

Town Clerk and Executive Director of Finance

Nicholas Holgate

Head of Information Systems Division

Barry Holloway

Kevin O'Connor
Cranbrook Basements
26-28 Hammersmith Grove,
Hammersmith,
London
W6 7BA

16 August 2013

Please ask for: Robin Yu

Dear Mr O'Connor,

Thank you for your requests for information under the Freedom of Information Act, which have been dealt with under the Environmental Information Regulations.

Section 39 of the Freedom of Information Act provides that environmental information shall be handled in accordance with the Environmental Information Regulations (EIR). Your request has been handled in accordance with EIR as it is our opinion that information held for the purposes of planning will constitute environmental information. These matters are considered to be measures likely to affect the elements and factors listed in paragraphs (a) and (b) of the definition of environmental information as set out in regulation 2(1). For example, construction projects are likely to affect land use, waste generation and disposal, water provision and drainage, energy use and noise, amongst others.

Your requests generally fall into one of the five broad categories as follows:

- No information is available, beyond that already in the public domain
- Information is available in a published document – we have referred to the published document.
- No information is sought – you seek an explanation or justification and I have elaborated on the process for this below.
- Internal communications sought - All internal communications have been withheld under regulation 12(4)(e).

6. You state that *"retaining at least of half of each garden will... allow water to drain through to the upper aquifer."*

Please confirm whether or not you have sought evidence and advice from fully qualified hydrogeological experts and provide copies of their report and case study to support your statement.

No information available other than in the Residential Basements Study Report, March 2013, Alan Baxter and Associates

<http://www.rbkc.gov.uk/planningandconservation/planningpolicy/corestrategy/basements.aspx> .

7. When focussing on the issue of surface water and ground water the report prepared by *Alan Baxter Associates* under paragraph 13.3.5 (a) states that *"in order to maintain the surface water and ground water status quo... sites where the near surface conditions are gravel or sands no more than 75% of the area of a garden should be built under with a basement."*

RBKC have decided to ignore this specific advice and restrict basement size to 50% of garden area in relation to water related issues.

RBKC must have specifically considered hydrogeological issues when choosing to ignore the specific advice of Alan Baxter Associates with regard to the size of a garden basement in gravel or sands.

Please provide details of the expert hydrogeological assessment which was carried out that has enabled the planning department to reach the decision to ignore the specific advice of Alan Baxter Associates in relation to surface water and ground water issues.

Please provide details of the professional evidence that you have relied upon to demonstrate that the current requirement to retain a minimum of 15% of garden undeveloped is insufficient to deal with water related issues.

No information other than as explained in the Alan Baxter Report (such as in para 9.8 and 13.3.5) and in the reasoned justification of publication policy.

8. You state that *"this policy takes into account the London Plan"* – you make specific reference to Plan Policy 3.5 of the London Plan.

Paragraph 3.5 of the London Plan does not relate to subterranean construction – instead referring specifically to development "on gardens."

We have a specific note from the Senior Strategic Planner at the Greater London Authority who confirms this point and goes onto say in writing that with regard to subterranean extensions reference should be made to paragraph 1.2.25 of the London Plan.

Please explain why you have sought to inaccurately make reference to a part of the London Plan which clearly does not relate to basement extensions. This suggestion is highly misleading.

No information sought

9. You state that *"the National Planning Policy Framework also supports local policies to resist inappropriate development of residential gardens and excludes private gardens from the definition of previously developed land."*

As you are aware the NPPF makes no reference to subterranean construction and the reference under numbered paragraph 53 to inappropriate development relates to *"garden grab development."*

With reference to numbered paragraph 53 of the NPPF please explain how you can demonstrate that subterranean development in excess of 50% of the garden area would cause harm to the local area.

No information sought

The following question relates to numbered paragraph 34.3.55 of "Basements Publication Planning Policy"

1. You state that "keeping the unexcavated area of a garden in a single area and adjacent to similar areas in other plots allows better drainage."

Please provide proof, evidence or explanation from a fully qualified hydrogeologist or similarly qualified person which supports your statement.

Alternatively provide written evidence of the information which is at your disposal to support your statement.

No information available.

2. You state that "keeping the unexcavated area of a garden in a single area... allows... continuity of large planting supporting biodiversity."

Please provide evidence from a fully qualified arboricultural expert and horticultural expert that supports your statement.

No information available.

3. You state that "the unexcavated area of a garden... will usually be at the end of the garden furthest from the building."

Please provide the reasoned justification to support this statement together with copies of the professional advice that you have received from fully qualified individuals, with suitable evidence, that supports your statement that the garden area should be located to the rear of the property and not elsewhere.

No information available.

The following question relates to numbered paragraph 34.3.56 of "Basements Publication Planning Policy"

1. We do not understand your reference to a "precautionary approach by limiting basements to a single storey."

It would appear that you are saying that you have not conducted a detailed study of basements carried out within the borough which has produced evidence to show continual and significant structural damage on a wide scale related to deeper basements.

Notwithstanding this and in the absence of any evidence you wish to adopt a precautionary approach, effectively "just in case there is a problem" intending to restrict basements to a single level.

We are seeking a specific answer to this specific point and would be grateful if you do not attempt to confuse matters by making reference to carbon or other unrelated factors.

We are seeking a direct answer to this question – are you seeking to restrict basements to a single level based upon perceived structural risk without having carried out a full and detailed survey across a large number of basement projects which have been completed in the borough in recent years?

We are unaware of any such study having been carried out by RBKC and in the absence of this research your approach is unreasonable.

No further information other than that available in Alan Baxter and Associates Report, March 2013.

The following question relates to numbered paragraph 34.3.59 of "Basements Publication Planning Policy"

1. You state that "once a basement is built a further basement... in the garden will not be acceptable at the same site."

Please provide the reasoned justification for this approach.

This policy will effectively prevent any person who had constructed a basement below their original property from subsequently constructing basement in the garden area.

Please provide a logical explanation as to why it would not be permissible for a householder who had completed a basement construction below their original house, say, ten years ago would not now be permitted to construct a basement of any size within their rear garden.

No information sought.

The following question relates to numbered paragraph 34.3.60 of "Basements Publication Planning Policy"

1. Within paragraph 34.3.60 you make reference to footnote 13 which in turn refers to British Standard 5837 2012.

Point 7.6 of BS 5837 2012 specifically deals with subterranean construction and trees.

The British Standard concludes having carried out enormous research informed by leading professional experts that it may be possible to excavate below the root protection area of trees and that each case should be assessed on its merits in the light of site specific specialist advice.

Please provide details of the professional arboricultural advice and reports that have been prepared to contradict the recommendations contained within 7.6 of BS 5837 2012.

[Repeats earlier request in Request 1 pt 9, and Request 4 pt 1.](#)

2. The RBKC policy proposal is to prevent excavation below the root protection zone of a tree despite the statements contained within BS 5837 2012 which confirms that in individual cases this may be possible – subject to circumstance.

Excavation below the root protection area of trees within RBKC has been acceptable where sufficient evidence is provided and we would direct you to excavation below trees at 10 Kensington Palace Gardens and in particular the observations of the Principal Arboricultural Officer of the Royal Borough of Kensington & Chelsea who states that he has no objection to the excavation below the root protection area of trees at the subject property on the basis that engineering and arboricultural justification has been provided.

Please refer to written comments made under Planning Reference PP/08/1323 dated the 9th July 2008 by Mr Angus Morrison – Chief Arboricultural Officer, RBKC.

Based upon the agreement of the Chief Arboricultural Officer of RBKC that excavation below the root protection area of a tree is possible following detailed engineering evaluation I would be grateful if you would provide detailed evidence of case studies which have been carried out in the intervening period within RBKC – which prove that trees have suffered as a consequence of excavation below the root protection area.

We have been unable to find any evidence to justify the decision of RBKC to ignore the recommendations of BS 5837 2012 on this specific point.

[Repeats earlier request in Request 1 pt 9, Request 4 pt 1, as well as in this request at pt 1.](#)

The following question relates to numbered paragraph 34.3.62 of "Basements Publication Planning Policy"

1. RBKC seeks to ban basements below the footprint of Listed Buildings on the basis that in all cases basement development on Listed Buildings

must have a negative impact on the host buildings historic integrity and should therefore be resisted by policy.

No information sought.

2. The Local Authority will have considered the comments of English Heritage under PPS 5 which states under paragraph 178 which states "assessment of an asset significance and its relationship to its setting will usually suggest the forms of extension that might be appropriate."

Please explain why RBKC refuses to accept that subterranean extensions to Listed Buildings should be judged on a case-by-case basis – preferring rather to adopt a blanket ban – particularly in light of Guidance by English Heritage that an individual assent is required.

No information sought. Please note, however, that PPS5 has been superseded by the NPPF.

3. Please explain why an extension of a Listed Building above ground is not subject to the same blanket ban based on architectural hierarchy and layout that applies to a subterranean extension.

It would appear that there is no reasoned justification for the blanket ban that is being applied in relation to plan for arrangement of subterranean extensions when identical circumstances exist for extensions above ground.

The proposed ban is highly prejudicial and misconceived.

No information sought

4. Please explain why if RBKC are prepared to consider above ground extensions to Listed Buildings then why is similar consideration not given to subterranean extensions?

No information sought.

5. Within PPS5 English Heritage specifically address the issue of subterranean extension under numbered paragraph 182 where they say that "proposals to remove or modify internal arrangements including the insertion of new openings or extension underground will be subject to the same considerations of impact on significance as for externally visible elements."

This statement indicates that English Heritage require subterranean extensions to be considered on the same basis as those which are constructed above ground – this in turn indicates that upon architectural principles a blanket ban on extensions below Listed Buildings is inappropriate and that development should be considered on a case-by-case basis.

Please provide an explanation that clearly states why subterranean extension below the footprint of a Listed Building can never be acceptable based upon plan form and hierarchical architectural arguments alone (for the purpose of

this question structural considerations should be ignored as they are a separate issue dealt with elsewhere within this letter).

No information sought.

The following question relates to numbered paragraph 34.3.63 of "Basements Publication Planning Policy"

1. You state that "basements in the gardens of Listed Buildings can result in extensive modifications to the buildings foundation."

Please provide full details of the case studies which have been conducted and the report that has been produced by qualified structural engineers indicating the extent of modification to the foundations of Listed Buildings which have been carried out within the borough within the last three years.

We are seeking an understanding of the information that has been used by the Local Authority to support their statement.

No information available.

2. You state that "basements in the gardens of Listed Buildings... pose risks of structural damage to the building."

Basements have been successfully constructed within the gardens of Listed Buildings for many years within RBKC – please provide details of the study which has been carried out proving that significant structural damage has been caused to Listed Buildings with RBKC in recent years as a consequence of basements being constructed within the gardens of Listed Buildings.

Please ensure that the evidence provided is supported and endorsed by fully qualified Structural Engineers and Chartered Surveyors.

[Residential Basements Study Report, March 2013 \(para 9.2.6.2\), Alan Baxter and Associates](#)

3. You state that the construction of basements "may be acceptable in a large garden where the basement can be built without extensive modification to the foundations."

This statement implies that minor modifications to the foundations are acceptable and on this basis we ask for your clarification as to what would constitute a modification which was not "extensive."

We assume that you will have made further reference to Table 2.5 of Ciria Report C 5804 and your clarification as to what level of damage would be acceptable is requested.

No information sought.

4. Please note that any material modification to a Listed Building involving structural repairs, extensions, replacement windows, modification to plan form will always have a structural impact of some degree and on this basis if

you simply respond to our enquiry stating that no damage should be caused then this will effectively require a blanket policy across the borough in relation to modifications of Listed Buildings of any type.

In the event that you wish to make a distinction between damage which may be caused as a consequence of subterranean construction and damage which may be caused as a consequence of above ground construction please provide a reasoned explanation as to why this distinction is appropriate supported by evidence from a fully qualified chartered engineer or chartered surveyor.

No information sought.

The following question relates to numbered paragraph 34.3.67 of "Basements Publication Planning Policy"

1. You state that "it is very important to minimise the visual impact of light-wells." Please explain why it is "very important" to minimise the impact of light-wells compared with other above ground forms of development.

No information sought.

2. You state that "care should be taken to avoid disturbance to neighbours from light pollution through roof lights."

Please provide evidence of the study where light pollution through roof lights has been assessed as being greater than other above ground forms of glazing which will generally be far more visible from adjacent properties or to members of the public.

Your statement implies that there is a significant problem with light pollution from basements and we would ask for your reasonable explanation as to the evidence you have used to make this statement.

No information available.

3. You state that "introducing light-wells where they are not an established and positive feature of the streetscape can harm the character or appearance of an area."

This statement means that with any street there may be multiple light-wells that have become an established feature of the street scene, by consequence of their presence may not necessarily be regarded as a positive feature by a Planning Officer even though they form part of the prevailing style of development in view of their number.

Please explain your intention in using the term "not a positive feature of the street scape" within the context of our wider question.

It would appear that the intention of this statement is to allow Planning Officer the right to determine whether or not a prevailing style of development is positive – for example, if a Planning Officer simply does not

like the appearance of light-well grilles within any given road, irrespective of the number that may exist, then the Planning Officer can refuse to allow consent for the proposed light-well on the basis that it is not regarded as "a positive feature of the street scape."

No information sought.

The following question relates to numbered paragraph 34.3.70 of "Basements Publication Planning Policy"

1. You state that "the applicant must demonstrate that these impacts are kept to acceptable levels under the relevant Acts and guidance, taking the cumulative impact of other development proposals into account."

Planning Policy Guidance Circular 11/95.. "Use of Conditions in Planning Permission" offers specific guidance on attempts to control matters that are the subject of alternative legislation under numbered paragraph 22 - "other matters are subject to control under separate legislation, yet also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary, and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable."

"A condition cannot be justified on the grounds that the Local Planning Authority is not the body responsible for exercising a concurrent control, and there cannot ensure that it will be exercised properly."

Under paragraph 31 - "A condition which is not sufficiently precise for the applicant to be able to ascertain what must be done to comply with it is ultra vires and cannot be imposed. Vague expressions... for example, so as not to cause annoyance to nearby residents give occupants little idea of what is expected of them."

Please explain the basis upon which the Planning Department is seeking confirmation from applicants that they will comply with the mandatory requirements of other statutory regulators.

No information sought.

2. You state that "the building compound and the skip location should be accommodated on the site or in exceptional circumstances in the highway immediately outside the application site."

As you are aware Planning Policy Guidance Circular 11/95.. states within Appendix B.. Conditions which are unacceptable Paragraph 7 - "to require that loading and unloading, and the parking of vehicles, shall not take place on the highway at the front of the premises. This Condition purports to exercise control in respect of the Public Highway, which is not under the control of the applicant."

At Paragraph 38 Circular 11/95 goes onto say "it is unreasonable to impose a Condition worked in a positive form which developers would be unable to comply with themselves or which they could comply with only with the consent or authorisation of a third party"....."Conditions which require the applicant to obtain an authorisation from another body should not be imposed."

Further at Paragraph 39 "it would be ultra vires, to require works which the developer has no power to carry out or which would need the consent or authorisation of a third party."

As you are aware the vast majority of properties within RBKC do not have a vehicular crossover to enable a skip to be deposited on the front garden nor is the front garden in the vast majority of cases large enough to accommodate a skip plus the other equipment which may be required to construct the development.

Please prove justification for requiring developers to demonstrate that they will obtain consent from third parties for highways permission to locate a skip or other construction related element on the public highway in light of the guidance contained within the Circular 11/95.

No information sought.

3. Please provide an explanation as to why a basement should require "exceptional circumstance" to gain permission to place a skip on the public highway in comparison to other above ground extensions – please refer to "Best Practice Guide" issued by London Councils which confirm the use of skips as "low risk."

No information sought.

The following question relates to numbered paragraph 34.3.71 of "Basements Publication Planning Policy"

1. You state that the basement and temporary works must be carried out... "limiting damage to an adjoining building to Category 1 of Table 2.5 of the Ciria Report C 5804."

This requirement ignored the specific advice contained within the Alan Baxter Report paragraph 14.4.1 (H) which states that Category 2 of Ciria Report 580 should be achieved.

Please provide an explanation as to why you have ignored the advice of your independent structural engineers.

Please also confirm details of the specific advice that you have received from fully qualified structural engineering staff stating that you should ignore the advice contained within the Baxter Report and apply an alternative standard.

No information available (also see para 10.9 of the Alan Baxter and Associates Report).

The following question relates to numbered paragraph 34.3.73 of "Basements Publication Planning Policy"

1. You state that before making a planning application applicants should "commence party wall negotiations."

Please provide details of the professional advice that you have received from Chartered Surveyors that recommends in advance of gaining planning consent for a scheme the party wall process should begin.

No information available.

2. Please confirm that you have considered the fact that Party Wall costs are not automatically borne by the individual having the works carried out and by consequence you expose the adjoining owner to costs that they may not recover from engagement in the party wall process before a planning application has even been submitted.

No information sought.

3. You state that "construction and traffic management plans and demolition and construction management plans should be discussed with the Council at pre-application stage."

Please explain the basis upon which you can require an applicant to discuss these matters with the Local Authority in advance of the submission of a Planning Application.

No information sought.

Request 6 (Email: 1 August 2013) Ref: 2013-740

Please supply the Detailed Plans and Specifications that were used as case study by Eight Associates and are referred to in the attached SAP Calculations for both the Extension and the Basement Calculations

No information available.

Complaints

I trust this has satisfied your request. Should you be unhappy with the handling of your request, the Council has an internal complaints process for handling FOIA complaints. Complaints are reviewed by the Chief Solicitor and Monitoring Officer or her nominee. A form is available from our website to lodge your complaint

<http://www.rbkc.gov.uk/councilanddemocracy/freedomofinformation.aspx>

Please contact us if you do not have website access and we can provide you with a copy of the form. Following this review, should you still be unhappy with how your information request has been handled, you have a further

right to appeal to the Information Commissioner who is responsible for ensuring compliance with FOIA.

Yours sincerely

Robin Yu

Information Protection Assistant
Information Governance Team
Information Systems Division (ISD)
The Royal Borough of Kensington and Chelsea
The Town Hall, Hornton Street, London W8 7NX
Tel: 020 7938 8226

Web: <http://www.rbkc.gov.uk>