

RBKC - Proposed Planning Policy CL7 - Comments by Cranbrook Basements - August 2013

Basement Development Should:	RBKC Reasoned Justification	RBKC Evidence Base	Ref	Objection to Proposed Policy	Cranbrook Evidence Base
CL7 A Not exceed a maximum of 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;	To reduce the level of Construction Phase inconvenience		1.00	RBKC have confirmed in writing that they have no evidence available to support their contention that the restriction of garden zone excavation to a maximum of 50% will reduce the level of construction phase inconvenience. This attempt to implement an enormous reduction in garden basement size in the absence of any evidence of benefit is wholly unreasonable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 11 - Item 1
			2.00	RBKC have stated in writing that inconvenience during the Construction Phase of a development are not a material factors that can be considered when in determining whether or not Planning Consent should be granted. This is the Publicly stated view of RBKC. It is therefore perverse to attempt to reduce the amount of garden Basement area that can be constructed on the basis of an issue that RBKC state is not a material planning consideration.	<b>Document 2</b> - RBKC - Non Material Planning Considerations - Page 2
			3.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
			4.00	The Independent Report prepared by ARUP Associates states that in most cases the degree of inconvenience experienced during Basement Construction is " In general, at least of similar, and <b>sometimes</b> of greater, magnitude than equivalent categories of disturbance created by other types of residential building works (such as replacing a roof, converting a loft, or adding a conservatory). The draconian restriction proposed by RBKC is unreasonable in light of this statement.	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 23 - Paragraph 5.4
			5.00	In the Judicial Review carried out by The Rt Honourable Lord Justice Underhill - RBKC supported the view that Construction Phase Inconvenience was not a reason to refuse the grant of Planning Consent - In conclusion Lord Justice Underhill states :- <i>"I do not underestimate the disruption which the carrying out of the development for which permission has been given is likely to cause to the claimant. Mr Brown made that point fully and clearly at the forefront of his submissions; and indeed, for what it is worth, the claimant has my sympathy. But it is a fact of life that in an urban environment development in neighbouring properties will from time to time cause real disruption to neighbours. That is not a reason for refusing the grant of planning permission. There are many remedies, both legal and social, for a person in the claimant's position to mitigate (though I appreciate it will not remove) the amount of the disruption, but I cannot see that it was even arguably unlawful for the council to grant permission on the conditions that it did.</i>	<b>Document 5</b> - Royal Courts of Justice - Case CO/11629/2011 - Page 6 - Point 17
Not exceed a maximum of 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;	To reduce Construction Phase traffic		6.00	61% of Basements that received Planning Consent since 2007 where schemes where the Basement was simply a component part of a larger development - It is essential to determine which part of the total development was responsible for any construction traffic generated	<b>Document 34</b> - Cranbrook Basements - Planning Officer Report Analysis

				7.00	RBKC have stated in a written answer <i>"The Council also notes that it is extremely rare for a basement to be dug in isolation, with the vast majority of such projects being associated with the refurbishment of the wider building"</i> - This statement is of critical importance because it totally undermines the RBKC contention that Basements are responsible for significantly increased levels of disruption for residents BECAUSE RBKC have failed to identify which part of a wider project that includes a basement is responsible for the alleged inconvenience.	<b>Document 35</b> - RBKC Consultation Response to Draft Policy March 2013
				8.00	Please refer to the Independent Report Prepared by Highways Experts <b>Waterman Transport</b> who conclude that Basement Construction does not generate any greater quantity of Construction Traffic than other forms of Urban Residential Construction - RBKC have produced no creditable evidence to prove otherwise	<b>Document 6</b> - Waterman Transport & Development - RBKC Traffic & Highways Policy Review
				9.00	RBKC confirm in writing that they have not carried out any research to determine what number of vehicle movements may be apportioned to the Basement element of a larger construction project - This is an extremely important distinction to ensure that Basement Construction is not incorrectly blamed for vehicle movements which are attributable to other parts of a larger project - In the absence of proper research any conclusion is unreliable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
		To limit the duration of Construction Phase		10.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
		To limit the extent of construction		11.00		
		To mitigate the alleged higher concentration of embedded carbon within Basements	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	12.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
		To mitigate the alleged higher levels of operational carbon associated with Basements	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	13.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
		To mitigate climate change	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	14.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
	Not exceed a maximum of 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;	To allow sufficient area for planting trees		15.00	RBKC have confirmed in writing that they have received no Professional Arboricultural or Horticultural advice to support their contention that <i>"Retaining at least half of each garden will enable natural landscape and character to be maintained, give flexibility in future planting including major trees"</i>	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 13 - Item 3

				16.00	Please refer to the Independent Report prepared by Mr Jeremy Barrell BSc FArborA DipArb Cbiol FICFor FRICS - Barrell Tree Consultancy which states <i>"there is no demonstrable need to leave any portion of a garden free of basement development in order to enable flexibility in planting tree's"</i>	<b>Document 11</b> - Barrell Tree Consultancy - Comments on RBKC Proposed Planning Policy Changes Relating to Basements - Page 5
				17.00	Jeremy Barrell is acknowledged by RBKC within its Supplementary Planning Document - Trees and Development April 2010 as an Arboricultural Expert	<b>Document 13</b> - RBKC - Tree's and Development - Supplementary Planning Document - Page 16
		To allow sufficient area for growth of plants and shrubs		18.00	RBKC have confirmed in writing that they have received no Professional Arboricultural or Horticultural advice to support their contention that <i>"Basements.....restricts the range of Planting"</i> - See Policy 34.3.54	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 2
				19.00	Please refer to the Independent Horticultural Report prepared by Mr David Gilchrist - who states <i>"1m of good quality, well drained topsoil above a basement structure will provide an excellent environment for the growth of plants and shrubs whilst strongly encouraging biodiversity – restrictions to the size of basements below gardens should not be made "based upon concerns over planting or biodiversity"</i>	<b>Document 30</b> - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements
		To encourage biodiversity		20.00	RBKC have confirmed in writing that they have received no Professional Arboricultural or Horticultural advice to support their contention that Limiting Garden Basements to 50% of the original garden area will encourage a greater degree of Biodiversity	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 13 - Item 5
		To maintain a green and leafy feel to Borough gardens		21.00	It is incorrect for RBKC to imply that gardens within the borough are "green and leafy" - This is not the case - Please see Document 12 Photo Schedule - In all of the examples the gardens are majority paved - following completion of the garden basement 1m of soil will be added which will allow significant planting and Biodiversity to flourish in uncontaminated topsoil	<b>Document 15</b> - Photographs of 33 Gardens in RBKC before Basement Planning Applications
				22.00	Please refer to the Independent Horticultural Report prepared by David Gilchrist Horticulture - which states <i>that importing 1m of Fresh Uncontaminated Topsoil above a Garden Basement will provide significant benefits to Planting and Biodiversity"</i>	<b>Document 30</b> - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements
		To allow better natural groundwater drainage		23.00	RBKC have confirmed in writing that they have received no Professional advice from a Chartered Hydrologist or other formally qualified groundwater expert to confirm their statement that <i>"retaining at least half of each garden will....allow water to drain through to the upper aquifer"</i>	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 14 - Item 6
				24.00	Alan Baxter Associates confirm in writing that the have carried out no scientific assessment of the amount of garden that should remain undeveloped - they have instead relied upon a "Rule of Thumb" assessment as follows <i>" The rule of thumb is only that! It is difficult to argue the limits on the size of a basement from a structural engineering import. They key issues are: - Allow some garden area to drain any rainwater to the Upper Aquifer. - Allow space to grow major trees - Townscape, streetscape issues - Area/volume debate. - Construction impact on residential amenity. The 50% garden coverage figure is being used by other Boroughs, so this on its own will help to justify this as a figure which is generally acceptable"</i>	<b>Document 35</b> - RBKC Response to Draft Policy - March 2013
				25.00	Please refer to the Independent Report prepared by three eminent Hydro Geological Experts - Environmental Protection Group, Mcloy Consulting and Card Geotechnical who state that <i>"There is no valid reason why basement construction should be limited to a blanket of 50% of a garden area on the basis of drainage or flood risk"</i>	<b>Document 20</b> - Environmental Protection Group, Card Geotechnical and Mcloy Consulting Group - Review of Drainage and Flooding Implications for Basements in RBKC

	Not exceed a maximum of 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;	To maintain character of garden		26.00	RBKC have provided no evidence to demonstrate that gardens within the borough have a particular "Character" - Please see Document 12 Photo Schedule - In all of the examples the gardens are majority paved - following completion of the garden basement 1m of soil will be added which will allow significant planting and Biodiversity to flourish in uncontaminated topsoil	<b>Document 15</b> - Photographs of 33 Gardens in RBKC before Basement Planning Applications
		To avoid restricting range of planting		27.00	RBKC have confirmed in writing that they have received no Professional Arboricultural or Horticultural advice to support their contention that the construction of a Basement within a garden will restrict the range of Planting	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 2
				28.00	Please refer to the Independent Horticultural Report prepared by Mr David Gilchrist - who states <i>"There is no requirement to limit the size of the basement to garden as 1m of structured topsoil will provide a suitable growing environment for all plant types"</i>	<b>Document 30</b> - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements
		To allow water to drain through to upper Aquifer		29.00	RBKC have confirmed in writing that they have received no Professional advice from a Chartered Hydrologist or other formally qualified groundwater expert to confirm their statement that "retaining at least half of each garden will....allow water to drain through to the upper aquifer"	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 14 - Item 6
				30.00	RBKC have confirmed in writing that they have received no Professional advice nor any evidence that demonstrates that the current requirement to retain 15% of Garden space undeveloped is insufficient to allow water to drain through to the upper Aquifer.	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 14 - Item 7
				31.00	The Report prepared by Alan Baxter Associates - Residential Basement Study - March 2013 for RBKC - States under the heading of Specific Recommendations - that <i>"In sites where the near surface conditions are gravel or sands, no more than 75% of the area of a garden should be built under with a basement"</i> and <i>"In sites where the subsoil is clay, no more than between 50% and 75% of the area of a garden should be built under with a basement."</i> - RBKC have ignored the advice of their directly appointed advisors in stating that in all cases a maximum of 50% of Garden should be developed as Basement	<b>Document 16</b> - Alan Baxter Associates Report - Residential Basement Study 2013
				32.00	Please refer to the Independent Report prepared by three eminent Hydro Geological Experts - Environmental Protection Group, Mcloy Consulting and Card Geotechnical who state that <i>"The existing requirement to limit basements to 85% of the garden area is more than sufficient to allow reasonable SuDS provision and Aquifer recharge on most sites"</i>	<b>Document 20</b> - Environmental Protection Group, Card Geotechnical and Mcloy Consulting Group - Review of Drainage and Flooding Implications for Basements in RBKC - Conclusions - Section 6
		To comply with requirements of London Plan Paragraph 3.5		33.00	Paragraph 3.5 of The London Plan is incorrectly quoted by RBKC as referring to Subterranean Construction - which it does not - Please refer to the written confirmation from Jennifer Peter's Senior Strategic Planner at Greater London Authority who confirms this point - Paragraph 3.5 of the London Plan States <i>"Housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment, taking account of strategic policies in this Plan to protect and enhance London's residential environment and attractiveness as a place to live. Boroughs may in their LDFs introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified."</i>	<b>Document 17</b> - Letter from Cranbrook Basements to Greater London Authority - Document 15 - Letter from GLA
	Not exceed a maximum of 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;	To protect health of residents		34.00	RBKC have confirmed in writing that they have no independent medical evidence to support the statement that Basement Construction can affect the Health of Residents	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12- Item 1

			RBKC - Basement Developments - Neighbours Survey	35.00	1354 people responded to the RBKC Survey - Only 3 people stated that they had suffered unspecified illness during the Construction Phase of a Construction Project that contained a Basement element - That is equal to 0.002% - As stated in Paragraph 8.00 - RBKC did not differentiate between cases where a basement was a standalone project or part of a larger development (as was the case in 61% of Planning Approvals) - As a result it cannot be proven that the alleged illness related to the basement or some other part of the wider construction project - or if the occurrence was not entirely coincidental	<b>Document 22</b> - RBKC Basement Development Neighbours Survey
		To comply with London Plan Supplementary Planning Guidance Paragraph 1.2.18 and 1.2.22 November 2012	<b>London Plan SPG - Paragraph 1.2.18 - "Gardens can play a number of important Roles * Defining Local Context and Character including Local social, physical, cultural, historical, environmental and economic characteristics providing safe, secure and sustainable environments and play spaces Supporting Biodiversity, Protecting London's Tree's, Green corridors and networks, abating flood risk and mitigating the effects of Climate change including the 'heat Island' effect and enhancing the distinct character of Suburban London - All of these objectives are met within existing Basement Planning Policy"</b>	36.00	The Independent Expert reports prepared by Barrell tree Consultancy, David Gilchrist Horticulture and Hydro Geological Experts - Environmental Protection Group, Mcloy Consulting and Card Geotechnical - confirms that irrespective of the size of Garden Basement - it is possible to create a garden space that meets all of the requirements of London Plan SPG - Paragraph 1.2.18. - Their Professional Expert Reports make clear that a garden stocked with any type of Plant, Shrub or Tree can be formed - in any style that suits the particular site circumstances - either informal or formal in layout - quite literally any garden style is achievable providing a well drained sustainable environment	<b>Document 11</b> - Barrell Tree Consultancy - Comments on RBKC Proposed Planning Policy Changes Relating to Basements - Page 5. Document 25 - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements. Document 16 - Environmental Protection Group, Card Geotechnical and Mcloy Consulting Group - Review of Drainage and Flooding Implications for Basements in RBKC - Conclusions - Section 6
			<b>London Plan SPG - Paragraph 1.2.22 - "Policy 7.4 requires development to have regard to the form, function and structure of areas, places or streets. Gardens can clearly be very much part of the form, function and structure which warrants respect and protection."</b>	37.00	The Report by David Gilchrist Horticulture confirms that any Shrub or Plant can be successfully planted in 1m of topsoil irrespective of the size of basement relative to garden. The Report by Barrell Arboricultural Consultants states that "there is no demonstrable need to leave any portion of a garden free of basement development in order to enable flexibility in planting tree's". The final layout, appearance and level of the garden can be determined by the designer in conjunction with Planning Authority - On this basis the requirements of London Plan SPG 1.2.22 are met in full	<b>Document 11</b> - Barrell Tree Consultancy - Comments on RBKC Proposed Planning Policy Changes Relating to Basements - Page 5. Document 25 - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements
	Not exceed a maximum of 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;	To comply with NPPF Paragraph 53	<b>NPPF Paragraph 53 - "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."</b>	38.00	The Independent Expert reports prepared by Barrell tree Consultancy, David Gilchrist Horticulture and Hydro Geological Experts - Environmental Protection Group, Mcloy Consulting and Card Geotechnical - Confirm that once a basement has been constructed within a garden and Fresh Topsoil together with good SuDs Drainage has been installed - that the garden is in better condition that before the basement was constructed - This would include the ability to replant the garden, introduce permeable paving and provide significantly improved opportunities for biodiversity to flourish - In short, the construction of a basement within a garden of any size offers a real opportunity for the sustainable regeneration of the entire garden with benefits not only for the subject property but for the neighbourhood and local area in general - these improvements are clearly to the benefit of the Local Area	<b>Document 10</b> - Barrell Tree Consultancy - Comments on RBKC Proposed Planning Policy Changes Relating to Basements - Page 5. Document 25 - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements. Document 16 - Environmental Protection Group, Card Geotechnical and Mcloy Consulting Group - Review of Drainage and Flooding Implications for Basements in RBKC - Conclusions - Section 6
CL7 B	Not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;	To reduce the level of Construction Phase inconvenience	11 Royal Borough of Kensington and Chelsea Residential Basement Study Report, Alan Baxter and Associates, March 2013	39.00	RBKC have confirmed in writing that they have no evidence available to support their contention that the restriction of garden zone excavation to a maximum of 50% will reduce the level of construction phase inconvenience. This attempt to implement an enormous reduction in garden basement size in the absence of any evidence of benefit is wholly unreasonable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 11 - Item 1

				40.00	RBKC have stated in writing that inconvenience during the Construction Phase of a development are not a material factors that can be considered when in determining whether or not Planning Consent should be granted. This is the Publicly stated view of RBKC. It is therefore perverse to attempt to reduce the amount of garden Basement area that can be constructed on the basis of an issue that RBKC state is not a material planning consideration.	<b>Document 2</b> - RBKC - Non Material Planning Considerations - Page 2
				41.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
		To reduce Construction Phase traffic		42.00	The Independent Report prepared by ARUP Associates states that in most cases the degree of inconvenience experienced during Basement Construction is " In general, at least of similar, and <b>sometimes</b> of greater, magnitude than equivalent categories of disturbance created by other types of residential building works (such as replacing a roof, converting a loft, or adding a conservatory). The draconian restriction proposed by RBKC is unreasonable in light of this statement.	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 23 - Paragraph 5.4
	Not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;			43.00	In the Judicial Review carried out by The Rt Honourable Lord Justice Underhill - RBKC supported the view that Construction Phase Inconvenience was not a reason to refuse the grant of Planning Consent - In conclusion Lord Justice Underhill states :- <i>"I do not underestimate the disruption which the carrying out of the development for which permission has been given is likely to cause to the claimant. Mr Brown made that point fully and clearly at the forefront of his submissions; and indeed, for what it is worth, the claimant has my sympathy. But it is a fact of life that in an urban environment development in neighbouring properties will from time to time cause real disruption to neighbours. That is not a reason for refusing the grant of planning permission. There are many remedies, both legal and social, for a person in the claimant's position to mitigate (though I appreciate it will not remove) the amount of the disruption, but I cannot see that it was even arguably unlawful for the council to grant permission on the conditions that it did.</i>	<b>Document 5</b> - Royal Courts of Justice - Case CO/11629/2011 - Page 6 - Point 17
				44.00	RBKC confirm in writing that they have not carried out any research to determine what number of vehicle movements may be apportioned to the Basement element of a larger construction project - This is an extremely important distinction to ensure that Basement Construction is not incorrectly blamed for vehicle movements which are attributable to other parts of a larger project - In the absence of proper research any conclusion is unreliable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
		To limit the duration of Construction Phase		45.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1

		To mitigate the alleged higher concentration of embedded carbon within Basements	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	46.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
		To mitigate the alleged higher levels of operational carbon associated with Basements	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	47.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
		To mitigate climate change	1 Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C, Eight Associates, August 2010	48.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
	Not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;	To reduce construction related risk of structural damage		49.00	The Independent Expert Report prepared by Mr Stephen Masters B.Sc. (Hons),.C.Eng.,M.I.Struct.E.,M.B.Eng of MMP Structural Design, Consulting Structural and Civil Engineers states that " <i>The construction techniques associated with retrofit basements are well established and have been refined based upon almost twenty years of construction experience amongst the leading contractors and designers. The detailed technical modelling together with soil reports, foundation trial pits and laboratory analysis enable highly accurate designs that are compliant with British Standard codes of practices and Building Regulations etc. To comply with the requirements of Health and Safety at Work Act it is a legal requirement that basements are safely propped with a scheme of temporary works designed by suitably qualified individual, ideally a Chartered Structural or Civil Engineer. If all of these factors are considered and embraced by suitably qualified and experienced professional team, the construction of a retro-fit basement should pose no structural threat to the stability of the host property, nor any adjoining or adjacent buildings</i> "	<b>Document 23</b> - MMP Structural Design - Consulting Civil and Structural Engineers - Comments on Basement Publication Planning Policy
		As a precautionary measure against potential damage to the subject property or adjacent building		50.00	RBKC have stated in writing that they have not carried out any survey nor do they have any specific evidence that damage has been caused to properties within RBKC as a consequence of constructing basements to a depth greater than a single storey - RBKC are seeking to impose an enormous restriction on lawful basement development without any evidence	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 4 - Paragraph 8 and Page 16 Paragraph 1
				51.00	The Independent Expert Report prepared by Mr Stephen Masters B.Sc. (Hons),.C.Eng.,M.I.Struct.E.,M.B.Eng of MMP Structural Design, Consulting Structural and Civil Engineers states that " <i>It is entirely unnecessary for RBKC to adopt a precautionary approach in effectively banning basements of more than one storey based upon unfounded structural concerns. As stated in the Alan Baxter report there are a number of structural solutions available for basements which would facilitate construction to a greater depth than a single storey and each project should be individually assessed and designed to suit unique site circumstances. It is a fact that constructing a second storey beneath a single storey basement scheme is normally more straightforward than constructing the initial single level because all of the temporary works will be in place along with the structural floor slab to basement level one. Our own experience has proved that deeper level basement construction is relatively straightforward once the initial reinforced concrete box and temporary works have been established (subject to soil conditions)"</i> "	<b>Document 23</b> - MMP Structural Design - Consulting Civil and Structural Engineers - Comments on Basement Publication Planning Policy

				52.00	It is entirely unjustified for RBKC to restrict Basement Construction on a Precautionary Basis. The Report by Arup Associates for RBKC states that <i>"subterranean developments have been successfully achieved in London and elsewhere over many years. In general these successful projects have been undertaken by experienced, competent teams who recognised the potential hazards and mitigated against them."</i>	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 30 - Paragraph 4
				53.00	The Report by Alan Baxter Associates states that <i>"many challenging subterranean developments have been successfully completed, generally undertaken by experienced competent teams"</i> (2.1.3) and that Basements Deeper than 1 Storey can be formed successfully subject to the selected foundation design - <i>Specific Recommendations 13.3.3</i>	<b>Document 16</b> - Alan Baxter Associates Report - Residential Basement Study 2013
	Not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;	To protect health of residents		54.00	RBKC have confirmed in writing that they have no independent medical evidence to support the statement that Basement Construction can affect the Health of Residents	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12- Item 1
				55.00	1354 people responded to the RBKC Survey - Only 3 people stated that they had suffered unspecified illness during the Construction Phase of a Construction Project that contained a Basement element - That is equal to 0.002% - As stated in Paragraph 8.00 - RBKC did not differentiate between cases where a basement was a standalone project or part of a larger development (as was the case in 61% of Planning Approvals) - As a result it cannot be proven that the alleged illness related to the basement or some other part of the wider construction project - or if the occurrence was not entirely coincidental	<b>Document 22</b> - RBKC Basement Development Neighbours Survey
CL7 C	Not be built under an existing basement;	To reduce construction related risk of structural damage		56.00	The Independent Expert Report prepared by Mr Stephen Masters B.Sc. (Hons),C.Eng.,M.I.Struct.E.,M.B.Eng of MMP Structural Design, Consulting Structural and Civil Engineers states that <i>"It is a fact that constructing a second storey beneath a single storey basement scheme is normally more straightforward than constructing the initial single level because all of the temporary works will be in place along with the structural floor slab to basement level one. Our own experience has proved that deeper level basement construction is relatively straightforward once the initial reinforced concrete box and temporary works have been established (subject to soil conditions)."</i>	<b>Document 23</b> - MMP Structural Design - Consulting Civil and Structural Engineers - Comments on Basement Publication Planning Policy
		As a precautionary measure against potential damage to the subject property or adjacent building		57.00	It is entirely unjustified for RBKC to restrict Basement Construction on a Precautionary Basis. The Report by Arup Associates for RBKC states that <i>"subterranean developments have been successfully achieved in London and elsewhere over many years. In general these successful projects have been undertaken by experienced, competent teams who recognised the potential hazards and mitigated against them."</i>	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 30 - Paragraph 4
CL7 D	Not cause loss, damage or long term threat to trees of townscape or amenity value;	To maintain a green and leafy feel to Borough gardens		58.00	It is incorrect for RBKC to imply that gardens within the borough are "green and leafy" - This is not the case - Please see Document 12 Photo Schedule - In all of the examples the gardens are majority paved - following completion of the garden basement 1m of soil will be added which will allow significant planting and Biodiversity to flourish in uncontaminated topsoil	<b>Document 14</b> - Photographs of 33 Gardens in RBKC before Basement Planning Applications
				59.00	Please refer to the Independent Horticultural Report prepared by David Gilchrist Horticulture - which states that <i>importing 1m of Fresh Uncontaminated Topsoil above a Garden Basement will provide significant benefits to Planting and Biodiversity"</i>	<b>Document 30</b> - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements
		To maintain character of garden		60.00	Please refer to the Independent Horticultural Report prepared by Mr David Gilchrist - who states <i>"1m of good quality, well drained topsoil above a basement structure will provide an excellent environment for the growth of plants and shrubs whilst strongly encouraging biodiversity – restrictions to the size of basements below gardens should not be made "based upon concerns over planting or biodiversity"</i>	<b>Document 30</b> - David Gilchrist Horticulture - Report on Proposed Planning Policy Changes relating to Basements



		To avoid excavation below root protection area of any tree		61.00	RBKC have confirmed in writing that they have not received professional Arboricultural advice that enables them to contradict British Standard 5837 2012 in relation to excavation below the Root Protection area of a tree.	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 4- Item 9
	Not cause loss, damage or long term threat to trees of townscape or amenity value;			62.00	British Standard 5837 2012 specifically considers the possibility of Subterranean Construction below the Root Protection Area of Tree's and recommends that each case should be considered on its merits and subject to individual circumstance - This policy is recommended by the British Standards Institute following years of research and evaluation by leading industry professionals - RBKC intend to adopt the opposite view whilst acknowledging that they have no evidence base or professional expertise to support their position. The British Standard states "7.6.1 Where it is proposed to form subterranean structures, e.g. basement extensions, within the RPA, it is essential to avoid excavating down through rootable soil if trees are to be retained. <i>In some cases, it might be technically possible to form the excavation by undermining the soil beneath the RPA</i> "	<b>Document 31</b> - BS 5837 2012 - Tree's in Relation to Construction - Page 27 - Paragraph 7.6 - Subterranean Construction within the RPA
				63.00	RBKC Chief Arboricultural Officer has previously supported the excavation below the Root Protection Area of Tree's	<b>Document 38</b> - Angus Morrison - Notes Agreeing to Tree Tunnelling - 10 Kensington Palace Gardens - PP.08.1323
				64.00	RBKC have confirmed in writing that they have no evidence of any damage caused to any tree within the borough as a consequence of tunnelling under the Root Protection Area whilst constructing a Basement - despite the fact that this process has been previously permitted within RBKC	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 3 - Item 7
CL 7 E	Not cause harm to the significance of heritage assets;			65.00		
CL 7 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;	To avoid any alterations to plan form of Listed Building		66.00	RBKC wish to impose a blanket ban on any type of subterranean extension below a Listed Building based upon a range of non structural Planning Issues including, Plan Form, Architectural Hierarchy, Levels, Alterations to the Fabric etc. - These considerations also apply to highly visible above ground extensions of Listed Buildings but no similar outright restriction is imposed - It is a fact that an above ground extension of a Listed Building will have a visible and immediate affect upon the Character and Setting of a Listed Building - although this will not always be negative. Since 2011 RBKC has granted Planning Consent for 38 above ground extensions of Listed Buildings - This is a significant number and demonstrates that substantial modification of a Listed Building which is highly visible can be successfully achieved. Based upon these facts the decision by RBKC to refuse to even contemplate a Basement Extension is highly unreasonable and arguably perverse	<b>Document 42</b> - Listed Building Planning Approval Analysis
				67.00	The English Heritage document " <i>Planning for the Historic Environment PRACTICE GUIDE</i> " remains a valid and Government endorsed document pending the results of a review of guidance supporting national planning policy. (Previously referred to in PPSS) - The English Heritage Practice Guide deals specifically with the possibility of underground extension where it states " <i>Proposals to remove or modify internal arrangements, including the insertion of new openings or extension underground, will be subject to the same considerations of impact on significance (particularly architectural interest) as for externally visible alterations</i> " English Heritage state that due consideration should be given to underground extension of a Listed Building and that each case should be assessed on its merits - It is wholly unreasonable for RBKC to refuse to even consider the possibility of a Basement below a Listed Building	<b>Document 32</b> - English Heritage Practice Guide - See Paragraph 182 - Page 48

	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;			68.00	The English Heritage Practice Guide also considers the possibility of creating additional floors and states that in certain cases this may be possible " <i>The introduction of new floors into a building or removal of historic floors and ceilings may have a considerable impact on an asset's significance. Certain asset types, such as large industrial buildings, are generally more capable of accepting such changes without unacceptable loss of significance</i> "	<b>Document 32</b> - English Heritage Practice Guide - See Paragraph 184 - Page 49
		To avoid risk of structural damage to any Listed Building		69.00	The Report by Alan Baxter Associates specifically addresses the issue of potential damage to a Listed Building as a consequence of Basement Construction and concludes:- " <i>From a structural engineering viewpoint there is little difference in risk between a listed and unlisted building</i> " - Baxter goes on to state " <i>The objection to basements under listed buildings primarily relates to how a building is used rather than any particular structural risk</i> " - RBKC have been advised by their appointed Structural Engineers that basements below Listed Building pose no additional or special Risks and having accepted that they have no evidence that any foundation has been extensively modified - it is wholly unreasonable for RBKC to impose a blanket ban on Basement construction either below a Listed Building or in the Garden of a Listed Building	<b>Document 16</b> - Alan Baxter Associates Report - Residential Basement Study 2013 - Page 85 - Question 10
		To avoid extensive modifications to the foundation of a Listed Building		70.00	RBKC have confirmed in writing that they have no evidence to support their statement that the foundations of Listed Buildings have been extensively modified as a result of basement construction	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 19 - Item 1
		To avoid any change to historic floor levels of Listed Building		71.00	The English Heritage Practice Guide specifically considers the possibility of altering floor levels within a Listed Building " <i>The introduction of new floors into a building or removal of historic floors and ceilings may have a considerable impact on an asset's significance. Certain asset types, such as large industrial buildings, are generally more capable of accepting such changes without unacceptable loss of significance</i> "	<b>Document 32</b> - English Heritage Practice Guide - See Paragraph 184 - Page 49
		To avoid any alteration to fabric of Listed Building		72.00	Any alteration to the fabric of a Listed Building should be assessed on a case by case basis and be judged upon the unique circumstances of the proposal - A blanket ban is unreasonable and unjustifiable - Particularly when considering that RBKC have granted Planning Approval for 38 substantial above ground extensions to Listed Buildings since 2011	<b>Document 42</b> - Listed Building Approval Analysis
		To avoid any change to hierarchy of rooms within Listed Building		73.00	Any alteration to the Hierarchical arrangement of a Listed Building should be assessed on a case by case basis and be judged upon the unique circumstances of the proposal - A blanket ban is unreasonable and unjustifiable - Particularly when considering that RBKC have granted Planning Approval for 38 substantial above ground extensions to Listed Buildings since 2011	<b>Document 242</b> - Listed Building Approval Analysis
CL 7 G	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;	To avoid light pollution		74.00	RBKC have confirmed in writing that they have no evidence to suggest or confirm that Light Pollution from Basement Lightwells has caused disturbance to neighbours. RBKC have also confirmed that they have no evidence to suggest that a greater level of light pollution is experienced from Lightwells than from far larger above ground glazed extensions - It is entirely unreasonable for RBKC to seek to restrict Lightwells based upon an unsubstantiated suggestion of possible light pollution - this point is amplified by the fact that a similar restriction is not applied to above ground forms of glazing which are far more visible	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 20 - Item 2

	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;	To avoid harming the character or appearance of an area		75.00	RBKC are seeking to impose a blanket ban on lightwells if they are not already an established feature of the street. This policy assumes that it is impossible for any type of lightwell to ever be acceptable unless others exist - irrespective of whether or not the subject property is located within a conservation area. This policy is entirely unreasonable because it refuses to judge each case based upon its merits and is a direct discrimination against what is a small floor level metal grill located unobtrusively adjacent to a building. The consequence of this policy is to allow RBKC to refuse to consider any modification to any property simply based upon the fact that there may not be existing examples of similar extensions or alterations within a particular street - this proposed policy undermines the very essence of Subjective Planning decision making on a case by case basis	
CL 7 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;	To avoid harming the character or appearance of an area		76.00		
CL7 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;	To allow sufficient area for planting trees		77.00		
		To allow sufficient area for growth of plants and shrubs		78.00		
		To encourage biodiversity		79.00		
		To maintain a green and leafy feel to Borough gardens		80.00		
		To allow better natural groundwater drainage		81.00		
		To maintain character of garden		82.00		
		To avoid restricting range of planting		83.00		
		To allow water to drain through to upper Aquifer		84.00		
		To comply with London Plan Supplementary Planning Guidance Paragraph 1.2.18 and 1.2.22 November 2012		85.00		
		To comply with NPPF Paragraph 53		86.00		
CL 7 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;	To mitigate the alleged higher concentration of embedded carbon within Basements		87.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy

	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;	To mitigate the alleged higher levels of operational carbon associated with Basements		88.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
		To mitigate climate change		89.00	The Report by 8 Associates has been described as fundamentally flawed by three Independent Sustainability Experts. The information contained within the Eight Associates Report is unreliable and cannot be relied upon by RBKC. It is the conclusion of the three independent experts that both the embedded carbon and operational carbon associated with Basement Construction and Operation is effectively the same as a traditionally constructed above ground building	<b>Document 11</b> -Waterman Energy, Environment & Design - Critical Report Review. <b>Document 9</b> - MES Energy Services - Technical Review of Eight Assoc Report. <b>Document 24</b> - BBS Energy Services - Review of RBKC Basement Publication Policy
CL 7 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;			90.00	Clause CL 7 K is a presumption against development and is contrary to the specific aims of NPPF - This policy requires applicants to meet an indeterminable target for a whole range of issues that are governed by alternative Legislation. RBKC's own written guidance states that this approach is Ultra Vires. RBKC state in writing "A 'traditional' description of where controls under the Town and Country Planning Act 1990 sit amongst the wider raft of other legislation would read as follows: the Town and Country Planning Act controls the appearance of buildings and land and the uses to which they are put; the Building Regulations ensure buildings are safe and fit for purpose; the Party Wall Act safeguards the interests of adjoining owners; the Environmental Protection Act and Control of Pollution Act protect the wider public and the environment from a range of harms, and the Highways Act ensures the efficient and safe use of roads and highways. This is an oversimplified context as there are other important pieces of legislation too, but it serves to illustrate the complement of legislation and the separate roles that each piece of primary legislation has. <i>The courts have made it very clear that authorities implementing controls under one piece of legislation should not attempt to emulate, influence, or over-write, controls laid down under other legislation; attempting to expand control beyond the proper remit of a particular Act would be 'ultra-vires'.</i> There is an understandable perception amongst many members of the public and other observers that many issues almost appear to fall into gaps between legislation, or are not dealt with adequately by one or another piece of legislation. <i>It may seem attractive to both observers or decision makers to attempt to bring matters under the planning 'umbrella' that should not properly be under there at all, but the courts will not tolerate this"</i>	<b>Document 28- RBKC</b> -Planning Consent in the Context of Alternative Legislation
				91.00	RBKC are seeking to impose conditions that relate to matters controlled by alternative legislation - this is unreasonable as stated by Lord Denning in Pyx Granite v MHLG - Lord Denning held: " <i>Although the planning authorities are given very wide powers to impose "such conditions as they think fit," nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest"</i>	<b>Document 33</b> - Lord Denning
		To reduce the level of Construction Phase inconvenience		92.00	RBKC have confirmed in writing that they have no evidence available to support their contention that the restriction of garden zone excavation to a maximum of 50% will reduce the level of construction phase inconvenience. This attempt to implement an enormous reduction in garden basement size in the absence of any evidence of benefit is wholly unreasonable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 11 - Item 1
	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;			93.00	RBKC have stated in writing that inconvenience during the Construction Phase of a development are not a material factors that can be considered when in determining whether or not Planning Consent should be granted. This is the Publicly stated view of RBKC. It is therefore perverse to attempt to reduce the amount of garden Basement area that can be constructed on the basis of an issue that RBKC state is not a material planning consideration.	<b>Document 2</b> - RBKC - Non Material Planning Considerations - Page 2

				94.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
				95.00	The Independent Report prepared by ARUP Associates states that in most cases the degree of inconvenience experienced during Basement Construction is " In general, at least of similar, and <b>sometimes</b> of greater, magnitude than equivalent categories of disturbance created by other types of residential building works (such as replacing a roof, converting a loft, or adding a conservatory). The draconian restriction proposed by RBKC is unreasonable in light of this statement.	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 23 - Paragraph 5.4
				96.00	In the Judicial Review carried out by The Rt Honourable Lord Justice Underhill - RBKC supported the view that Construction Phase Inconvenience was not a reason to refuse the grant of Planning Consent - In conclusion Lord Justice Underhill states :- <i>"I do not underestimate the disruption which the carrying out of the development for which permission has been given is likely to cause to the claimant. Mr Brown made that point fully and clearly at the forefront of his submissions; and indeed, for what it is worth, the claimant has my sympathy. But it is a fact of life that in an urban environment development in neighbouring properties will from time to time cause real disruption to neighbours. That is not a reason for refusing the grant of planning permission. There are many remedies, both legal and social, for a person in the claimant's position to mitigate (though I appreciate it will not remove) the amount of the disruption, but I cannot see that it was even arguably unlawful for the council to grant permission on the conditions that it did.</i>	<b>Document 5</b> - Royal Courts of Justice - Case CO/11629/2011 - Page 6 - Point 17
		To reduce Construction Phase traffic		97.00	61% of Basements that received Planning Consent since 2007 where schemes where the Basement was simply a component part of a larger development - It is essential to determine which part of the total development was responsible for any construction traffic generated	<b>Document 34</b> - Cranbrook Basements - Planning Officer Report Analysis
				98.00	Please refer to the Independent Report Prepared by Highways Experts <b>Waterman Transport</b> who conclude that Basement Construction does not generate any greater quantity of Construction Traffic than other forms of Urban Residential Construction - RBKC have produced no creditable evidence to prove otherwise	<b>Document 6</b> - Waterman Transport & Development - RBKC Traffic & Highways Policy Review
	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;			99.00	RBKC confirm in writing that they have not carried out any research to determine what number of vehicle movements may be apportioned to the Basement element of a larger construction project - This is an extremely important distinction to ensure that Basement Construction is not incorrectly blamed for vehicle movements which are attributable to other parts of a larger project - In the absence of proper research any conclusion is unreliable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1

		To avoid a skip being placed on highway		100.00	Please refer to the Independent Report prepared by Highways Experts Waterman Transport which confirms that it is a highly routine feature of Construction in an Urban Environment for a Builders Skip to be placed upon the Public Highway - Waterman state <i>"In terms of construction traffic residential basement developments are no different from other types of residential development. Indeed it is very difficult to isolate those trips specifically related to basement construction from those associated with upper level development. There is currently extensive planning policy and guidance already in place which seeks to reduce the noise pollution and disruption associated with construction in general. RBKC already has policies in place that have to be met prior to the commencement of any construction through the implementation of a 'Construction Traffic Management Plan'. This gives RBKC the opportunity to manage construction throughout the borough. The draft policy is considered to unfairly prejudice residential basement developments.</i>	<b>Document 6</b> - Waterman Transport & Development RBKC Traffic & Highways Policy Review - Executive Summary
		To avoid suspension of parking bays		101.00	Please refer to the Independent Report prepared by Highways Experts Waterman Transport which confirms that <i>"During any major residential construction it may be necessary to suspend parking. A suspension can be gained by the developer/contractor, or even a private individual, through RBKC who have the powers to suspend parking places so that necessary work can be carried out by the public utilities (gas, water and electricity companies). Also, so that private companies and individuals may carry out the following works and services, such as: Large Deliveries, Crane Operations, Access to Sites, Police Security, Removals, Tree Surgery, Special Events, Road Works, Storage of Plant and Materials, Film Production, Temporary Structures, Cleaning, Mobile Workshops"</i>	<b>Document 6</b> - Waterman Transport & Development RBKC Traffic & Highways Policy Review - Page 17 - Paragraph 7 - Point 11
		To ensure that construction management plans are discussed with RBKC at Pre Application Stage		102.00	The Town and Country Planning Act does not require applicants to engage with a Local Authority in a Pre Application process - This will lead to inevitable delays whilst different departments are consulted on matters that are the subject of alternative legislation. If required Construction Management plans should be considered as part of the usual planning application process - they should not require what will effectively amount to approval in advance of application submission	
	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;	To ensure that construction phase related impact meet the requirements of alternative Acts and Legislation		103.00	It is not the role of RBKC Planners to attempt to ensure that other Legislative Controls are properly implemented by other Departments during the construction process. RBKC state in writing <i>"A 'traditional' description of where controls under the Town and Country Planning Act 1990 sit amongst the wider raft of other legislation would read as follows: the Town and Country Planning Act controls the appearance of buildings and land and the uses to which they are put; the Building Regulations ensure buildings are safe and fit for purpose; the Party Wall Act safeguards the interests of adjoining owners; the Environmental Protection Act and Control of Pollution Act protect the wider public and the environment from a range of harms, and the Highways Act ensures the efficient and safe use of roads and highways. This is an oversimplified context as there are other important pieces of legislation too, but it serves to illustrate the complement of legislation and the separate roles that each piece of primary legislation has. The courts have made it very clear that authorities implementing controls under one piece of legislation should not attempt to emulate, influence, or over-write, controls laid down under other legislation; attempting to expand control beyond the proper remit of a particular Act would be 'ultra-vires'. There is an understandable perception amongst many members of the public and other observers that many issues almost appear to fall into gaps between legislation, or are not dealt with adequately by one or another piece of legislation. It may seem attractive to both observers or decision makers to attempt to bring matters under the planning 'umbrella' that should not properly be under there at all, but the courts will not tolerate this"</i>	<b>Document 28 - RBKC</b> -Planning Consent in the Context of Alternative Legislation
CL 7 L	I. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;	To reduce the level of Construction Phase inconvenience		104.00	RBKC have confirmed in writing that they have no evidence available to support their contention that the restriction of garden zone excavation to a maximum of 50% will reduce the level of construction phase inconvenience. This attempt to implement an enormous reduction in garden basement size in the absence of any evidence of benefit is wholly unreasonable	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 11 - Item 1

				105.00	RBKC have stated in writing that inconvenience during the Construction Phase of a development are not a material factors that can be considered when in determining whether or not Planning Consent should be granted. This is the Publicly stated view of RBKC. It is therefore perverse to attempt to reduce the amount of garden Basement area that can be constructed on the basis of an issue that RBKC state is not a material planning consideration.	<b>Document 2</b> - RBKC - Non Material Planning Considerations - Page 2
				106.00	RBKC have confirmed in writing that they have not considered the potential reduction in construction period which can be achieved when using mechanised excavation equipment for Basement construction - Reductions of up to 75% in project duration are achievable when excavation is carried out mechanically - The lack of Policy Research by RBKC is extremely serious when seeking to restrict the legitimate development rights of Householders and Developers	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12 - Item 1
				107.00	The Independent Report prepared by ARUP Associates states that in most cases the degree of inconvenience experienced during Basement Construction is " In general, at least of similar, and <b>sometimes</b> of greater, magnitude than equivalent categories of disturbance created by other types of residential building works (such as replacing a roof, converting a loft, or adding a conservatory). The draconian restriction proposed by RBKC is unreasonable in light of this statement.	<b>Document 3</b> - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 23 - Paragraph 5.4
	I. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;			108.00	In the Judicial Review carried out by The Rt Honourable Lord Justice Underhill - RBKC supported the view that Construction Phase Inconvenience was not a reason to refuse the grant of Planning Consent - In conclusion Lord Justice Underhill states :- <i>"I do not underestimate the disruption which the carrying out of the development for which permission has been given is likely to cause to the claimant. Mr Brown made that point fully and clearly at the forefront of his submissions; and indeed, for what it is worth, the claimant has my sympathy. But it is a fact of life that in an urban environment development in neighbouring properties will from time to time cause real disruption to neighbours. That is not a reason for refusing the grant of planning permission. There are many remedies, both legal and social, for a person in the claimant's position to mitigate (though I appreciate it will not remove) the amount of the disruption, but I cannot see that it was even arguably unlawful for the council to grant permission on the conditions that it did.</i>	<b>Document 5</b> - Royal Courts of Justice - Case CO/11629/2011 - Page 6 - Point 17
		To protect health of residents		109.00	RBKC have confirmed in writing that they have no independent medical evidence to support the statement that Basement Construction can affect the Health of Residents	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 12- Item 1
				110.00	1354 people responded to the RBKC Survey - Only 3 people stated that they had suffered unspecified illness during the Construction Phase of a Construction Project that contained a Basement element - That is equal to 0.002% - As stated in Paragraph 8.00 - RBKC did not differentiate between cases where a basement was a standalone project or part of a larger development (as was the case in 61% of Planning Approvals) - As a result it cannot be proven that the alleged illness related to the basement or some other part of the wider construction project - or if the occurrence was not entirely coincidental	<b>Document 22</b> - RBKC Basement Development Neighbours Survey

		To ensure that construction phase related impact meet the requirements of alternative Acts and Legislation		111.00	It is not the role of RBKC Planners to attempt to ensure that other Legislative Controls are properly implemented by other Departments during the construction process. RBKC state in writing "A 'traditional' description of where controls under the Town and Country Planning Act 1990 sit amongst the wider raft of other legislation would read as follows: the Town and Country Planning Act controls the appearance of buildings and land and the uses to which they are put; the Building Regulations ensure buildings are safe and fit for purpose; the Party Wall Act safeguards the interests of adjoining owners; the Environmental Protection Act and Control of Pollution Act protect the wider public and the environment from a range of harms, and the Highways Act ensures the efficient and safe use of roads and highways. This is an oversimplified context as there are other important pieces of legislation too, but it serves to illustrate the complement of legislation and the separate roles that each piece of primary legislation has. <i>The courts have made it very clear that authorities implementing controls under one piece of legislation should not attempt to emulate, influence, or over-write, controls laid down under other legislation; attempting to expand control beyond the proper remit of a particular Act would be 'ultra-vires'. There is an understandable perception amongst many members of the public and other observers that many issues almost appear to fall into gaps between legislation, or are not dealt with adequately by one or another piece of legislation. It may seem attractive to both observers or decision makers to attempt to bring matters under the planning 'umbrella' that should not properly be under there at all, but the courts will not tolerate this"</i>	<b>Document 28 - RBKC</b> -Planning Consent in the Context of Alternative Legislation
CL 7 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;	To limit any damage to adjoining building to damage Category 1 of Table 2.5 of CIRIA Report C580		112.00	It should not be the responsibility of the Planning Department to determine the specifically the classification to which a Basement should be designed. Different Chartered Structural Engineers will adopt various techniques to achieve the same end result - all of which is routinely achieved without any damage to the host or adjacent buildings. The issue of Structural design is already subject to very significant control under alternative legislation including, The Building Regulations, The Party Wall Act, The Construction and Design Management Act, The Health and Safety at Work Act. RBKC should not seek powers to control matters that are the subject of Alternative Legislation.	
				113.00	Planning Officers do not have the necessary Engineering Expertise to determine Engineering Design Criteria - There is the potential for significant disagreement where RBKC Planners impose standards that they do not fully understand. RBKC have ignored the specific advice of Alan Baxter Associates which states that " <i>The design and construction methodology should aim to limit damage to the existing building on the site and to all adjoining buildings to Category 2 as set out in CIRIA report 580 (see Para 10.8) and the Engineering Design and Construction Statement should clearly explain how this is to be achieved"</i> - Baxter goes further stating at 13.2.2 " <i>Each basement proposal is unique. Generic basement designs are not appropriate and should not be permitted for consideration at planning. Each application must demonstrate a recognition and understanding of the special and unique factors that apply in each case"</i> For these reasons the final technical structural engineering design solution should be determined on a case by case basis and reviewed under the auspices of the relevant legislation including - Party Wall Act, Building Regulations, Construction and Design Management, Health and Safety at Work Act.	<b>Document 16</b> - Alan Baxter Associates Report - Residential Basement Study 2013
				114.00	It is standard practice to design a basement to CIRIA C580 Damage Category 1. This is confirmed within the Independent Expert Report prepared by Mr Stephen Masters B.Sc. (Hons),.C.Eng.,M.I.Struct.E.,M.B.Eng of MMP Structural Design, Consulting Structural and Civil Engineers states that " <i>basement construction is subject to strict control under The Party Wall Act and schemes are comprehensively reviewed by an independent Chartered Engineer acting on behalf of an adjoining owner. Party Wall agreements are not be signed until such time as both sets of Engineers have reached an agreement thereby minimising yet further the potential for any structural design related issues. It is normal to design basements to CIRIA C580 Damage Category 1 (fine cracks than can easily be treated during normal decoration) and that in layman's terms this is the similar to the type of damage that can occur regularly as a result of seasonal ground movements . These fine cracks may have some structural significance but are not deemed serious"</i>	<b>Document 23</b> - MMP Structural Design - Consulting Civil and Structural Engineers - Comments on Basement Publication Planning Policy



		To ensure compliance with requirements of Party Wall Act		115.00	RBKC have confirmed in writing that they have not received any Professional Party Wall advice in recommending that Party Wall Negotiations are commenced in advance of submitting a Planning Application - This recommendation is entirely unreasonable and exposes Applicants and Adjoining Owners to costs that they may not recover. It is entirely reasonable for an applicant to obtain planning consent for a basement that they may not intend to construct for several years if at all. Party Wall Agreements have a limited lifespan of 12 months and as such could prove abortive if the works are not started within that time frame	<b>Document 1</b> - RBKC Response to Freedom of Information Request - Page 23 - Item 1
	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;			116.00	Please refer to the Independent Expert Report produced by Mr Mark Williams BSc., FRICS who states "One of the recommendations put forward under paragraph 34.3.73 is that party wall negotiations should start in advance of submission of Planning Applications. This is wholly impractical and also would impose a significant, financial burden on both the building owner and the adjoining owner. Whilst it is normal for the adjoining owner's, surveyor's fees to be paid for by the building owner, the immediate responsibility of the adjoining owner lies with that owner. It may well be that the adjoining owner would become responsible for his surveyors fees in the event of the work not proceeding. This could result in fees of many thousands of pounds for abortive work. Furthermore, the validity of a Party Wall Notice and also the Award has a 12 month life span. Quite often negotiations in respect of Party Wall work and the necessary in-depth analysis by engineer, architect and surveyor in the scheme and the relevant, other professional bodies employed to check the scheme is such that this 12 month validity period will be eroded.	<b>Document 29</b> - Taylor Williams Daly - Party Wall Act - Page 12 - Conclusion
CL 7 N	Be protected from sewer flooding through the installation of a suitable pumped device.			117.00		
	General Observations			118.00	<b>Circular 11-95 is explicit on the limit of Local Planning Authority Powers</b> where it states "Other matters are subject to control under separate legislation, yet also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary, and <b>one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable.....</b> " "A condition cannot be justified on the grounds that the local planning authority is not the body responsible for exercising a concurrent control, and therefore cannot ensure that it will be exercised properly".....It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with consent or authorisation of a third party themselves, or which they could comply with only with the consent or authorization of a third party"..... <b>it would be ultra vires</b> , however, to require works which the developer has no power to carry out, or which would need the consent or authorisation of a third party..... An example of an unreasonable Planning Condition would be " To require that loading and unloading, and the parking of vehicles, shall not take place on the highway at the front of the premises. This condition purports to exercise control in respect of a public highway, which is not under the control of the applicant" <b>The proposals by RBKC totally ignore the guidance provided in this important Planning Policy Guidance document and seek to place unreasonable obstacles in place that will frustrate the legitimate development aspirations of Householders</b>	<b>Document 31</b> - Circular 11-95
				119.00	RBKC State within Official Planning Department Guidance - " <b>Commenting on A Planning Application</b> - " It is important that third parties express their views on an application but unfortunately, some of your concerns may not be issues we can consider when determining an application as they are not "material planning considerations". Issues we can and cannot take into consideration are: " <b>Disruption and Disturbance from Building Works</b> "	<b>Document 2</b> - RBKC - Non Material Planning Issues - Issues Not Affecting Grant of Planning Permission