

# Robert Ward-Booth

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## Conservation & Design

Planning Policy Team  
Royal Borough of Kensington and Chelsea  
Kensington Town Hall  
Hornton Street  
London  
W8 7NX

BY EMAIL ONLY  
3<sup>rd</sup> September 2013

Dear Sir

**RE: PUBLIC CONSULTATION – DRAFT POLICY CL7 ( BASEMENTS) & DRAFT POLICY CL4 ( HERITAGE ASSETS)**

I am writing on behalf of my client, Knight Build Ltd regarding the Council's emerging policy for the control of basement construction.

I would respectfully request that the comments which are set out within this letter should be taken into consideration during the forthcoming examination of the above proposed policies by the planning inspectorate. In this regard I would respectfully request the opportunity to give evidence to the planning inspector at the forthcoming examination in public.

**POLICY CL7 ( BASEMENTS)**

In summary, the objectives of the council set out within the reasoned justification for the new policy are as follows:-

- To improve the living conditions of residents and neighbours
- To ensure that the landscape value and potential of gardens is protected
- To ensure good drainage.
- To minimise risk to existing building structures
- To ensure the proper protection of the Historic Built Environment
- To protect the amenity of residents and to ensure good quality contextual design
- To reduce carbon emissions.
- To reduce construction nuisance and disturbance to residents and neighbours during construction phase works.
- To prevent flooding risk.
- To ensure that schemes for basement works are properly designed

My client would wish to support these policy objectives and would acknowledge that basement development which is poorly designed and poorly managed does give rise to a very significant risk of damage to adjoining property and will result in substantial and unnecessary disruption for local residents.

In this regard, my client would wish to encourage the Council to bring forward planning policies which will allow the Council to seek to require independent third party validation of the technical adequacy of basement design, the methodology of construction works and the monitoring of basement development throughout the construction phase.

However, in drafting proposed new policy CL7 the Council has sought to achieve its objectives by the introduction of three apparently arbitrary limitations on the amount of new basement development.

These are the stipulation in Policy CL7 (a) that basement development should not exceed a maximum of 50 % of each garden, the stipulation in CL7 (b) and CL7 (c) that basements should not (subject to some exceptions) exceed more than one storey in depth and the stipulation in CL7 (f) that basement construction should not involve excavation below a Listed Building.

My Client would respectfully point out that the imposition of simplistic arbitrary limitations of this type will result in situations where sustainable development is prevented unnecessarily and that this will result in unnecessary, and unjustified economic and social harm.

My client would therefore wish to say that Policy Sections CL7 (a), CL7 (b), CL7(c) and CL7 (f) are not justified, are not in conformity with the NPPF and are unsound.

In this regard I would be grateful if it were possible for the following comments and observations could be taken into consideration.

## **ECONOMIC AND SOCIAL COST OF PROPOSED POLICY RESTRICTIONS**

### **SOCIAL COST**

In very large measure the residential built environment within the Royal Borough of Kensington and Chelsea results from a substantial 19th century building boom. Very substantial construction works occurred during this period and this would have caused substantial disruption and inconvenience for residents within the locality during that period.

It would have been possible to reduce the amount of disruption for 19th-century residents by restricting the amount of development permitted and one possible, if somewhat arbitrary, option would have been to limit the construction of dwellings to a height of no more than one storey.

Clearly, this might have reduced the level of short term inconvenience faced by 19th-century residents.

However, I would respectfully suggest that an arbitrary restriction of this type would have materially degraded the quality and richness of the built environment which we enjoy today.

Just as 19th century built investment benefits our community today so the built investment of current building owners will benefit successive generations of residents in the future to come.

The National Planning Policy Framework recognises the need to provide the supply of housing and homes that the country needs and that meet the needs of present and future generations (NPPF paragraph 7, NPPF paragraph 17). These objectives extend to the adaptation, alteration and extension of existing dwellings to meet the needs of residents as this change and evolve over time.

By introducing an arbitrary restriction on the form and amount of basement construction which can occur the council's proposed policy will reduce the extent to which we are able to provide for the needs of residents and the extent of built investment which we will be able to pass on to future generations.

As a result, introduction of the new policy restriction will result in a material harm which should be weighed up and taken into consideration.

## ECONOMIC COST

Large-scale deep basement construction represents a very significant financial investment by individual residents and, at an aggregate level, basement development within central London is of real and material economic benefit to our shared economy. Development of this type supports good quality well-paid jobs and substantial economic activity. It also generates substantial tax revenue which helps to support the public services of our community.

In this regard it is important to acknowledge that the Government is committed to securing economic growth in order to create jobs and prosperity (NPPF paragraph 18) and that the economic role played by the planning system is one of the three key dimensions of sustainable development (NPPF paragraph 7).

By introducing an arbitrary restriction on the form and amount of basement construction which can occur the Councils proposed policy will reduce construction and economic activity which will result in the destruction of jobs, a reduction in economic activity, and a reduction in tax revenue for our community.

As a result, introduction of the new policy restriction will result in material economic harm which should be weighed up and taken into consideration.

My client would respectfully request the opportunity to provide evidence at the forthcoming examination in public regarding the economic harm which will result from the introduction of the Councils proposed basement policy.

## WEIGHING UP

The Council will say that it has had regard to all material considerations and that it has taken a balanced position in which it seeks to restrict but not prevent basement construction.

However, I would respectfully query how much thought the council has really given to the social and economic cost of the proposed policy. Similarly, I would respectfully query how much consideration the council has given to alternative evidence based policies which might reduce adverse social and economic harm by allowing large/deep basements where these can be shown to be sustainable.

My client would respectfully request the opportunity to provide evidence at the forthcoming examination in public and to provide evidence regarding alternative evidence based policy approaches which would provide a more appropriate strategy and achieve a better and more appropriate balance between the economic, social and environmental objectives of our community.

### **ALTERNATIVE EVIDENCE BASED POLICY APPROACH**

The Council recognises the need for proposals for basement development to be supported by detailed analysis and evidence to demonstrate the sustainability of the individual scheme concerned.

I would strongly support the council's requirement for detailed site investigation and an evidence based analysis of the impact of each individual basement proposal. This will provide good quality evidence about the impact of each individual scheme and on this basis the Council will be able to weigh up each individual proposal to determine whether they are, or are not, sustainable.

My client would respectfully request the opportunity to provide evidence at the forthcoming examination in public in respect of the very wide range of different circumstances which can be encountered in basement construction within the Borough and will highlight the substantial variations in geotechnical, structural and drainage / hydrological conditions which can be experienced.

In this regard, my client would acknowledge that there will be situations where even quite modest single storey basement proposals might result in an unacceptable level of harm and which should therefore be resisted by the Local Planning Authority. However, my client will give evidence to show that there are other circumstances (even in small and relatively constrained sites) where the construction of a deep basement or a basement which extends below more than 50 % of a property garden does not in fact involve any greater "risk" than the construction of a single storey basement, and that such larger basement proposals will not result in any material adverse harm to adjoining property, drainage, hydrology, landscaping or landscape potential. Similarly, my client will give evidence to show that there are circumstances where a deep basement does not in fact result in any materially greater disruption to traffic / highway safety and residents amenity than an alternative single storey basement proposal.

Similarly, my client would question the apparently simplistic assertion within the Council's reasoned justification which purports to justify a restriction on basement development on the basis of a comparison of the embodied carbon and carbon use of new basement construction when compared to above ground development.

In this regard my client would respectfully suggest that this comparison is misleading and irrelevant and that any assessment in respect of carbon emissions and mitigation must surely be based on a case by case assessment which compares the life time carbon use associated with a property which is subject to basement development with the expected life time carbon use of the subject property if retained in its existing condition.

The essential point is that a scheme for basement development may well include associated enhancements in thermal performance and energy use which result in a net reduction of the actual life time carbon use associated with the individual property.

Given the above comments it is inevitable that the arbitrary limitations proposed within the current policy will result in the council refusing planning permission for basement development schemes which are demonstrably sustainable.

This is illogical and I would respectfully suggest that it is contrary to guidance set out within the National Planning Policy Framework.

## **RISK**

The Council's statement of justification makes the assertion that deeper basements have greater structural risks and complexities and that a "precautionary" decision has therefore been taken to limit basements to no more than one storey in depth.

My client would respectfully request the opportunity to provide evidence at the forthcoming examination in public in respect of the structural risks involved in basement construction. In this regard my client will give evidence to show that the Council assertion is very simplistic and that in appropriate circumstances construction of a deep basement (even in small and relatively constrained sites) will not result in any material increase in structural risk.

Indeed, the fact that the Council is forced to fall back on a "precautionary" justification is in itself evidence that there is no real evidence base to support a prescriptive ban on deep basement construction.

Similarly, I would respectfully question whether the council has taken a proportionate approach to the weight which it has given to the perceived structural risks associated with basement construction.

By way of example, I would point out that all buildings are subject to some form of structural movement, that many historic buildings have experienced significant structural deformation over their lifespan and that there are many other forms of development which also involve significant risk to building structures.

Simple works such as re-wiring, re-plumbing or internal alteration can, if poorly implemented, cause devastating structural damage as a result of fire, leaking pipes, flooding or structural collapse.

The risk which can result from poorly implemented basement development does justify the introduction of planning policy which ensures the proper validation of basement design and the proper monitoring of basement construction works. However, it does not justify the introduction of arbitrary limits of the size of basement construction.

## **RESIDENTS AMENITY & CONSTRUCTION IMPACT**

My client would strongly support the introduction of a planning policy to minimise and control the impact of construction works on the amenity of residents. We should all aspire to ensure that construction works are managed in a way which minimises impact on the lives of local residents and measures such as the monitoring and control of noise and vibration and the proper management of parking and construction traffic are entirely reasonable.

However, the council seeks, in part, to justify the introduction of arbitrary limits on basement construction on the basis that reducing the amount of construction works will improve the amenity of local residents. Indeed, from verbal discussion with planning officers I have the sense that this is the fundamental reason why the new policy is being introduced.

I would make two points in this regard.

In the first instance, we need to be clear that this amounts to the introduction of a planning policy which restricts a sustainable form of development simply on the basis that this will reduce the amount of construction work within the locality.

With respect to the council, I fail to see how this is consistent with the National Planning Policy Framework and I await with interest the Council's policy justification in this regard.

The second point to make is that even in terms of the Council objective to reduce the amount of construction work involved the arbitrary nature of the policy means that it will result in perverse planning decisions.

By way of example, a single storey basement development for a large domestic property may well take longer and result in more construction traffic than a two storey basement development for a smaller property.

Similarly, a basement which is limited in area but includes a small section of two storey construction (e.g. to accommodate a plant room) might involve substantially less volume of construction than a single storey basement which extends below the whole of the area permitted by the draft policy.

Finally, I would make the point that a poorly managed single storey basement development may well take longer to complete than a well managed scheme for a deeper proposal.

If the Council genuinely wishes to reduce construction related impact on the amenity of local residents it would be far better served by developing an evidence based policy approach which includes an assessment of traffic/ parking capacity, methodology of construction and the impact

that this will have in terms of programme of works, aggregate construction impact within individual localities and the impact of construction phase works within the street scene.

## **HISTORIC BUILT ENVIRONMENT**

The government places great weight on the importance of the proper protection and management of the Historic Built Environment which is one of the core principles set out in paragraph 17 of the NPPF. However, the NPPF does not include any absolute presumption in favour of preservation or conservation of Heritage Assets and provides a sophisticated, proportionate and evidence based approach which seeks to balance harm caused by any individual design proposal against the wider benefits of the intended development.

Fundamentally, the NPPF makes it clear that proposals for development which affects Heritage Assets can only properly be assessed on the basis of an individual assessment of the significance of each individual asset concerned and the actual impact of the application proposal on the significance of that individual Heritage Asset.

Determination is then made on an individual basis following a careful "weighing up" of the level of significance of the individual asset, the level of benefit or harm which the development will have for the significance of the individual asset concerned and any wider social and economic benefit which may flow from the development proposal.

In this regard, the National Planning Policy Framework makes it clear that harm to the significance of a Heritage Asset can be justified and in this regard it sets out the relative levels of justification which should be applied depending on the level of harm caused and the relative level of significance of the Heritage Asset concerned.

In contrast, subsection "f" of the draft policy seeks to introduce an absolute and arbitrary prohibition of excavation below a Listed Building.

In practice, it would be entirely normal, to reach the conclusion that basement development which results in genuine harm to the significance of a Heritage Asset cannot be justified and that permission should therefore be refused. Indeed, there will be many cases where the construction of a basement below a Listed Building would indeed cause unacceptable harm to its significance as a Heritage Asset.

However, it is self-evident that there will be cases where basement development results in harm to a Heritage Asset which can be justified and it is also self-evident that there may be Listed Buildings whose actual significance will not be adversely affected by the construction of the basement below its footprint.

It is illogical and inconsistent with the NPPF for the Council to effectively legislate to say that the significance of every Listed Building will be unacceptably harmed by the construction of a basement below its footprint.

Similarly, it is illogical and inconsistent with the NPPF for the Council to seek to legislate to say that no basement development which causes harm to a Heritage Asset can be justified.

To reinforce this point I would make the comparison between Draft Policy CL7 (f) and the Council's emerging draft policy CL4 which deals specifically with development which affects Heritage Assets.

This new Policy has been revised for consistency with the NPPF and whilst the policy seeks to preserve the significance of Heritage Assets it is noticeable that the council does not seek in this policy to introduce any proscriptive prohibition of any other particular form of development or alteration of Heritage Assets and Listed Buildings.

In this regard I would make particular comparison with the Council's approach to above ground development and would point out that the Council does not seek to introduce any arbitrary or prescriptive prohibition of alternative forms of development such as rear extensions, internal alteration or addition of conservatories.

It is illogical and unsustainable for the Council to suggest that the significance of every Listed Building will be unacceptably harmed by basement development. It is also illogical and unsustainable for the Council to assess the impact of basement development on the significance of a Heritage Asset in a different way to that which would be used to consider other forms of development such as rear extensions or internal alterations.

I would respectfully point out that the emerging draft policy is not consistent with National Planning Policy Guidance for the Historic Built Environment and is therefore unsound.

## **DRAFT POLICY CL4 (HERITAGE ASSETS)**

In large measure I would wish to support policy CL4 which has been drafted to reflect revised guidance for the management of the Historic Built Environment set out within the NPPF.

However, and as noted above, I would point out that the NPPF does not include any absolute presumption in favour of preservation or conservation of Heritage Assets and provides a sophisticated, proportionate and evidence based approach which seeks to balance harm caused by any individual design proposal against the wider benefits of the intended development.

Similarly, I would highlight the guidance set out in paragraph 76 of the associated extant English Heritage Practice Guide which states that :-

***“ ....The key to sound decision making is the identification and understanding of the differing, and perhaps conflicting, heritage impacts accruing from the proposals and how they are to be weighed against both each other and any other material planning considerations .....*”**

I would respectfully point out that draft policy CL4 does not include any acknowledgement that harm to the significance of a Heritage Asset can be justified and that it does not provide any



mechanism for the proper “weighing up” of the differing and sometimes conflicting heritage impacts of development and other material planning considerations.

The draft policy is therefore inconsistent with the NPPF and is unsound.

I would respectfully suggest that the wording of the draft policies should be modified in order to properly reflect NPPF guidance in this regard.

Please do not hesitate to contact me if you require any further information.

Kind Regards

Yours faithfully

A handwritten signature in black ink, reading "R.A. Ward-Booth". The signature is written in a cursive style with a long horizontal flourish underneath.

**Robbie Ward-Booth**  
**Bsc (Hons), MRICS, Dip Bldg Con, IHBC**