaults) of any garden of a listed building, except for gardens on large sites where the basement would not involve extensive modification to the foundations of the listed building by being substantially separate from the listed building.

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

CL7f

Paragraphs 34.3.49 and 50 of the reasoned justification set out the un-neighbourly side-effects of basement construction. Paragraph 34.3.52 makes clear that the bigger the excavation the greater these impacts. Paragraph 34.3.53 says that creating basement rooms creates more carbon emissions than building comparable rooms above ground.

Paragraph 34.3.54 refers to the role of gardens in creating 'a picturesque and tranquil ambience' within London's densest borough. This description is welcome but it fails to capture the role of large gardens in creating openness, providing for natural drainage and giving relief from the sense of containment that goes with the Borough's very high density. (An illustration of a big garden in Oakley Gardens will be produced at the EIP.)

The greenery of Kensington and Chelsea is what has made it for generations one of the most admired urban landscapes in the world. It is an approach to town-making that demonstrates how city living and nature can be united.

Trees are an important component of this natural resource, as is recognised in 34.3.60, but this paragraph is concerned only with conserving trees that EXIST.

Given all the uncertainties about climate change, the importance of natural drainage, and the need to keep open the possibility of improving the Borough's green landscape, it is just as vital to protect gardens that offer opportunities for the future planting of NEW TREES in NEW LOCATIONS.

CONCLUSIONS

Policy CL7f is unsound. Where it considers large sites, it is focussed only on possible damage to the foundations of listed buildings from excavation. It does not recognise the contribution made by large gardens to relief from a sense of cramming, greenness, natural drainage and scope for future tree planting. It is not consistent with sustainable development, nor with the NPPF, and has not been positively prepared.

Furthermore there is a mismatch between the Council's evidence on impacts of basement construction (which shows them to be extremely disturbing) and its acceptance of the prospect of large-scale excavation in the gardens of large sites. This points to a lack of proportion between the evidence base and the policy and results in the latter not being justified.

The Chelsea Society accordingly considers that Policy CL7f needs to be modified to give greater protection to the Borough's precious large gardens. We suggest the following wording:

Basement development should:

'not involve excavation under a listed building or any garden of a listed building, including large gardens. Such large gardens, by their very size, make significant contributions to the Borough's greenery, provide relief from the claustrophobia of high density, are important reserves of natural drainage and offer, as smaller gardens rarely can, new opportunities to plant forest trees.

State planning policy or paragraph number to which you are referring

Policy CL 7.I. Basement development should.....ensure that constructions impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works.

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as

possible. Please make it clear which paragraph number or Policy box number you are commenting on.

Please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

CL7I

The reasoned justification makes very clear the impacts of basement construction on adjoining and nearby residents and establishes that they are a 'material consideration in planning'. See Paragraphs 34.3.48/49/50. Paragraph 34.3.52 indicates that the larger the excavation the more 'dust, noise and vibration experienced for a prolonged period'. Paragraph 34.3.70 deals again with these nuisances and specifies that applicants 'must demonstrate that these impacts are kept to acceptable levels under the relevant acts and guidance, taking the cumulative impacts of other developments into account.'

This leads to Policy CL7I and its requirement that nuisances 'are kept to acceptable levels'.

The Chelsea Society believes that arrangements should be made for the Inspector taking the EIP to visit at least two of the largest excavations at that time taking place in the Borough. We suggest that one should be Sloane House, Sloane Lodge in Old Church Street, Chelsea.

The reality is that, because of the small scale, high density patterns of development characteristic of the Borough, AND PARTICULARLY CHELSEA, even the most considerate and skilled contractor will make life hell for neighbours. Bored pile drivers, sheet pile drivers, diesel generators, JCB diggers, diesel compressors – all of which can be needed to excavate – and then the cement mixers, tower cranes and steel delivery lorries needed for construction are not designed to be operated within two or three metres of

where people are living.

Diesel fumes, which due to small particles of soot are carcinogenic, are not even referred to in the draft policy. Yet they waft into the houses of neighbours of larger excavations.

Policy CL7I is unsound. No evidence is produced to show that giant basements are required in Kensington and Chelsea. And no evidence is produced to show that the impacts associated with extreme basement construction can, or ever has, been kept to acceptable levels. All the evidence points to the contrary – that the impacts are unacceptable. It follows that the CL7I is not positively prepared.

Furthermore the mismatch between the evidence available from extreme basement developments and the modesty of the policy response indicates that CL7I has not been justified.

The Chelsea Society has no glib answer to this set of problems but is convinced the Policy CL7I does not address them. It is not sound.

As a step in the right direction the Society would offer the following, indicative, redrafting of CLI. We are fully aware that more work will need to be done on it.

Basement development should:

be designed to minimise construction impacts such as noise, vibration, diesel fumes and dust. Contractors will be required, before starting work, to specify the plant to be used and demonstrate to an appropriately qualified engineer, and the planning case officer, that it is state-of-the-art in minimising environmental nuisances. Contractors will also be required to install continuous noise, dust and emissions measuring equipment, and report its outputs daily to appropriate officials such as party wall surveyors (where present) and Borough enforcement staff.

Please attach additional pages as required

Yes

No

Do you consider the Planning Policy Document to be legally compliant?

Please give the reasons for your choice below and be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting

on.

The Chelsea Society has been a full participant in a lengthy and properly conducted consultation process which the Council was legally obliged to undertake. We believe that the process of which this consultation is part is legally compliant.

please attach additional pages as required

Do you wish to appear at the Examination on any of these matters?

Yes

-/

No

Please specify on what matter

Policy CL7 Clauses a,b,c,f and l. These are all covered above.

APPENDIX

London Borough of Hammersmith and Fulham Development Management Local Plan July 2013

Policy - DM A8

Basement accommodation and lightwells

New basement accommodation in existing dwellings will be permitted where:
it does not extend beyond the footprint of the dwelling and any approved extension (whether built or not);

there is no adverse impact on the amenity of adjoining properties and on the local, natural and historic environment; and

it does not increase flood risk from any source.

All other new or extended accommodation below street level should be designed to minimise the risk of flooding to the property and nearby properties from all sources of flooding.

To minimise the risk of sewer flooding, developments will be required to provide active drainage devices.

Where there is a medium to high risk of fluvial flooding and no satisfactory means of escape can be provided, new self contained basement flats will not be permitted.

Justification

4.33 The council will allow people to extend their houses and flats into the basement below the building providing there is no adverse impact on the amenity of neighbouring properties or negative impact on the street scene due to the need for the provision or alteration of lightwells (see also relevant SPD). The general presumption that basements will be confined to the footprint of the building is to prevent any cumulative adverse impact on drainage arising from such developments and their cumulative impact on groundwater flows, with potential increased risk of flooding of existing basements in the area. It is important that proposals for new or extended basements provide clear evidence that demonstrates that there is no adverse effect on surface water drainage, the sewers and on groundwater flows. Vegetation and permeable surfaces can help to control surface water runoff and the loss of vegetation can also affect the character of conservation areas and planted rear gardens, thereby impacting on privacy, shade and biodiversity. In areas at risk from flooding, new self contained basement dwellings will not be permitted because of the risk to life in the event of a flood. Any new basement accommodation that is below street level should be designed to reduce flood risk and to minimise any impact from flooding from any source, including sewer flooding. For fluvial flooding this will incorporate a satisfactory means of escape. To protect against sewer flooding, developments must include the provision of a pumped solution or 'active drainage devices' incorporating non-return valves to prevent water entering a property from drains and sewers (see Appendix A.1.4 and A2 of the H&F Strategic Flood Risk Assessment).

4.34 Basement excavation often raises concerns about the structural stability of adjacent properties because of works to party walls and foundations, in particular. These issues may be properly dealt with by means of a party wall agreement under the Party Wall Act 1996. However, the council wishes to encourage good neighbourliness and avoid planning applications which cannot be implemented due to the lack of agreement between the applicant and the owners of neighbouring properties or land instability. The NPPF places significant weight on ground conditions, land stability and local environmental issues (eg. Paragraphs 109, 120 and 121) as material considerations in determining planning applications. Therefore, the council requires applicants to submit a Subterranean Construction Method Statement (carried out by a qualified structural or civil engineer) with the planning application and to make the statement available at the same time to neighbouring owners to demonstrate that the development accords with the policy

end