

Council's Response to Representation by The Kensington Society, April 2014

BASEMENTS POLICY: JANUARY 2014 COMMENTS BY THE KENSINGTON SOCIETY

The Kensington Society **strongly supports** the need for a new policy on basements as the current policy is totally unfit for purpose, but considers that certain aspects of Local Plan Policy CL7: Basements are **unsound**, but with certain clarifications and improvements both to the policy and the reasoned justification we consider that the policy could be made sound.

These changes are:

- a clearer definition of what constitutes a “basement” (34.3.46)
- clarification of the likely impact on “nearby” buildings (34.3.50)
- clarification of the appropriate floor-to-ceiling height of a basement both generally, particularly where a swimming pool is proposed. (34.3.52)
- no basements under gardens of listed buildings (or if that is not accepted, greater clarity about the proximity of garden basements close to listed buildings (34.3.62); and
- a requirement that construction traffic management plans need to be an integral part of the application (34.3.69)

The Kensington Society wishes to appear at the Examination-in-Public to speak to this submission.

Policy CL7:

Overall whilst the Society strongly supports the direction of travel of this policy, it nevertheless considers that the policy needs further improvement to achieve soundness. The current Core Strategy policies CL2(g) and CE1, have proved to be unfit for purpose. We strongly support the proposal to limit the scale of basements and to reduce their impact on amenity, neighbours and on sustainability.

The Society specifically **supports** the following sound policies:

- limit of garden basement to 50% of garden for non-listed properties (a);
- limit of one storey (b);
- protection for trees (d);

- protection of heritage assets (e), especially listed buildings and conservation areas;
- no excavation under listed buildings (f);
- the requirement for sustainable urban drainage schemes (j);
- the requirement to increase the sustainability of buildings where basements are developed (k); and
- the need for keeping nuisances – noise, vibration and dust - to acceptable levels (m).

Support for these aspects of the policy is noted.

However, there are certain clarifications and improvements both to the policy and the reasoned justification which are essential before the Society can agree that the policy is sound.

Policy CL7:

- a. The Society considers this to be **unsound** as it applies to all properties, including those that are listed. We consider that listed buildings should not have basements in gardens, see (f) below. In addition, the Society does not consider that exceptions should be made for large sites.

It is considered that basements underneath the gardens of listed buildings can be successfully achieved without harm to the special architectural and historic interest of listed buildings. This can be achieved through, for example, an appropriate link to the main building, and careful consideration of the structural integrity of the listed building.

The Council's supporting document Basements in Gardens of Listed Buildings, Alan Baxter and Associates, Feb 2014 sets out other structural issues that need to be considered when basements are proposed in the gardens of listed buildings. Para 34.3.62 of the reasoned justification of the Submission Basements Policy, RBKC, Apr 2014 provides further detail on this issue.

Exceptions for larger sites as explained in para 34.3.57 have been made as these can offer more opportunity to mitigate construction impacts and carbon emissions on site.

The National Planning Policy Framework (NPPF) has a presumption in favour of sustainable development. Larger sites also have the scope to support economic development by creating more jobs (para 9 and 19 NPPF), contribute to the vitality of town centres (para 23, NPPF) and deliver a wide choice of high quality homes (para 49 NPPF). Given the public

benefits that development of larger sites can bring it is considered appropriate to have the flexibility in the policy to make an exception for these sites.

- b. The Society considers that limit of one storey is **unsound**, but could be made sound if it did not make exceptions for large sites.

Please see comments above in respect of the exceptions for larger sites.

- c. The Society considers that there is a need for a clearer definition of what constitutes a basement (see above).

The definitions provided are considered to be sufficiently clear to allow officers to make an on-site assessment as to what constitutes a basement development. As a Borough with many differing site circumstances, prevailing garden levels and gradients this is best established on a case by case basis.

- d. The Society **strongly supports** and considers this aspect of the policy – to protect trees – to be **sound**.

Support noted.

- e. The Society considers this **sound**, but considers that the term “heritage assets” is unfamiliar to most readers – whether developers or residents. Para 34.3.60 and this policy needs to make this clearer by specifically giving as examples both listed buildings and conservation areas, rather than putting it in the latter part of footnote 14 - it is not very accessible. This should be upfront in the reasoned justification and in the policy. It should be noted that the Borough has more than 4,000 listed buildings and structures and about 75% of its area is covered by conservation areas.

The footnote is considered to be adequate for this purpose.

- f. The Society **strongly supports** the policy of no excavation under listed buildings and, as far as it goes, the policy is **sound**. However, because of the risks to the main building, outbuildings (such as vaults in the front garden or under pavements which are attached to the building and to studios in the gardens) and to boundary walls which all form part of the listed structures within the curtilage, the Society considers that allowing basements under the garden could put these elements of the structure at risk. In addition, whilst the reference to pavement vaults is welcome, it should be clear that the policy also applies to vaults within the curtilage.

Please see above comments in respect of the impact on listed buildings and please refer to the supporting document Basements in Gardens of Listed Buildings, Alan Baxter and Associates, Feb 2014. It is acknowledged

that some sites may encompass other listed structures, such as outbuildings or boundary walls and these matters would continue to be assessed and addressed on a case-by-case basis to ensure that harm is not caused to their heritage significance.

- g. The Society agrees with this provision, but that if our proposal for (f) above is successful it would be unnecessary. If not, the Society would support the soundness of this policy.

Please see comments above.

- h. The Society considers that this policy is **sound as far as it goes**, however, it should be extended to cover the rear of properties facing communal gardens. This has been an issue which is in part covered by the policy about garden squares (CR5(c)) but which needs to be covered specifically in this policy.

This issue is covered by amendment to policy CR5c which refers to garden squares in relation to basements. It is not considered that repetition of this issue in CL7 is required.

- i. The Society considers this policy to be **sound**.

Comments noted.

- j. The Society **strongly supports** the need to provide sustainable urban drainage schemes, but consider that the effect should be to contain rainwater runoff within the site, not just attenuate run-off to the sewer system.

Support noted. Policy CE2 of the Core Strategy requires surface water run-off to be managed as close to its source as possible. In line with CE2 an on-site solution is a priority, however the nature and degree of the sustainable urban drainage systems will be assessed on a case by case basis.

- k. The Society **strongly supports** the requirement to increase the sustainability of buildings where basements are excavated, constructed with large amounts of concrete and require major energy consumption for cooling and ventilation. This approach is **sound** and is in accord with the London Plan, which is an integral part of the development plan for Kensington and Chelsea. The reasoned justification para 3.4.3.69 should refer to the relevant London Plan policies for sustainability and basements – it is far more than footnote 20 suggests.

Support noted. The reference to the London Plan in paragraph 34.3.68 of the reasoned justification is considered to be adequate in this case.

- I. The Society **strongly supports** the use of traffic congestion and parking criteria for assessing both basements and major construction projects generally. This is **sound**, but the reasoned justification should make specific reference to the need for construction traffic management plans which minimise the scale and duration of parking suspensions and work on the basis of a presumption of keeping skips, materials and equipment off the highway wherever possible. We consider that there is need for a lead policy in the Plan to require construction traffic management plans – not just for basements.

Construction Traffic Management Plans are generally sought on those schemes, including major development schemes, where construction traffic may cause harm to amenity or highway and pedestrian safety, in accordance with the Transport Supplementary Planning Document, adopted 2008. Construction Traffic Management Plans are assessed on their own merits with the aim of reducing the impact on parking availability, traffic flow, road safety, residential amenity and pedestrian convenience. Please refer to Chapter 8 (pg 33) of the Transport SPD. As such it is not considered that such a policy is required at this time.

- m. The Society **strongly supports** the need for keeping nuisances – noise, vibration and dust to acceptable levels. This policy is **sound**.

Support noted.

- n. The Society **strongly supports** this policy and considers it **sound**.

Support noted

- o. The Society considers this policy **sound**, although it should also cover the impact of basements on flooding of neighbouring premises.

Comments noted. Issues relating to flooding would be assessed on a case by case basis and if wider flooding problems were to exist these would be considered in light of Core Strategy policy CE2.

Detailed Comments:

To improve the soundness of the basement policy CL7, the Society proposes the following changes to the reasoned justification – paragraphs 34.3.46 to 34.3.72 and to detailed wording of Policy CL7.

34.3.46: There is no definition of what ‘below prevailing ground level of a site’ means, whether it mean just the floor or the complete structure. If it is not defined as a previously-consented scheme, which is say almost completely underground but not completely, it might be argued not to be a basement and therefore a further level could be permitted.

As stated above, the definitions provided are considered to be sufficiently clear to allow officers to make an on-site assessment as to what constitutes a basement development. As a Borough with many differing site circumstances, prevailing garden levels and gradients this is best established on a case by case basis.

34.3.50: Line 5 refers to 'adjacent' property. Paragraph 34.3.48 line 5 refers to 'nearby' buildings. It is not clear whether there is a difference. Adjacent is often defined as having a common boundary or being contiguous. Nearby is more appropriate since there have been problems with buildings which are near but not necessarily contiguous.

Comments noted. It is not considered that a change is required.

Line 8: refers to long-term harm. The definition of "long-term" in planning. We would suggest that it is at least many years and that the effects of even multiple excavations might not fall within that definition. We agree that it should not be limited to dealing with day-to-day issues but at least medium term should be included on the basis that something lasting a year or more is taken into account.

Comments noted. It is not considered that a definition of long term is required in this case.

34.3.52: The possible additional allowance for a swimming pool should be directly related to the swimming pool and not a general allowance just because part of the basement has a pool. A floor-to-ceiling height of 3m should be sufficient with a further allowance of for a swimming pool rather a general allowance of 3-4m.

With regard to ceiling heights, the Council considers that there should be a degree of flexibility to design a single storey as required. The text is clear that it should not be capable of horizontal subdivision.

34.3.62: Line 6: The Council have been refusing garden basements which are too close to the historic asset on the basis that the new structure would adversely affect the listed building, including vaults. This line should be modified to include the historic asset as well as adjoining houses.

It is acknowledged that some sites may encompass other listed structures, such as outbuildings or boundary walls and these matters would continue to be assessed and addressed on a case-by-case basis to ensure that harm is not caused to their heritage significance.

34.3.69: It needs to be clear that construction traffic management plans are required as part of the application, otherwise consents can be granted which can only be implemented by unacceptable traffic schemes.

The policy is not considered to be the stage to prescribe the required timing for submission of the Construction Traffic Management Plan and this matter will be subject to further consideration under the revised Supplementary Planning Document.

34.3.70: The Party Wall Act only deals with the immediate adjoining properties. This should be made clear and as stated at the lecture last month only relates to the Party Wall and may not apply to other structures.

As this is a matter outside planning control it is not considered necessary to provide further explanation or clarification on Party Wall matters within the policy document.

The importance of identifying buildings of importance in the new Conservation Area Appraisals is confirmed in footnote of the Basement policies as it refers to buildings formally identified by the LPA.

Noted.

Robert Ward-Booth

Conservation & Design#

The Executive Director of Planning and Borough Development
f.a.o The Policy Team
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BY EMAIL ONLY
26th March 2014

Dear Sir

RE: PUBLIC CONSULTATION FEBRUARY 2014 – DRAFT POLICY CL7 - BASEMENTS

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 as part of the forthcoming examination in public.

My client would wish to acknowledge that basement development of any size and depth 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. Similarly inappropriate basement development of any size or depth can result in harm to site drainage and environmental and built heritage assets.

In this regard, my client would wish to very strongly support the Council's fundamental objective which is to control basement development in order to minimise and manage these risks.

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

Subject to some limited exceptions these are as follows :-

- That basement development should not extend under more than 50 % of each garden or open part of each site.
- Basement development should not involve excavation of more than one storey below the lowest original floor area.
- That no basements may be constructed below the footprint of 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.

The policy is not anti-growth but proposes sustainable development. The Council does not consider that the proposed policy would result in economic and social harm and these claims are unsubstantiated.

Because of this my client would therefore wish to say that draft policy is not justified, is not in conformity with the NPPF and is unsound.

From a practical perspective my client would also question whether the arbitrary limits which are proposed will in fact make any really significant difference to the aggregate amount of development and the primary concern of the council in relation to the amenity of local residents.

The Council is of the view that the proposed policy does not represent arbitrary limits but is based on the evidence based which accompanies the submission.

In this regard, I would draw attention to the statistics set out the Council's Basement Development Data which indicate that proposals for multi storey basement development accounted for less than 10 % of applications for basement construction in 2012 and 2013. If a policy restriction were already in place preventing basements of more than one storey it would seem reasonable to expect that these schemes would still go ahead albeit at a reduced size and that the actual reduction in the aggregate amount of development would have been really quite limited. Furthermore, the apparent increase in applications for multi storey basements may well have been influenced by the Councils stated intention to bring forward new policy restrictions rather than any long term acceleration in demand for this form of development.

I would also observe that the Basement Development Data does not provide information about the number of basement schemes which involve construction extending beyond an area of 50 % of site gardens or the number of basement schemes below Listed Buildings.

The truth is that the Council has no accurate understanding of the extent to which its new policy will actually reduce the aggregate amount of basement construction or improve residential amenity. Indeed, the limited data which is available suggests that the policy approach which is proposed will be of very little benefit to local residents.

Whilst I would acknowledge that the policy proposals will meet a political need for "something to be done" I would respectfully question whether the aggregate impact of the policy proposal will result in any significant enhancement in overall residential amenity within the locality.

This opinion does not demonstrate consideration of the Council's evidence base which supports the view that the policy would better protect residential amenity throughout the Borough.

I would further point out that the arbitrary nature of the proposed policy restrictions is based on desperately simplistic and stereotypical assumptions about the size, form and impact of multi storey basement development.

The proposed policy is based on quality and impact and the proposed limits are an essential strand to achieving this for all the reasons set out in the Policy Formulation Report, RBKC, Feb 2014.

By way of example, a basement extension which is limited to the footprint of an existing building but which includes as small second storey element of construction (perhaps to accommodate a plant room or other service equipment) might well result in less excavation, less carbon use and less disruption than a larger single storey basement which extends out to make full use of the permitted 50 % of rear garden area. In this scenario the larger and more disruptive proposal would be allowed whilst the smaller and less disruptive proposal would be refused permission.

This is a purely hypothetical example which would not justify a change to the policy.

I would respectfully suggest that perverse outcomes of this type will not make life better for our community and that this does highlight the potential harm associated with the use of arbitrary and simplistic planning policies.

Given the above comments I would respectfully suggest that the proposed policy approach will not be effective in achieving the Council's objectives, that it is not the most appropriate strategy and that it will result in unnecessary prevention of otherwise sustainable development. As a result the proposed policy is not justified, is not in conformity with the NPPF and is unsound.

It is the Council's view that the proposed policy would permit sustainable development, compliant with the definition of sustainable development and aims of the NPPF. The policy does not prevent development.

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

ECONOMIC AND SOCIAL COST OF PROPOSED POLICY RESTRICTIONS

SOCIAL COST

In its introduction to the proposed new policy the Council provides some limited acknowledgement that the provision of basement accommodation can be of benefit. I would support this assertion and would suggest that the Council should explicitly acknowledge that basement construction is a worthwhile built investment which 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 adaption, 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, should be taken into consideration and should be given much greater weight in the formulation of new planning policy.

The view that basement extensions play an important role in meeting future housing need and supply is unsubstantiated. There is no evidence available, either from the Council or the author of the above statement, to suggest that there is a need for properties with basement extensions in the Borough.

In any event, due to their subterranean nature and often limited scope for obtaining natural daylight and ventilation, basement developments are likely to provide non-habitable accommodation, ancillary only to the main dwelling.

The policy takes account of the three dimensions of sustainable development referred to in the NPPF: economic; social and environmental. It seeks to strike an appropriate balance of these three strands through not banning such developments but restricting them. This matter is addressed in the Policy Formulation Report.

ECONOMIC COST

Large-scale deep basement construction represents a very significant financial investment by individual residents and 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.

Should it be of assistance to the Council my client would be pleased to provide evidence regarding the economic benefit which flows from deep basement.

Contributions to the economy are welcome, particularly in terms of investment and employment opportunities, and should be incorporated into the balance of considerations. However, it is not considered that these matters reduce the need for, or offset the need for, development to be sustainable and in accordance with the principles of the NPPF.

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.

It is noted that no such evidence has been submitted at this stage for the Council's consideration.

COUNCIL'S REASONED JUSTIFICATION

In assessing the soundness of the Councils proposed policy wording it is important to examine

and think through the council's reasoned justification.

In this regard I would draw attention to paragraphs 34.3.49, 34.3.50 which tell us that the Council has a number of "concerns" about larger forms of basement construction, considers that careful control of the form, scale and extent of basement construction is required and then simply explains that this is why the proposed new restrictions will be introduced.

It is clear that the council has used its very best efforts to find problems with basement construction and the succeeding paragraphs highlight possible generalised concerns regarding drainage and carbon use and go on to justify the proposal on the basis that smaller developments will result in less disruption to residential amenity.

However, what is apparent is that the Council has not been able to find any real evidence to suggest that there is anything fundamentally unsustainable in relation to completed basement development which exceeds more than one storey in depth. Furthermore, my client would be pleased to provide evidence to show that in appropriate circumstances, and with appropriate design, schemes which extend for more than 50 % of rear garden area can also be constructed without any material harm to drainage, ground water or landscape value.

Please refer to the Council's evidence base documents, in particular the Life Cycle Carbon Analysis, Eight Associates, Feb 2014. In addition the policy is based on a range of other issues. The size restriction will have an impact on the volume of excavation and also on the carbon footprint.

Again, no evidence has been provided to the Council to substantiate the authors argument.

In effect, the Council seeks to prevent sustainable development because its construction is considered to be too inconvenient and because its construction also requires the use of energy.

As a matter of basic principle I would respectfully suggest that this policy approach is inconsistent with the NPPF.

Notwithstanding this I would also question the council's evidence in respect of relationship between the amount of basement development and residential amenity and issues of carbon use.

In its justification, the Council suggests that limitations on the depth and extent of basement construction should be put in place because this will reduce the volume of excavation involved and that this will therefore reduce harm to residential amenity during the construction phase.

However, the reality is that there is no simple linear relationship between the amount of excavation work and the level of disruption caused to local residents. By way of example, a small single-storey basement constructed below a mews house accessed via a very constricted access approach may well result in much more disruption than a larger two-storey basement constructed below a property fronting onto a more generous access road or which has capacity to accommodate on-site storage and/or loading arrangements. Similarly, a badly designed and poorly managed small basement extension is quite capable of causing much more damage and disruption than well-designed and well-managed but somewhat larger proposal.

The author refers to two extremities of basement developments. While each site is subject to its own unique circumstances, the policy seeks to encompass a fair and balanced approach which can be applied to all cases.

With regard to the Council evidence base in respect of carbon use it would seem that the report

commissioned by the Council has been very carefully structured in order to support the policy approach which the Council has sought to take. In this regard, my client would wish to provide evidence for consideration by the forthcoming examination in public in respect of the detailed analysis set out within the councils report.

No such contrary evidence has been submitted for the Council's consideration.

However, at this stage I would wish to make a number of common sense observations regarding the structure of the analysis which has been presented.

In this regard the analysis is in some ways quite misleading and in particular I would draw attention to the way in which the councils report seeks to make a comparison between the embodied energy involved in the construction of an above ground extension compared with that involved in the construction of a basement extension. In particular I would draw attention to the implied suggestion that there is some simple option for building owners to choose between the alternatives of an above ground or below ground extension.

The reality of course is that policies of planning restraint within the locality are very tightly drawn and that in the majority of cases the options and potential for substantial above ground extension are very limited. The fundamental reason why applicants propose substantial basement extensions is that substantial above ground extensions are prohibited by established planning policy. Making a comparison between the different levels of embodied energy involved in construction is therefore largely irrelevant and somewhat misleading.

I would also observe that it would seem to be common sense that the level of operational carbon use of a building which has been substantially enlarged by extension will be greater than that of a small building which was not being extended. Similarly, it is common sense that the construction of a larger extension or indeed larger development of any type will involve more carbon use than a comparatively smaller extension or smaller development. Indeed, this argument could be extended to suggest that all new development should be prevented unless it can be demonstrated that there is some form of mitigation to ensure that there is no net increase in overall carbon use. I am unpersuaded that this approach is consistent with government objectives for the planning system.

No evidence is submitted to support these contentions. With regard to larger developments, these are assessed on a case by case basis and often the material considerations and benefits of such schemes are such that they outweigh concerns relating to carbon use during construction. Such schemes are materially different in their nature to domestic subterranean extensions.

Finally, I would observe that the report is again based on assumptions and generalisations about the form and construction of basement development and that it is entirely conceivable that some designs for deeper basement construction might in fact result in less carbon use than alternative schemes which only extend to one storey in depth. Rather than simply banning certain categories of basement development I would respectfully suggest that a much more appropriate strategy would be to make judgements in relation to carbon use on a case-by-case basis and on the basis of the actual development proposed in each individual case.

It is acknowledged that there may be exceptions and anomalies to the assumptions contained within the Council's evidence base. However, these do not represent the general trends. To assess carbon use from construction on a case by case basis is not considered to be expedient.

Given above comments is clear that the proposed policy approach which envisages the introduction of arbitrary limits on basement construction is not consistent with National

Planning Policy Guidance, will result in perverse outcomes, will not be effective in achieving the Councils fundamental objectives and is not justified.

The in this regard I would suggest that a much more appropriate strategy would be for the Council to develop an alternative evidence-based policy approach which has regard to the design and circumstances of each individual development proposal.

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 wish to demonstrate 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 also 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.

No such evidence has been submitted for the Council's consideration at this stage. Site specific circumstances and the specific details of the proposed will be taken into account in the assessment of any planning application. However, it is the purpose of the Core Strategy to set out the Borough's overarching policies, visions and objectives. The policies within it help to ensure consistency and help guide the delivery of sustainable development in the Borough. It is therefore considered that the principle of the policy in entirely appropriate given the specific trends and circumstances of this area.

The Council has made a number of assertions to suggest 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.

Please refer to evidence base documents, in particular Alan Baxter Basements Report.

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.

No such evidence has been submitted for the Council's consideration at this stage.

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.

Please refer to evidence base documents, in particular Alan Baxter Basements Report.

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 on the size of basement construction.

The impact of basement development on structural stability is one of many considerations informing the proposed policy, as described in the Policy Formulation Report.

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.

If the Council genuinely wishes to reduce construction related impact on the amenity of local residents and prevent harm from basement development 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.

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.

This section of the policy does not represent a significant shift in the Council's policy in respect of basements and listed buildings. The approach of resisting basements under listed buildings where they would harm the special historic interest of the

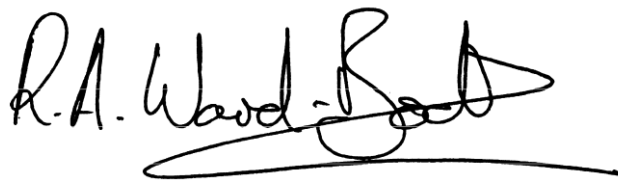
building has also been supported at appeal. Site specific circumstances and other material considerations surrounding these proposals will continue to be taken into account, as required by the NPPF.

I would be grateful if it were possible for the above comments to be taken into consideration.

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

Kind Regards

Yours faithfully

A handwritten signature in black ink, appearing to read 'R.A. Ward-Booth'. The signature is stylized with a large, sweeping underline that extends to the right.

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

Comments from Property Investment (Chelsea) Ltd

Ref	Name	Comment	Council's Response	Recommended Change
	<p>Property Investment (Chelsea) Limited c/o Chancery St James Plc (P Curwen)</p>	<p>We do not object to the principle of a bespoke basement policy. Our concerns relate to certain aspects of the detail of the policy which are considered below. It follows that we object to this insofar as it requires compliance with all of the criteria listed in CL7 a to n. We object to certain of these criteria as set out below.</p> <p>The reduction to 50% from the present level set out in CL7 a is arbitrary. The supporting text seeks to justify this by reference to carbon emissions. We believe this connection is tenuous at best. It is based on a generalisation about basements and extrapolates from this to determine a percentage of garden area that should be covered to reduce this impact. The impact this will have is not quantified in any way.</p> <p>It also states that this will result in less disturbance to residents. Whilst this may notionally be the case, the text does not justify why the difference in basement size becomes unacceptable at the higher level and not the 50% level.</p>	<p>The Council's supporting document - Case Studies of Basement Excavation, Alan Baxter and Associates, Jan 2014 shows that larger basements in general have a greater rate of excavation (m3 per week) than smaller ones (para 6.3). There is also a good correlation between the volume of excavation and the total number of lorry movements (para 6.4).</p> <p>Please also refer to Technical Review, RBKC - Basements Policy Public Consultation Response Waterman Energy Report, Eight Associates, April 2014.</p>	<p>No change.</p>

		<p>It does not take account of the existing garden size. On a small garden the 50% figure would constrain the amount of accommodation available under the policy leaving an area of only token greenery with no room for major trees or any serious prospect of this being delivered.</p> <p>On larger properties there may well be potential to increase beyond the 50% figure and still maintain sufficient areas for tree planting etc. It also ignores the fact that there are many rear gardens within the Borough which are already hard surfaced over all or part of their area. The 2009 SPD allows a basement under a larger area but also requires 1m of top soil over it. In these situations (where the garden is hard surfaced) the scope for planting is actually an improvement over the current position resulting in increased not reduced areas for planting.</p> <p>For these reasons the policy is not justified or effective.</p>	<p>Para 34.3.55 of the reasoned justification recognises that <i>“the townscape of the Borough is urban and tightly developed in character. However, rear gardens are often a contrast....”</i></p> <p>Policy CL7 (j) also recognizes that the character in some localities can be small paved courtyards. However, a large majority of back gardens in the Borough do have a green and leafy character which can be permanently eroded by basement development as shown in the Council’s supporting document Basements Visual Evidence, Feb 2014. It should also be noted that basement development causes a permanent change in ground conditions and the natural process it provides. Hard paving on the other hand is easily reversible and can adapt to changing circumstances such as desire for more planting or adaptation to respond to climate change.</p>	<p>No change.</p>
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		<p>CL7b seeks to reduce the number of levels of basement. Para 34.3.50 states that this is due to the increased structural risk and complexities associated with such development. This 'precautionary' approach prevents applicants from putting forward a well considered case based on assessing and mitigating the risks associated with it.</p> <p>It is also focussed on the construction impacts and not the long term visual or amenity issues of the scheme which may well be neutral. These are the areas that planning should be more properly concerned with, particularly where the technical issues are properly addressed through supporting information or other legislation such as the Party Wall Act and the Building Regulations.</p> <p>We therefore do not consider this aspect of the policy to be justified.</p> <p>For the same reasons we object to CL7 c. We welcome the change in approach to basements in the gardens of listed buildings reflected in the amended wording to CL7 f and g in the September document. Overall the policy seeks to constrain unfairly a form of development which has the potential to provide additional accommodation in the most sustainable of cities. Such an approach is contrary to the presumption in favour of sustainable development set out in the National Planning Policy Framework. We do not believe, therefore, that the Policy would be consistent with national policy.</p>	<p>The size restriction will have an impact on the volume of excavation and also on the carbon footprint. See Life Cycle Carbon Analysis, Eight Associates, Feb 2014. In addition the policy is based on a range of other issues.</p> <p>Construction impacts are material planning considerations depending on the nature of development. The construction of basements can have a serious impact on the quality of life of residents in the area as stated in para 34.3.49 and 34.3.50 of the reasoned justification.</p> <p>The Council's policy is partly based on the evidence of construction impacts as experienced by residents. This is expressed in the Surveys of neighbours and residents undertaken in August/ September 2012, responses to various consultations and daily correspondence received by the planning department.</p>	<p>No change.</p>
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		Additional comments in response to July 2013 consultation		
		<p>For the same reasons we object to CL7 c. We object to CL7 f. This represents a very significant change in the level of restriction to be imposed from the existing situation by resisting any form of basement extension to a listed building. We remain of the view that a well designed basement can, in some instances, allow the hierarchy of the existing/original building to be properly interpreted. A discrete connection to a basement extension below the garden can be achieved in a number of ways that are not dependent on the size of the building as implied in CL7 f.</p> <p>This blanket ban goes well beyond the scope of the NPPF (paras 131 to 134) which require a more balanced assessment. We do not believe, therefore, that the Policy would be consistent with national policy. Overall the policy seeks to constrain unfairly a form of development which has the potential to provide additional accommodation in the most sustainable of cities. Such an approach is contrary to the presumption in favour of sustainable development set out in the National Planning Policy Framework. We do not believe, therefore, that the Policy would be consistent with national policy.</p>	<p>The policy has since been revised in this respect and prohibits only basements underneath listed buildings.</p>	<p>N/A</p>

Council's Response to Representation by Jones Lang LaSalle, April 2014

The Executive Director
Planning and Borough Development
FAO The Policy Team
Royal Borough of Kensington & Chelsea
Town Hall
Hornton Street
London W8 7NX

Your ref
Our ref 486500LON / JF
Direct line 020 7852 4742
Jeff.Field@eu.jll.com

26th March 2014

Dear Sir,

Representations – Partial Review of Core Strategy – Policy CL7 Basements – Publication Planning Policy, February 2014

We write in connection with the above, which follows on from the public consultation exercises that were undertaken in December 2012, March 2013 and July 2013. We act for a number of clients who bring forward basement developments within the Royal Borough of Kensington and Chelsea (the Borough). We submitted representations at all consultation stages.

The purpose of this current consultation is to receive responses from the public as to whether publication Policy CL7 is legally compliant and sound. This consultation is the second undertaken on the publication Planning Policy, as a consequence of the high number of responses received between July and September 2013. The Borough published an updated set of evidence base documents in support of the current consultation.

This representation is focused on the soundness of the publication policy and is an update to our September 2013 representation. It is important that the two representations are taken together to form the JLL comments to the Publication Planning Policy.

Paragraph 182 of the National Planning Policy Framework (NPPF) sets out that a local planning authority should submit a plan for examination that it considers to be 'sound'. The plan policy should meet the following criteria:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

In our previous representations, we stated that publication Policy CL7 would not meet any of the above criteria. For the record, we attach a copy of our representations submitted on 30 January, 1 May 2013 and 3 September 2013 (Appendix 2). All of the points made continue to apply to Policy CL7 as published in February 2014.



Publication Policy CL7 remains unchanged from that set out in July 2013, despite a large number of consultation responses opposing the strict policy approach.

We have examined publication Policy CL7 together with the text contained in the publication document and the updated evidence base, and we raise the following objections in relation to policy soundness.

Core Strategy Review Assessment

This section assesses whether the plan policy is:

1. Positively prepared

The NPPF considers a plan policy to be 'positively prepared' when it meets "*objectively assessed development and infrastructure requirements*".

In our previous representations we drew attention to the Borough's requirement to achieve 600 houses per annum from 2011/12, as set out in the London Plan and then reiterated in Core Strategy Policy CH1. We highlighted that despite the healthy number of residential planning permissions, the 2012 Annual Monitoring Report (AMR) demonstrates that the rate of completions has been unable to keep up with the rate of permission.

The 2013 AMR confirms the concern raised in 2012: "*to date only a relatively low proportion of the permissions have been translated into completions. There were just 102 completions in 2011/12 and this has fallen to just 65 in 2012/13*" (para 10.10). Paragraph 10.7 further indicates that "*the levels of both permissions and completions is a significant drop from the level in 2011/12*", although this is considered to be an anomaly.

The above corroborates our view that as new permissions are granted, the number of residential units being implemented at the moment will not be able to bridge the gap.

Paragraph 10.14 of the 2013 AMR stipulates that the Borough expects to have enough residential units built by 2020/2021 to meet its London Plan target. However, this is only a hypothetical figure and does not contribute to mitigating the current high housing demand in the Borough and the low completion rate.

Housing Demand

As the 2012 AMR, the 2013 AMR acknowledges that "*however many houses are built we cannot begin to meet the high demand either for private sale or for 'affordable' homes in the Borough*" (para 10.1). As a result, the aim of the Core Strategy is to deliver housing diversity rather than fully satisfy housing demand.

The Borough's unique built environment attracts a very high number of residents and investors and a large proportion of these will be looking for prime residential units with significant floorspace.

As set out in our September 2013 representation, there continues to be a mismatch between housing supply (small units, mainly in the form of flats) and demand for larger units (usually houses rather than flats). This is clearly demonstrated in the Core Strategy that explains how 70% of the housing stock is comprised of small units with one or two bedrooms although over the next 20 years market demand will be for 80% three and four or more bedroom units.



This mismatch must be taken into account when formulating housing policies, ensuring that the delivery of larger units (that could also result from basement proposals) is not jeopardised.

Indeed, paragraph 47 of the NPPF states that *“To boost significantly the supply of housing, local planning authorities should [among other things] use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework (...).”*

Market Response

The Borough is a very attractive place to live but the specifics of the local built environment means that roof or rear extensions are often impossible, and subterranean development can be the only answer to improving existing properties without affecting the appearance of Conservation Areas.

The 2014 Basements Development Data report confirms the trend set out in the 2013 report: the number of basement applications has been increasing since 2001, with a significant increase registered in 2011 and 2012.

The majority of permissions for subterranean development relate to one level basement proposals, the number of two or more levels basement proposals amounting to 7% of the total permissions. However, there is also a marked increase in these applications which further demonstrate the demand for additional residential floorspace from the Borough housing stock.

The NPPF requires planning authorities to *“identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand”* and to *“positively seek opportunities to meet the development needs of their area”* (para 50 and 14).

The evidence from the 2013 and 2014 Basements Development Data reports demonstrates an objectively assessed requirement for basement extensions. It also proves that part of the demand for larger residential units has taken the form of demand for subterranean development. This increasing requirement needs to be addressed positively rather restricted.

The Borough has an existing supply of larger than normal units. The Council’s housing policies adequately provide for a diversity of housing in the Borough.

The Council is not banning basements but introducing a limit which would still allow significant extension of existing properties i.e. adding a whole new floor and up to 50% of each garden. Large deeper basements normally on the second level and beyond are not suitable for habitable floorspace as they have no natural ventilation or daylight. As pointed out the Core Strategy mentions number of bedrooms not floorspace that is not habitable.

The Council has considered all strands of sustainable development – social, economic and environmental in formulating the policy. The approach above has no regard to environmental considerations. As the author points out the Borough is a very attractive place to live, therefore it is important to consider the erosion of the special character which makes the Borough attractive and formulate policies to prevent this erosion.



General considerations

The updated evidence published by the Borough reiterates that published for the 2013 consultations in terms of housing demand.

Therefore we confirm our response as set out in the September 2013 representation. **It is considered that publication Policy CL7 is not sound, on the basis of its failure to take into account the full housing evidence and to address the complexity of the Borough's housing demand.**

2. Justified

Under NPPF policy, a plan policy is 'justified' when it is *"the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence"*.

Housing Demand

Section 1 above demonstrates that publication Policy CL7 has not taken into account the full extent of the housing demand in the Borough, despite the updated evidence base. It is considered that the strategy adopted is not based on 'proportionate evidence' thereby leading to the Council not having explored all reasonable alternatives.

Having reviewed the evidence on housing demand at Section 1 of this Representation and the full evidence base produced for these public consultation exercises, we confirm our response to publication Policy CL7.

The most reasonable alternative to publication Policy CL7 is a policy that:

- **Maintains the same stance of policy CL2 on number of storeys (no limitation); and**
- **Adopts the Baxter's Basement Report recommendation in terms of maximum garden coverage (75%).**

The 50% figure is not based only on the Alan Baxter and Associates (ABA) report which is linked to surface water drainage. Please refer to the Policy Formulation Report, RBKC, Feb 2014 for the range of issues considered.

Among all reasonable alternatives, this is a strategy that will allow the current provision of large accommodations to continue thus meeting local housing demand and addressing a number of housing and amenity issues as set out in our September 2013 representation. In summary, these are:

- Despite the large supply of flats, the Borough is considered to provide a unique built environment for large units in central London and will keep on experiencing high levels of demand for these types of accommodation. This is confirmed in the 2009 Strategic Housing Market Assessment. The demand for additional new large units could be tempered if private owners were allowed to deliver the desired floorspace increases within their properties.
- The 2012 Strategic Housing Market Assessment Update indicates a *"very large income gap between the social rented sector and market rent"* with need for increased provision of intermediate housing. By delivering larger units as part of basement developments rather than new built, there would be reduced pressure on future housing stock.
- Updated evidence demonstrates that the demand for large multilevel subterranean development is relatively small compared to one storey basement proposals. Resisting proposals for more than a subterranean level is deemed excessive compared to the impact that these cases would



have on the Borough's built environment. Neighbouring residential amenity can be successfully protected through policy requirements: the updated evidence base has highlighted amenity concerns but has not suggested any solutions.

Although publication Policy CL7 is not aimed at preventing basement applications, its strict approach will decrease the number of large schemes put forward for subterranean development. The unintended consequence of this approach will be to deprive the Council's housing offer of valuable large residential units, as set out in the above paragraphs.

Please see response above.

Impact on existing and future tree stock

It is noted that the Trees and Basement report (February 2014) resists tunnelling beneath the RPA of trees to construct basement. This is because the Borough "*cannot be sure what affect this type of construction practice will have on soil structure and the health and stability of the tree/s above*" (para 3.1).

It is considered that the evidence base does not provide sufficient justification to prohibit tunnelling in Root Protection Area (RPA) in all circumstances. Further studies need to be undertaken to ascertain the impact of tunnelling, and whether a safe level can be identified beneath which tunnelling would not be detrimental to the soil structure and the health and stability of trees. This would need to be established by a qualified arboricultural consultant and agreed with the Borough's Arboricultural Officer.

At this stage no evidence has been submitted to suggest that tunneling can be an effective method to protect existing trees. No examples have been provided which demonstrate practical and successful implementation of this technique.

Impact on character and appearance of gardens

The character and appearance of gardens are key considerations in the evidence base documents published in February 2014: the Basement Visual Evidence report, the Basement Visual Evidence, External Manifestation report, the Trees and Basement report and the Policy Formulation Report. Concern is raised that cumulative impact of a large number of basements could change the character of the Borough.

The Policy Formulation Report highlights the importance given to back gardens in the London Plan (policy 3.5) and the London Plan Housing SPG (para 1.2.18) in "*defining local context and character including local social, physical, cultural, historical, environmental and economic characteristics*" (among others). The report states that the "*Council's visual evidence on the impact of basements shows that basement development can alter the character of gardens and have the potential to adversely impact on the roles defined in the London Plan Housing SPG*".

However, **the correct use of conditions and further guidance would avoid the negative visual impact of basement proposals shown in the evidence base thus preserving the appearance and character of the local context.**

The use of planning conditions can only be to maintain greenery for a limited period of time. The policy seeks to take a proactive rather than reactionary approach to ensure that opportunities for greenery and planting in gardens are maintained in the long term.

Conditions and further guidance would also avoid any threat to the Borough's current and future tree stock.



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It is not considered that trees roots could be protected by condition and the presence of existing trees needs to be considered early in the design stage.

Specifically:

- Current policy already requires external manifestations to be kept to a minimum. Some of the photos included in the evidence base show subterranean developments that would not be permitted today (this is acknowledged in the aforementioned reports).
- The potential artificial and sterile appearance of the garden can be avoided through the approval of a landscape plan and accompanying arboricultural report. The correct implementation of the landscape plan could then be monitored at regular intervals.
- The soil structure and the health and stability of the tree/s above can also be preserved when tunnelling is proposed as a construction method, as long as tunnelling is only allowed up to a 'safe level' beneath the RPA.

These matters are discussed above.

General considerations

It is concluded that publication Policy CL7 is not justified, as an alternative strategy can be formulated that:

- **Better responds to local housing needs;**
- **Does not impact on residential amenity;**
- **Protects the Borough's existing and future tree stock; and**
- **Preserves the appearance and character of gardens and therefore of the local context.**

These matters are discussed above and the policy is considered to be compliant with the NPPF in supporting sustainable development.

3. Effective

The definition of 'effective' means that the policy achieves its goal. The stated objective is to reduce the potential amenity effects of basement development. In our September 2013 response, we stated that there could be significant space between the construction of the policy and its desired aim. We confirm that this is still our view.

Construction and amenity impacts are not the sole aim of the policy, as explained in the Policy Formulation Report.

The Basement Works, Impact on Residents report (February 2014) indicates that the Borough "has the longest permitted hours for noisy works in London" and that "even when works are being undertaken using best practice and in full compliance with our requirements, neighbouring residents are severely inconvenienced for long periods of time, resulting in a significant loss of their living conditions within their dwellings".

However, a more flexible approach with good supporting guidance and implementation would be much less intrusive than a restricted policy approach without good guidance and on-site management. Neighbouring residential amenity can be successfully protected through policy requirements, planning conditions or informatives.

The aforementioned document demonstrates that of the 595 sites granted planning permission for subterranean development between 2010 and 2013 and/or under construction, only 9% (53) generated complaints to the Noise and Nuisance Team.



The updated evidence base should therefore be used as the base for revised guidance, rather than for a restrictive policy. Guidance could include:

- Reduced working hours to match that of the rest of London, especially in cases where work ground-borne noise and vibration can be transferred via the party wall into adjoining properties.
- Temporary erection of sound wall on site to minimise airborne noise and the movement of dust.
- Temporary soundproofing of the party wall to reduce transfer of noise and vibration.
- Control the route followed by vehicles required to support the basement excavation and the construction.

Clearly the above list is purely a suggestion and it is not complete nor exhaustive. A final list would need to be compiled by a specialist.

In our September 2013 response, we set out a Best Practice Guidance for basements, which is adopted by our clients. This is included in the current representation as Appendix 1.

Such matter could be addressed through guidance at a later stage. However, the policy is constructed around more than only amenity and disturbance issues. Please refer to the Policy Formulation Report.

With this practice and guidance emerging from the updated evidence base being adopted in planning conditions and informatives as necessary, we consider that a more flexible policy approach would be effective in allowing the Borough to meet and deliver its wider policy goals.

4. Consistent with national policy

Under the NPPF, a plan policy which is 'consistent with national policy' *"should enable the delivery of sustainable development in accordance with the policies in the Framework"*.

Paragraph 7 of the NPPF sets out that in order to be sustainable *"development planning should achieve:*

- *an economic role;*
- *a social role; and*
- *an environmental role."*

Our September 2013 representation explains clearly why we do not consider publication Policy CL7 to be policy compliant. The paragraphs below provide a summary of our previous considerations and address the updated evidence base.

House prices in the Borough are prohibitive. Working families that would like make their existing homes large enough to meet their requirements may decide to leave should they not be allowed to do so, taking their skills and investment out of the area. The basement industry provides jobs for a large number of people and generates fees for many local specialist consultants. Publication Policy CL7 is therefore contrary to the drive for economic and social benefits which are outlined in paragraph 7 of the NPPF.

Contributions to the economy are welcome, particularly in terms of investment and employment opportunities, and should be incorporated into the balance of considerations. However, it is not considered that these matters reduce the need for, or offset the need for, development to be sustainable in accordance with the principles of the NPPF. As stated above the proposed policy is not banning basement and allows significant extension of homes – adding a whole new floor and up to 50% of each garden. This is sufficient for any growing families needs for



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more floorspace. Also as stated before basements deeper than one storey are not suitable for habitable floorspace.

Under its environmental role, development planning should contribute to protecting and engaging the built and historic environment. It is considered that existing Policy CL2 complies with these requirements and that there is no need to restrict its extent. Subterranean development can result in minimal changes to the appearance and character of the urban environment, if controlled properly.

This is addressed at Section 2 above under 'Impact on character and appearance of gardens'.

Finally, NPPF paragraph 158 states that *"each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals"*.

Sections 1 and 2 of this representation demonstrate that the proposed restriction of basement developments does not consider the full housing evidence available. Indeed, the significant rise in the number of applications for basement developments is a signal of demand and need for larger family homes which are not positively addressed in publication Policy CL7.

In light of the above, it is not considered that publication Policy CL7 is in line with the NPPF.

The policy takes account of the three dimensions of sustainable development referred to in the NPPF: economic; social and environmental. It seeks to strike an appropriate balance of these three strands through not banning such developments but restricting them. This matter is addressed in the Policy Formulation Report.

Conclusions

Publication Policy CL7 is not considered 'sound' as this representation has demonstrated it not to be:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

Planning policy and housing market evidence highlight significant housing demand in the Borough and growing appetite for large units. The updated evidence base confirms this.

As stated in our previous representations, basement proposals should be seen as a tool to contribute to housing supply in a sustainable manner, delivering floorspace increase through modification of existing stock and allowing new development proposals to meet diverse housing needs. The proposed restriction to basement proposals will hinder the provision of large homes, against local demand. This is contrary to the principle of sustainable development at the basis of the NPPF.

These matters are discussed above. The policy does not ban basements, but seeks to restrict them appropriately.

The impact of subterranean proposals on neighbouring amenity and on the character and appearance of gardens can be addressed via conditions and informatives. The updated evidence base can constitute the base for further guidance rather than a restrictive policy.

We confirm that in our view **a policy that includes the requirements of adopted Policy CL2 and of the**



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Subterranean Development SPD is considered the best strategy for determining subterranean development proposals, as stated in previous Representations. Specifically, the following amended should be made to publication Policy CL7:

- Point 'a' should be amended to adopt the maximum 75% garden coverage proposed by the Baxter's Basement Report ; and
- Point 'b' should be deleted imposing no restrictions on the number of basement levels.

Yours faithfully,

Jones Lang LaSalle Ltd

Appendix 1 - Basement Best Practice Guidance

The range of construction methods available, the different ground conditions present and the range of issues and mitigation measures which may be applicable for any potential subterranean basement application are numerous and in each case would be site-specific.

Despite this, it is possible to identify a series of 'best practice' standards which could be better suited to achieve the main stated goal of the proposed policy – controlling disruption from the construction of basements.

The policy as currently drafted would miss many of these items and could therefore fail in its stated goal. A small poorly planned and constructed basement will cause far more disruption than a large well planned and constructed basement.

The table below lists lists the principles of best practice, comparing the way they are dealt with under existing Policy CL2 and how they could be better integrated in the policy.

Table 1 – Basement Best Practice, principal issues

	Policy CL2	Best Practice Amendments
Surface water flow and flooding	A Flood Risk Assessment (FRA) is required, which covers the application site.	If the main concern is about the cumulative effect of basements, then a requirement could be put forward that the FRA takes into account the number of basements on the street. This could be supplemented with a public register of all basements built or planning submitted for in London, including depth details. The use of a water recycling system under the 1m of soil could also be proposed, reducing the pressure placed on the combined storm water and sewer network.
Subterranean (groundwater) flow	No requirements.	Applicants could submit a hydrology report based on ground investigations, including exploratory boreholes which can assess the water level and flows across the site. This would ensure that the information is then taken into account at the design stage.
Ground movement	No requirements.	Damage Risk Assessments to be prepared by a qualified professional to ensure that the proposed Construction Method Statement would not lead to damage in neighbouring properties. Minimum forecast standards could be set as is

		the case with most party wall awards – allowing for an amber movement of 7mm and red movement of 12mm.
Site monitoring	Structural engineer to monitor works.	Extend this to include an RICS surveyor on weekly visits.
Effects upon neighbours	Prepare Construction Traffic Management Plans (CTMP) at an early stage.	<p>More, upfront analysis and submission of technical information.</p> <p>Introduce a planning condition requiring projects be implemented in accordance with an approved programme and start date.</p> <p>The rationale being that the developer will need to be ready to start and putting more emphasis on getting the necessary investigations organised and approved in the planning stage. This could also aid the Council to manage the number of projects taking place on any one street – avoiding the cumulative effect of basements being developed in close proximity.</p> <p>Greater emphasis could be given within the CTMP to avoid semi-permanent skips in public street and a greater use of innovative ways of removing soil during the day, whilst retaining the street scene in the evenings.</p> <p>To control noise and dust nuisance, building sites should be encouraged to fully wrap the house in hoarding.</p>
Environmental issues	Policy fails to take account of the life of the proposed building against the life of the existing building.	Policy could take account of the environmental benefits of basements due to the excellent insulation properties from the soil and the large amount of concrete used in their construction. Initiative could be put forward to encourage spoil sharing strategies, whereby the soil is re-used for landscaping on large London schemes.
Professionals / Contractors	Generic ‘Considerate Constructors’ scheme.	<p>The establishment of a Borough supported / industry funded, local constructors group to include Architects, Contractors/Builders and other professionals.</p> <p>There could also be an advisory board which</p>

		<p>brings together the local Residents' Associations. The group would be subject to very tight working practice rules which ensure that all projects are conducted in manner which is 'neighbour-friendly'.</p> <p>Should any members breach the rules, he would be required to leave the scheme and therefore be unable to be part of a site within the Borough.</p>
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The author has provided useful best practice guidelines. These options could be explored as part of the replacement SPD in due course. However, these guidelines cannot be relied upon or reasonably secured under the planning system and they do not negate the need for a policy. Paragraph 154 of the NPPF states “that local plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan”. The Council considers that the policy achieves this requirement.



Appendix 2- Previous JLL representations



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Your ref
Our ref 486500LON / JF
Direct line 020 7852 4742
Jeff.Field@eu.jll.com

3rd September 2013

Dear Sir,

**Representations – Partial Review of Core Strategy – Policy CL7
Basements – Publication Planning Policy, July 2013**

We write in connection with the above, which follows on from the public consultation exercises that were undertaken in December 2012 and March 2013. We act for a number of clients who bring forward basement developments within the Royal Borough of Kensington and Chelsea. We submitted representations at those earlier stages.

The purpose of this current consultation is to receive responses from the public as to whether proposed Policy CL7 is legally compliant and sound. This Representation is focused on the soundness of the proposed policy.

Paragraph 182 of the National Planning Policy Framework (NPPF) sets out that a local planning authority should submit a plan for examination that it considers to be 'sound'. The plan policy should meet the following criteria:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

In our previous Representations, we stated that proposed Policy CL7 would not meet any of the above criteria. For the record, we attach a copy of our Representations submitted on 30 January and 1 May 2013. All of the points made continue to apply to proposed Policy CL7 as published in July 2013.

Proposed Policy CL7 remains unchanged from that set out in March 2013, despite consultation responses opposing the strict policy approach when compared to the first draft published in December 2012.

We have examined proposed Policy CL7 together with the text contained in the publication document and we raise the following objections in relation to its soundness.



Core Strategy Review Assessment

This section assesses whether the plan policy is:

1. Positively prepared

The NPPF considers a plan policy to be ‘positively prepared’ when it meets “*objectively assessed development and infrastructure requirements*”.

In our previous Representations we drew attention to the Borough’s requirement to achieve 600 houses per annum from 2011/12, as set out in the London Plan and then reiterated in Core Strategy Policy CH1. This is a ten year target, to be delivered until 2027/28, unless reviewed earlier. The previous London Plan target was 350 units per year, for a plan period from 2007/8 to 2017/18.

Referring to the above figures, the 2012 Annual Monitoring Report (AMR) comments that the Borough benefits from a very healthy housing supply as planning permissions for new residential units “*have increased year on year and exceeded the target set in the London Plan of 350 units for 2009/10 and the higher target of 600 units since August 2011*” (paragraph 10.7).

However, a smaller number of permissions have been completed. The AMR concedes that only 175 new units were built in 2010/11 and 102 in 2011/12, although more are expected to be delivered in the coming years (there were 1,756 residential units at implementation stage at the end of March 2012).

The data outlined above demonstrates how the figures reported in a housing trajectory can be misleading. Although the Borough has a healthy supply of residential approvals, its rate of completions has been unable to keep up with the rate of permission. As new permissions are granted, the number of residential units being implemented at the moment will not be able to bridge the gap.

Table 10.1: Residential Approvals and Completions 2006-2012 (1 April – 31 March)

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Net Residential Approvals	409	368	485	540	783	860
Net Residential Completions	171	132	253	324	175	102

Table 1 – AMR, Table 10.1: Residential Approvals and Completions 2006-2012 (1 April – 31 March)

Housing Demand

The AMR acknowledges that “*however many houses are built we cannot begin to meet the high demand either for private sale or for ‘affordable’ homes in the Borough*” (paragraph 10.1). As a result, the aim of the Core Strategy is to deliver housing diversity rather than fully satisfy housing demand.

The Borough’s unique built environment attracts a very high number of residents and investors, and a large proportion of these will be looking for prime residential units with significant floorspace.



The Core Strategy stipulates that the Borough is characterised largely by flats, circa 80% of all residential dwellings in 2009, and that 70% of the housing stock is comprised of small units with one or two bedrooms (paragraphs 2.2.33 and 34.3.55).

However, paragraph 35.3.10 notes in relation to housing mix that “*over the next 20 years, the size of new market housing likely to be required in the Borough is 20% one and two bedroom units and 80% three and four or more bedroom units*”.

The above evidence demonstrates that there is a mismatch between housing supply (small units, mainly in the form of flats) and demand for larger units (usually houses rather than flats) and this must be taken into account when formulating housing policies. Paragraph 47 of the NPPF states that “*To boost significantly the supply of housing, local planning authorities should [among other things] use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework (...)*”.

It is acknowledged that the full demand for housing in the Borough cannot be satisfied and that the Core Strategy cannot impact directly on the completion rate. **Nonetheless, Core Strategy policies can address the demand for larger units by adopting policies that do not hinder their delivery or development.**

[Please see comments above.](#)

Market Response

An important part of the housing demand has recently focused on subterranean development. The 2010 Core Strategy stipulates: “*over the last five years, there has been a 70% increase in applications for subterranean developments, with over 200 planning applications submitted in 2008*”. This is due to the specifics of the local built environment which is largely historic in character, densely built and with very high land values. Roof or rear extensions are often impossible, and subterranean development is often the only answer to improving existing properties, without affecting the appearance of Conservation Areas.

As the costs associated with moving in London continues to rise, subterranean development is often the only realistic way to add much needed space to an existing home. Many families who have lived in the Borough for a number of years cannot afford to buy a new house locally, but they could afford to extend their existing home. Subterranean development keeps growing families and communities in the Borough, rather than pushing them out of London or to other boroughs.

The 2013 Basements Development Data report, published in support for this particular consultation exercise, sets out the most relevant figures for basement development. Table 2 above provides evidence that the number of ‘subterranean’ applications has been steadily increasing since 2001, with a slight dip in 2009 possibly linked to the economic recession. Particularly, there was a significant increase of in 2012 when 307 cases were registered against 186 registered in 2011.

The table indicates that 80% of the applications registered between 2008 and June 2013 were approved, demonstrating that the large majority of the proposals are in line with planning policies.

	2008	2009	2010	2011	2012	2013 (11 June 2013)	Average (2008 - 2012)	Total (2008 - 11 June 2013)
Permissions Granted	204	121	150	132	242	77	170	926
Permissions Refused	17	10	14	25	53	23	24	142
Cases Withdrawn	41	28	43	63	82	0	51	257
Cases Pending	-	-	-	-	-	66		66
Cases Registered	186	129	182	186	307	166	198	1,156

Table 2 – Basements Development Data, Table 2: Planning Data for applications with a basement element.

Table 2 does not take into account basement extensions that can be carried out as part of permitted development rights. The Council has only data from commencement of work notifications to Building Control, which does not include those residents who used private companies. Even these potentially incomplete figures show that a marked increase in the notifications in 2011 and 2012, as shown on Table 3 below. This is in line with the trend identified in the above paragraphs.

Year	“commencement of work” notifications
2008	34
2009	30
2010	28
2011	60
2012	96

Table 3 – Basements Development Data, Table 2: Planning Data for applications with a basement element.

Basements that are well designed can provide comfortable day-lit rooms, with natural ventilation and external access, as extensions to the living spaces at upper levels, providing unique work places and spacious family rooms. The increased number of basement applications illustrates the need and desirability of this type of low impact extensions.

This point is contested. Due to concerns and restrictions relating to the external manifestations associated with basements, it is often the case that only a small area of the basement development will benefit from natural light and ventilation. While there are exceptions where bedrooms are successfully provided, the ability of the basement to provide additional sleeping accommodation or high quality accommodation is often limited.

The majority of permissions for subterranean development relate to one level basement proposals, the number of two or more levels basement proposals amounting to 6% of the total permissions. However, there is also a marked increase in these applications which further demonstrate the demand for very large residential floorspace in the Borough.

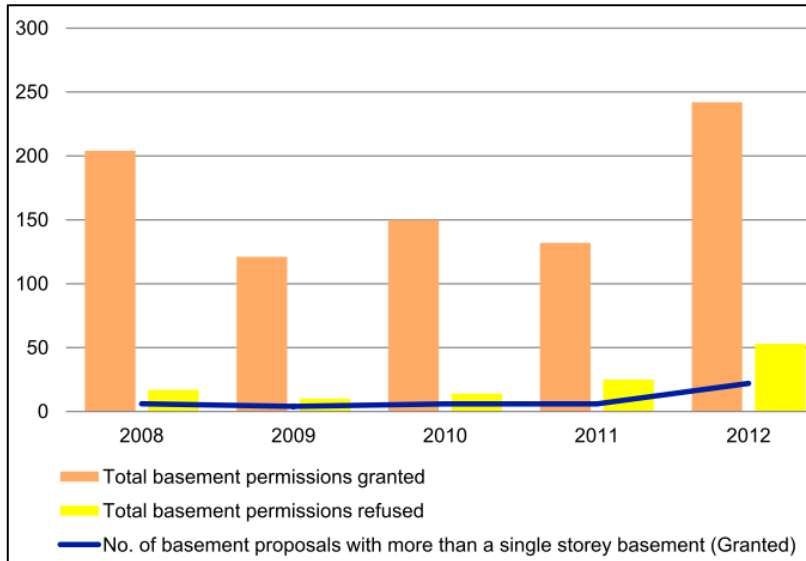


Image 1– Basements Development Data, Chart 3 Planning data including more than a single storey basement.

The NPPF requires planning authorities to “*identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand*” and to “*positively seek opportunities to meet the development needs of their area*” (paragraphs 50 and 14).

The evidence from the Basements Development Data demonstrates an objectively assessed requirement for basement extensions. It also proves that part of the demand for larger residential units has taken the form of demand for subterranean development. This increasing requirement needs to be addressed positively rather restricted.

The revised policy would not place a ban upon basement extensions, only limit them appropriately.

It is noted that the Core Strategy cannot possibly satisfy the full demand for housing in the Borough. Although the high demand for larger accommodation cannot be fully met, it should be positively addressed in the relevant policies. By reducing the permitted size and extent of basement proposals, proposed Policy CL7 does not take into account all the evidence available on housing requirements in the Borough.

The data that supports this Representation is publicly available and has been extracted from the London Plan, the Core Strategy, the AMR and the Basements Development Data. It is considered that this data can be treated as “*objectively assessed need for market housing*” as required by paragraph 47 of the NPPF.

It is concluded that proposed Policy CL7 is not sound, on the basis of its failure to take into account the full housing evidence and to address the complexity of the Borough’s housing demand.

Please see comments above.

2. Justified

Under NPPF policy, a plan policy is ‘justified’ when it is “*the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence*”.



Section 1 above demonstrates that proposed Policy CL7 has not taken into account the full extent of the housing demand in the Borough. Therefore, the strategy adopted is not based on 'proportionate evidence' leading to the Council not having explored all reasonable alternatives.

Proposed Policy CL7 seeks to merge the policy requirements for subterranean development set out in adopted Policy CL2 and the Subterranean Development SPD. However, it takes a stricter stance on garden coverage (point 'a') and number of storeys (point 'b').

Having reviewed the evidence on housing demand at Section 1 of this Representation and the evidence base produced for these public consultation exercises, it is considered that the most reasonable alternative to proposed Policy CL7 is a policy that:

- **Maintains the same stance of policy CL2 on number of storeys (no limitation); and**
- **Adopts the Baxter's Basement Report recommendation in terms of maximum garden coverage (75%).**

Among all reasonable alternatives, this is strategy that will allow the current provision of large accommodations to continue thus meeting local housing demand and addressing a number of housing issues as set out below.

The Borough faces increasing demand for large houses in a context of limited land supply and a densely developed built environment. The support of large units helps make the Borough attractive.

Please see responses to these points above.

Housing Content

The 2009 Strategic Housing Market Assessment states that the percentage of flats in the Borough was 82.5% compared to 48.3% in Greater London and 19.4% in England as a whole (paragraph 2.24). Despite the large supply of flats, the Borough is considered to provide a unique built environment for large units in central London and will keep on experiencing high levels of demand for these types of accommodation.

Indeed, the Assessment makes reference to the Borough's 'super prime', high price housing market. It states that *"demand for super-prime properties is set to increase and the supply of such properties is predicted to shrink. This indicates there is potential for unmet demand in this sector"*. Furthermore, in the request for exemption from the 2013 extension of permitted development rights, the Council states that *"Kensington and Chelsea contains much of London's prime housing market" and that "there is a strong and seemingly insatiable demand for housing in the Borough"*.

The presence of super prime units in new developments is currently being reviewed by the Council in the Housing Issues and Options Consultation, in order to avoid future instances where very large units may dominate a proposed housing mix thereby reducing the potential number of dwellings that could be provided.

The demand for additional new large units could be tempered if private owners were allowed to deliver the desired floorspace increases within their properties. If existing owners did not seek larger units across in the Borough, they would partially ease the pressure to deliver large units in new developments and develop on Greenfield land. **A strategy that meets the demand of prospective housing occupiers**



through existing housing stock is considered to be reasonable and a more sustainable option when compared with satisfying demand by building new units.

Basement development can provide additional floorspace without increasing the building footprint or significantly reducing garden size. For new build design the reduction in footprint relative to the number of stories, scores points in the Ecology Section of the Code for Sustainable Homes.

The author appears to suggest large basements will satisfy the demand for super-prime units in this part of London. Details and evidence of this correlation have not been provided. Many of the Borough's properties already constitute super-prime units by reason of their size.

The policy is based on a number of strands, based on the sustainability dimensions referred to in the NPPF and takes a balanced approach to achieving sustainable development.

Housing Need

The 2012 Strategic Housing Market Assessment Update indicates a “*very large income gap between the social rented sector and market rent*” with need for increased provision of intermediate housing. Furthermore, 14.1% of all (non-student) households live in unsuitable housing. **By delivering larger units as part of basement developments, new developments could instead seek to meet the above housing needs and no pressure will be added on the housing stock deficit.**

In response to our March 2013 Representation, the Council commented that “*the policy is not putting a stop to basements but proposing a reasonable scale of development. The proposed policy would allow people to extend their homes but help minimise their impacts*”.

The demand for large 2 level subterranean development is relatively small compared to one storey basement proposals. Resisting proposals for more than a subterranean level is deemed excessive compared to the impact that these cases would have on the Borough's built environment.

As basement works can be undertaken with minimum disruption to neighbouring residential amenity, proposed Policy CL7 is not the most reasonable strategy that can be applied to basement development.

Inevitably, all building works can cause nuisance but local authorities can enforce working hour limits and other controls through their planning policies. It is considered that neighbouring residential amenity can be successfully protected through policy requirements. For instance, the Borough has been increasingly using its substantial powers to control noise generated by building works, effectively mitigating noise levels on all basement sites.

The Arup Scoping Report highlights the potential risks to the existing and neighbouring buildings if the development is poorly surveyed, managed and constructed (all which can be controlled by planning policies). The report concludes by saying that successful subterranean development has been achieved in the Borough for many years.

The attached Basement Best Practice Guidance provides an overview of how subterranean development can be carried out with minimal disruption to neighbouring properties and surrounding built environment.

Proposed Strategy



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Although proposed Policy CL7 is not aimed at preventing basement applications, its strict approach will decrease the number of large schemes put forward for subterranean development. The unintended consequence of this approach will be to deprive the Council's housing offer of valuable large residential units, as set out in the above paragraphs.

The proposed new policy adopts the same approach to large and small houses. But although owners of houses with very large gardens may be able to create the space they require under the new policy, the vast majority of residents will find they cannot justify the cost of creating a restricted living space.

Curbing housing supply in a Borough under pressure to meet increasing housing demand is not a reasonable strategy. **The strategy we put forward in this Representation provides enough flexibility to deal with large development proposals that meet housing demand.** This is in line with NPPF that requires planning authorities to plan for a mix of housing based on current and future demographic trends and the needs of different groups in the community (paragraph 50).

We reiterate that basement development is often the only option for growing families to remain in the Borough. Existing families and communities should not be penalised for wanting to improve their family living standard. The effect of moving house impacts families both financially and emotionally.

As stated above in the section, it is considered that the most reasonable alternative to proposed Policy CL7 is a policy that:

- **Maintains the same stance of policy CL2 on number of storeys (no limitation); and**
- **Adopts the Baxter's Basement Report recommendation in terms of maximum garden coverage (75%).**

Considering the benefits delivered by the proposed strategy, this is considered to be the most appropriate approach to subterranean development in the Borough.

It is concluded that proposed Policy CL7 is not justified, as an alternative strategy can be formulated that better responds to local housing needs and does not impact on residential amenity.

Responses to these points are provided above.

3. Effective

The definition of 'effective' means that the policy achieves its goal. The stated objective is to reduce the potential amenity effects of basement development. However, in our view, there is significant space between the construction of the policy and its desired aim. A more flexible approach with good supporting guidance and implementation would be much less intrusive than a restricted policy approach without good guidance.

At Attachment 1, we set out Best Practice Guidance for basements, which is adopted by our clients. With this practice encouraged throughout planning conditions or informatives we are convinced that a more flexible policy approach would be effective in allowing the Borough to meet and deliver its wider policy goals.

4. Consistent with national policy

Under the NPPF, a plan policy which is 'consistent with national policy' *"should enable the delivery of sustainable development in accordance with the policies in the Framework"*.



Paragraph 7 of the NPPF sets out that in order to be sustainable “*development planning should achieve:*

- ***an economic role;***
- ***a social role; and***
- ***an environmental role.”***

In May 2013 the Government has relaxed permitted development rights to build larger extensions, to help relieve the shortage in housing. This enables families to make their existing homes large enough to meet their requirements. In addition, it seeks to boost the construction industry and help the economy.

Moreover, by restricting hard working families from creating their dream home in the Borough, there is a risk they would leave and take their skills and investment out of the area. These are often growing families who use and contribute to local amenities such as shops, restaurants, supermarkets and coffee shops. It should also be noted that the basement industry provides jobs for a large number of people and generates fees for many local specialist consultants.

Proposed Policy CL7 is therefore contrary to the drive for economic and social benefits which are outlined in paragraph 7 of the NPPF.

Under its environmental role, development planning should contribute to protecting and engaging and built and historic environment. It is considered that existing Policy CL2 complies with these requirements and that there is no need to restrict its extent. Specifically, subterranean development results in minimal changes to the appearance and character of the urban environment.

Basements create a good stable structural base, often providing old buildings a proper foundation for the first time, capable of supporting heavy loads. By combining foundation design with the provision of habitable space, the extra depth of structure provides the building with greater ability to cope with climate change effects in the soil, such as shrinkage or tree roots.

The existing stock of period town houses was not designed to provide adequate space for 21st century family living. On the contrary, basements can aid in the creation of desirable, sustainable homes, providing greater flexibility and adaptability of space thus extending the practical life of the building.

The proposed restriction of basement developments does not consider the full housing evidence available, in breach of NPPF paragraph 158 requirements. The paragraph states that “*each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals*”.

The significant rise in the number of applications for basement developments is a signal of demand and need for larger family homes. Paragraph 14 sets out that “*local planning authorities should positively seek opportunities to meet the development needs of their area*”. The statistics demonstrate the development needs of the Borough and to restrict these development needs would be contrary to paragraph 14.

Finally, we re-iterate the sentiments of paragraph 187 of the NPPF that local planning authorities “*should look for solutions rather than problems, and decision-takers at every level should seek to approve applications and should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.*”

In light of the above, it is not considered that proposed Policy CL7 is in line with the NPPF.

Responses to these points are provided above.

Conclusions

Proposed Policy CL7 is not considered 'sound' as this Representation has demonstrated it not to be:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

Planning policy and housing market evidence highlight significant housing demand in the Borough and growing appetite for large units. Basement proposals should be seen as a tool to contribute to housing supply in a sustainable manner, delivering floorspace increase through modification of existing stock and allowing new development proposals to meet diverse housing needs.

The proposed restriction to basement proposals will hinder the provision of large homes, against local demand. This is contrary to the principle of sustainable development at the basis of the NPPF.

A policy that includes the requirements of adopted Policy CL2 and of the Subterranean Development SPD is deemed to be the best strategy for determining subterranean development proposals, as stated in previous Representations. Specifically, the following amended should be made to proposed Policy CL7:

- Point 'a' should be amended to adopt the maximum 75% garden coverage proposed by the Baxter's Basement Report ; and
- Point 'b' should be deleted imposing no restrictions on the number of basement levels.

Responses to these points are provided above.

Yours faithfully,



Jones Lang LaSalle Ltd

Attachment 1 - Basement Best Practice Guidance

The range of construction methods available, the different ground conditions present and the range of issues and mitigation measures which may be applicable for any potential subterranean basement application are numerous and in each case would be site-specific.

Despite this, it is possible to identify a series of 'best practice' standards which could be better suited to achieve the main stated goal of the proposed policy – controlling disruption from the construction of basements.

The policy as currently drafted would miss many of these items and could therefore fail in its stated goal. A small poorly planned and constructed basement will cause far more disruption than a large well planned and constructed basement.

The table below lists the principles of best practice, comparing the way they are dealt with under existing Policy CL2 and how they could be better integrated in the policy.

Table 1 – Basement Best Practice, principal issues

	Policy CL2	Best Practice Amendments
Surface water flow and flooding	A Flood Risk Assessment (FRA) is required, which covers the application site.	If the main concern is about the cumulative effect of basements, then a requirement could be put forward that the FRA takes into account the number of basements on the street. This could be supplemented with a public register of all basements built or planning submitted for in London, including depth details. The use of a water recycling system under the 1m of soil could also be proposed, reducing the pressure placed on the combined storm water and sewer network.
Subterranean (groundwater) flow	No requirements.	Applicants could submit a hydrology report based on ground investigations, including exploratory boreholes which can assess the water level and flows across the site. This would ensure that the information is then taken into account at the design stage.
Ground movement	No requirements.	Damage Risk Assessments to be prepared by a qualified professional to ensure that the proposed Construction Method Statement would not lead to damage in neighbouring properties. Minimum forecast standards could be set as is



		the case with most party wall awards – allowing for an amber movement of 7mm and red movement of 12mm.
Site monitoring	Structural engineer to monitor works.	Extend this to include an RICS surveyor on weekly visits.
Effects upon neighbours	Prepare Construction Traffic Management Plans (CTMP) at an early stage.	<p>More, upfront analysis and submission of technical information.</p> <p>Introduce a planning condition requiring projects be implemented in accordance with an approved programme and start date.</p> <p>The rationale being that the developer will need to be ready to start and putting more emphasis on getting the necessary investigations organised and approved in the planning stage. This could also aid the Council to manage the number of projects taking place on any one street – avoiding the cumulative effect of basements being developed in close proximity.</p> <p>Greater emphasis could be given within the CTMP to avoid semi-permanent skips in public street and a greater use of innovative ways of removing soil during the day, whilst retaining the street scene in the evenings.</p> <p>To control noise and dust nuisance, building sites should be encouraged to fully wrap the house in hoarding.</p>
Environmental issues	Policy fails to take account of the life of the proposed building against the life of the existing building.	Policy could take account of the environmental benefits of basements due to the excellent insulation properties from the soil and the large amount of concrete used in their construction. Initiative could be put forward to encourage spoil sharing strategies, whereby the soil is re-used for landscaping on large London schemes.
Professionals / Contractors	Generic ‘Considerate Constructors’ scheme.	<p>The establishment of a Borough supported / industry funded, local constructors group to include Architects, Contractors/Builders and other professionals.</p> <p>There could also be an advisory board which</p>

		<p>brings together the local Residents' Associations. The group would be subject to very tight working practice rules which ensure that all projects are conducted in manner which is 'neighbour-friendly'.</p> <p>Should any members breach the rules, he would be required to leave the scheme and therefore be unable to be part of a site within the Borough.</p>
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Responses to these points are provided above.



The Executive Director
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Kathryn.williams@eu.jll.com

1st May 2013

Dear Sir,

**Representations – Partial Review of Core Strategy – Policy CL7
Basements – Revised Draft Policy, March 2013**

We write in connection with the above which follows on from the consultation that was undertaken in December 2012. We act for a number of clients who bring forward basement developments within the Borough.

For the record, we attach a copy of our Representations submitted on 30 January 2013 in response to your December 2012 Draft Policy. All of the points made continue to apply to the March 2013 Revised Draft Policy.

The Council has prepared the Revised Draft Policy to respond to representations made against the first wave of consultation; in some areas it is to remove ambiguity and provide clarification whilst in others the approach has been tightened.

In our previous representations, we stated that the policy is not:

- Positively prepared;
- Justified;
- Effective; or
- Consistent with national policy.

These criticisms flow through to the Revised Draft Policy:

- a) 50% limit of each garden of the property (down from 75% in the first draft) – *this is arbitrary limit with no robust justification.*

The objective is to retain a significant proportion of gardens in their natural form to allow the continuation of the different roles that gardens play but at the same time allow development to take place.

Basements can impact on the natural character of garden, and create issues relating to drainage which are linked to flood risk, restrict flexibility in planting and have an impact on biodiversity. Therefore it is reasonable to expect a significant proportion to be retained in its natural form. Please see the accompanying evidence base.

- b) Restriction to one basement level per house – *again, this is arbitrary, further levels would have nil*



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effect upon the townscape.

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The reasons for the restriction are not based on impact on the character but as stated in the reasoned justification, the single storey restriction is seeking to minimise risk as well as reduce construction impacts and carbon emissions.

The other aspects of the policy set out generic considerations more in line with a development management document rather than a Core Strategy.

Please note the Council's Core Strategy includes development management policies and the draft policy is intended to be a development management policy.

The quoted (para 1.12) justification (from the London Plan Policy 3.5A) supporting a limit to the development within the garden is unsound. Policy 3.5A represents the strategy to prevent garden grabbing for the development of new houses; there is no evidence to suggest this is a threat to the Royal Borough or that basement proposals are an intrinsic part of such developments. Garden basement schemes are usually part of developments at existing houses.

While seeking to stop infill development the reasons to stop such developments apply equally to basement development. Reasoned justification to Policy 3.5 states that “back gardens play important roles in addressing many of these policy concerns, as well as being a much cherished part of the London townscape contributing to communities’ sense of place and quality of life.” The London Plan Housing SPG further amplifies the roles that gardens play.

Development both above or below ground can alter the character of gardens and adversely impact on the roles defined in the London Plan Housing SPG. It is reasonable to expect a significant proportion of gardens to be kept free of any development to allow their natural character to be maintained.

Para 53 of the NPPF also states “Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.” The NPPF further precludes gardens from the definition of previously developed land.

The policy is consistent with these aims.

In paragraph 1.20, the council states that:

‘while residents would generally like to see greater restrictions than those proposed, those involved in basement development find the proposals too restrictive’

It is clear that the council in the drafting of the second stage consultation has paid no weight to those who are engaged in basement developments.

The Council has to balance differing interests and weigh up the benefits of building basements and the impacts on amenity, environment, drainage etc. The draft policy is seeking to promote sustainable development. It is not formulated on popular vote.

Box 1: Reasoned Justification – In response, we consider the following text inappropriate (some comments in italics):

- A basement will not be allowed where a property already has an existing basement
- Restricting the size of the basements helps to limit the extent and duration of construction, and hence construction impact (*we suggest that this is not a valid planning consideration*)

The policy is not formulated on construction impact alone. A range of other reasons have been explained.



- At least half of the garden should therefore remain free of basement development to enable flexibility in planting, including major trees (*the 'greening' of a garden can be taken into account during the basement application process – the council ordinarily has no powers to prevent residents introducing 'hard' patios to rear garden areas*)
- The definition of 'garden' is inappropriate in that it includes all existing paved areas
- Protection of private gardens against inappropriate development is supported in the London Plan (*there is no indication that basements are 'inappropriate' development*)

Basements can be inappropriate development if they negatively impact on the role and functions of garden recognised in the London Plan and GLA's Housing SPG.

- In order to minimise these (structural) risks, a precautionary approach has been taken, limiting basements to a single storey (*there is no structural evidence supporting this proposition*)

The greater risks of multi-storey basements are highlighted in the Alan Baxter and Associates report.

- Restricting basements beneath gardens of listed buildings – (*again there is no justification for this approach*)

The policy is seeking to protect the foundations and fabric of listed buildings from harmful modifications as this can affect the historic integrity of the building and pose risks of damage to the building. The policy allows for exceptions on large sites where there will be no extensive modifications to the foundations.

As a general approach, the paragraphs concerned with BREEAM and construction are inappropriate, either exceeding reasonable requirements or treading on areas covered by other legislation.

The targets have been set at reasonable levels. It is not clear which other legislations cover this issue. Policy 5.4: Retrofitting of the London Plan should be referred to.

Box 2: Proposed Policy – again our comments in italics:

- a) 50% restriction – *this is not justified.*

The objective is to retain a significant proportion of gardens in their natural form to allow the continuation of the different roles that gardens play but at the same time allow development to take place.

Basements can impact on the natural character of garden, and create issues relating to drainage which are linked to flood risk, restrict flexibility in planting and have an impact on biodiversity. Therefore it is reasonable to expect a significant proportion to be retained in its natural form.

Please see evidence base documents.

- b) Limited to one basement – *this is not justified.*
- c) Limitations on gardens of listed buildings – *this is not justified (that should be rectified).*

There is no reference in the Policy to reflect para. 34.3.63 of the Reasoned Justification, where in excess of 50% of the garden area, or more than one new level, would be acceptable in certain circumstances.

Conclusions

Policy CL2 of the 2010 Core Strategy remains an acceptable benchmark – this does not need to change. Basements help provide family accommodation within the Borough and should be encouraged. The policy pays little or no attention to this objective.

The policy recognises that basements can be a useful way to add extra accommodation. The policy is not putting a stop to basements but proposing a reasonable scale of development. The proposed policy would allow people to extend their homes but help minimise their impacts.

Appendix D of the Revised Draft Policy states that ‘Planning can only deal legitimately with planning issues’ (para D.1). We consider that the Revised Draft oversteps this mark and is unjustified, unnecessary and unduly restrictive.

Yours faithfully,



Jones Lang LaSalle Ltd

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30 January 2013

Dear Sir,

**Representations – Partial Review of Core Strategy – Policy CL7
Basements – Draft Policy for Public Consultation and other matters (December 2012)**

We act for a number of clients who bring forward basement developments within the Royal Borough of Kensington and Chelsea.

We therefore submit these representations to the draft policy, for which the consultation ends on 31 January 2013. Our principal representations are set out below in bold in italics.

Paragraph 182 of the National Planning Policy Framework (NPPF) sets out that a local planning authority should submit a plan for examination that it considers to be “sound.” The plan policy should meet the following criteria:

- **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;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and,
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

We have examined Policy CL7 together with the text contained in the draft document for consultation; in response we raise the following concerns and objections.

Draft Proposed Policy CL7 (Basements)

The proposed Policy CL7 (Basements) states:

“Basement development must be of the highest quality. The Council will require Basement development to adhere to the following requirements:

- a. The basement must not exceed 75% of each garden of the property. Where the findings of the analysis of the surface water conditions of the site demonstrate surface water drainage will not be maintained, this percentage will be reduced. The unaffected garden must be in a single area.
- b. The basement must not comprise more than one additional storey except on larger sites which are less constrained and where it can be demonstrated that traffic and construction impacts can be successfully mitigated.
- c. There must be no loss, damage or long term threat to trees of townscape or amenity value, and the ability of future tree planting of a suitable size and scale both on site and in neighbouring gardens must not be prejudiced.
- d. The scheme must not cause substantial harm to heritage assets.
- e. The development must maintain and take opportunities to improve the character of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited.
- f. The basement must not introduce light wells and railings to the front or side of the property which are visible from the street, where these are not a feature of that street.
- g. The development must include a sustainable urban drainage scheme including a minimum of one metre of permeable soil above any part of the basement beneath a garden.
- h. Where the basement is to be constructed under an existing building, the dwelling or commercial property to which the basement relates must be adapted to a high level of performance in respect of carbon emissions and this must be verified at pre-assessment stage and after construction has been completed. Where a new building with a basement is proposed, the same applies to the entire building.
- i. The submitted application must demonstrate how traffic and construction activity will be organised so as not to harm road safety, significantly increase traffic congestion, nor place unreasonable inconvenience on the day to day life of those living and working nearby.
- j. The submitted application must demonstrate how the construction will be carried out in such a way as to minimise potential impacts such as noise, vibration and dust for the duration of the works;
- k. The submitted application must demonstrate how it is intended to safeguard the structural stability of the application building and nearby buildings.

Applicants are also advised to look at policy CE2, Flooding, in considering basement proposals.”

Our Representations

- a) *Positively prepared*

There is a need for more housing floorspace within the borough. Therefore the policy would not objectively meet development and infrastructure requirements of the area.

- ***We consider that any attempt to introduce an Article 4 Direction taking basements out of permitted development is an unnecessary gross infringement of the house owner's right***

There is a requirement to achieve 600 houses per annum in the Borough until 2027/28 under Core Strategy policy CH1. The RBKC Annual Monitoring Report 2012 states in paragraph 10.7 "the net gains for approvals in the Borough were 783 for 2010/11 and 860 for 2011/12 till the end of March which is a very healthy supply when considered against the target." Yet the approvals do not convert into completions with only 175 built in 2010/11 and 102 in 2011/12. The Annual Monitoring Report quotes from E C Harris titled 'The London Prime Residential development Pipeline: A Continued Magnet for Global Investment' potential reasons as being the lack of finance and the lack of skilled construction workforce to build.

The need for more houses could be significantly reduced if home owners were allowed to create the space needed within the boundary of their ownership. Policy CL7 is overly protective.

- ***The restrictions in relation to the depth and percentage of area of the basement would not enable occupier objectives and requirements to be met.***

When evidence from Hydrological Surveyors and Ground Water Surveyors supports the ability to achieve a larger basement area then these should be approved. There is a very limited visual impact given the nature of the development below ground and it would be unreasonable to impose the single storey limit. Paragraph 154 of the NPPF sets out that "*Local Plans should be aspirational but realistic. They should address the spatial implications of economic, social and environmental change.*" The proposed basement policy has not fully considered the impact the restrictions would have on the home owners wishing to extend their properties.

b) Justified

We do not consider that it is the role of planning to control basements in the way proposed by draft policy CL7.

The evidence given to support restrictions on basement development seems to be based on feedback from the residents questionnaires, with a response of only 17%. The questionnaire was not detailed enough to obtain feedback that was constructive.

- ***Much of the end impact of basement development is not seen. Construction does not influence whether other developments are approved and it ought not to be a material planning consideration for basements. There is no reason to support it in the area of basement development.***

There is a lack of evidence where a number of basements have been constructed over the last 10 years to determine whether basement development has had a negative impact, as confirmed in the Basement Owners Survey November 2012.

Paragraph 158 of the NPPF sets out that “each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals.” Therefore, further evidence is needed to support the restrictions set out in policy CL7 before these standards are applied.

- **Residents wish to live in the borough because of the fine houses. Some houses are quite small whereas others can be large. It is often true that building upwards is often limited because of conservation issues; it would therefore be entirely appropriate to allow residents to build such extensions to meet the particular needs of this particular family.**

c) *Effective*

The RBKC Annual Monitoring Report 2012 provides details of the number of basement developments in figure 9.1 from 2008 – 2012. In total 1226 applications have been submitted and 143 applications have been refused (11.6%). The majority (88%) of applications were considered to be acceptable basement development and therefore we question the need to restrict basement development, when the existing policy is effective in delivering good development.

d) *Consistent with National Policy*

- **Policy CL7 is not in accordance with the policies and principles of the National Planning Policy Framework.**

Paragraph 14 of the NPPF sets out that “at the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking. For **plan-making**, this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient **flexibility** to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

- ***The policy is drafted in a negative way and if it is to be included then it should be positive in terms of its construction – Basement development will be encouraged (where planning permission is necessary) provided it achieves the highest quality of design***

This policy tests would therefore not meet the development needs of the area.

- ***The policy items are more appropriate for a good design guide.***

There is no flexibility applied in the policy tests or they provide uncertainty (especially parts a and b).

The policy does not provide a positive or flexible approach to development. The restriction area of 75% is not founded on credible evidence. Qualified surveyors and engineers must provide confirmation that the proposed basement could be sustainable at a site. Consequently there is no justification to apply this 'general rule' restriction.

- ***The policy also applies to the limit to one storey to prevent construction traffic. There is no valid planning basis for this approach.***

These are not planning matters that should be considered at application stage and we therefore question the legality of these restrictions. The supporting text of the Basements Review document states that construction, noise and structural matters are not planning matters as they are dealt with under separate legislation. However, there would be significant overlap with the Party Walls Act (1996), the Control of Pollution Act (1974) and the Environmental Protection Act (1990).

Paragraph 187 of the NPPF confirms that:

“Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.” We do not consider that policy CL7 is in line with this guidance.

e) *Policy Wording Suggestion*

1. We question the legality of some of the issues used to control basement development

2. We propose the following, which is in line with the existing guidance in the Supplementary Planning Document (SPD) Subterranean Development (May 2009):

“a. The basement must not exceed 85% of each garden of the property.”

3. We request that the following is removed:

“b. The basement must not comprise more than one additional storey except on larger sites which are less constrained and where it can be demonstrated that traffic and construction impacts can be successfully mitigated.”

The restriction on the depth of the basement should be related to structural and ground water issues only. Paragraphs 34.4.59 and 34.3.60 do not provide adequate justification why the basement should be one storey only (uncertainty could prevail).

4. We request the following is amended:

“h. Where the basement is to be constructed under an existing building, the dwelling or commercial property to which the basement relates must be adapted to a high level of performance in respect of carbon emissions and this must be verified at pre-assessment stage and after construction has been completed. Where a new building with a basement is proposed, the same applies to the entire building.”

We proposed the following wording:

“The new basement to be constructed must meet the EcoHomes assessment ‘Very Good’ which must be verified at pre-assessment stage and after construction has been completed.”

There is no justification to support the requirement of the entire dwelling or property to reduce carbon emissions and is an unreasonable criteria to meet. The EcoHomes BREEAM Assessments are an established method of achieving improvements in energy efficiency and we consider it more appropriate to apply this to the new basement extension only.

5. We request the following is amended:

“i. The submitted application must demonstrate how traffic and construction activity will be organised so as not to harm road safety, significantly increase traffic congestion, nor place unreasonable inconvenience on the day to day life of those living and working nearby.”

We proposed the following wording:

“The proposals should seek to minimise potential noise or disturbance to those living or working nearby”

The proposed wording adequately ensures that there would be no transport issues with the development during the construction phase. Day to day inconvenience during standard working hours is not a planning issue.

6. We do not support the blanket removal of permitted development rights.

Article 4 Directions should be rarely used. They will produce uncertainty.



JONES LANG
LASALLE®

It is estimated by the council to cost well in excess of £65,00 pa. The cost to the applicant of producing all of the documents that form the Basement Impact Assessment (BIA) (as would be required under these proposed changes) on each application is circa £85-150,000. This figure would need to be compensated to the applicant if the basement could normally be constructed through permitted development.

The NPPF states in paragraph 200 that *“the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.”* We do not consider that the local amenity and wellbeing of the area would be compromised throughout the entire Borough in order to justify the Article 4 Direction.

Conclusions

We request that the council make the suggested amendments to policy CL7 to provide flexibility and compliance with national planning policy.

Please would you confirm receipt of this letter and provide any further correspondence in relation to the Basement Policy Review to Kathryn Williams or Jeff Field at these offices.

Yours sincerely,

A handwritten signature in cursive script that reads "Jones Lang LaSalle Ltd.".

Jones Lang LaSalle Ltd

Council's Response to Representation by Savills, April 2014

Representation towards "Basements: Publication Planning Policy" February 2014

- 1.1 We write on behalf of a number of clients including Echlin & Bailey and Morpheus to submit a representation towards the "Basements" consultation document, which incorporates proposed revisions to Core Strategy Policy CL7 'Basements'.
- 1.2 The above companies have progressed numerous major developments in Kensington and Chelsea, ranging from large apartment blocks to individual houses.
- 1.3 Savills has extensive experience in preparing and progressing subterranean planning applications. Within the Royal Borough of Kensington and Chelsea, Savills has achieved planning permission for subterranean development at over 40 properties across the Borough. Additionally, we have extensive experience of subterranean development within other London Boroughs including the City of Westminster and the London Borough of Camden and as such we have worked within various planning policy contexts and restrictions.
- 1.4 This representation updates our previous representation submitted in relation to the draft CL7 "Basements" policy published in July 2013, and Appendix 1 sets out our proposed revised wording of the new draft policy. We would note that the majority of the objections raised in our previous consultation still stand. To avoid duplication, we have therefore included our previous representations again as part of this submission, within Appendices 2 and 3.
- 1.5 In addition to the revised wording of the policy, we note that a number of new or updated evidence base documents have been made available. As such, the following provides an addendum to our previous representations, which set out our additional comments in light of the revised policy and evidence base. We also wish to formally request to speak at Examination in Public (EiP) and will be supported in our comments by Geotechnical Consulting Group and the Heritage Team of Turley Associates.
- 1.6 Supporting statements are also re-submitted with this representation from GCG and Turley Associates, confirming their support for this representation and their key concerns which will be expanded upon at EiP. Turley have updated their statement in light of the most recent amendments to the policy, however it is considered that GCG's comments are still relevant and as such the previous letter is resubmitted.

Comments on Revised Policy

- 1.7 We welcome the amendment to the proposed policy which now allows more flexibility to build under the garden of a listed building, provided it can be demonstrated that there is no harm to

the architectural or historic interest of the listed building. However, we consider that this caveat is covered within section (e) of the policy which states that basements 'should not cause harm to the significance of heritage assets'. As such, section (g), which states that basements should 'demonstrate there is no harm to the special architectural and historic interest of the listed building when proposed in the garden', is not necessary or justified, as this simply repeats the requirement of section (e). We therefore consider that section (g) should be removed entirely from the policy.

Criteria (e) and (g) of CL7 complement one another. The test must be that the significance of the heritage asset is not harmed. (criteria (e)). However, given the potential that a basement extension has to harm the interest of the adjoining listed building, it is reasonable to specifically require the applicant to assess potential harm, and to demonstrate that no harm will occur, at the beginning of the process. This assessment will consider both the impact upon appearance and upon structural integrity.

- 1.8 We consider that the amendment to the policy to allow subterranean development under the garden of a listed building is a positive step in the right direction, however we do consider that the same flexibility should be applied to proposals for basements under listed buildings, rather than applying a 'blanket ban' in this regard.
- 1.9 As set out within the accompanying note prepared by the Heritage Team of Turley Associates, it is important to consider the context within which basements are promoted. Whilst it is true that in some cases the particular significance of a listed building could preclude a basement extension, the approach adopted in the draft policy and supporting text is an unsubstantiated generalisation and cannot be regarded as being correct and applicable in all instances. The correct approach, in line with policy set out in the NPPF, would be to determine the particular significance of a heritage asset and then to assess whether the proposals would have a beneficial, neutral or harmful effect on this significance. Each case has to be considered on its merits.
- 1.10 As such, we consider that section (f) of the amended policy, which states that basements 'should not involve excavation under a listed building (including pavement vaults)', is not justified and should therefore be deleted from the policy. We consider that section (e) is adequate to ensure that subterranean development will only be approved when it does not result in harm to the significance of listed buildings.

There is a presumption enshrined in planning policy and guidance that development should be permitted unless a local planning authority can demonstrate harm. The Council is of the view that development beneath the garden of a listed building, or within a conservation area will not necessarily cause harm to the character of the area, or to the interest of the listed building.

We are, however of the opinion, that development beneath a listed building will in itself harm the hierarchy of historic floor levels and harm the building's historic integrity. As such there will be a presumption against such development. This is set out in more detail in RBKC response to Cranbrook Basements (2014) related to listed buildings.

Basements Visual Evidence

- 1.11 We note that since our previous representation, the Council have acknowledged that many of the examples set out within their visual evidence pre-date the existing basement policy, however they maintain that ‘the photographs demonstrate the need to introduce a planning policy that requires basement developments to consider the external manifestations carefully’. However, we disagree with this statement, as it still does not address the fact that the majority of the visual evidence pre-dates the current basement policy, as such the current basement policy is clearly successful in addressing the apparent ‘harm’ caused by basement development to the character and appearance of residential gardens.

RBKC’s visual impact report (2014) shows that if appropriate planning policies are not in place, the widely held view that basements are invisible and therefore do not cause any harm to the character or appearance of an area is not accurate. As stated in para 1.3 of the report “Basement development is considered less visually intrusive than above ground development. However, the photographs in this document demonstrate that the external manifestations of basements such as lightwells, roof lights, railings, staircases etc. can have adverse visual impacts. It is acknowledged that many of these examples predate the existing basement policy. It is also acknowledged that not all basement developments will result in the type of visual impacts shown in these photographs. Nevertheless the photographs demonstrate the need to introduce a planning policy that requires basement developments to consider the external manifestations carefully. This should also be considered in light of the numbers of basement planning applications and the special character of the Royal Borough”.

- 1.12 We would also note that Class F of Part 1 of the General Permitted Development Order (as amended) allows for the provision of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse. The only condition to this relates to if the proposed hard surface is located between the principal elevation and a highway, as such the removal of minor soft landscaping in the rear garden such as a lawn and its replacement with hard surfacing is permitted development. As such, we consider that the amount of weight applied to the retention of soft landscaping within rear gardens is too substantial, bearing in mind that residents are ordinarily able to install hard landscaping without requiring planning permission.

Noted. The Council recognises that changes to a garden when associated with the building of a basement will require planning permission. These changes can have implications on appearance, upon hydrology and upon biodiversity. As such it is reasonable to require the provision of a metre of top soil above a basement.

Basement Works – Impact on Residents

- 1.13 This evidence document is prepared by RBKC’s Noise and Nuisance Team and sets out their experience on the impact of basement works on residents in terms of noise and nuisance.
- 1.14 We would draw attention to paragraph 3.1 of this evidence document which states that ‘Limiting the size of basement developments will shorten the duration of the impact generally for residents’. However, this is in complete contradiction to evidence which RBKC

commissioned, by Alan Baxter Associates (ABA). Within their 'Case Studies... in relation to Programme and Vehicle Movements' document, ABA state that 'there is no clear correlation between the time taken to excavate the basement and the overall size or volume of the basement'. As such, RBKC's Noise and Nuisance Team's assertion that the size of basement development should be limited in order to reduce impact on residents is simply not correct.

- 1.15 Basement development, much the same as any other development within the Borough, can be controlled through conditions which restrict working hours and require the submission of an effective Construction Traffic Management Plan. As such, restricting the size of basements due to noise impacts is therefore not justified.

It is normal practice to require applicants to demonstrate the merits of their proposals including that it can be implemented without unacceptable impacts on residential amenity. Planning conditions are used by the Council to mitigate the adverse effects of the development in-line with National Planning Practice Guidance.

Para 158 of the NPPF relates to proportionate evidence in relation to plan making not in relation to planning applications.

Trees and Basements

- 1.16 RBKC have produced an evidence document titled 'Trees and Basements', although it is not clear who prepared this document and what their qualifications are.
- 1.17 We note that paragraph 3.2 of this document acknowledge that BS 5837:2005 states that 'it might be technically possible to form the excavation by undermining the soil beneath the RPA'. However, the document then goes on to claim that equally, it might not be technically possible to excavate in this manner. RBKC therefore use this reasoning for not allowing tunnelling under RPAs. However, we note that policies within development plans should positively prepared, as such a blanket ban should not be placed on tunnelling under trees where it has not been proved that this actually causes harm to the tree. Rather, the acceptability of this should be considered on a case-by-case basis.

The Council is not aware of any evidence that tunnelling underneath trees has been successfully carried out.

If the Council does not preclude this, all residential gardens will be exposed to having basements underneath RPAs of trees. As there are no real examples of this being done the Council cannot risk the potential long term impact of this could have on trees in the Borough. The BS does not point to any examples either. No evidence has been submitted of where this has been successfully done in a residential garden. Also policy cannot be based on one or two cases it will have to be established without doubt before it can be accepted as a norm.

Basement in Gardens of Listed Buildings

- 1.18 This evidence document has been prepared by Alan Baxter Associates (ABA) which sets out what needs to be considered when proposing a basement under a the garden of a listed

building.

- 1.19 We would note that, when discussing access arrangements to basements within gardens of listed buildings, the document states that 'the extent of underpinning and disruption to the existing fabric of the building should be limited to that reasonably required to form the connection'. As such, ABA clearly consider that some underpinning to listed buildings can be acceptable. This leads us to conclude that a blanket ban on subterranean development beneath listed buildings is not justified as the Council's own evidence clearly concedes that there are some circumstances where such excavation is acceptable. We therefore reiterate that section (f) of the proposed revised policy should be deleted.

The Council is of the opinion, that development beneath a listed building will in itself harm the hierarchy of historic floor levels and harm the building's historic integrity. As such it is appropriate to have a presumption against such development.

The NPPF states that the more important the asset, the greater the weight should be to its conservation. The submission policy attaches a proportionate weight to the significance of listed buildings.

An applicant will have the opportunity to argue the exceptional case where they consider one exists.

Appendix 1: Suggested Revised Wording for Policy CL7

Basements

All basements must be designed, constructed and completed to the highest standard and quality.

Basement development should:

a. not exceed a maximum of 85~~50~~% of each garden or open part of the site. The unaffected garden must be in a single area and where relevant should form a continuous area with other neighbouring gardens. Exceptions may be made on large sites;

~~b. not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;~~

~~c. not add further basement floors where there is an extant or implemented planning permission for a basement or one built through the exercise of permitted development rights;~~

d. not cause loss, damage or long term threat to trees of townscape or amenity value;

e. not cause harm to the significance of heritage assets

~~f. not involve excavation underneath a listed building (including pavement vaults);~~

~~g. demonstrate there is no harm to the special architectural and historic interest of the listed building when proposed in garden;~~

h. not introduce light wells and railings to the front or side of the property unless they are already an established and positive feature of the local streetscape;

i. maintain and take opportunities to improve the character or appearance of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited;

j. include a sustainable urban drainage scheme (SUDs), including a minimum of one metre of permeable soil above any part of the basement beneath a garden. Where the character of the gardens within an urban block is small paved courtyards SUDs may be provided in other ways;

k. ensure that any new building which includes a basement, and any existing dwelling or commercial property related to a new basement, is adapted to a high level of performance in respect of energy, waste and water to be verified at pre-assessment stage and after construction has been completed;

l. ensure that traffic and construction activity does not harm pedestrian, cycle, vehicular and road safety, affect bus or other transport operations (e.g. cycle hire), significantly increase traffic congestion, ~~nor place unreasonable inconvenience on the day to day life of those living, working and visiting nearby;~~

m. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;

n. be designed to safeguard the structural stability of the application building, nearby buildings and other infrastructure including London Underground tunnels and the highway;

o. be protected from sewer flooding through the installation of a suitable pumped device. A specific policy requirement for basements is also contained in Policy CE2, Flooding.

Please see comments above.

Appendix 2:

Previous representation - “Basements: Publication Planning Policy” July 2013

Paragraph 34.3.47 of the consultation document recognises that basement development is a useful form of development:

“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.”

As noted in the consultation document, there is a growing demand for basement development, particularly within RBKC which is restricted from development in other ways due to the following reasons:

Over 70% of the Borough is within a conservation area, which places limits on development

The Borough contains over 4000 listed buildings

The Borough has heavily built up and has a very limited amount of vacant land

Basement development helps meet the needs of the Borough within the context of the above restrictions, in particular it assists in:

The provision of additional floorspace (such as leisure space and habitable space where possible), which may not have been achievable above ground

The provision of much needed parking, within the context of a Borough which has issued more parking permits than there are on-street parking spaces

The provision of space of plant machinery, as opposed to locating them outdoors where they have the potential to cause noise disturbance

The ability to provide lateral spaces, particularly within listed buildings where it is difficult to provide these due to constraints on changes to plan form

National Planning Policy Framework Tests

As a starting position, it is essential to consider the proposed revisions to Policy CL7 in the context of the National Planning Policy Framework. At the heart of the Framework is the ‘presumption in favour of sustainable development’.

Paragraph 182 of the NPPF states that when examining local plans, the Inspector will consider whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. The NPPF identifies four criteria for considering the tests of soundness, which includes demonstrating that the policy is:

- Positively prepared
- Justified
- Effective
- Consistent with national policy

We consider that the draft policy does not satisfy the first, second and fourth points above.

Restriction on the size of basements

The document seeks to restrict the size of basements to 50% of the garden area, and to one storey only (unless there is already a basement storey, in which case no further storeys will be permitted). Flexibility is only proposed where large comprehensively planned sites are proposed.

Objections

RBKC's reasoning behind these restrictions on basements size are:

- Nearby residents' quality of life and living conditions
- Structural stability of adjacent properties
- Character of rear gardens
- Heritage
- Sustainable drainage
- Carbon emissions

Our representation considers each of the above reasons for restrictions on the size of basement development in turn, with particular reference to the Council's supporting evidence including Alan Baxter's 'Residential Basement Study Report' March 2013, and RBKC's 'Visual Evidence'.

Nearby residents' quality of life and living conditions

Paragraph 34.3.70 of the supporting text to the draft policy states that:

"Basement construction can cause nuisance and disturbance for neighbours and others in the vicinity, through construction traffic, parking suspensions and the noise, dust and vibration of construction itself."

RBKC are therefore seeking to justify restricting the overall size of basements by claiming that this will help limit the extent and duration of construction, and hence the construction impact. However, proposing a blanket restriction on development due to possible construction impact RBKC are therefore seeking to justify restricting the overall size of basements by claiming that this will help limit the extent and duration of construction, and hence the construction impact. However, proposing a blanket restriction on development due to possible construction impact implications is not within the remit of the planning system. Construction impact can be controlled and mitigated through the requirement to submit a Basement Impact Assessment and through the imposition of planning conditions. Where other controls are available they should be relied upon. Nor has RBKC explained why its approach to this matter is different from its stated position as appears on its web-site under their planning pages where it lists

'disruption and disturbance from building work' as a non material planning consideration.

To stop development occurring from the outset through such a blanket restriction is neither justified, nor in accordance with the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development.

It is normal practice to require applicants to demonstrate the merits of their proposals including that it can be implemented without unacceptable impacts on residential amenity. Planning conditions are used by the Council to mitigate the adverse effects of the development in-line with National Planning Practice Guidance.

The policy does not propose a blanket restriction and applications will continue to be assessed on their own merits and with regard to other material considerations. The impact of the construction process on residential amenity is one strand of several which inform the new policy. Restricting the size of basements will assist in reducing the impact, as well as having other advantages in relation to, for example carbon impact, visual impact and its impact upon local hydrology.

Irrespective of the above, RBKC have provided no evidence to justify their claim that the size of a basement is proportionate to the level of construction impact; indeed Alan Baxter's Basement Study Report makes no reference to this. Rather, it is the method used and site specific constraints which are the key factors which determine construction impact. As noted within our previous representations, the current policy requires that planning applications for all basement proposals are accompanied by a Construction Method Statement and Construction Traffic Management Plan which must be approved by the Council. As such, it is our view that RBKC have sufficient control over construction in order to ensure that adverse effects are mitigated. Further, appropriate conditions can be attached to planning permissions in order to ensure further control over development and construction work (i.e. control of working hours etc). We would also note that other regulatory controls are available.

A restriction on the size of basement development due to construction impact sets a very dangerous precedent as if such impact became a reason for refusing planning permission this could affect all forms of development above ground.

For these reasons we object to a restriction on the size of basement development due to construction impact. The policy is not sound as it is not **positively prepared** or **justified**.

Smaller size of development generally translates to reduced construction duration and volume on each individual site.

Restricting the size of basements will assist in reducing this impact, as well as having other advantages in relation to, for example carbon impact, visual impact and its impact upon local hydrology.

The mitigation of impact will also be achieved through the submission of a Construction Method Statement and a CTMP.

Structural stability of adjacent properties

Our previous representation objected to the 'precautionary measure' taken in the draft policy relating to the restriction on basements to one storey in order to 'minimise structural risks and complexities'. We note that this element has remained unchanged in the current draft policy, and RBKC's response to our previous objection to this element of the policy was to highlight paragraph 13.3.3 of Alan Baxter's Basement Study Report which states that:

"The depth of underpinning to party walls of semi-detached or terraced houses should generally be limited to 4m below the underside of the foundations of the party walls. Deeper basements should be avoided or else formed using piled walls"

Based on this quote, RBKC are seeking to place a ban on the majority of basements over one storey.

However, the depth of 4m is referred to within the context of underpinning party walls, and the report suggests that other methods such as piled walls may be feasible. Further, the report does not suggest that a limit should be applied to basement stories either under detached buildings or under gardens in general. A ban on basements over one storey in depth is therefore not justified and indeed is not recommended within the Alan Baxter report. The current Subterranean development SPD (2009) requires that all applications for basement development must be supported by a Construction Method Statement, setting out the specific details of excavation, construction techniques, assessment of impacts on existing and neighbouring structures and geology and hydrology considerations. This report must be prepared by a Chartered Civil Engineer or Structural Engineer and should be submitted and approved by the Council. As such, RBKC already have suitable control over the construction method and qualifications of those carrying out the works, and there is therefore no justifiable reason to limit the number of basements to one level on these grounds.

New policies should be introduced where there is demonstrable harm being caused as a result of existing policies (or lack thereof). The Council have provided no evidence that existing basements extending more than one storey below ground level cause any issues in terms of structural stability, and as such there is no requirement for the proposed limitation of the number of basement levels. This element of the policy therefore does not meet the tests of soundness as it is not **justified**.

The size restriction will have an impact on the volume of excavation and also on the carbon footprint. See Life Cycle Carbon Analysis, Eight Associates, Feb 2014. In addition the policy is based on a range of other issues.

Character of rear gardens

The supporting text to the draft policy states:

“Whilst basements can preserve the remaining openness of the townscape compared with other development forms, it can also introduce a degree of artificiality into the garden area and restrict the range of planting. Retaining at least half of each garden will enable natural landscape and character to be maintained, give flexibility in future planting (including major trees), support biodiversity and allow water to drain through to the ‘Upper Aquifer’”

In supporting their claim that basements introduce a degree of ‘artificiality’ into garden areas and restrict the range of planting, RBKC reference their report entitled ‘Basements Visual Evidence’. This compares gardens with basements over a number of years, leading to RBKC’s conclusion that gardens with basements underneath generally appear artificial with a sterile appearance and reduced planting.

We have reviewed RBKC’s visual evidence and conclude that it is misleading and does little to support RBKC’s arguments for the following reasons:

The majority of the examples within RBKC’s visual evidence document were given approval prior to RBKC’s Subterranean SPD was adopted in 2009, when tighter controls on planting was introduced within Chapter 9. If anything we would suggest that this evidence clearly shows that the introduction of the 2009 subterranean guidance resulted in developments having to maintain/provide a suitable level of landscaping, which is why the majority of the examples shown in RBKC’s visual

evidence document date from before 2009. This suggests that loss of landscaping is not an issue and as such the limitation of basements to 50% of the garden area due to this reason is not justified.

Of the limited number of examples within RBKC's visual evidence document given approval after the 2009 Subterranean SPD was adopted, all of these were subject to a condition requiring a landscaping scheme to be submitted to and approved by RBKC prior to development commencing. RBKC therefore had sufficient control over the proposed landscaping of the garden and would have had to approved the schemes before development could commence. We consider it unreasonable to suggest that these gardens do not contain enough landscaping as a result of basement development, when RBKC had control over this matter in the first instance. The need to restrict basements to 50% of the garden area for this reason is therefore unnecessary.

There are a number of errors contained within RBKC's visual evidence document which calls into question the validity of the entire evidence document. For instance, the photo shown of 7-10 Cottage Place is clearly a construction site and not the finished development, as such it is incorrect to suggest from this photo that there has been a 'loss of planting' as planting may well have been reinstated. Further, the planning permission referenced for this example (PP/10/00268) was in fact a withdrawn s73 application, this suggests a lack of adequate research into these examples.

Due to the reasons outlined above, we would suggest that RBKC's visual evidence document should be discounted as 'evidence' which can credibly be relied for supporting their argument for restricting basements to 50% of the garden area.

We would also add that the appearance of gardens as 'artificial' is very much a subjective argument, and to many people the appearance of landscaped garden areas introduced as a result of basements is considered to be an improvement to the property and the wider area.

We would dispute the fact that basements extending under gardens would restrict the range of planting. The proposed policy continues to require 1m of topsoil above basements within gardens, and as such we would suggest that in some cases, for example where existing gardens are mainly hardstanding, the level of planting can be substantially increased as part of a basement proposal.

We would highlight the example of Kensington Roof Gardens (shown in the photo below), which clearly boasts a substantial amount and variety of planting, in only 0.8m of topsoil. Clearly, it is possible for planting to easily grow in 1 metre of topsoil and we therefore consider that the proposed restriction on basement size to 50% of the garden based on planting is not justified.

RBKC's visual impact report (2014) shows that if appropriate planning policies are not in place, the widely held view that basements are invisible and therefore do not cause any harm to the character or appearance of an area is not accurate. As stated in para 1.3 of the report "Basement development is considered less visually intrusive than above ground development. However, the photographs in this document demonstrate that the external manifestations of basements such as lightwells, roof lights, railings, staircases

etc. can have adverse visual impacts. It is acknowledged that many of these examples predate the existing basement policy. It is also acknowledged that not all basement developments will result in the type of visual impacts shown in these photographs. Nevertheless the photographs demonstrate the need to introduce a planning policy that requires basement developments to consider the external manifestations carefully. This should also be considered in light of the numbers of basement planning applications and the special character of the Royal Borough”.

In terms of more mature trees, we consider that very large trees are not appropriate within residential terraces as they cause overshadowing and structural problems. Notwithstanding this, Alan Baxter Associates (ABA)'s report states at paragraph 9.8.6 that in most cases, a 3m strip at the rear of the garden would be sufficient to allow trees to grow. As such, limiting basement development to only 50% of the garden based on flexibility for planting is not justified, because 50% of the garden area is likely to be more than the required 3m strip. Sustainable development should not be impeded by the unnecessary and unwarranted blanket application of 50% when such a figure is arbitrary and unjustified.

Due to the clear errors in RBKC's visual evidence, we conclude that the proposed policy has not been **positively prepared**, and we would also suggest that a restriction on basement development due to unsupported claims of the introduction of artificiality and loss of landscaping in gardens is not **justified**. As such, the policy is unsound.

No evidence has been presented to show that mature trees are inherently inappropriate within residential terraces.

The 50% maximum limit is supported by a range of evidence. This includes –

- 1. Alan Baxter Associates Basements Report (Mar 2013)**
- 2. Basements Visual Evidence, Feb 2014**
- 3. Basements Visual Evidence - External Manifestations, Feb 2014**
- 4. Trees and Basements, Feb 2014**
- 5. Impact of Basement Development on Biodiversity, Feb 2014**
- 6. London: Garden City, 1998 - 2008, London Wildlife Trust, 2011**

Heritage

The proposed revised policy seeks to resist basement development below not only listed buildings but also the gardens of listed buildings.

We consider it is critical that listed buildings are well maintained, part of which is ensuring that they continue to be in active use and meet the requirements of modern living. Basements under gardens of listed buildings are a very effective way of achieving this, and with sensitive links they do not cause any harm whatsoever to listed buildings. There is no evidence that subterranean development below gardens causes harm to listed buildings, and indeed Alan Baxter's Report does not conclude that such extensions will necessarily lead to harm.

We have liaised with Turley Associates' Heritage Team who have produced a supporting statement submitted with this representation. Turley Associates have provided impartial advice on a number of planning applications for basement proposals in RBKC, including a number of proposals for basements under the gardens of listed buildings. In conclusion, they consider that the draft policy is unsound as far as it relates to heritage assets due to the fact that it is not supported by credible evidence and is not in conformity with the presumption in favour of sustainable development. As such it is neither **justified** or consistent with **national policy**.

The submission policy has been amended to allow basements within the gardens of listed buildings where the applicant “demonstrates that there is no harm to the special and historic interest of the listed building.”

Sustainable drainage

As noted above, the supporting text to the draft policy states that the limitation of basements to 50% of the garden area will also allow water to drain through to the 'upper aquifer'. However, ABA's report confirms that, in fact, 50% of the garden is not required for such drainage. Where the near surface subsoil is gravel, the report confirms that only 25% of the garden area will be required to allow drainage to the upper aquifer. Where the near surface sub-soil is clay, the report suggests that the proportion under which a garden shouldn't be built might be between 25% and 50%. The report states that each case should be judged on their merits, and as such applying a 'rule of thumb' to all basement developments by limiting basements to 50% of the total garden area unnecessarily stops development from occurring, particularly where building up to 75% of the garden may be perfectly acceptable.

In addition, we consider that the revised policy adequately deals with sustainable drainage through the requirement for basement development to include a sustainable urban drainage scheme (SUDs), including the provision of a minimum of one metre of permeable soil above the basement. We consider that this element of the draft policy is more than sufficient to allow sustainable drainage, and the proposed restriction of basement size to 50% of the garden area is therefore not **justified**. The proposed policy is therefore not sound.

Alan Baxter Associates Basements Report (March 2013) confirms that the leaving an area of garden undeveloped will have a beneficial impact upon local drainage. However, the benefits of leaving 50% undeveloped are wider than just the impact upon hydrology, but relate to benefits to the appearance and to the impact of constriction upon those in the vicinity.

Carbon emissions

The draft policy requires that for residential development, BREEAM Domestic Refurbishment 'Very Good' rating is met including a minimum standard of 'Excellent' in the energy section and a minimum of 80% credits in the waste category. For non-residential development, the stand is BREEAM 'Very Good'.

We objected to this element within our previous representations based on it not being in accordance with national policy, however we note that our representations in this regard has not been

responded to within RBKC's 'Consultation Responses to Draft Basements Policy March 2013'. As such, our previous comments still stand, as follows:

As noted within the appeal decision ref. APP/K5600/D/12/2174477 at 1 Burnsall St, the Inspector came to the conclusion that "any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal". This appeal was granted in June 2012; and should be given significant weight. RBKC have not provided any evidence of other appeal decisions where the policy in relation to the BREEAM requirement has been accepted, as such we do not consider that this requirement is appropriate and it should therefore be removed.

The Council continues to be of the opinion that this is an acceptable and regulation compliant requirement which has been supported in appeals subsequent to that referred to above.

The requirement for listed buildings to achieve a BREEAM 'very good' rating is very restrictive as it is often challenging to meet required standards in listed buildings without impacting unnecessarily on their heritage value. The policy needs to be realistic in terms of what can actually be achieved at listed buildings and the requirement for meeting BREEAM standards should be determined on a case by case basis. The policy should therefore incorporate some flexibility on this requirement.

The standards have been set at a level which would generally allow listed buildings to be upgraded to similar level. Please refer to Evidence Base for Basements and Policy CE1: Climate Change, Eight Associates, July 2013. However, the Council also has a duty 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." (section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990. Therefore a balance has to be struck where listed buildings are concerned.

In addition to our previous comments, we note that the supporting text to the draft policy states that:

"Carbon emissions of basements are greater than those of above ground developments per square metre over the building's life cycle. The embodied carbon in basements is almost three times the amount of embodied carbon in an above ground development per square metre"

The supporting text references Eight Associates' evidence document 'Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C'. We have reviewed this document and can confirm that there is not evidence within this document to support the requirement for the whole building to meet BREEAM 'Very Good' ratings. As such, this requirement is not **justified** and should be removed from the draft policy.

The Council consider the evidence base in this sound in this respect. The policy seeks for the carbon emissions of basement development to be offset. The Eight Associates Report considers a standard is considered to be reasonable for the historic environment of this Borough.

Conclusions

The NPPF seeks to promote sustainable development; however the application of this draft policy actively discourages beneficial development. As such, the draft policy is neither positively prepared, consistent with national policy or justified and therefore the policy fails to meet tests of soundness. The policy should therefore be revised in order to allow consideration of the context of the site.

The Council is of the view that the policy would achieve sustainable development which strikes an appropriate balance of the three strands of sustainable development described in the NPPF. The policy does not seek to prevent or ban basement development, only to limit it to a size so to ensure it achieves and conforms to the aspirations of the NPPF.

Appendix 3:

Previous representation - “Basements: Second Draft Policy for Public Consultation” March 2013

We write on behalf of a number of clients to submit a representation towards the “Basements” consultation document, which incorporates proposed revisions to Core Strategy Policy CL7 ‘Basements’.

Savills The London Planning Practice has extensive experience in preparing and progressing subterranean planning applications. Within the Royal Borough of Kensington and Chelsea, Savills LPP have achieved planning permission for subterranean development at over 40 properties across the Borough. Additionally, we have extensive experience of subterranean development within other London Boroughs including the City of Westminster and the London Borough of Camden and as such we have worked within various planning policy contexts and restrictions.

We would firstly highlight that the reasoning behind the second draft consultation document, as set out on page 4 of the consultation document, is flawed. Paragraph 1.12 states that:

“London Plan Policy 3.5A supports policies in LDFs to “introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified”. The desirability to maintain ‘green and leafy’ gardens, flexibility to plant major trees together with the recommendations in the ABA report regarding drainage indicate substantial proportion of the garden should remain free of any development”

The Council have misinterpreted the purpose of London Plan Policy 3.5A. The supporting text of the London Plan Policy highlights that the main reasoning behind the introduction of the Policy relates to significant local concern which can be caused by the **loss** of gardens. The supporting text goes on to state that the London Plan supports development plan-led presumptions against development **on** back-gardens. The introduction of basements, by their very nature, do not result in the loss of a garden and clearly do not represent development on back gardens, as such the use of this London Plan Policy to justify the restrictions introduced through RBKC’s revised basement policy is fundamentally flawed.

The Council has not quoted Policy 3.5 of the London Plan as referring to subterranean development. Para 34.3.55 of the reasoned justification of the Submission Basements Policy, April 2014 states “This policy takes into account the London Plan (Policy 3.5) and the Mayor of London’s Housing SPG both of which emphasise the important role of gardens.”

The remainder of this representation sets out our concerns in relation to specific aspects of the proposed revised policy, under the following headings:

- Restricting the size of basements
- Proposed limitation of basements to 50% of garden area
 - Garden character

- Water drainage
- Proposed limitation of basements to one additional level
- Heritage/listed buildings
- Sustainability

Restricting the size of basements

The consultation document seeks to justify restricting the overall size of basements by claiming that this will help to limit the extent and duration of construction, and hence the construction impact. We would firstly disagree that the size of a proposed basement is proportionate to the level of construction impact, but would suggest that the method used is the key factor which determines construction impact. Construction methods are controlled through requiring the submission and approval of a Basement Impact Assessment. RBKC have not provided any evidence that the size of a basement is directly proportional to construction impact, and as such limiting the size of basements for this reason is not justified or necessary.

Further, proposing a blanket restriction on development due to possible construction impact implications is not within the remit of the planning system. Construction impact can be controlled and mitigated through the requirement to submit a Basement Impact Assessment and through the imposition of planning conditions. To stop development occurring from the outset through such a blanket restriction is neither justified, nor in accordance with the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development.

The following considers in more detail the specific restrictions proposed on the size of basement development in RBKC.

The proposed restriction to basement storey's is not only informed by evidence relating to the construction impact but also to carbon emissions and off-setting. Please refer to the Policy Formulation Report for further details.

Proposed limitation of basements to 50% of garden area

Garden Character

Paragraph 34.3.59 of the proposed supporting text to the basement policy states that basements that extend under gardens can result in the garden above being artificially level, and can restrict the range of planting.

Alan Baxter Associates (ABA)'s report states at paragraph 9.8.6 that in most cases, a 3m strip at the rear of the garden would be sufficient to allow trees to grow. As such, limiting basement development to only 50% of the garden based on flexibility for planting is not justified, because 50% of the garden area is likely to be more than the required 3m strip.

Further, we would dispute the fact that basements extending under gardens would restrict the range of planting. The proposed policy continues to require 1m of topsoil above basements within gardens, and as such we would suggest that in some cases, for example where existing gardens are mainly

hardstanding, the level of planting can be substantially increased.

The consultation document has not explained why a garden being artificially level is a negative outcome, and in any case, over time the level of a garden will change naturally and no longer be 'artificial'. As such, the limitation of basements to 50% of the garden area based on the character of the garden is not a sound or justified reason for the imposition of this restriction.

The 50% restriction is not based only on the flexibility to retain major trees; it is also to allow drainage into the 'Upper Aquifer' and the need to maintain the natural character of gardens. It may even be possible for small gardens in conjunction with other small gardens to have large trees but having a basement would preclude that possibility. The Council has in-house arboricultural and ecology officers whose advice has been sought throughout policy making.

Please see Council's supporting documents *Trees and Basements, Feb 2014* and *Impact of Basement Development on Biodiversity, Feb 2014*.

When applying policy, the policy objectives should be considered. While seeking to stop infill development the reasons to stop such developments apply equally to basement development. Reasoned justification to Policy 3.5 states that "*back gardens play important roles in addressing many of these policy concerns, as well as being a much cherished part of the London townscape contributing to communities' sense of place and quality of life.*" The London Plan Housing SPG (para 1.2.18) further amplifies the roles that gardens play.

Water Drainage

Paragraph 34.3.59 goes on to state that the limitation of basements to 50% of the garden area will also allow water to drain through to the 'upper aquifer'. However, ABA's report confirms that, in fact, 50% of the garden is not required for such drainage. Where the near surface subsoil is gravel, the report confirms that only 25% of the garden area will be required to allow drainage to the upper aquifer. Where the near surface sub-soil is clay, the report suggests that the proportion under which a garden shouldn't be built **might** be between 25% and 50%. The report states that each case should be judged on their merits, and as such applying a 'rule of thumb' to all basement developments by limiting basements to 50% of the total garden area unnecessarily stops development from occurring, particularly where building up to 75% of the garden may be perfectly acceptable. The NPPF seeks to promote sustainable development; however the application of this policy actively discourages development. The policy should therefore be revised in order to allow consideration of the context of the site.

Please see comments above.

Proposed limitation of basements to one additional level

The revised policy also seeks to limit basements to one additional storey or, where there is already a basement, not allow any further basement stories. This approach is described as being 'precautionary' in order to minimise structural risks and complexities.

There is no reason to propose a precautionary approach. As noted within GCG's supporting letter, ABA's report does not provide any reasoned justification for the limitation of one level from a structural engineering point of view, and does not in fact recommend that RBKC impose a limit on basement

levels at all. The report simply states that the deeper the basement, the greater the care required in terms of design and construction.

The current Subterranean Development SPD (2009) requires that all applications for basement development must be supported by a Construction Method Statement, setting out the specific details of excavation, construction techniques, assessment of impacts on existing and neighbouring structures and geology and hydrology considerations. This report must be prepared by a Chartered Civil Engineer or Structural Engineer and should be submitted and approved by the Council. As such, RBKC already have suitable control over the construction method and qualifications of those carrying out the works, and there is therefore no justifiable reason to limit the number of basements to one level on these grounds.

New policies should be introduced where there is demonstrable harm being caused as a result of existing policies (or lack thereof). The Council have provided no evidence that existing basements extending more than one storey below ground level cause any issues in terms of structural stability, and as such there is no requirement for the proposed limitation of the number of basement levels.

The size restriction will have an impact on the volume of excavation and also on the carbon footprint. See Life Cycle Carbon Analysis, Eight Associates, Feb 2014. In addition the policy is based on a range of other issues.

Heritage/listed buildings

The proposed revised policy requires that no excavation is proposed both beneath listed buildings and beneath the gardens of listed buildings. The consultation document claims that the addition of a floor below the lowest floor level of a listed building will in the majority of cases affect the hierarchy of the historic floor levels, and hence the original building's historic integrity.

We consider that the reasoning behind this revised policy stance is a generalisation which by no means applies to every listed building. Many listed buildings have been substantially altered, with their main value being their facade. The addition of a basement to listed buildings which have been altered in the past could therefore have a neutral impact on the subject building. Further, the excavation of a basement below a listed building could in fact have a positive impact on a listed building, where it is associated with wider listed building enhancements under the same planning application.

We do not consider that it is necessary to introduce such a protective policy because Core Strategy CL4 already provides the necessary protection for listed buildings which ensures that development cannot take place which would adversely affect a listed building. Policy CL4 seeks to resist the removal or modification of features of architectural importance, and requires the preservation of the special architectural or historic interest of listed buildings, making specific reference to the plan form. As such, there is no requirement to introduce a policy which resists basements under gardens of listed buildings as there is already sufficient policy in place which safeguards against inappropriate impacts on listed buildings.

Listed buildings need to evolve and adapt to suit the needs of modern day living and basements are a good way of doing this. Basements often have much less of an impact on the listed building heritage

asset than above ground extensions due to their limited visual impact.

The policy has since been revised in this respect. CL7f) now requires that basement development does not take place underneath a listed building.

Sustainability

The proposed supporting text to the revised policy continues to require BREEAM standards to be met across the entire existing building. As noted within the appeal decision ref. APP/K5600/D/12/2174477, the Inspector came to the conclusion that “any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal”. This appeal was granted in June 2012; as such this constitutes very recent case law and should be given significant weight. RBKC have not provided any evidence of other appeal decisions where the policy in relation to the BREEAM requirement has been accepted, as such we do not consider that this requirement is legally compliant and it should therefore be removed.

Please see comments above in respect of this appeal decision.

The requirement for listed buildings to achieve a BREEAM ‘very good’ rating is very restrictive as it is often challenging to meet required standards in listed buildings without impacting unnecessarily on their heritage value. The policy needs to be realistic in terms of what can actually be achieved at listed buildings and the requirement for meeting BREEAM standards should be determined on a case by case basis. The policy should therefore incorporate some flexibility on this requirement.

Please see comments above in respect of this issue.

I trust the above comments will be taken into consideration. I would also like to take this opportunity to confirm that we would wish to speak at Examination in Public.

Yours sincerely,

Nick de Lotbiniere

1. Turley Heritage have been appointed to consider the Royal Borough's draft policy CL7 (relating to basement extensions) so far as it relates to heritage assets¹, with particular reference to statutorily listed buildings. We have considered the draft policy as well as the relevant supporting material.

Statutory Duty and Relevant Planning Policy

2. *Before considering the merits of the draft policy we firstly review the Planning (Listed Buildings & Conservation Areas) Act 1990 (hereafter referred to as 'the Act'), which sets out the statutory duties with regard to listed buildings and conservation areas, national policy as set out in the National Planning Policy Framework (NPPF) and the adopted Development Plan.*
3. The Act requires decision makers to have special regard to the desirability of preserving the special interest of a listed building² and its setting³ and to preserve or enhance the character or appearance of a conservation area⁴. Recent case law⁵ has confirmed that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings, where "preserve" means to "to do no harm" (after South Lakeland). The findings of this judgement are applicable to the statutory duty outlined by section 16(2) of the Act with regard to works of alteration, extension and demolition of listed buildings.
4. The NPPF provides further guidance on the Government's approach to delivering sustainable development with the key tenets being a general presumption in favour of granting planning permission and proportionality. The NPPF requires applicants to prepare proportionate assessments of the significance of heritage assets in order to inform decision making⁶ with a general presumption in favour of conserving, and where possible, enhancing this significance⁷ although acknowledging that not all elements of a heritage asset will contribute positively to its significance. The NPPF makes clear that the greater the significance of a heritage asset the greater the presumption in favour of its conservation⁸. The policy is not prescriptive and in accordance with the principles of the NPPF which seeks to achieve sustainable development in a positive and proactive manner. Contrary to this, policy CL2(g) of the Core Strategy, relating to subterranean development, states that basements are not permitted below listed buildings and places a bar on such development as a matter of principle.

The Council disagree and consider the policy strike an appropriate balance with, and accord to, the three strands of sustainable development defined by the NPPF.

Tests of soundness

5. Paragraph 182 of the NPPF states that when examining local plans, the Inspector will consider whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. The NPPF identifies four criteria for considering the tests of soundness, which includes demonstrating that the policy is:
 - Positively prepared;
 - Justified;
 - Effective; and

¹ NPPF Annex 2 Glossary

² Section 16(2)

³ Section 66

⁴ Section 72

⁵ Barnwell Manor Wind Energy Limited and (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary of State for Communities and Local Governments, Case No: C1/2013/0843, 18th February 2014

⁶ Paragraph 128

⁷ Paragraph 131

⁸ Paragraph 132

- Consistent with national policy.
6. We consider that policy CL7 does not satisfy the first, second and fourth points above.

Context for subterranean development

7. It is important to consider the context in which proposed basement extensions have been promoted. It is accepted that 'basements are a useful way to add extra accommodation to homes and commercial buildings'⁹. Given the generally prescriptive nature of the Royal Borough's policies relating to other form of modifications and alterations to properties, such as roof and rear extensions, it is entirely understandable that residents and businesses seek to provide much needed and valuable additional commercial and living space within basements. Put simply; if one is discouraged from extending upwards or outwards it is natural to develop proposals to provide additional space below ground.

Conformity with NPPF and local policy

8. Part (f) of draft policy CL7 (and the supporting text at paragraph 34.3.61) makes clear that it is the intention of the Royal Borough to resist all proposals for basement extensions below statutorily listed buildings. In seeking to impose a complete ban on basement extensions below statutorily listed buildings the Royal Borough seeks to go beyond the extent of the existing local policy context for basement extensions as well as the NPPF. This is regrettable as part (e) of draft policy CL7 is sufficient to protect the significance of heritage assets and is sufficient to ensure that the draft policy is in conformity with the relevant statutory provision and national planning policy, insofar as relevant to built heritage. We discuss potential amendments to draft policy CL7 later in this note.

Please note the policy in respect of listed buildings has altered since this time.

Lack of supporting evidence

9. The supporting information, particularly the 'Royal Borough of Kensington & Chelsea Residential Basement Study Report' (March 2013) and 'Basements in Gardens of Listed Buildings' (February 2014) prepared by Alan Baxter & Associates LLP, Basements Policy Formulation Report and Basements Visual Evidence prepared by the Royal Borough, does not provide any evidence to support the restriction of this form of development in the manner outlined in the supporting text to the draft policy. In particular, references to English Heritage guidance on terraced houses¹⁰ cannot be given any substantive weight given its age and the significant development of planning policy since its publication.

Please note the policy in respect of listed buildings has altered since this time.

Reliance on Alan Baxter Report

10. The draft policy 'prays in aid' of the 2013 Alan Baxter report to support assertions that basement proposals, as a matter of principle, pose unavoidable and undesirable risk to the integrity, stability and significance of statutorily listed buildings. Whilst acknowledging that basement proposals can be complex and difficult developments, the Alan Baxter report does not conclude that such extensions will necessarily lead to harm. Instead, the report notes that the success of a basement extension(s) relies on securing the necessary expertise to develop an appropriate solution which is responsive to the particular characteristics of the site, building and adjoining context. There is no suggestion that there should be a moratorium of basement development under listed buildings (or their gardens) on either structural or aesthetic grounds (subject to some limitations on the amount of retained garden

⁹ Alan Baxter & Associates LLP (2013) Royal Borough of Kensington and Chelsea Residential Basement Study Report & supporting text to draft policy CL7

¹⁰ English Heritage (1996). London Terrace Houses 1660-1860

and the provision of a suitable growing medium amongst other criteria). There is simply no evidence within the report to warrant the overly restrictive approach adopted in this draft policy.

Please refer to other supporting evidence and the Policy Formulation Report.

Effect on the significance of a listed building

11. We note that within the supporting text of draft policy CL7 and the Basement Policy Formulation report (February 2014), great weight is placed on the significance of a listed building with the assertion made that any basement extension will, as a matter of principle, have a harmful effect on this significance. Similar claims are made regarding the contribution of original/historic foundations to the significance of heritage assets. Whilst it is true that in some cases the particular significance of a listed building could preclude a basement extension (bearing in mind the weight to be applied to the relevant statutory duties and policy in the NPPF), the approach adopted in the draft policy and supporting text is an unsubstantiated generalisation and cannot be regarded as being correct and applicable in all instances.
12. The suggested approach in draft policy CL7 is therefore contrary to national policy. The correct approach, in line with policy set out in the NPPF and reflected by paragraph 34.3.60 in the accompanying text to draft policy CL7, would be to determine the particular significance of a heritage asset and then to assess whether the proposals would have a beneficial, neutral or harmful effect on this significance. Each case has to be considered on its merits. Without appropriate assessments of significance it is simply not possible to assert that any basement extension below a statutorily listed building would have a harmful effect on its special interest.

Please note the policy in respect of listed buildings has altered since this time. Please see Policy Formulation Report.

‘Soundness’ of policy

13. Accordingly, draft policy CL7, as far as it relates to heritage assets and statutorily listed buildings in particular, is not supported by a credible evidence base. Furthermore, given this lack of a robust evidence base the proposed restrictive approach to subterranean development is not in conformity with the presumption in favour of sustainable development and requirement to adopt a proportionate approach to assessing the effects of development upon the significance of heritage assets as set out in the NPPF. It is also not in compliance with existing local policy. This element of the draft policy is therefore not ‘sound’.

Amendments to policy

14. Notwithstanding these concerns, we consider that the draft policy could be modified to reflect the available evidence and relevant statutory and planning policy framework by removing subsection (f) in its entirety. It is also suggested that subsection (g) also be removed as it simply repeats the requirements of subsection (e).
15. Retention of subsection (e) of the draft policy would be sufficient to bring the draft policy into conformity with the requirements of the Planning (Listed Buildings and Conservation Area) Act 1990, NPPF and existing local policy.

Comments noted. No changes recommended to the policy.



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Sarah Round,
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2nd Sep 2013

Dear Ms
Round,

PROPOSED CHANGES TO RBKC'S PLANNING POLICY FOR BASEMENTS

Thank you for asking us to give our views on the Council's proposals and the background information to them. As you know, we carry out a lot of work in the area and are well aware of the issues on all sides.

We have reviewed your current draft representation report and confirm that we are in agreement with your objections.

We have read the Alan Baxter (AB) report which has been prepared for the Council with a mind to the proposed policy changes. The report and indeed the report prepared previously by Arup for RBKC is helpful in explaining the issues that need to be considered when contemplating basement construction in the Borough. They do not, however, make anything other than 'rule of thumb' statements which justify their recommendation concerning limits to the plan area of a basement, nor make any statements at all concerning limiting the depth of basement construction, nor any suggestions that there should be no basements under listed buildings. The report does not therefore provided any reasoned justification for the proposed changes in RBKC's Planning Policy based on engineering matters. Both this document and the one prepared by Arup should help RBKC's Planners (and Councillors) understand the issues, but as AB say, each case must be judged on its merits. We do disagree with some details of what they say, but these are details, not substantive points. However in some cases we fear that, taken literally by lay persons, they may result in unnecessary concern and work.

The message that comes out of both the Arup and the AB reports is that it is absolutely essential to make sure that those concerned with both design and construction of this sort of development have the right qualities. I also entirely agree with the need to enter into dialogue with the parties likely to be affected at an early stage. This is just common sense.

We are well aware that the main issue that RBKC has to deal with is concerns over the number and scale of basements being constructed in the Borough. This is entirely understandable. The Council seem to think that by raising concerns over the engineering issues, they can justify reducing the scale of any single scheme. In our opinion this is misguided because it can be challenged. Deeper basements would be more risk than shallower ones if all basements were done by the same team, but done by a competent team, basements of any reasonable depth should not give rise to unacceptable risk. However, it doesn't work that way. Larger projects do tend to have experienced teams. The projects most at risk are the smaller projects which are carried out by inexperienced teams. These are the main ones to target. From an engineering perspective the most important thing is to find a way of ensuring that all projects are done by competent and experienced teams.

In summary either the proposed policy changes cannot be justified on the basis of the advice that RBKC have received from their consultants or, in some cases (for example in the case of limitations based on the proportion of a plot taken up by basements) the advice given is not backed up by proper engineering considerations. Were the latter advice to be reasonable, RBKC should be telling their residents that they must not place an impervious surface over their gardens.

I can confirm that I would be happy to support you when the draft policy is considered at Examination in Public.

Yours sincerely
For Geotechnical Consulting Group LLP


Hugh St John

The ABA report makes 'rule' of thumb' recommendations regarding an area of the garden to be left free of development for drainage purposes. However, it is clear that a proportion should be left free for drainage. This is combined with the fact that a reasonable proportion of the garden should be left free of development to enable flexibility in planting and maintain the character of gardens in the Borough. Therefore a limit on development to a maximum of 50% of the garden is considered reasonable.

The ABA report does highlight that multiple level basements are more challenging than single level basements. It makes references to this issue at para 8.6 (h), 9.3.6.5 and in the recommendations at para 13.3.3 where it states that *"underpinning to party walls of semidetached or terraced houses should generally be limited to 4m below the underside of the foundations of the party walls. Deeper basements should be avoided or else formed using piled walls if feasible"*. The Royal Borough has a very special historic character and to reduce the risk the Council considers it is appropriate to restrict basements to single storey. However the limit to a single storey will also help minimise construction impacts of large basements in densely built up residential areas of the Borough. The policy allows exceptions to the limits for larger comprehensively planned sites. The issues that the policy is designed to address extend beyond technical concerns covered in the ABA report.

Please note the comments made below this point have been responded to above. Therefore please refer to the Council's responses above.

Representation towards "Basements: Publication Planning Policy" July 2013

- 1.1 We write on behalf of a number of clients including Echlin & Bailey and Morpheus to submit a representation towards the "Basements" consultation document, which incorporates proposed revisions to Core Strategy Policy CL7 'Basements'.
- 1.2 The above companies have progressed numerous major developments in Kensington and Chelsea, ranging from large apartment blocks to individual houses.
- 1.3 This representation follows our previous representation on the last stage of consultation. We note that the draft policy contained within this current round of consultation has not been substantially changed, as such the majority of the objections raised in our previous consultation still stand and included again with this submission.
- 1.4 Savills has extensive experience in preparing and progressing subterranean planning applications. Within the Royal Borough of Kensington and Chelsea, Savills has achieved planning permission for subterranean development at over 40 properties across the Borough. Additionally, we have extensive experience of subterranean development within other London Boroughs including the City of Westminster and the London Borough of Camden and as such we have worked within various planning policy contexts and restrictions.
- 1.5 The following letter sets out our key areas of representation to the current consultation document. We also wish to formally request to speak at Examination in Public (EiP) and will be supported in our comments by Geotechnical Consulting Group and Turley Associates.
- 1.6 Supporting statements are submitted with this representation from GCG and Turley Associates, confirming their support for this representation and their key concerns which will be expanded upon at EiP.
- 1.7 We have proposed an alternative wording to the policy which is set out within Appendix 1. Our proposed alternative wording more closely reflects the wording contained within the current Core Strategy policy and Subterranean SPD 2009, which we consider places suitable controls on basement development.

Basement Development

- 1.8 Paragraph 34.3.47 of the consultation document recognises that basement development is a useful form of development:

"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.”

1.9 As noted in the consultation document, there is a growing demand for basement development, particularly within RBKC which is restricted from development in other ways due to the following reasons:

- Over 70% of the Borough is within a conservation area, which places limits on development
- The Borough contains over 4000 listed buildings
- The Borough has heavily built up and has a very limited amount of vacant land

1.10 Basement development helps meet the needs of the Borough within the context of the above restrictions, in particular it assists in:

- The provision of additional floorspace (such as leisure space and habitable space where possible), which may not have been achievable above ground
- The provision of much needed parking, within the context of a Borough which has issued more parking permits than there are on-street parking spaces
- The provision of space of plant machinery, as opposed to locating them outdoors where they have the potential to cause noise disturbance
- The ability to provide lateral spaces, particularly within listed buildings where it is difficult to provide these due to constraints on changes to plan form

National Planning Policy Framework Tests

1.11 As a starting position, it is essential to consider the proposed revisions to Policy CL7 in the context of the National Planning Policy Framework. At the heart of the Framework is the ‘presumption in favour of sustainable development’.

1.12 Paragraph 182 of the NPPF states that when examining local plans, the Inspector will consider whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. The NPPF identifies four criteria for considering the tests of soundness, which includes demonstrating that the policy is:

1. Positively prepared
2. Justified

3. Effective
4. Consistent with national policy

1.13 We consider that the draft policy does not satisfy the first, second and fourth points above.

Restriction on the size of basements

1.14 The document seeks to restrict the size of basements to 50% of the garden area, and to one storey only (unless there is already a basement storey, in which case no further storeys will be permitted). Flexibility is only proposed where large comprehensively planned sites are proposed.

Objections

1.15 RBKC's reasoning behind these restrictions on basements size are:

- a) Nearby residents' quality of life and living conditions
- b) Structural stability of adjacent properties
- c) Character of rear gardens
- d) Heritage
- e) Sustainable drainage
- f) Carbon emissions

1.16 Our representation considers each of the above reasons for restrictions on the size of basement development in turn, with particular reference to the Council's supporting evidence including Alan Baxter's 'Residential Basement Study Report' March 2013, and RBKC's 'Visual Evidence'.

(a) Nearby residents' quality of life and living conditions

1.17 Paragraph 34.3.70 of the supporting text to the draft policy states that:

"Basement construction can cause nuisance and disturbance for neighbours and others in the vicinity, through construction traffic, parking suspensions and the noise, dust and vibration of construction itself."

1.18 RBKC are therefore seeking to justify restricting the overall size of basements by claiming that this will help limit the extent and duration of construction, and hence the construction impact. However, proposing a blanket restriction on development due to possible construction impact RBKC are therefore seeking to justify restricting the overall size of basements by claiming that this will help limit the extent and duration of construction, and hence the construction impact. However, proposing a blanket restriction on development due to possible construction impact implications is not within the remit of the planning system. Construction impact can be

controlled and mitigated through the requirement to submit a Basement Impact Assessment and through the imposition of planning conditions. Where other controls are available they should be relied upon. Nor has RBKC explained why its approach to this matter is different from its stated position as appears on its web-site under their planning pages where it lists 'disruption and disturbance from building work' as a non material planning consideration.

- 1.19 To stop development occurring from the outset through such a blanket restriction is neither justified, nor in accordance with the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development.
- 1.20 Irrespective of the above, RBKC have provided no evidence to justify their claim that the size of a basement is proportionate to the level of construction impact; indeed Alan Baxter's Basement Study Report makes no reference to this. Rather, it is the method used and site specific constraints which are the key factors which determine construction impact. As noted within our previous representations, the current policy requires that planning applications for all basement proposals are accompanied by a Construction Method Statement and Construction Traffic Management Plan which must be approved by the Council. As such, it is our view that RBKC have sufficient control over construction in order to ensure that adverse effects are mitigated. Further, appropriate conditions can be attached to planning permissions in order to ensure further control over development and construction work (i.e. control of working hours etc). We would also note that other regulatory controls are available.
- 1.21 A restriction on the size of basement development due to construction impact sets a very dangerous precedent as if such impact became a reason for refusing planning permission this could affect all forms of development above ground.
- 1.22 For these reasons we object to a restriction on the size of basement development due to construction impact. The policy is not sound as it is not **positively prepared** or **justified**.

(b) Structural stability of adjacent properties

- 1.23 Our previous representation objected to the 'precautionary measure' taken in the draft policy relating to the restriction on basements to one storey in order to 'minimise structural risks and complexities'. We note that this element has remained unchanged in the current draft policy, and RBKC's response to our previous objection to this element of the policy was to highlight paragraph 13.3.3 of Alan Baxter's Basement Study Report which states that:

"The depth of underpinning to party walls of semi-detached or terraced houses should generally be limited to 4m below the underside of the foundations of the party walls. Deeper basements should be avoided or else formed using piled walls"

- 1.24 Based on this quote, RBKC are seeking to place a ban on the majority of basements over one storey. However, the depth of 4m is referred to within the context of underpinning party walls, and the report suggests that other methods such as piled walls may be feasible. Further, the report does not suggest that a limit should be applied to basement stories either under detached buildings or under gardens in general. A ban on basements over one storey in depth is therefore not justified and indeed is not recommended within the Alan Baxter report.
- 1.25 The current Subterranean Development SPD (2009) requires that all applications for basement development must be supported by a Construction Method Statement, setting out the specific details of excavation, construction techniques, assessment of impacts on existing and neighbouring structures and geology and hydrology considerations. This report must be prepared by a Chartered Civil Engineer or Structural Engineer and should be submitted and approved by the Council. As such, RBKC already have suitable control over the construction method and qualifications of those carrying out the works, and there is therefore no justifiable reason to limit the number of basements to one level on these grounds.
- 1.26 New policies should be introduced where there is demonstrable harm being caused as a result of existing policies (or lack thereof). The Council have provided no evidence that existing basements extending more than one storey below ground level cause any issues in terms of structural stability, and as such there is no requirement for the proposed limitation of the number of basement levels. This element of the policy therefore does not meet the tests of soundness as it is not **justified**.

(c) Character of rear gardens

- 1.27 The supporting text to the draft policy states:

“Whilst basements can preserve the remaining openness of the townscape compared with other development forms, it can also introduce a degree of artificiality into the garden area and restrict the range of planting. Retaining at least half of each garden will enable natural landscape and character to be maintained, give flexibility in future planting (including major trees), support biodiversity and allow water to drain through to the ‘Upper Aquifer’”

- 1.28 In supporting their claim that basements introduce a degree of ‘artificiality’ into garden areas and restrict the range of planting, RBKC reference their report entitled ‘Basements Visual Evidence’. This compares gardens with basements over a number of years, leading to RBKC’s conclusion that gardens with basements underneath generally appear artificial with a sterile appearance and reduced planting.
- 1.29 We have reviewed RBKC’s visual evidence and conclude that it is misleading and does little to support RBKC’s arguments for the following reasons:

- 1.30 The majority of the examples within RBKC's visual evidence document were given approval prior to RBKC's Subterranean SPD was adopted in 2009, when tighter controls on planting was introduced within Chapter 9. If anything we would suggest that this evidence clearly shows that the introduction of the 2009 subterranean guidance resulted in developments having to maintain/provide a suitable level of landscaping, which is why the majority of the examples shown in RBKC's visual evidence document date from before 2009. This suggests that loss of landscaping is not an issue and as such the limitation of basements to 50% of the garden area due to this reason is not justified.
- 1.31 Of the limited number of examples within RBKC's visual evidence document given approval after the 2009 Subterranean SPD was adopted, all of these were subject to a condition requiring a landscaping scheme to be submitted to and approved by RBKC prior to development commencing. RBKC therefore had sufficient control over the proposed landscaping of the garden and would have had to approved the schemes before development could commence. We consider it unreasonable to suggest that these gardens do not contain enough landscaping as a result of basement development, when RBKC had control over this matter in the first instance. The need to restrict basements to 50% of the garden area for this reason is therefore unnecessary.
- 1.32 There are a number of errors contained within RBKC's visual evidence document which calls into question the validity of the entire evidence document. For instance, the photo shown of 7-10 Cottage Place is clearly a construction site and not the finished development, as such it is incorrect to suggest from this photo that there has been a 'loss of planting' as planting may well have been reinstated. Further, the planning permission referenced for this example (PP/10/00268) was in fact a withdrawn s73 application, this suggests a lack of adequate research into these examples.
- 1.33 Due to the reasons outlined above, we would suggest that RBKC's visual evidence document should be discounted as 'evidence' which can credibly be relied for supporting their argument for restricting basements to 50% of the garden area.
- 1.34 We would also add that the appearance of gardens as 'artificial' is very much a subjective argument, and to many people the appearance of landscaped garden areas introduced as a result of basements is considered to be an improvement to the property and the wider area.
- 1.35 We would dispute the fact that basements extending under gardens would restrict the range of planting. The proposed policy continues to require 1m of topsoil above basements within gardens, and as such we would suggest that in some cases, for example where existing gardens are mainly hardstanding, the level of planting can be substantially increased as part of a basement proposal.

- 1.36 We would highlight the example of Kensington Roof Gardens (shown in the photo below), which clearly boasts a substantial amount and variety of planting, in only 0.8m of topsoil. Clearly, it is possible for planting to easily grow in 1 metre of topsoil and we therefore consider that the proposed restriction on basement size to 50% of the garden based on planting is not justified.

Kensington Roof Gardens

- 1.37 In terms of more mature trees, we consider that very large trees are not appropriate within residential terraces as they cause overshadowing and structural problems. Notwithstanding this, Alan Baxter Associates (ABA)'s report states at paragraph 9.8.6 that in most cases, a 3m strip at the rear of the garden would be sufficient to allow trees to grow. As such, limiting basement development to only 50% of the garden based on flexibility for planting is not justified, because 50% of the garden area is likely to be more than the required 3m strip. Sustainable development should not be impeded by the unnecessary and unwarranted blanket application of 50% when such a figure is arbitrary and unjustified.
- 1.38 Due to the clear errors in RBKC's visual evidence, we conclude that the proposed policy has not been **positively prepared**, and we would also suggest that a restriction on basement development due to unsupported claims of the introduction of artificiality and loss of landscaping in gardens is not **justified**. As such, the policy is unsound.

(d) Heritage

- 1.39 The proposed revised policy seeks to resist basement development below not only listed buildings but also the gardens of listed buildings.
- 1.40 We consider it is critical that listed buildings are well maintained, part of which is ensuring that they continue to be in active use and meet the requirements of modern living. Basements under gardens of listed buildings are a very effective way of achieving this, and with sensitive links they do not cause any harm whatsoever to listed buildings. There is no evidence that

subterranean development below gardens causes harm to listed buildings, and indeed Alan Baxter's Report does not conclude that such extensions will necessarily lead to harm.

- 1.41 We have liaised with Turley Associates' Heritage Team who have produced a supporting statement submitted with this representation. Turley Associates have provided impartial advice on a number of planning applications for basement proposals in RBKC, including a number of proposals for basements under the gardens of listed buildings. In conclusion, they consider that the draft policy is unsound as far as it relates to heritage assets due to the fact that it is not supported by credible evidence and is not in conformity with the presumption in favour of sustainable development. As such it is neither **justified** or consistent with **national policy**.

(e) Sustainable drainage

- 1.42 As noted above, the supporting text to the draft policy states that the limitation of basements to 50% of the garden area will also allow water to drain through to the 'upper aquifer'. However, ABA's report confirms that, in fact, 50% of the garden is not required for such drainage. Where the near surface subsoil is gravel, the report confirms that only 25% of the garden area will be required to allow drainage to the upper aquifer. Where the near surface sub-soil is clay, the report suggests that the proportion under which a garden shouldn't be built might be between 25% and 50%. The report states that each case should be judged on their merits, and as such applying a 'rule of thumb' to all basement developments by limiting basements to 50% of the total garden area unnecessarily stops development from occurring, particularly where building up to 75% of the garden may be perfectly acceptable.
- 1.43 In addition, we consider that the revised policy adequately deals with sustainable drainage through the requirement for basement development to include a sustainable urban drainage scheme (SUDs), including the provision of a minimum of one metre of permeable soil above the basement. We consider that this element of the draft policy is more than sufficient to allow sustainable drainage, and the proposed restriction of basement size to 50% of the garden area is therefore not **justified**. The proposed policy is therefore not sound.

(f) Carbon emissions

- 1.44 The draft policy requires that for residential development, BREEAM Domestic Refurbishment 'Very Good' rating is met including a minimum standard of 'Excellent' in the energy section and a minimum of 80% credits in the waste category. For non-residential development, the stand is BREEAM 'Very Good'.
- 1.45 We objected to this element within our previous representations based on it not being in accordance with national policy, however we note that our representations in this regard has

not been responded to within RBKC's 'Consultation Responses to Draft Basements Policy March 2013'. As such, our previous comments still stand, as follows:

- 1.46 As noted within the appeal decision ref. APP/K5600/D/12/2174477 at 1 Burnsall St, the Inspector came to the conclusion that "any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal". This appeal was granted in June 2012; and should be given significant weight. RBKC have not provided any evidence of other appeal decisions where the policy in relation to the BREEAM requirement has been accepted, as such we do not consider that this requirement is appropriate and it should therefore be removed.
- 1.47 The requirement for listed buildings to achieve a BREEAM 'very good' rating is very restrictive as it is often challenging to meet required standards in listed buildings without impacting unnecessarily on their heritage value. The policy needs to be realistic in terms of what can actually be achieved at listed buildings and the requirement for meeting BREEAM standards should be determined on a case by case basis. The policy should therefore incorporate some flexibility on this requirement.
- 1.48 In addition to our previous comments, we note that the supporting text to the draft policy states that:
- "Carbon emissions of basements are greater than those of above ground developments per square metre over the building's life cycle. The embodied carbon in basements is almost three times the amount of embodied carbon in an above ground development per square metre"*
- 1.49 The supporting text references Eight Associates' evidence document 'Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C'. We have reviewed this document and can confirm that there is not evidence within this document to support the requirement for the whole building to meet BREEAM 'Very Good' ratings. As such, this requirement is not **justified** and should be removed from the draft policy.

Conclusions

- 1.50 The NPPF seeks to promote sustainable development; however the application of this draft policy actively discourages beneficial development. As such, the draft policy is neither positively prepared, consistent with national policy or justified and therefore the policy fails to meet tests of soundness. The policy should therefore be revised in order to allow consideration of the context of the site.

Appendix 1: Suggested Revised Wording for Policy CL7

Basements

All basements must be designed, constructed and completed to the highest standard and quality.

Basement development should:

a. not exceed a maximum of 85~~50~~% of each garden. The unaffected garden must be in a single area and where relevant should form a continuous area with other neighbouring gardens. Exceptions may be made on large comprehensively planned sites;

~~b. not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;~~

~~c. not be built under an existing basement;~~

d. not cause loss, damage or long term threat to trees of townscape or amenity value;

e. not cause harm to the significance of heritage assets ~~unless it is necessary to deliver public benefits which would outweigh this harm;~~

f. not involve excavation underneath a listed building (including pavement vaults) ~~or any garden of a listed building, except for gardens on large sites where the basement would not involve extensive modification to the foundation of the listed building by being substantially separate from the listed building;~~

g. not introduce light wells and railings to the front or side of the property unless they are already an established and positive feature of the local streetscape;

h. maintain and take opportunities to improve the character or appearance of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited;

i. include a sustainable urban drainage scheme (SUDs), including a minimum of one metre of permeable soil above any part of the basement beneath a garden. Where the character of the gardens within an urban block is small paved courtyards SUDs may be provided in other ways;

j. ensure that any new building which includes a basement, and any existing dwelling or commercial property related to a new basement, is adapted to a high level of performance in respect of energy, waste and water to be verified at pre-assessment stage and after construction has been completed;

k. ensure that traffic and construction activity does not harm pedestrian, cycle, vehicular and road safety, affect bus or other transport operations (e.g. cycle hire), significantly increase traffic congestion, ~~nor place unreasonable inconvenience on the day to day life of those living, working and visiting nearby;~~

l. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;

m. be designed to minimise damage to and safeguard the structural stability of the application building, nearby buildings and other infrastructure including London Underground tunnels and the highway;

n. be protected from sewer flooding through the installation of a suitable pumped device.

A specific policy requirement for basements is also contained in Policy CE2, Flooding.

Appendix 2: Previous representation

Dear Sir/Madam,

Representation towards “Basements: Second Draft Policy for Public Consultation”

We write on behalf of a number of clients to submit a representation towards the “Basements” consultation document, which incorporates proposed revisions to Core Strategy Policy CL7 ‘Basements’.

Savills The London Planning Practice has extensive experience in preparing and progressing subterranean planning applications. Within the Royal Borough of Kensington and Chelsea, Savills LPP have achieved planning permission for subterranean development at over 40 properties across the Borough. Additionally, we have extensive experience of subterranean development within other London Boroughs including the City of Westminster and the London Borough of Camden and as such we have worked within various planning policy contexts and restrictions.

We would firstly highlight that the reasoning behind the second draft consultation document, as set out on page 4 of the consultation document, is flawed. Paragraph 1.12 states that:

“London Plan Policy 3.5A supports policies in LDFs to “introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified”. The desirability to maintain ‘green and leafy’ gardens, flexibility to plant major trees together with the recommendations in the ABA report regarding drainage indicate substantial proportion of the garden should remain free of any development”

The Council have misinterpreted the purpose of London Plan Policy 3.5A. The supporting text of the London Plan Policy highlights that the main reasoning behind the introduction of the Policy relates to significant local concern which can be caused by the **loss** of gardens. The supporting text goes on to state that the London Plan supports development plan-led presumptions against development **on** back-gardens. The introduction of basements, by their very nature, do not result in the loss of a garden and clearly do not represent development on back gardens, as such the use of this London Plan Policy to justify the restrictions introduced through RBKC’s revised basement policy is fundamentally flawed.

The remainder of this representation sets out our concerns in relation to specific aspects of the proposed revised policy, under the following headings:

- Restricting the size of basements
- Proposed limitation of basements to 50% of garden area
 - Garden character
 - Water drainage

- Proposed limitation of basements to one additional level
- Heritage/listed buildings
- Sustainability

Restricting the size of basements

The consultation document seeks to justify restricting the overall size of basements by claiming that this will help to limit the extent and duration of construction, and hence the construction impact. We would firstly disagree that the size of a proposed basement is proportionate to the level of construction impact, but would suggest that the method used is the key factor which determines construction impact. Construction methods are controlled through requiring the submission and approval of a Basement Impact Assessment. RBKC have not provided any evidence that the size of a basement is directly proportional to construction impact, and as such limiting the size of basements for this reason is not justified or necessary.

Further, proposing a blanket restriction on development due to possible construction impact implications is not within the remit of the planning system. Construction impact can be controlled and mitigated through the requirement to submit a Basement Impact Assessment and through the imposition of planning conditions. To stop development occurring from the outset through such a blanket restriction is neither justified, nor in accordance with the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development.

The following considers in more detail the specific restrictions proposed on the size of basement development in RBKC.

Proposed limitation of basements to 50% of garden area

Garden Character

Paragraph 34.3.59 of the proposed supporting text to the basement policy states that basements that extend under gardens can result in the garden above being artificially level, and can restrict the range of planting.

Alan Baxter Associates (ABA)'s report states at paragraph 9.8.6 that in most cases, a 3m strip at the rear of the garden would be sufficient to allow trees to grow. As such, limiting basement development to only 50% of the garden based on flexibility for planting is not justified, because 50% of the garden area is likely to be more than the required 3m strip.

Further, we would dispute the fact that basements extending under gardens would restrict the range of planting. The proposed policy continues to require 1m of topsoil above basements within gardens, and as such we would suggest that in some cases, for example where existing gardens are mainly hardstanding, the level of planting can be substantially increased.

The consultation document has not explained why a garden being artificially level is a negative outcome, and in any case, over time the level of a garden will change naturally and no longer be 'artificial'. As such, the limitation of basements to 50% of the garden area based on the character of the garden is not a sound or justified reason for the imposition of this restriction.

Water Drainage

Paragraph 34.3.59 goes on to state that the limitation of basements to 50% of the garden area will also allow water to drain through to the 'upper aquifer'. However, ABA's report confirms that, in fact, 50% of the garden is not required for such drainage. Where the near surface subsoil is gravel, the report confirms that only 25% of the garden area will be required to allow drainage to the upper aquifer. Where the near surface sub-soil is clay, the report suggests that the proportion under which a garden shouldn't be built **might** be between 25% and 50%. The report states that each case should be judged on their merits, and as such applying a 'rule of thumb' to all basement developments by limiting basements to 50% of the total garden area unnecessarily stops development from occurring, particularly where building up to 75% of the garden may be perfectly acceptable. The NPPF seeks to promote sustainable development; however the application of this policy actively discourages development. The policy should therefore be revised in order to allow consideration of the context of the site.

Proposed limitation of basements to one additional level

The revised policy also seeks to limit basements to one additional storey or, where there is already a basement, not allow any further basement stories. This approach is described as being 'precautionary' in order to minimise structural risks and complexities.

There is no reason to propose a precautionary approach. As noted within GCG's supporting letter, ABA's report does not provide any reasoned justification for the limitation of one level from a structural engineering point of view, and does not in fact recommend that RBKC impose a limit on basement levels at all. The report simply states that the deeper the basement, the greater the care required in terms of design and construction.

The current Subterranean Development SPD (2009) requires that all applications for basement development must be supported by a Construction Method Statement, setting out the specific details of excavation, construction techniques, assessment of impacts on existing and neighbouring structures and geology and hydrology considerations. This report must be prepared by a Chartered Civil Engineer or Structural Engineer and should be submitted and approved by the Council. As such, RBKC already have suitable control over the construction method and qualifications of those carrying out the works, and there is therefore no justifiable reason to limit the number of basements to one level on these grounds.

New policies should be introduced where there is demonstrable harm being caused as a result of existing policies (or lack thereof). The Council have provided no evidence that existing basements extending more than one storey below ground level cause any issues in terms of structural stability, and as such there is no requirement for the proposed limitation of the number of basement levels.

Heritage/listed buildings

The proposed revised policy requires that no excavation is proposed both beneath listed buildings and beneath the gardens of listed buildings. The consultation document claims that the addition of a floor below the lowest floor level of a listed building will in the majority of cases affect the hierarchy of the historic floor levels, and hence the original building's historic integrity.

We consider that the reasoning behind this revised policy stance is a generalisation which by no means applies to every listed building. Many listed buildings have been substantially altered, with their main value being their facade. The addition of a basement to listed buildings which have been altered in the past could therefore have a neutral impact on the subject building. Further, the excavation of a basement below a listed building could in fact have a positive impact on a listed building, where it is associated with wider listed building enhancements under the same planning application.

We do not consider that it is necessary to introduce such a protective policy because Core Strategy CL4 already provides the necessary protection for listed buildings which ensures that development cannot take place which would adversely affect a listed building. Policy CL4 seeks to resist the removal or modification of features of architectural importance, and requires the preservation of the special architectural or historic interest of listed buildings, making specific reference to the plan form. As such, there is no requirement to introduce a policy which resists basements under gardens of listed buildings as there is already sufficient policy in place which safeguards against inappropriate impacts on listed buildings.

Listed buildings need to evolve and adapt to suit the needs of modern day living and basements are a good way of doing this. Basements often have much less of an impact on the listed building heritage asset than above ground extensions due to their limited visual impact.

Sustainability

The proposed supporting text to the revised policy continues to require BREEAM standards to be met across the entire existing building. As noted within the appeal decision ref. APP/K5600/D/12/2174477, the Inspector came to the conclusion that "any deficiency in relation to the dwelling as a whole already exists and would not be a consequence of the current proposal". This appeal was granted in June 2012; as such this constitutes very recent case law and should be given significant weight. RBKC have not provided any evidence of other appeal decisions where the policy in relation to the BREEAM requirement has been accepted, as such we do not consider that this requirement is legally compliant and it should therefore be removed.

The requirement for listed buildings to achieve a BREEAM 'very good' rating is very restrictive as it is often challenging to meet required standards in listed buildings without impacting unnecessarily on their heritage value. The policy needs to be realistic in terms of what can actually be achieved at listed buildings and the requirement for meeting BREEAM standards should be determined on a case by case basis. The policy should therefore incorporate some flexibility on this requirement.

I trust the above comments will be taken into consideration. I would also like to take this opportunity to confirm that we would wish to speak at Examination in Public.

Yours sincerely,

Nick de Lotbiniere

2 May 2013



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Dear Sir/Madam,

Representation towards "Basements: Second Draft Policy for Public Consultation"

We write on behalf of a number of clients to submit a representation towards the "Basements" consultation document, which incorporates proposed revisions to Core Strategy Policy CL7 'Basements'.

Savills The London Planning Practice has extensive experience in preparing and progressing subterranean planning applications. Within the Royal Borough of Kensington and Chelsea, Savills LPP have achieved planning permission for subterranean development at over 40 properties across the Borough. Additionally, we have extensive experience of subterranean development within other London Boroughs including the City of Westminster and the London Borough of Camden and as such we have worked within various planning policy contexts and restrictions.

We would firstly highlight that the reasoning behind the second draft consultation document, as set out on page 4 of the consultation document, is flawed. Paragraph 1.12 states that:

"London Plan Policy 3.5A supports policies in LDFs to "introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified". The desirability to maintain 'green and leafy' gardens, flexibility to plant major trees together with the recommendations in the ABA report regarding drainage indicate substantial proportion of the garden should remain free of any development"

The Council have misinterpreted the purpose of London Plan Policy 3.5A. The supporting text of the London Plan Policy highlights that the main reasoning behind the introduction of the Policy relates to significant local concern which can be caused by the **loss** of gardens. The supporting text goes on to state that the London Plan supports development plan-led presumptions against development on back-gardens. The introduction of basements, by their very nature, do not result in the loss of a garden and clearly do not represent

development on back gardens, as such the use of this London Plan Policy to justify the restrictions introduced through RBKC's revised basement policy is fundamentally flawed.

The remainder of this representation sets out our concerns in relation to specific aspects of the proposed revised policy, under the following headings:

- Restricting the size of basements
- Proposed limitation of basements to 50% of garden area
 - o Garden character
 - o Water drainage
- Proposed limitation of basements to one additional level
- Heritage/listed buildings
- Sustainability

Restricting the size of basements

The consultation document seeks to justify restricting the overall size of basements by claiming that this will help to limit the extent and duration of construction, and hence the construction impact. We would firstly disagree that the size of a proposed basement is proportionate to the level of construction impact. but would suggest that the method used is the key factor which determines construction impact. Construction methods are controlled through requiring the submission and approval of a Basement Impact Assessment. RBKC have not provided any evidence that the size of a basement is directly proportional to construction impact. and as such limiting the size of basements for this reason is not justified or necessary.

Further, proposing a blanket restriction on development due to possible construction impact implications is not within the remit of the planning system. Construction impact can be controlled and mitigated through the requirement to submit a Basement Impact Assessment and through the imposition of planning conditions. To stop development occurring from the outset through such a blanket restriction is neither justified, nor in accordance with the National Planning Policy Framework's (NPPF) presumption in favour of sustainable development.

The following considers in more detail the specific restrictions proposed on the size of basement development in RBKC.

Proposed limitation of basements to 50% of garden area

Garden Character

Paragraph 34.3.59 of the proposed supporting text to the basement policy states that basements that extend under gardens can result in the garden above being artificially level, and can restrict the range of planting.

Alan Baxter Associates (ABA)'s report states at paragraph 9.8.6 that in most cases, a 3m strip at the rear of the garden would be sufficient to allow trees to grow. As such, limiting basement development to only 50% of the garden based on flexibility for planting is not justified, because 50% of the garden area is likely to be more than the required 3m strip.

Further, we would dispute the fact that basements extending under gardens would restrict the range of planting. The proposed policy continues to require 1m of topsoil above basements within gardens, and as such we would suggest that in some cases, for example where existing gardens are mainly hardstanding, the level of planting can be substantially increased.

The consultation document has not explained why a garden being artificially level is a negative outcome, and in any case, over time the level of a garden will change naturally and no longer be 'artificial'. As such, the limitation of basements to 50% of the garden area based on the character of the garden is not a sound or justified reason for the imposition of this restriction.

Water Drainage

Paragraph 34.3.59 goes on to state that the limitation of basements to 50% of the garden area will also allow water to drain through to the 'upper aquifer'. However, ABA's report confirms that, in fact, 50% of the garden is not required for such drainage. Where the near surface subsoil is gravel, the report confirms that only 25% of the garden area will be required to allow drainage to the upper aquifer. Where the near surface sub-soil is clay, the report suggests that the proportion under which a garden shouldn't be built **might** be between 25% and 50%. The report states that each case should be judged on their merits, and as such applying a 'rule of thumb' to all basement developments by limiting basements to 50% of the total garden area unnecessarily stops development from occurring, particularly where building up to 75% of the garden may be perfectly acceptable. The NPPF seeks to promote sustainable development; however the application of this policy actively discourages development. The policy should therefore be revised in order to allow consideration of the context of the site.

Proposed limitation of basements to one additional level

The revised policy also seeks to limit basements to one additional storey or, where there is already a basement, not allow any further basement stories. This approach is described as being 'precautionary' in order to minimise structural risks and complexities.

There is no reason to propose a precautionary approach. As noted within GCG's supporting letter, ABA's report does not provide any reasoned justification for the limitation of one level from a structural engineering point of view, and does not in fact recommend that RBKC impose a limit on basement levels at all. The report simply states that the deeper the basement, the greater the care required in terms of design and construction.

The current Subterranean Development SPD (2009) requires that all applications for basement development must be supported by a Construction Method Statement, setting out the specific details of excavation, construction techniques, assessment of impacts on existing and neighbouring structures and geology and hydrology considerations. This report must be prepared by a Chartered Civil Engineer or Structural Engineer and should be submitted and approved by the Council. As such, RBKC already have suitable control over the construction method and qualifications of those carrying out the works, and there is therefore no justifiable reason to limit the number of basements to one level on these grounds.

New policies should be introduced where there is demonstrable harm being caused as a result of existing policies (or lack thereof). The Council have provided no evidence that existing basements extending more than one storey below ground level cause any issues in terms of structural stability, and as such there is no requirement for the proposed limitation of the number of basement levels.

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