

Town Clerk and Executive Director of Finance

Nicholas Holgate

Head of Information Systems Division

Barry Holloway

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

16 August 2013

Please ask for: Robin Yu

Dear Mr O'Connor,

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

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

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

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

- Repeats earlier request – I have cross referred to your earlier request in these instances.

Please note that the information you seek is related to a policy that is in formulation. As you are aware there is a procedure for policy formulation that is set out in the Planning Regulations. In some instances you seek an explanation (rather than information) on the emerging policy. The purpose of the examination process is for such issues to be raised and for the Inspector to consider them. The EI Regulations are not designed to get into a dialogue and explanation of the emerging policy. Nor would it be appropriate to offer explanations without making the response equally available to all. Please also note that the Council is obliged to publish all the evidence it will rely upon at the examination in relation to the emerging policy. You state that the aim of your requests is to seek such evidence. This is already in the public domain and available on this web page

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

As mentioned above, all internal communications have been withheld under regulation 12(4)(e).

In accordance with the Council's right under regulation 12(4)(e) of EIR, we have decided withhold internal communications to the extent that the disclosure would have an adverse impact on the ability of Council officers to communicate in an effective and private manner with each other. It is imperative to ensure the effective running of the Council that officers are allowed to communicate with one another in the knowledge that certain communications can be done so with a certain degree of privacy.

In applying the exception I am obliged to consider whether the public interest in disclosure outweighs the public interest in maintaining the exception. I acknowledge that disclosure of internal communications may add to the public accountability of the Council's actions and may provide valuable information affecting its residents. There is however, a strong public interest in allowing the Council private thinking space in conducting certain aspects of its business. This will help to ensure that Council officers are able to carry out their functions fully and effectively, and the privacy of such communications is fundamental to this. In this instance, we believe that the public interest in withholding the information outweighs the public interest in disclosure.

I deal with each of the points you request, in turn below:

Request 1: (Letter: 22nd July 2013) Ref: 2013-698

1. Copies of briefing documentation and scope of instructions sent to Alan Baxter Associates to assist them in preparation of the "Residential Basement Study Report" that has been used to inform the proposed Basement Planning Policy changes

Copy of the brief is attached. For the purposes of transparency to other parties, this information will be made available on the Council's website.

2. Copies of all notes, emails and written exchanges between RBKC and Alan Baxter and Associates that relate to "Residential Basement Study Report".

Internal communications sought.

3. Provide copies of all written documents and emails that have been used by Planning Department (during formulation of Proposed Basement Planning Policy Changes) as evidence of the fact that Basement Construction has a greater impact on residents and businesses during the construction phase – than other types of construction

- Residents and Neighbours Surveys conducted in September 2012
- Public consultation documented throughout the formulation of the policy.

These are available on

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

4. Provide copies of all written documents and emails that analyse construction schemes to determine which are basement construction only and those for which a basement is simply a component part of a larger scheme

No information available.

5. Provide copies of all written documents and emails that have been used to determine the proportion of inconvenience that should be attributed to the Basement Element of a general construction scheme - this information would have been used by Planning Department to ensure that the basement component of a larger redevelopment scheme was not inaccurately blamed for neighbour inconvenience that was attributable to the wider development

No information available.

6. Provide copies of all written documents and emails between Planning Department and environmental Health department that have been exchanged in relation to proposed Basement Planning Policy Changes.

Internal communications sought.

7. Provide copies of all written documents and emails that relate to any Study or Survey carried out into the impact that the construction of basement or subterranean structures within the gardens of Listed Buildings has had upon the host property – this should specifically include studies or information that relates to damage to the listed building

No information available.

8. Provide copies of all written documents and emails that relate to any study or survey that has been carried out to demonstrate the damage that has been caused throughout the borough during the construction of basements of a depth greater than a single storey – this information will have been used to inform the proposal to limit basement construction to a single storey

No information available other than the Alan Baxter and Associates Residential Basement Study Report, March 2013. This is available on

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

9. Provide copies of all written documents and emails that have been relied upon by the Planning Department in reaching the decision to ignore the Statements contained in BS 5837 2012 Paragraph 7.6.1 – identified in footnote 13 relating to paragraph 34.3.60 – namely “tunnelling underneath the root protection area should not be undertaken” – Provide details of the independent research or other studies carried out by RBKC to justify their alternative view to that described within British Standard 5837 2012

No information available

10. Provide copies of all written documents, emails and specialist reports that have been relied upon to inform the contents of paragraph 34.5.54 – specifically the contention that “Basements... restrict the range of planting...including major tree’s” – we are specifically requesting the expert Arboricultural and Horticultural evidence that will have been relied upon by RBKC

Basements Visual Evidence, July 2013. This is available on

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

11. Provide copies of all written documents and emails that relate to legal advice that RBKC has received in relation to “Basements – Publication Planning Policy – Partial review of the Core Strategy – July 2013”

No information available.

12. Provide copies of all internal notes, reports, emails or other correspondence produced or exchanged by any person involved in the production of “Basements – Publication Planning Policy – Partial review of the Core Strategy – July 2013”

Internal communications sought.

13. Provide copies of all internal notes, reports schedules and emails that have been exchanged or relied upon in relation to the statement 34.3.63

"Basements in the gardens of listed buildings can result in extensive modifications to the buildings foundations" – We are seeking sight of the evidence relied upon by RBKC in making that statement

Internal communications sought.

14. Provide details of the evidence backed Study that has been carried out to support the statement made at 34.3.49 – "Tight knit streets... can have several basements underway at any one time"

Basements Development Data, July 2013. This is available on:

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

- Ove Arup and Partners Scoping Study, June 2008 (pg 8: Cumulative Effects)
- Residential Basements Study Report, March 2013, Alan Baxter and Associates (para 12.6)
- Various consultation events.

These documents are available on the Council's website.

15. Provide copies of all internal notes, written documents, reports and studies that relate to alleged damage to neighbouring property arising from Basement Construction

Internal communications sought.

Published information is in Residents and Neighbours Surveys, September 2012 and in Public consultation documented throughout the formulation of the policy. These are available on:

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

Request 2: (Email: 23rd July 2013) Ref: 2013-706

The information sought relates to a report which was published as part of the evidence for the Core Strategy in 2010. This report was not challenged at the time of the Core Strategy examination. The adopted Core Strategy is beyond the valid period for a legal challenge, so the Council is not obliged to keep any records in relation to this report.

1. Copies of all documents either email or physical paper that exist in relation to the initial brief issued to 8 Associates

Brief is in the report itself (pg 4). No further information available.

2. Copies of the original documents relied upon and generated when the 2 schemes analysed within the report were selected

Explained in the report itself (pg 6). No further information available.

3. All documents that relate to assessment of criteria required to select schemes for analysis

No information available.

4. All documents that exist that relate to the report prepared by Eight Associates for RBKC entitled " Life Cycle Carbon Analysis of Extensions and Subterranean Development in RBK&C" – either written or electronically held

Internal communications sought.

Request 3 (Letter: 24th July 2013) Ref: 2013-711

To assist us in our research please provide the following:

1. Copies of all initial notices that have been received by Approved Inspections from the 1st May 2009 to 23rd July 2013.

This information is available to search on-line:

<http://www.rbkc.gov.uk/bconline/search.do;jsessionid=1681ED8F1CA888293658AC397C20C604?action=advanced> .

2. In circumstances where the Royal Borough of Kensington & Chelsea carried out Building Control Services – please provide copies of the Building Control Application Form that describes the nature of the work due to be carried out – if it is possible to identify the nature of the works from the front page only of each application form then it is not necessary to provide copies of the remainder of the document.

This information is available to search on-line:

<http://www.rbkc.gov.uk/bconline/search.do;jsessionid=1681ED8F1CA888293658AC397C20C604?action=advanced> .

Request 4 (Email: 28th July 2013) Ref: 2013-723

1. Copies of all correspondence, notes or documents that are either electronically or physically held or that have been exchanged between parties – that have been used to inform the decision to propose the banning of any type of excavation underneath the root protection area of a tree – despite the suggestion in BS 5837 2012 that this may be possible in certain cases

Repeats earlier request in Request 1 (pt 9)

2. Please provide copies of all documents or case studies or evidence that has been compiled to support the requirements of paragraph 34.3.60 in so far as is required for the purposes of reasoned justification and evidence based under the National Planning Policy Framework

With the exception of precluding tunnelling underneath trees it is based on BS 5837 2012 and existing Core Strategy policy set out in policies CL2 g (iii) and CR6.

3. Please provide copies of any evidence based list that has been compiled by RBKC of the extent and location of any trees that have been damaged as a consequence of "Tunnelling Under" the root protection area whilst constructing a basement

No information available.

Request 5 (Letter 1 August 2013) Ref: 2013-739

I have responded to the information requested in your letter below, but would like, first, to respond to the fourth paragraph in your letter.

Over the last six months we have made repeated requests for information to the Planning Department which have largely been ignored.

The only formal request for information was made for the judicial review case in relation to 17 Holland Park. The planning office provided the information requested. Following this a formal FOI request dated 10 June 2013 was submitted requesting information on all planning permissions granted by the Council which were subjected to judicial review. This information was provided within the stipulated time for responding to such requests. As previously stated the evidence used for formulating the policy has been published by the Council in accordance with the Planning Regulations.

Any informal emails sent to the planning office have also been promptly answered.

The following question relates to numbered paragraph 34.3.48 of "Basements Publication Planning Policy"

1. Please provide the evidence that you have relied upon to demonstrate that the noise and inconvenience associated with a basement is greater than that for any other building project.

- Residents and Neighbours Surveys, September 2012.
- Public consultation documented throughout the formulation of the policy.

These are available on:

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

2. You stated that "concerns have been raised regarding "the structural stability of nearby buildings."

Please produce evidence of the report by fully qualified Chartered Surveyors and Structural Chartered Engineers which justify this statement.

- Residential Basements Study Report, March 2013, Alan Baxter and Associates (various references including para 9.2.3.7, 9.2.4.2, 9.2.5.3)
- Ove Arup and Partners Scoping Study, June 2008 (section 5.2)
- Residents and neighbours surveys, September 2012
- Public consultation documented throughout the formulation of the policy.

These documents are available on the Council's website:

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

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

3. Please confirm whether or not an analysis had been carried out to confirm the number of construction schemes where the basement forms part of a larger development scheme.

For example, in circumstances where the basement is being constructed in conjunction with extensions to the remainder of the house or a wider refurbishment programme.

Repeats earlier requests in Request 1 (pt 4).

4. With regard to the preceding numbered paragraph (3) please provide details of the study which has been carried out which correctly distinguishes between inconvenience associated with the basement element and inconvenience associated with the remainder of the construction project.

Repeats earlier requests in Request 1 (pt 3 and 5)

5. You state that "*management of traffic plant and equipment*" has given rise to concerns.

Please provide evidence of the reports and studies that have been carried out to inform that statement and in particular please advise the professional qualifications of those persons who have made those statements particularly with regard to professional highways qualifications.

Concerns are raised in the Residents and Neighbours Surveys, September 2012. Public consultation documented throughout the formulation of the policy.

These are available on the Council's website:

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

6. Where the basement is simply a component part of a larger development project please provide details of the method that you have used to distinguish between the construction impact that relates to the basement from the construction impact that relates to the wider project.

Repeats earlier requests in pt 3 and 4 above and Request 1 (pt 3 and 5).

This is particularly important in view of the statement made by ARUP Associates – their report to RBKC entitled “RBKC Town Planning Policy on Subterranean Development” under numbered paragraph 5.4 **Nuisance Caused During Works** which states “in general these effects (basements) are at least of similar and sometimes greater magnitude than equivalent categories of disturbance caused by other types of residential building works such as replacing a roof, converting a loft or a adding a conservatory.”

In essence, what ARUP have said is that the construction of a basement is virtually indistinguishable from a larger construction project as the impacts are similar.

No information sought.

The following question relates to numbered paragraph 34.3.49 of “Basements Publication Planning Policy”

1. You make this statement “in the Royal Borough the construction impact of basements is a significant material consideration in planning”.

On the official RBKC planning website under the heading of “Once an application has been made” you state that “disruption and disturbance from building work” are not material planning matters.

Please explain this contradiction.

No information sought.

2. You state that “tight knit streets of terraced and semi-detached houses can have several basement developments underway at any one time.”

Please provide evidence to support this statement – namely that multiple basements are regularly being constructed simultaneously in tight knit streets – please support your confirmation with a list of addresses and dates when this has occurred.

It is extremely important that you provide detailed evidence to support your contention as it is central to the proposed policy to restrict basement construction based on the grounds of inconvenience and disruption – particularly with regard to highways.

Repeats earlier request in this letter (pt 2 under para 34.3.4).and Request 1 (pt 14)

3. You state that *"the duration of construction (for basements) is longer than for above ground extensions"*

Please provide evidence of the professionally prepared reports prepared by qualified individuals to substantiate this statement.

We are unaware of any evidence that the Local Authority possess based on studies that have been carried out by RBKC.

Residential Basements Study Report, March 2013, Alan Baxter and Associates (Section 12):

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

4. You state that *"the excavation process has a high impact on neighbours."*

Please provide evidence to support this statement bearing in mind the comments of ARUP Associates within numbered paragraph 5.4 of their report which states that *"in general these effects (basements) are generally of at least similar and sometimes of greater magnitude than equivalent categories of disturbance created by other types of residential building works such as replacing a roof, converting a loft or a adding a conservatory."*

Your response on this point is particularly important because you are in effect contradicting statements made by ARUP Associates. To our knowledge none of the statements made by ARUP have been rejected by the Local Authority.

Residents and Neighbours Surveys, September 2012

Residential Basements Study Report, March 2013, Alan Baxter and Associates (Section 12)

Ove Arup and Partners Scoping Study, June 2008 (para 5.5, pg 9: Environment)

5. You state that *"the removal of spoil requires many more vehicle movements."*

We do not understand this statement. If your intention is to suggest that a basement requires more vehicle movements than an above ground extension then please provide copies of the detailed time and motion study and material delivery schedule that has been relied upon to support you statement.

Importantly – please provide details of the method you have used to distinguish between soil or general waste removal and general material deliveries into site on a development where the basement is a component part of a larger project.

Your response on this point is extremely important because you are claiming that basements are somehow more intensive processes than above ground

building works and we are seeking evidence to support the statement that you are making so far as we are aware RBKC have no evidence to support their statement.

No further information other than in

- Ove Arup and Partners Scoping Study, June 2008 (para 5.5, pg 9: Environment)
- Residential Basements Study Report, March 2013, Alan Baxter and Associates (para 12.5)

The following question relates to numbered paragraph 34.3.50 of "*Basements Publication Planning Policy*"

1. You make reference to "*the effect of multiple excavations*" in many streets.

The aim of this statement appears to be to create the impression that the borough is littered with examples of roads where multiple basements are being constructed simultaneously.

Please provide evidence to support your statement in the form of case studies which are confirmed by date and specific address.

Repeats earlier request in Letter 1 (pt 14)

2. You state that there are "*concerns over the structural stability of adjacent property.*"

Please provide detail of the study which has been carried out across the borough to confirm that this statement is justified.

We are seeking professionally qualified comment from Chartered Structural Engineers and Surveyors who have participated in the study which has been used to inform your statement.

We are unaware of any professional evidence that RBKC have to support their claim.

Repeats earlier request in this letter (pt 2 under para 34.3.48)

The following question relates to numbered paragraph 34.3.51 of "*Basements Publication Planning Policy*"

1. Please provide details of the method of calculation and the basis of the assessment which has been carried out to restrict basement excavation to no more than half the garden area as an adequate means to address the concerns which you have raised in paragraph 34.3.50.

It would appear that your restriction of excavation to no more than half the garden area is entirely arbitrary. Your evidence to the contrary is requested.

No information is available.

The following question relates to numbered paragraph 34.3.52 of "Basements Publication Planning Policy"

1. You state that "restriction to size of basements will help to protect residential living conditions in the borough by limiting the extent and duration of construction and by reducing the volume of soil to be excavated."

Please provide details of the specific calculations that you have carried out to determine the amount of time which is required to construct a basement and the amount of vehicle movements that may be required to remove the spoil.

Please provide details of the alternative calculations which you have carried out to demonstrate the very significant reduction in excavation time which is achieved using mechanised excavation equipment.

No information is available.

The following question relates to numbered paragraph 34.3.53 of "Basements Publication Planning Policy"

1. You state that "large basement construction in residential neighbourhoods can affect the health and wellbeing of residents."

Please provide details of the reports and case studies which have been carried out to demonstrate that the health of residents has been affected.

Please include medical reports to substantiate the claim.

No information available other than in the Residents and neighbours surveys, September 2012.

The following question relates to numbered paragraph 34.3.54 of "Basements Publication Planning Policy"

1. You state that "basements... can also introduce a degree of artificiality into the garden area."

Please provide statistical evidence to support your contention that an extremely small number of basements with formal gardens have had a negative effect on the "green and leafy nature" of the borough.

No information available beyond that in Basements Visual Evidence, July 2013

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

2. You state that "basements... restricts the range of planting."

Please provide the evidence from a suitably qualified horticultural expert and a suitably qualified arboriculturalist which you have used to support your statement.

No information available beyond that in Basements Visual Evidence, July 2013

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

3. You state that "*retaining at least half of each garden will enable natural landscape and character to be maintained, give flexibility in future planting including major trees.*"

Please provide details of the professional arboricultural and horticultural reports which you have had prepared and rely upon to support this statement.

No information available beyond that in Basements Visual Evidence, July 2013

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

4. The current planning policy requires a minimum of one metre of soil is retained over the entire basement below a garden.

Please provide detailed professional evidence which states that one metre depth of soil is insufficient to plant trees and shrubs.

No information available beyond that in Basements Visual Evidence, July 2013

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

5. You state that "*retaining at half of each garden will... support biodiversity.*"

Please provide professional reports or professionally supported documentation that demonstrates one metre of soil above a basement that is greater than half of the garden area **will not** support biodiversity.

We are of the opinion that one metre of soil across the top of a larger basement structure within the garden is more than adequate to support a high degree of biodiversity – moreover additional benefits to biodiversity are achieved where the existing garden which may previously have been paved is covered in fresh soil.

No information available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No information sought

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

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

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

No information sought

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

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

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

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

No information available.

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

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

No information available.

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

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

No information available.

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

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

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

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

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

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

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

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

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

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

Please provide the reasoned justification for this approach.

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

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

No information sought.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No information sought.

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

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

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

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

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

The proposed ban is highly prejudicial and misconceived.

No information sought

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

No information sought.

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

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

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

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

No information sought.

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

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

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

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

No information available.

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

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

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

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

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

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

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

No information sought.

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

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

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

No information sought.

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

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

No information sought.

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

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

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

No information available.

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

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

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

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

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

No information sought.

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

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

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

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

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

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

No information sought.

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

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

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

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

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

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

No information sought.

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

No information sought.

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

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

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

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

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

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

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

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

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

No information available.

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

No information sought.

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

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

No information sought.

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

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

No information available.

Complaints

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

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

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

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

Yours sincerely

Robin Yu

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

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