

**Council's Response to Cranbrook Basements' Submission on
Law and Policy by Timothy Comyn, RBKC, Feb 2014**

CRANBROOK BASEMENTS

ROYAL BOROUGH OF KENSINGTON AND CHELSEA PARTIAL

REVIEW OF THE CORE STRATEGY JULY 2013-09-02

REGULATION 19: TOWN AND COUNTRY PLANNING (LOCAL PLAN) REGULATIONS 2012

BASEMENTS PUBLICATION PLANNING POLICY: POLICY CL7

LAW / POLICY SUBMISSION OF CRANBROOK BASEMENTS

ON THE UNSOUNDNESS OF PARTIAL REVIEW POLICY CL7

INTRODUCTION

1. This submission forms part of the representations of Cranbrook Basements ('CB') on the unsoundness of Partial Review Policy CL7 contained in the Royal Borough of Kensington and Chelsea ('RBKC') Basements Publication Planning Policy July 2013 ('BPPP'). It is to be read together with the representations on behalf of CB on planning matters submitted by Bell Cornwell (Simon Avery) and the comments of CB itself (Kevin O'Connor) on technical considerations with accompanying expert reports ('CB's representations').
2. CB contends for the reasons set out in these three representations, that proposed Policy CL7 ('CL7') is not 'sound.'(Regulation 20(5)(b))

[There is no Regulation 20 \(5\) \(b\) in the Town and Country Planning \(Local Planning\) \(England\) Regulations. Regulation 20 deals with representations relating to a local plan. The correct provision is, in fact, in section 20 \(5\) \(b\) of the Planning and Compulsory Purchase Act 2004.](#)

¹ Persimmon Homes (North East) Ltd v Blyth Valley BC [2009] J.P.L. 335 (CA).

² PINS LDF Guidance 09/2009:33.

EXAMINING POLICY CL7: NPPF 182

3. To be sound CL7 must be shown to be:
- positively prepared on a strategy which seeks to meet objectively assessed development and infrastructure requirements;
 - justified – the policy should be the most appropriate policy when considered against reasonable alternatives, based on proportionate evidence;
 - effective – the policy should be deliverable; and
 - consistent with national policy – the policy should enable the delivery of sustainable development.
4. These are legal tests. A policy not positively prepared, not justified, not effective and not consistent with national policy, or failing in respect of any one of these criteria, is beyond the powers of the RBKC as the local plan making authority. For the reasons set out in CB’s representations, CL7 and the ‘Reasoned justification’ paragraphs 34.3.46 – 34.3.73 (‘RJ’) accompanying the draft policy, are not sound when tested against the above criteria.

[These are not legal tests as these are not set out in planning legislation but are derived from the NPPF para 182.](#)

POSITIVELY PREPARED

The evidence base

5. To be sound CL7 must be founded upon ‘a robust and credible evidence base.’¹ The evidence must be proportionate and must inform the content of the policy.²
6. Page 4 of the BPPP states that the RJ paragraphs 34.3.46 – 73 ‘justifies the policy.’ Accordingly, in determining whether CL7 is sound, the decision maker should focus on the content of those paragraphs to discover whether they demonstrate compliance with the four point soundness criteria.

³ PPS1 and ‘General Principles’.

⁴ The population of RBKC is 196,000. 8000 represents 4% of the population of which

⁶ Arup Geotechnics Phase 1 Scoping Study Rev B: 1.1

‘Concern from residents’

7. Contrary to RJ 34.3.46, CL7 does not apply ‘to all basement proposals.’ Despite the recognition in 34.3.47 that basements are ‘a useful way to add extra accommodation to homes and commercial buildings’ (and therefore, in principle, a sustainable form of development), CL7 (a) prohibits basement proposals that exceed 50% of garden land and CL7 (b) those of more than one storey. CL7 (RJ 34.3.47) purports to promulgate ‘rules’ to exclude these basement developments.

As set out in the reasoned justification of Basements Publications Planning Policy, RBKC, Feb 2014 *“Basements are a useful way to add extra accommodation to homes and commercial buildings. Whilst roof extensions and rear extensions add visibly to the amount of built development, basements can be built with much less long term visual impact – **provided appropriate rules are followed. This policy sets out those rules” (our emphasis).***

8. A first apparent justification for the imposition of these ‘rules’ is the assertion in RJ 34.3.48 that ‘Basement development in recent years has been the subject of concern from residents.’ Guidance has been given by the Secretary of State on the proper approach to the evaluation of representations by third parties in relation to development.³ If they are to carry any material weight they must be shown to be soundly based on objective planning grounds.

PPS1 referenced at footnote 3 has not been in existence for some years now. Para 1 of the NPPF states *“It provides a framework within **which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities”.** (our emphasis)*

9. The RBKC ‘Basement Developments – Neighbours Survey’: November 2012 provides no objective foundation for the imposition of the ‘rules.’ First, the survey was partial excluding all residents in the borough who were not living ‘in the vicinity of properties where planning permission had been sought for a basement development.’ Secondly, the extent of this geographical area – ‘in the vicinity,’ is not defined in the survey report and thus its appropriateness cannot be tested.

Undertaking surveys of those who had no real life experience of living next to or near a basement would not provide any meaningful information and would have been a waste of Council’s resources. Any survey that evaluated and considered experiences of those who had never lived near a basement would no doubt have been subject to even more criticism from objectors to policy. This was a ‘targeted’ survey.

10. Thirdly, of the 8000⁴ questionnaires distributed, only 1354 (17%) were completed. It is submitted that a 17% return rate in this case, where individual householders in close proximity to basement development sites were singled out for consultation, is no substantial basis upon which to impose the proposed CL7 policy 'rules' on such development. The results of the survey show that (8000-1354) 6,646 householders 'in the vicinity of properties where planning permission has been sought for basement development' were not minded to inform RBKC that they had any concerns about such development. Thus, to the extent it was a pin point survey, the very low response rate demonstrated by implication that, despite being canvassed by RBKC, a substantial majority (83%) of the 8000 residents living 'in the vicinity of' basement development were silent as to there being any need for a policy change in the recently adopted Core Strategy policy CL2 affecting basement development. Nevertheless, RJ 34.3.47 seeks to place reliance on this mixed minority response to targeted consultation to build a policy foundation for the new 'rules' to be imposed in CL7. Such an approach is misconceived, and an example of policy being informed by evidence which is not proportionate contrary to NPPF 182.

A number of assumptions are made above. The facts are a neighbour's survey was undertaken by the Council. The response rate is in fact considered to be quite high in formulating a local planning policy. For example consultations undertaken by the Council on other matters such as housing, employment which are in themselves are greatly significant issues generate a very low response rate. However, this does not translate to residents not being concerned about these issues.

In addition the survey is only part of the evidence supporting the Council's proposed policy.

11. Fourthly, this disproportionate reliance being placed on an insubstantial minority response to consultation is exacerbated by the lack of any apparent investigation by RBKC of the reasonableness of the 1354 responses to consultation taking account of the nature of the response, the circumstances it dealt with and whether the individual concerned had any planning justification for his or her concern having regard to the existing controls available to RBKC and other public authorities and the fact that all development has some impact on neighbours.
12. Fifthly, and in any event, the analysis in the survey report demonstrates that of the 17% responses, only about half expressed concern 'to some extent' about matters

such as noise, vibration and dust. In addition, a majority of respondents noticed no change in drainage, flooding, damp and vermin either during or after construction.

13. In short, the RBKC 'Basement Development Neighbours Survey' 2012 provides no sound evidential basis for the proposed change of policy. It demonstrates no 'objectively assessed development requirement' for CL7. On the contrary, its results lend cogent support to the efficacy of the existing recently adopted Core Strategy policy CL2 in the management of basement development in the borough. As stated in the Gateshead MBC case,⁵ 'public concern' must be justified if it is to be a material planning consideration. The 2012 survey results show that the overwhelming majority of residents living in the vicinity of basement development in the borough do not see any requirement for the 'rules' in policy CL7.

While it is being suggested that it is unreasonable for the Council to take account of the views of 1,354 responses, it is on the other hand clearly being suggested that views of Mr Comyn's client should override all other views received in the surveys.

Firstly, it is incorrect to state the "*overwhelming majority of residents living in the vicinity of basement development in the Borough do not see any requirement for the 'rules' in policy CL7*". The surveys as Mr Comyn knows were not undertaken on the merits of the proposed policy. Public concern is justified in this case given the response in the surveys, the daily phone calls received by Council officers, volume of correspondence the Council receives, public interest in the consultation when compared to any other planning policy formulated by the Council. The issue has been raised in the Parliament both in the House of Lords and the House of Commons. These are all matters that have been raised as a consequence of planning approval. In this Borough with its special character both historic and in terms of density (highest household density anywhere in the UK), narrow constrained streets these are material planning considerations in formulating this policy.

Secondly Gateshead MBC case relates to a waste incinerator which needed a separate authorisation from HM Inspectorate of Pollution (HMIP) to carry on the process of incineration. Construction impacts related to basements do not need approval from other regimes. This case is not considered relevant to the basements policy.

The construction impact of basement development

14. RJ 34.49 says that in RBKC the construction impact of basements is a significant material consideration 'because the Borough is very densely developed and populated.' As regards the density of development and population in the borough,

⁵ [1995] Env LR 37

there has been no material change of circumstances since the adoption of the Core Strategy in 2010.

15. Nor have there been any material changes regarding the statutory control mechanisms in place to manage basement development. The RBKC Subterranean Development SPD 2009 (itself informed by the Arup Subterranean Development Scoping Study which led to the 2008 revisions of the GPDO), recognises that residents can have concerns about such development but also confirms that:
- subterranean developments can be built safely in nearly all circumstances (1.1.5);
 - noise relating to construction and demolition ‘will be controlled by the Council under section 60 and 61 of the Control of Pollution Act 1974’ (‘COPA’) (Appendix C p.30);
 - that British Standards Codes of Practice for Demolition and the Environmental Protection Act 1990 relating to nuisance ‘should considerably reduce the risks and nuisance inherent in demolition work...’(Appendix C p.31)
 - the appointment of a Party Wall surveyor is not a material planning consideration;
 - a key requirement of planning policy under the new LDF process ‘is not to duplicate policy or related legislation’ including:
 - Building Control – engineering design, on-site operations; safe working and standards of workmanship;
 - Construction and Design and Management Regulations (2007) – health and safety during demolition and construction;
 - Control of Pollution Act 1974 – noise levels, working hours, use of plant;
 - Part Wall Act 1996 – requirement for reasonable measures to be taken to protect property from damage;
 - Highways Act 1980 – long term obstructions of the highway and skip, transfer of spoil, erection of hoardings licensing;

- Road Traffic Regulation Act 1984 / Road Traffic Act 1991 – traffic management orders;
- Environmental Protection Act 1990 – abatement notices re excessive noise, grit or dust;
- Health and Safety at Work Act 1974; and
- Housing Act 2004 – health and safety in dwellings.

16. By reason of its density, the vast majority of development of all kinds in the RBKC, including basement development, will have been and will be ‘next door’ (RJ 34.3.50). There are and have been for many years, these statutory regimes in place that are recognised by the SPD, to control construction and demolition operations relating to quality of life and structural stability. These remain extant and available, and there has been no material change of circumstances with regard to the statutory control of construction and demolition operations that amounts to an objective planning requirement for the imposition of the ‘rules’ proposed policy CL7.

[Please refer to National Planning Practice Guidance: Land Stability to see how planning can work alongside other regimes. Planning is not delving into other regimes through the proposed policy as suggested.](#)

[The legislation stated above “remain extant and available” however, what has changed is the number of basement planning applications and subsequent implementation. Much of the legislation stated above deals with issues arising after the grant of planning permission. Given the cumulative impacts of a growing number of developments the Council does not wish to place undue reliance on mitigation.](#)

Restriction on size

17. There is, accordingly, no objective planning justification or requirement for the proposed restriction on the extent of basement excavation under gardens ‘to no more than half the garden’ and the limit on the ‘depth of excavation to a single storey in most cases.’ The RBKC should focus on whether basement development ‘is an acceptable use of the land and the impact of the use, rather than control of the processes or emissions themselves where these are subject to approval under pollution control regimes.’ (NPPF 122) (Underlining added).

18. The rationale in RJ 34.3.49 - 51 for placing a policy embargo in proposed policy CL7 on these forms of basement development is not based on the use of land but

essentially on the perceived short term effects of construction and demolition on neighbours. Thus, CL7 seeks to deny the ‘potential benefits’⁶ of subterranean development in the dense urban area of RBKC ‘including the increased space available to house holders and to businesses,’⁷ by reference to considerations not concerned with the use of land but with short term environmental impacts of construction and demolition that are subject to control by other non-planning statutory regimes.

The Council would like to point out that in addition to the underlined text of para 122 of the NPPF the quotation above also importantly states “.....**where these are subject to approval under pollution control regimes**”. Basement development does not require any other approval under such or other regimes. Please see National Planning Practice Guidance: Land Stability to see how planning can work alongside other regimes.

Mr Comyn seems to assume the policy is based purely on construction impacts and fails to consider other ‘long term’ environmental impacts clearly shown in Council’s evidence on visual character, trees, biodiversity and carbon. In commenting on the ‘use of land’ he also fails to consider that the NPPF has precluded private gardens from the definition of previously developed land. As such private gardens cannot be developed unrestricted in accordance with the NPPF.

19. In the DCLG publication ‘Non-Material Planning Considerations,’ guidance is given that such considerations include ‘Matters controlled under building regulations or other non-planning legislation e.g. structural stability, drainage details, fire precautions, matters covered by licences etc...Problems arising from the construction period of any works e.g. noise, dust, construction vehicles, hours of working (covered by the control of pollution Acts).’ Contrary to this explicit guidance,⁸ therefore, policy CL7 seeks to impose an embargo on sustainable basement development by reference to non-material planning considerations. The policy is, thereby, not soundly based or consistent with achieving sustainable development.⁹

As Mr Comyn would know ‘material planning considerations’ are not defined in law. A wide spectrum of issues can be material planning considerations depending on the case. Structural stability, drainage and construction impacts are planning considerations but the weight accorded to them can be different in different cases and can reflect the means of controls in other fields. Construction impacts are material planning consideration for example in schemes requiring an Environmental Assessment as part of the planning application; construction has to be considered upfront.

Please refer to [National Planning Practice Guidance: Land Stability](#) to see how planning can work alongside other regimes.

20. Nor would the policy serve any measureable or practical planning purpose. As advised by the ArupGeotechnics, the forms of disturbance during basement works give rise to effects which, in general 'are at least of similar, and sometimes of greater, magnitude than equivalent categories of disturbance created by other types of residential building works (such as replacing a roof, converting a loft, or adding a conservatory).'¹⁰ RBKC have produced no substantial evidence to demonstrate the fallacy of this statement or that basement works of the type to be embargoed by CL7 are of a magnitude in short term impact on amenity greater than that of other types of residential building works in the borough ordinarily controlled by planning conditions.

The Arup report is from 2008. The Council has collated a range of other evidence since then. Arup have made this remark in their report but it can only be assumed they were referring to small basements of the type the policy will allow. This is because the range of projects listed is not considered to be equivalent to the large basements the policy will preclude. Replacing a roof, converting a loft or adding a conservatory can hardly be described similar to a scale of development which may propose floorspace of more than one floor under the entire footprint of the building and up to 85% of each garden.

Policy CL2 (d) (i) of the Core Strategy requires (amongst other criteria) above ground extensions "to be visually subordinate to the original building;" The Royal Borough also has a very special historic character with 70% within designated conservation areas and 4,000 listed buildings. As a result above ground extensions are proportionally small compared to the host building.

⁷ Ibid

⁸ And contrary to the High Court judgement in Richard Szpiro V. RBKC and Wheeler CO/11629/2011 Underhill J.

⁹ NPPF 182 first bullet.

¹⁰ ArupGeotechnics report Phase 1 Scoping Study Rev B 5.4

21. In conclusion under this heading, CL7 is not based on any plan making strategy that seeks to meet ‘objectively assessed development requirements.’¹¹

Para 182 (first bullet) of the NPPF has been taken out of context here. It states *“Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;”*

On the basis of Mr Comyn’s comments it would appear that all extensions (including above ground) contribute to meeting objectively assessed development needs. Therefore above ground extensions should also be allowed to cover private gardens unrestricted and include as many floors as required with no other considerations. Mr Comyn does not refer to ‘consistent with achieving sustainable development’ also included in para 182. The Council has clearly not banned all basements but given its evidence come to the conclusion that within prescribed limits basements are sustainable but unrestricted or covering almost entire gardens is not a sustainable form of development.

JUSTIFIED

22. Policy CL 7 is not ‘justified’ for the reasons mainly set out in the CB technical representations and accompanying expert reports. For the reasons stated there:

there is no evidence to support the claim that limiting the area of garden excavation to 50% will reduce the level of construction phase inconvenience; Compared to a basement that is two or more storeys deep and extending under a maximum of 85% of each garden, a basement of a single storey under a maximum of 50% of each garden will reduce construction impacts on each individual site.

no research has been carried out by RBKC to quantify the number of vehicle movements that would be associated with a larger basement construction project.

Evidence is provided in *Case Studies of Basement Excavation*, Alan Baxter and Associates, Jan 2014.

the report by Eight Associates (RJ 34.3.53,69) is demonstrably flawed as regards its assessment of lifetime carbon emissions relating to basement development;

This report has been superseded by *Life Cycle Carbon Analysis*, Eight

Associates, Feb 2014.

- CL7 and its accompanying RJ (34.3.54 -55, 60, 68) is not underpinned by any professional arboricultural or horticultural advice relating to the alleged benefits of retaining ‘at least half of each garden’¹² or proven drainage requirement;

The Council’s in-house arboricultural officers have been involved in policy formulation throughout the process. Please refer to Council’s supporting documents Trees and Basements, Feb 2014 and Alan Baxter Associates Basements Report (Mar 2013). Cranbrook Basements’ own report by Arup Hydrologic Review of Basements, Publication Planning Policy (Document 51) states *“Generally the Publication Planning draft of the policy provides a reasonable policy to be implemented with respect to potential hydrological and hydrogeological impacts both locally and across the Borough”*. (page 11) and *“There may be some sites where the 50% rule is not conservative enough or where existing/adjacent developments could be impacted detrimentally. For example, a site where existing conditions do not provide adequate surface water storage, such as sites in outcropped London Clay areas”* (page 12).

- CL7 is not supported by any expert evidence to show that basement construction can materially affect the health of residents;

The Council is not claiming there have been wide spread health issues related to basement development.

- CL7 (RJ 34.3.71) is not based on any survey or survey evidence showing that damage has actually been caused to properties in RBKC as a consequence of basement development above single storey;¹³

The Council is not stating structural reasons to support the policy to restrict basements to a single storey.

- CL7 (RJ 34.3.61 – 66) fails to acknowledge the flexibility supported by English Heritage with regard to basement development under listed buildings and in conservation areas;¹⁴

In response to the July 2013 Basements Publication Consultation, English

Heritage’s representation states *“English Heritage has reviewed the document in light of the National Planning Policy Framework (NPPF), which includes, as one of its core principles, that heritage assets be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Having done this, English Heritage advises that we are broadly content with the soundness of the proposed revisions in terms of the historic environment.”*

It is incorrect to state English Heritage guidance note to PPS5 has a flexibility supported by English Heritage with regard to basement development under listed buildings and in conservation areas. See the Council’s response on this point in Council’s Response to Cranbrook Basements comments related to Listed Buildings, RBKC, April 2014.

¹¹ NPPF 182 first bullet.

¹² See the Barrell and Gilchrist reports.

¹³ See the Masters structural design report

¹⁴ Planning for the Historic Environment PRACTICE GUIDE: ENGLISH HERITAGE

- CL7 (RJ 34.3.67) adopts an unreasonable blanket ban on lightwells and railings to the front and side of buildings without opportunity for consideration to be given to the planning merits of individual schemes; and

The policy is not putting a blanket ban on light wells and railings to the front and side of buildings. It states *“not introduce light wells and railings to the front or side of property **unless** they are already an established and positive feature of the local streetscape”* (our emphasis). Planning works on the basis that *“Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise”* (Section 38(6) of the Planning and Compulsory Purchase Act 2004). The policy is the starting point and each case is assessed on its own merit. Policies are written to address most cases rather than the exceptions.

- unnecessarily and inappropriately (RJ 34.3.71) requires proof of detailed structural design at the planning application stage.

It is not considered that planning policy can deal with structural issues beyond what is essential to satisfy the Council that there will be no harm to the character or appearance of the Borough’s built environment due to structural damage. This is done through a requirement for a construction method statement.

Evidence on this issue has not been collected deliberately. Nevertheless, officers have been to properties where structural damage has been witnessed. These include 48/50 Abingdon Villas, 24 Pembridge Mews, 148 Kensington Park Road (listed building) and 3 and 5 Upper Phillimore Gardens. Other cases are cited in representations received on the publication consultation including one by Mr Christopher Hunt.

EFFECTIVE

23. Proposed policy CL7 is not positively prepared or justified by substantial and compelling evidence and will not be effective or deliver sustainable

development. On the contrary, CL7, if adopted, is likely to inhibit many sustainable basement developments in RBKC and prevent the optimisation of scarce residential and commercial development opportunities in this dense urban area of London.

The policy is positively prepared and allows basements with the prescribed limits and consideration of other policy criteria. It is supported by a range of evidence and supports sustainable development.

CONSISTENT WITH NATIONAL POLICY

24. CB contend for the forgoing reasons that CL7, in having a negative effect on the sustainable development of basements in RBKC, is in material conflict with London Plan policy 2.1 and its accompanying commentary which supports growth and development in the city. CL7 if adopted is likely to cause significant financial damage to employers in the basement industry by placing an embargo on sustainable basement developments in the borough.

Growth and development neither in the NPPF nor in the London Plan is supported at the cost of all other environmental and social consideration. The golden thread running through the NPPF is 'sustainable development' with a balance of all three strands – social, economic and environmental. The policy takes into account all three strands of sustainable development and allows basements within the prescribed limits and policy criteria.

25. In addition, CL7 does not 'take into account the London Plan' policy 3.5 (RJ 34.3.54).

As stated to CB by Jennifer Peters, a strategic planner at the GLA, policy 3.5 does not relate to subterranean construction.

This is factually incorrect. The letter does not state this. The email supports the Council and states with reference to London Plan policy 3.5 *"The policy enables boroughs to introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified. In its local application it will be for boroughs to determine whether it should also apply to commercial development on back gardens in light of their local circumstances. Further guidance on*

implementing the policy can be found in the Housing SPG para 1.2.17-1.2.24, recognising the important role back gardens play in London and strategic policy concerns which should be taken into account when protecting them (our emphasis). Para 1.2.25 deals with strategic issues which may bear on subterranean extensions." (our emphasis)

The relevance of 'commercial development' in the response from GLA to Cranbrook basements is unclear but it can be assumed it is in reference to a specific query posed by Cranbrook Basements. However, the response is clear that it is for the boroughs to determine how the policy applies depending on local circumstances.

The Council has received a letter of compliance from the GLA. GLA's Draft Sustainable Design and Construction SPG, July 2013 (page 12, 27 and para 2.2.25) lists London Plan Policy 3.5 as relevant to basement development.

26. CL7 also conflicts with national policy set out in the NPPF as outlined above and for the reasons stated in Bell Cornwell's submissions on behalf of CB.

The policy is compliant with the NPPF and this point has been responded above (see response to 21, 22, 23 and 24). Separate response has been provided by the Council to the Bell Cornwell submissions. See documents Council's Response to Cranbrook Basements Document 62 by Bell Cornwell, RBKC, April 2014 and Council's Response to Representations submitted on behalf of Cranbrook Basements on Planning Matters by Bell Cornwell LLP (July 2013 Responses), RBKC, April 2014.

CONCLUSION

26. In overall conclusion, having regard to the guidance in NPPF 150-181, proposed policy CL7

- has not been prepared with the objective of contributing to the achievement of sustainable development.

As stated in the Council's response above the policy is seeking to achieve sustainable development and has considered all three strands of sustainable

development in its formulation.

- places unnecessary financial burdens on development
The policy does not place any unnecessary financial burdens on development. All issues covered by the policy are necessary and supported by evidence.
- is not based on adequate, up-to-date and relevant evidence
The Council's policy is based on a range of relevant evidence as set out in the Policy Formulation Report, RBKC, Feb 2014. The evidence is adequate and proportional to the policy.
- contains no clearly justified safeguards and thereby inhibits development unnecessarily; and
The policy does not inhibit development but supports sustainable development. Proposals that comply with the policy will be granted without any delay.

is accordingly not a sound planning policy.

None of the points raised above in Mr Comyn's opinion renders the policy unsound. Timothy Straker QC has advised that the Council could properly come to the conclusion that the policy is sound.

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