

Executive Summary

Council's Response to Cranbrook Basements – Executive Summary, Comments on Basements Publication Planning Policy – Royal Borough of Kensington and Chelsea, April 2014

Please note Council's comments are in italics and blue.

General comment – The submission by Cranbrook Basements has sought to separate out each issue that the policy is seeking to address in isolation. It should be noted that the Council's policy is based on a number of issues together as set out in the Policy Formulation Report, RBKC, Feb 2014.

1. The Royal Borough of Kensington & Chelsea (RBKC) is proposing to amend current basement Planning Policy within the Borough.
2. RBKC have failed to demonstrate that the existing planning policies are in any way deficient or that there is evidence to demonstrate that they do not meet appropriate standards.
3. Inconvenience related to construction activity is seldom a welcome event but construction is an essential part of our economy employing hundreds of thousands of highly skilled individuals, many thousands of whom would be significantly affected if the proposed RBKC Planning Policies are adopted.
4. The documentation contained within our submission addresses each of the issues raised by RBKC and with the benefit of expert reports prepared by leading industry professionals will demonstrate that the claims made by RBKC are either without foundation or simply wrong.
5. In preparing the draft policy proposals, RBKC have relied upon a limited number of Reports including :
 - Alan Baxter Associates Basements Report March 2013
 - Alan Baxter Associates Basements in Gardens of Listed Buildings
 - Alan Baxter Associates – Basement Vehicle Movements
 - Lifecycle Carbon Analysis - Extensions and Subterranean Development – Eight Assoc
 - Evidence Base for Basements and Policy CEI – Eight Associates

- RBKC Document – Basement Works – Impact on Residents
- RBKC Document – Impact of Development on Biodiversity
- RBKC Document - Basements Visual Evidence – Photographic

6. The principal report's relied upon by RBKC are those of Alan Baxter Associates (ABA). ABA is a Structural Engineering Consultancy. Neither of the Report Authors hold appropriate professional qualification to enable them to comment adequately on a number of issues raised within their report's – Where ABA comment on issues upon which they have no professional qualification – then those opinions are effectively lay opinions and no weight should be given to those comments
7. Within the brief issued by RBKC to Alan Baxter Associates they were asked to report on the following construction specializations
 - Arboricultural matters
 - Horticultural matters
 - Geotechnical matters
 - Hydrology
 - Environmental Health
 - Sustainable Urban Drainage
 - Energy Costs
 - Eco-Homes Assessments
 - Energy requirements
 - The Party Wall Act
 - Highways matters
 - Transport Matters

Neither of the report authors holds professional qualifications in relation to these specialist disciplines and any comments that they offer cannot be regarded as Expert Opinion.

Alan Baxter and Associate

See Response to Consultation Comments prepared for RBKC by Alan Baxter and Associates, Apr 2014

8. RBKC have claimed that basement construction has a disproportionately high carbon footprint and as such is damaging to the environment. This statement is wrong. In making these statements they have relied upon the various reports provided by Eight Associates.

9. In 2013 the original Carbon Analysis Reports prepared by Eight Associates were analysed by three independent expert consultants and found to be fundamentally flawed and totally inaccurate
10. Despite multiple written requests including applications under Freedom of Information – RBKC refused to allow access to the calculations that had be carried out thereby denying independent experts the opportunity to examine the “evidence” that formed the basis of the discredited Eight Associates Reports
11. In February 2013 RBKC issued further reports by Eight Associates which simply contain a series of conclusions and absolutely no detailed calculations
12. Once again multiple written requests for access to the Carbon Calculations have been refused by RBKC – this naturally leads to the suspicion that both Eight Associates and RBKC are not confident that the calculations are accurate
13. Fundamentally the refusal of RBKC to produce Evidence to support their conclusions automatically fails to meet the fundamental requirements of the NPPF – insofar as all Policy Changes must be Evidence Based – NPPF Paragraphs 150 - 182
14. As a consequence of RBKC refusal to provide evidence to substantiate the Eight Associates conclusions – Cranbrook Basements instructed Internationally acknowledged experts – Waterman’s to produce a technical report analysing Carbon across the entire lifespan of the Basement compared to a similar above ground extension using examples contained within the Eight Associates Reports. Unsurprisingly the Waterman’s Report and fully disclosed calculations clearly demonstrate that subterranean extensions have lower carbon content over whole of building construction and lifespan than that of a similar above ground extension.
15. Claims made by RBKC in relation to carbon generated through basement construction are wrong and the reports prepared by Eight Associates are fundamentally flawed.

Response to points 9-15 – These are comments on the 2010 Report. The Council accepted that this report had some arithmetical errors, it was out of date and relied on a small number of case studies. As a result this report was superseded by Life Cycle Carbon Analysis, Eight Associates, Feb 2014 report. The Council has not refused to provide the information requested. The Council’s consultants Eight Associates have provided references to where information was available within their document. They did not provide information which was their intellectual property.

Response to point 14 is provided in Technical Review, RBKC - Basements Policy Public Consultation Response Waterman Energy Report, Eight Associates, April 2014

16. RBKC Planning are attempting to control the detail through the planning process of a large number of issues that are already the subject of control and management under alternative

legislation. If the proposed planning policy rules are adopted – RBKC Planning Policy will be controlling matters that are the subject of alternative Primary Legislation including:

- The Party Wall Act
- The Environmental Health Act
- The Control of Pollution Act
- The Building Regulations
- The Highways Act
- The Construction Design & Management Regulations
- The Health & Safety at Work Act

The Courts have made clear that any such attempt would render the entire Policy “*Ultra Vires*”

17. As RBKC state within their own published document ‘Relationship with Planning Legislation’’*the Town & Country Planning Act Controls the appearance of buildings and land and the uses to which they are put, the Building Regulations ensure buildings are safe and fit for purpose, the Party Wall Act safeguards the interests of adjoining owners, the Environmental Protection Act and Control of Pollution Act protect the wider public and the environment from a range of harms and the Highways Act ensures the efficient and safe use of roads and highways. This is an oversimplified context as there are other important pieces of legislation too, but it serves to illustrate the complement of legislation and the separate roles that each piece of primary legislation has.* **The Courts have made it very clear that Authorities implementing controls under one piece of legislation should not attempt to emulate, influence or over-write controls laid down under legislation, attempting to expand control beyond the proper remit of a particular Act would be ‘ultra vires’. It may seem attractive to both observers or decision makers to attempt to bring matters under the planning umbrella that should not properly be there at all, the Courts will not tolerate this** – Document 23 – RBKC Statement – Planning Consent in Context of Alternative Legislation.

18. RBKC accept that Planning Policy should not seek to exercise control over matters which are the subject of alternative legislation and yet that would be the natural consequence of the adoption of the proposed planning policy changes.
19. Basement construction is already amongst the most highly controlled construction process carried out.
20. The level of documentation required to obtain Planning Consent under current policy includes:
- Fully developed Structural Engineering Design Philosophy
 - Site Investigation Borehole
 - Environmental Sustainability Assessment – Eco-Homes
 - Arboricultural Report
 - Hydrogeological Report
 - Geotechnical Report
 - Construction Method Statement
 - Construction Traffic Management Plan
 - Acoustic Report
21. Further controls are entirely unnecessary.
22. It is a fundamental principal that Planning Consent should not be refused for any proposal on the basis of a matter which can be resolved through the use of a Condition – Circular 11/95.
23. The Court of Appeal decision in ‘Gateshead Metropolitan Borough Council v Secretary of State for the Environment, 12th May 1994’ is clear that non planning construction related matters that are the subject of alternative legislation should be left to the controls of the relevant statute.
- The proposed policy is not seeking to impose controls over matters dealt with under other legislation. This is acknowledged in the reasoned justification of the policy (para 34.3.69). The Gateshead case related 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. Also see National Planning Practice Guidance on Land Stability which explains how planning can work alongside other regimes.*
24. In attempting to gather evidence RBKC carried out a survey which was specifically aimed at capturing the experience of those people affected by basement construction.
25. The survey carried out by RBKC is fundamentally flawed and the evidence should not be relied upon because RBKC failed to make a distinction between basements which were

18. RBKC accept that Planning Policy should not seek to exercise control over matters which constructed as a component part of a far larger re-development and those cases where the basement may have been a stand-alone project.

RBKC have formally confirmed that *'it is extremely rare for a basement to be dug in isolation with the vast majority of such projects being associated with the refurbishment of the wider building.'*

26. The questionnaire provided by RBKC to residents who participated within the survey did not allow the respondent to be clear that the inconvenience they alleged they experienced was actually related to the basement component of a wider redevelopment.
27. It is understandable that residents would be confused as to the precise source of their inconvenience, bearing in mind the statements made by ARUP Associates in their formal report to RBKC on subterranean development where they state specifically under Paragraph 5.4 Nuisance Caused During Works – *'main forms of nuisance and disturbance during basement works are, in general, at least of similar and sometimes 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.'*
28. It is highly likely that having received a questionnaire from the Local Authority which fails to make a distinction between basement construction and that of the wider project, that the respondent will automatically blame the basement for any perceived inconvenience bearing in mind the statement by RBKC that it is extremely unusual for a basement to be constructed in isolation.
29. The Residents' Survey conducted by RBKC is fundamentally flawed and should be disregarded.

The Council does not agree with these assertions regarding the residents and neighbours surveys. The survey forms were clear that information was being collected about basement development including the title. It is also clear from the written responses in the surveys that the respondents were writing about basement development.

30. Freedom of Information enquiries to RBKC has provided formal responses on the part of the Local Authority on a range of issues.
31. RBKC have confirmed that they have no supporting evidence on a range of issues including the following:
 - The number of Planning Consents where a basement is simply a component part of a larger redevelopment – **no supporting evidence available**
 - Analysis of Residents' Survey to ensure that where a basement is simply a component part of a wider redevelopment that it is not unfairly blamed for

RBKC have formally confirmed that *it is extremely rare for a basement to be dug in isolation*
construction inconvenience – **no supporting evidence available**

- Results of study to demonstrate that basement construction within the gardens of Listed Buildings has caused damaged to the host property – **no supporting evidence available**

This part of the policy has been changed since July 2013 and the policy is no longer precluding basements in the gardens of listed buildings.

- Results of survey to demonstration any trees within RBKC which have been damaged as a consequence of excavation below the root protection area – **no supporting evidence available**

No evidence will be available as this is normally not allowed by planning policy. The Council's enforcement team does have cases where trees are damaged during construction including one at 2 Abingdon Villas, basement constructed by Cranbrook Basements.

- Details of studies to demonstrate that the construction period for basements is longer than above ground extensions – no supporting evidence available

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. Basement development on the other hand can introduce large increases in floorspace by adding a whole new floor under the footprint and into the large majority of the garden in accordance with the existing policy. Also see para 12.2 of Alan Baxter Associates Basements Report (Mar 2013).

- Proof that basements restrict the range of planting – **no supporting evidence available**

Please refer to Trees and Basements, RBKC, Feb 2014 and Basements Visual Evidence, Feb 2014

- Proof that retaining at least half of each garden will enable natural landscape and character to be maintained – **no supporting evidence available**

Evidence is presented in Basements Visual Evidence, Feb 2014 of gardens before and after basement construction. Clearly evidence of 50% cannot be presented as this is not the Council's policy at present. The proposed policy will be monitored to study the impacts.

- Details of projects where basements constructed to a depth of more than one storey have led to damage to the subject or adjacent buildings – **no supporting evidence available**

The Council is not restricting basements to a single storey based on structural issues.

- Schedule of Listed Buildings that have been damaged as a consequence of basement construction within the host garden – **no supporting evidence available**

The policy is requiring that basement development demonstrates no harm to the special architectural and historic interest of the listed building when proposed in the garden (CL7 (g)). This is a reasonable requirement given the Council's duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

A listed building has been damaged at 148 Kensington Park Road as a result of basement development underneath the adjoining non-listed building.

- Schedule of foundations to Listed Buildings that have been substantially modified as a consequence of basement construction – **no supporting evidence available**

Modifications to foundations are required to form the link to the basement. See Basements in Gardens of Listed Buildings, Alan Baxter and Associates, Feb 2014

32. RBKC are relying upon as evidence the photographic schedule contained within 'Basements Visual Evidence.'
33. The vast majority of projects listed by RBKC were granted Planning Consent under policies which were withdrawn in May 2009. The remainder of the schemes were still under construction at the time of photography.

34. Photographic schedule produced by RBKC is unreliable for the following reasons:

- Virtually all of the schemes that have been constructed were built in line with policy which has not been in force since May 2009
- The remainder of the schemes were under construction at the time they photographs were taken
- There are no examples of fully landscaped basements constructed under the Planning Rules which have been in effect since May 2009
- An Article 4 Direction regarding landscaping does not apply across the Borough and residents will have been able to implement landscaping schemes without reference to the Planning Department resulting in modification to gardens unrecorded by RBKC
- The before and after photographs span a period of up to 13 years during which time householders may have taken the opportunity under Permitted Development to modify their gardens – Potentially removing greenery and Installing Decking/Paving

See Council's response to Cranbrook Basements' documents on Visual Evidence, RBKC, April 2014.

35. RBKC have refused to provide an explanation as to why it is necessary to impose a blanket ban on any type of basement below a Listed Building based upon planning reasons.

Reasons are explained in para 34.361 of the reasoned justification of the Basements Submission Planning Policy, RBKC, April 2014.

36. Since 2011 RBKC has granted Planning Consent for 38 above ground extensions of Listed Buildings and yet refuses to even consider the possibility of a subterranean extension.

See Council's Response to Cranbrook Basements comments related to Listed Buildings, RBKC, April 2014

37. English Heritage specifically consider the potential for underground extension within their English Heritage Practice Guide where they state, 'proposals to remove or modify internal arrangements including insertion of new openings or **extensions underground** will be subject to the same considerations of impact on significance as for externally visible alterations.'

See Council's Response to Cranbrook Basements comments related to Listed Buildings, RBKC, April 2014

38. It is unreasonable for RBKC to impose a blanket ban on subterranean extensions to Listed Buildings.

39. The blanket ban imposed by RBKC cannot be based upon structural reasons because within their report Alan Baxter & Associates state, *'from a structural engineering viewpoint there is*

little difference in risk between a Listed and an un-Listed building.... the objection to basements under Listed Buildings primarily relates to how a building is used rather than any particular structural risk.'

Reasons are explained in para 34.361 of the reasoned justification of the Basements Submission Planning Policy, RBKC, April 2014.

Also see Council's Response to Cranbrook Basements comments related to Listed Buildings, RBKC, April 2014

40. ARUP Associates go onto say within their report to RBKC , *'subterranean developments have been successfully achieved in London and elsewhere over many years. In general these successful projects have been undertaken by experienced, competent teams, who recognise the potential hazards and mitigate against them.'*

41. The expert independent report prepared by AMEC Ecology states "It is concluded that the need for a new policy to restrict basement development to a maximum of 50% of back gardens and no more than a single storey *cannot be justified* on grounds relating to adverse effects on Biodiversity.....The current legislation and policy context is deemed sufficient to ensure the conservation of biodiversity interests within gardens in the Royal Borough of Kensington and Chelsea"

42. The expert independent report prepared by Adonis Ecology states "The Impact of Basement Development on Biodiversity" does not provide any evidence that basement developments have reduced biodiversity report prepared by RBKC nor does it provide evidence of any significant potential impacts that cannot be adequately mitigated for under present policy. The report also fails to identify that there are opportunities for biodiversity enhancement with basement developments that can be achieved under present policy. *Thus there is no justification from biodiversity for further limiting the extent or depth of basement developments"*

Please refer to Response to consultation responses for "The potential impact of basement excavation on biodiversity: a paper for the RBKC Planning Department, April 2014.

43. The expert independent report prepared by Stephen Laird (Technical Editor of BS 5837 2012) Forbes Laird Arboriculture " To conclude my review of the RBKC Trees and Basements document, although it purports to set out an evidential case against those matters relating to basements with which RBKC takes issue, in fact it does no such thing. *Instead, it is effectively an*

opinion piece which deserves to be afforded very little weight”

44. The expert independent report prepared by John Booth Arboriculture *“I respectfully submit that it appears that trees are being used unreasonably as a means to unnecessarily resist/restrict subterranean development”*

See Council’s response to Arboricultural Issues raised by Cranbrook Basements and Basement Force, RBKC, April 2014

45. The expert independent report prepared by 24 Acoustics *“It is considered that the construction methods used by Cranbrook Basements, are likely to ensure that for basement construction projects noise levels will generally not exceed those specified in BS 5228 and that vibration levels will be minimised.”*

See Council’s response to Environmental Health Issues, RBKC, April 2014

46. The expert independent Historic Buildings report prepared by Jeffrey George Associates *“We note a lack of consistency with National Framework Policy in regard to basements and listed buildings. No other authority in London or nationally has sought to limit basements in this way. Effectively there is already a virtual ban in excavating beneath the footprint of listed buildings in RBKC and it seems to us that this goes against National Policy and English Heritage guidance of each case being judged on its own merit”*

See Council’s response to Cranbrook Basements’ Document 60 by Jeffery George Associates:

47. The expert independent report produced by Waterman Transport *“Traffic generated by Construction is a temporary situation and has a negligible effect on the local highway network compared to the existing background traffic. Basement construction traffic is no different from other kinds of construction”*

See Consultation Comments prepared for RBKC by Alan Baxter and Associates, Apr 2014

48. The expert independent report prepared by Barrell Tree Consultancy states that, *“RBKC did not publish any expert analysis of its position regarding trees in the original review, but instead relied on incorrect and inappropriate lay assessment relating to trees in the Alan Baxter Report, attempting to dress it up as a reasonable and balanced analysis. That mindset seems to have persisted into the current documents..... Such a mindset is not generally considered reasonable, balanced, professional or sound, and that is why I draw attention to it”* and further *‘there is no demonstrable*

need to leave any portion of a garden free of basement development in order to enable flexibility in planting trees.'

Internal consultation and discussion with Council's in-house arboricultural team has been sought throughout the policy preparation.

49. The expert independent report prepared by David Gilchrist, Horticulturist, states that, *'I'm of good quality well drained top-soil above a basement structure will provide an excellent environment for the growth of plants and shrubs whilst strongly encouraging bio-diversity.'*

See Council's response to Arboricultural Issues raised by Cranbrook Basements and Basement Force, RBKC, April 2014

50. The independent expert report prepared by the Environmental Protection Group, states that, *'there is no valid reason why basement construction should be limited to a blanket ban of 50% of a garden area on the basis of drainage or flood risk.'*

See Consultation Comments prepared for RBKC by Alan Baxter and Associates, Apr 2014

51. The independent expert report prepared by Taylor Williams Daley Chartered Surveyors states that, *'the Party Wall Act more than adequately deals with any perceived risk or problems with basement construction... therefore through RBKC's lack of understanding of the Party Wall Act I find the reasoned justification and Policy CL7 of RBKC Basements Publication Planning Policy to be unsound.'*

See Consultation Comments prepared for RBKC by Alan Baxter and Associates, Apr 2014. There is no mention of the Party Wall Act within the policy itself. The reasoned justification at para 34.3.72 is advisory promoting good practice rather than introduce a requirement.

Conclusion

There is no evidence to support the draft policy proposals

All of the issues that matters seek to control are already controlled under Alternative Primary Legislation

Independent Expert Reports contradict statements made by RBKC Planning Officers

Expert Legal Opinion suggests that Proposed Policy may be Ultra Vires

RBKC are basing proposed Policy on information that is deeply flawed and fundamentally lacks evidence