

## **Council's Response, Royal Borough of Kensington and Chelsea**

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### **Examination of the Partial Review of the Kensington and Chelsea Core Strategy:**

#### **Basements Publication Planning Policy**

#### **Matters, Issues and Questions for Examination**

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### **Introduction**

The Inspector invites succinct responses to the following specific questions that relate to the matters and issues that are central to his examination of the partial review. Comments unrelated to these questions should not be submitted. All existing representations will be taken into account and should not be expanded or repeated, although may be cross-referenced where relevant.

Respondents should only answer those questions relating to the subject of their original representation(s), but the Council should answer all the questions.

The questions reflect, and should be answered with reference to, the soundness criteria set out in the National Planning Policy Framework 2012 ("the Framework"): i.e. that plans should be positively prepared, justified, effective and consistent with national policy.

Further information about the Examination, Hearings and the format of Written Statements to be submitted in response to these questions is set out in a separate Guidance Note available on the Council's web site. Please note especially the 3,000 word limit.



## **Matter 1: Legal Compliance**

### ***Issue 1.1: Whether the Plan is legally compliant***

**1. Is the Plan legally compliant as is indicated by the Council in its ED/1 replies to the Preparatory Questions on this topic (Question 6)?**

The Council has submitted the Planning Advisory Service's legal compliance checklist (BAS 09) which sets out details of how the proposed policy complies with the legal requirements at each stage of preparation.

The Council's Local Development Scheme (LDS) November 2012 (RBKC 4) identified the review of the Core Strategy policies relating to basement development (Policies CL2 (g) and CE1 (c)). The programme set out in the November 2012 LDS was revised to reflect an additional (second draft) Regulation 18 consultation and a further Regulation 19 (publication) consultation. The revised programme is set out in the submitted April 2014 LDS (RBKC 3).

The Council has undertaken extensive consultation including direct mail outs to organisations and individuals on the Local Plan database. This database includes the specific and general consultation bodies as set out in Planning Regulations 2012. The submitted document BAS 03 Basements Summary of Consultation (RBKC April 2014) sets out details of consultation undertaken at each stage of policy preparation. Consultation at each stage of policy preparation has been undertaken in accordance with the Council's adopted SCI (Involving People in Planning (IPIP) (RBKC 2).

**2. If the Plan is not considered to be legally compliant, please explain in what areas it does not comply and what needs to be done to make it compliant.**

The Plan is considered legally compliant as set out in the response to question 1 above.

**3. If it is considered that public consultation requirements were not properly carried out, please explain where the Council has not complied with either the 2012 Regulations or its own Statement of Community Involvement ("Involving People in Planning").**

Public consultation was carried out in compliance with the SCI (Involving People in Planning) (RBKC 2).

The Council has submitted a Summary of Consultation (BAS03) which sets out details of all consultation undertaken at each stage. The Council sent direct mail outs to organisations and individuals on the Local Plan database (including specific and general consultees set out in Planning Regulations 2012). In addition the Council used its on-line consultation portal, Council's website, weekly planning bulletin and local libraries to publicise consultation and invite comments. The Council organised public events at the draft consultation stages (Regulation 18) as well as setting up a Basements Working Group (which included elected members, industry representatives, specialists in EcoHomes/BREEAM assessments and the Party Wall Act and representatives of residents associations). A targeted survey of neighbours,

owners and residents associations was also undertaken at the early stages of policy preparation (August-September 2012).

Section 3 of the IPIP Document sets out how the Council will undertake consultation on policy formulation. In particular Diagram 2 (page 29) sets out a useful summary of the consultation that would be undertaken at different stages of Plan preparation. As set out in BAS 03 all requirements have been met with regard to this.

4. **Does the final Sustainability Appraisal (SA) at BAS21 deal adequately with all the reasonable alternatives in assessing a policy for this type of development? Was there consideration of an impact assessment led policy approach alternative?**

**Note: paragraph 4.2 of the final SA (BAS21) says: “Alternative policy options were specifically considered in the December 2012 SA/SEA. As these were dismissed at that time, it is not considered appropriate to address them again in this document.”** However, legally the final SA must clearly set out the reasons for the selection of the Plan’s proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. These choices may not have been made within the SA process (e.g. at a committee), but the final SA should set out those reasons. It should also state whether these reasons are still valid at submission. If this has not been done, I will consider asking the Council to prepare a correcting addition to the final SA. These legal principles have been set out in various court cases, e.g. see *Heard v Broadland District Council & Ors* [2012] EWHC 344 (Admin) (24 February 2012) at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/344.html>.

As noted the final SA (BAS 21) refers to the consideration of alternatives in the December 2012 SEA/SA (BAS 55). The Council has also set out the options considered in section 6 of the Policy Formulation Report (BAS 18). However, the Council is working on producing an addition to the final SA to include the reasons for the selection of the Plan’s proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. This will be sent to the Inspector and published on the examination website by the 12<sup>th</sup> of September 2014.

***Issue 1.2: Whether there is a “need” for the Policy***

5. **Is there a requirement in law for there to be a proven “need” for a particular policy in a local plan before a LPA can include it? I have been unable to find such a requirement in the 2004 Act, the 2012 Regulations, the Framework, or the PPG. I am aware of the soundness criteria in the Framework (elaborated upon in the PPG) for a Plan to meet the requirements (or “need”) for particular types of development (e.g. housing, if housing policies are included) and for it to be justified by proportionate evidence. It is also possible for a policy to be unnecessary (see below).**

No, there is not a specific requirement in planning law for a proven “need” for a policy before it can be published. However, there is a substantial body of evidence in this case to provide justification for the current adopted basement policy to be revised.

As stated the Council already has existing policies (CL2 g and CE1 c) on basement development in the adopted Core Strategy. However, these policies have not proven as effective as they could be in terms of managing the environmental impact of basements. The Core Strategy policies have been in place for almost 4 years and prior to these policies the Council had an adopted policy CD32 in the Unitary Development Plan (UDP). The Council also has a Supplementary Planning Document (SPD) on Subterranean Development adopted in 2009. As the existing policies have been in place for 4-5 years, it is an appropriate time to review these policies. This review will bring the policies currently in the Core Strategy and SPD in one place and provide a comprehensive policy which addresses a key planning issue in this Borough.

The PPG (ID: 12-008) further sets out *“to be effective plans need to be kept up to date.... Most Local Plans are likely to require updating in whole or in part at least every five years. Reviews should be proportionate to the issues in hand”*.

The responses to various consultations and the surveys of neighbours and residents associations highlight the impact experienced by residents. There is a clear need for a planning policy for basement development in the Royal Borough. This is demonstrated by the –

- The rising number of planning applications for this type of development (BAS 27), the dense character of the Royal Borough (BAS 24, BAS 25 and BAS 26) and the cumulative impact of basement development;
- Basement development has an impact of the living conditions (construction impacts – noise, vibration, dirt, dust, heavy machinery in narrow residential roads) (BAS 29, BAS 28, BAS 62, BAS 63);
- Drainage impacts (BAS 30);
- Visual impacts (BAS 33 and BAS 34);
- Impacts on vegetation (BAS 35) and biodiversity (BAS 36 and BAS 37); and,
- Carbon footprint of basements (BAS 38).

The GLA has published Supplementary Planning Guidance on Sustainable Design and Construction (BAS 95) which states, *“Mayor’s Best Practice - Where there is pressure for basement developments, boroughs should consider whether there are any particular local geological or hydrological issues that could particularly affect their construction, and adopt appropriate policies to address any local conditions”* (page 25). The Council does have a local policy but this is not considered to deal adequately with the increasing scale and number of planning applications and all the cumulative issues set out in the reasoned justification. As set out above it is appropriate to review the existing policies.

**6. Is policy CL7 unnecessary because the issue can be dealt with through other local or national policies or legislation? Does other legislation primarily deal with the aftermath and/or the resulting impacts of basement development permissions?**

The issue cannot be dealt with through other local or national policies or legislation. National planning policy is silent on the issue of basement development and it is largely written for above-ground development.

As stated previously the Council does have a local policy, but there is now a need for a more effective policy to deal adequately with the increasing scale and numbers of development applications involving basements and all the cumulative issues set out in the reasoned justification.

Other legislation such as Control of Pollution Control Act, Environmental Protection Act 1990 and the Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 have a role to play in individual cases but do not provide sufficient control to deal with the impacts that have been created by basement development and are reactive rather than proactive in nature. There is no requirement for a separate permission under any pollution control regime. British Standard 5228 – 1 2: 2009 is a code of practice for noise and vibration control on construction and open sites, but it deals with mitigation once permission has been granted. These regimes require site-by-site enforcement under different legislative and control regimes and do not provide the safeguards that are necessary. They do not establish the consistency or clarity that a planning policy would have.

A statement of planning policy is clear to everyone at the outset and sets out the basis for the holistic management of basement development. It covers all material planning considerations, not only those relating to noise and disturbance but also drainage, trees, character and appearance, which are issues the other regimes do not cover.

### ***Issue 1.3: What policies will be superseded by the Plan?***

- 7. The Council has confirmed in its Question 17 response in ED/1 that policy CL7 “will supersede Policy CL2: New Buildings, Extensions and Modifications to Existing Buildings criteria (g) (Chapter 34 of the Core Strategy (RBKC 1)) and CE1: Climate Change criteria (c) (Chapter 36 of the Core Strategy (RBKC 1)).” Unfortunately, the Plan does not state this as required by Regulation 8(5). The Council should prepare a suggested main modification to correct this for my consideration and for discussion at the hearings.**

The Plan (BAS 01) states at page 3 “*This policy will supersede Policy CL2: New Buildings, Extensions and Modifications to Existing Buildings criteria (g) and CE1: Climate Change criteria (c) of the adopted Core Strategy, RBKC 2010*” and this is considered to be in accordance with Regulation 8(5). This text was not included in the publication document (BAS 14) and the Council would be happy to accept the text above as a main modification if so required.

If required the text could also be amended to reflect the reasoned justification in the adopted Core Strategy 2010 which will be superseded. The main modification could read “*Proposed policy CL7 will supersede Policy CL2: New Buildings, Extensions and Modifications to Existing Buildings criteria (g) and reasoned justification at 34.3.20 and Policy CE1: Climate Change criteria (c) and reasoned justification at 36.3.12 of the adopted Core Strategy, RBKC 2010*”.

As part of the ‘Miscellaneous Matters’ examination there is a table at Chapter 41 which deals with how Unitary Development Plan policy is being superseded by policies in the Core Strategy. The existing Core Strategy policies which are being superseded have also been added to the table as a main modification.

**Issue 1.4: Legally, can a supplementary planning document (SPD) be used for the purposes proposed by the Council, and is its use and purposes clearly and effectively set out in the Plan?**

8. Regulations 5 and 6 of the Local Planning Regulations 2012 set out what should be in a local plan and therefore what should not be in a SPD. In the light of this [particularly Regulation 5(1)(a)(iv)], should the information proposed to be in the Basements SPD (paragraph 34.3.70) be in a local plan?

The new policy is in accordance with Regulations 5 and 6.

Regulation 5 (1) (a) (iv) states “(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following— (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;”

Given the large number of planning applications relating to basement development in the Royal Borough and the potential individual and cumulative impact on environmental, social, design and economic objectives (taken from Regulation 5(1)(a)(iii), it is justified to have a development management policy on basement development within the Local Plan.

Para 34.3.70 is the reasoned justification for criterion (n) of the proposed policy CL7. It also sets out the type of investigations and studies that should be carried out. The Council requires this information at present in a Construction Method Statement. Criterion n and para 34.3.70 are considered detailed enough for a Development Plan Document and it is considered further details such as those set out in the existing SPD are not appropriate to be included in the proposed policy. Such detailed policy requirements would make the planning policy very inflexible and the SPD would be a better vehicle to provide further guidance on the policy.

The PPG states at (Ref ID - 12-010) “While the content of Local Plans will vary depending on the nature of the area and issues to be addressed, all Local Plans should be as focused, concise and accessible as possible.” It states at para (Ref ID - 12-028) in relation to SPDs “They should build upon and provide more detailed advice or guidance on the policies in the Local Plan. They should not add unnecessarily to the financial burdens on development”.

Para 153 of the NPPF states “...Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development”.

The aim of the SPD will be to set out the details of how we will approach traffic and construction management, and help applicants understand what information they will need to submit with their basement applications. The Council’s approach is in line with the NPPF and PPG.

- 9. The Council's responses to the representations in BAS04 say that the Basements SPD will include the details of the Demolition and Construction Management Plans (DCMPs) and the Construction Traffic Management Plans (CTMPs) which will be required with planning applications for this type of development. However, the Plan does not actually say this. Should it, in order to be effective? And should such Management Plans apply to all basement development applications or just to certain ones?**

The Plan does not need to explicitly specify the scope of a revised SPD. The Council's approach is consistent with the NPPF. Criteria l, m and n of the proposed policy CL7 provide the planning policy on these issues and the SPD can provide further details to help applicants make successful applications.

The Council has made a conscious decision to try and avoid specific references to SPD guidance in the Local Plan as it is more likely to be subject to change and the SPD provides a more flexible document to update and amend as necessary. Specific reference within the Plan itself will make this task more difficult and in any case a direct reference is not required within the Plan to make the policy effective. There are other opportunities, such as on the Planning website where it can be made clear that the policies and the accompanying SPD should be read together.

It is expected that these requirements will apply to all basement developments. Clearly retrofitting even a small basement underneath an existing property requires detailed engineering considerations to ensure structural stability. Construction of most basement developments require plant and machinery and in most cases, results in construction impacts on neighbouring residents given the dense and constrained character of this Borough. On this basis, the policy requirements as set out at criteria l, m and n need to apply to all basement developments.



## **Matter 2: Definitions and use of terminology**

### ***Issue 2.1: Whether the Plan is effective and consistent with national policy in its definitions and use of terminology***

#### **10. Is the term 'basement' adequately defined in the reasoned justification at 34.3.46? If not, how should it be defined?**

The Council considers that 'basement' is adequately defined in para 34.3.46 as many houses in the Borough have original floors below ground. The front/street levels were often artificially raised at the time of development in the Victorian era. As a result the lowest floor could be below street level but above garden level at the back. It is not possible to encapsulate every eventuality on-site in this Borough as this would lead to a very lengthy and inflexible policy.

The definition uses 'general prevailing ground level' and allows some discretion to planning officers to assess the site and use a common sense approach to establish whether the application proposes a basement. It should also be pointed out that in most planning applications it should be obvious as to whether a basement (by virtue of constructing an additional floor below an existing building or underground) is proposed. Despite a basement policy being in existence for a period of over 10 years the Council cannot recall that there having been any disputes over definition.

#### **11. In paragraph 34.3.47, should the word 'principles' (or 'guidelines' or other similar term) be substituted for the word 'rules'? The word 'rules' implies the application of inflexible, immutable laws which is contrary to the Framework, the PPG, the law as it relates to Local Plans, and to planning practice.**

The Council would be willing to accept a change of wording from 'rules' to 'requirements'. However, the policies are more than guidelines and 'principles' implies too much flexibility.

#### **12. In paragraph 34.3.50 should the word 'management' be substituted for the word 'control'? The Framework and the PPG no longer uses the term 'control'.**

The Council considers that 'management' is not necessarily the correct word to use in the context of what is stated in para 34.3.50 and the word 'control' is more appropriate. We are not resisting basement development but we are controlling it. However, if the Inspector is concerned by the use of the word 'control' in relation to the NPPF the Council will accept changing the text and substitute 'control' with 'management'.

#### **13. Is the term 'large site' adequately defined in the reasoned justification at 34.3.57? If not, how should it be defined?**

The Council considers a 'large site' is adequately defined in para 34.3.57. The paragraph sets out the definition of large site in some detail and this does not leave any room for confusion about when a site is large or not. The text presents a sensible definition which is not overly prescriptive and offers the decision maker the flexibility to apply a common sense approach. It would be unreasonably restrictive to attempt to define 'large sites' further and could lead to unnecessary appeals or legal challenges

based on precise wording which would not assist with this sensible fact and degree approach.

**14. In clause i. of CL7 should the word ‘significantly’ be inserted before the word ‘harm’ as otherwise any harm, no matter how small, would be unacceptable?**

The Council considers that adding the word ‘significantly’ could enable the decision maker to weigh up the risks and come to a balanced view. The Council would therefore be willing to accept this change.

**15. In clause e. of CL7 should the word ‘substantial’ be inserted before ‘harm’ to reflect the advice in paragraph 133 of the Framework?**

Inserting the word ‘substantial’ before ‘harm’ in criterion e would imply that less than substantial harm would be acceptable. The NPPF does not allow ‘less than substantial’ harm without first weighing up the public benefits of the proposal. Para 134 of the NPPF states *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”*.

Most planning applications with basement development in this Borough are linked to domestic property enlargements, which have limited public benefit (other than the obvious investment in the housing stock).

In any case applications are determined in accordance with the Plan unless material considerations (such as the ones listed in the NPPF) indicate otherwise. The PPG also states at (Ref ID - 12-010) *“There should be no need to reiterate policies that are already set out in the National Planning Policy Framework.”*

For these reasons, the Council does not consider that the word ‘substantial’ needs to be, or should be, inserted.

### **Matter 3: The order of the reasoned justifications for the Policy**

- 16. From my reading of the Plan's reasoned justification, paragraph 3.14 of BAS02 and other documentation, I understand that the Council has a priority order for the reasons justifying the Policy. These are, in order: the increasing number of basement planning applications; that these developments are primarily under existing dwellings and gardens within established residential areas; that the Royal Borough is very densely developed and populated; the adverse impact on residential amenity, primarily on residents' health, well-being and living conditions due to factors such as noise and disturbance, vibration, dust and heavy vehicles over prolonged time periods, together with the loss of rear gardens and structural stability concerns; the desire to limit carbon emissions; the need to retain natural gardens and trees to maintain the character and appearance of the Royal Borough, along with sustainable drainage and biodiversity requirements; the adverse impact on the large number of listed buildings and conservation areas in the Royal Borough; and, lastly, the adverse visual impact of certain externally visible aspects of these developments. Is this correct? If so, should it be more clearly stated in the Plan? If the above is not correct, please explain.**

The Inspector has provided an excellent and succinct summary of the reasons behind the policy. However, the reasoned justification was written to provide a narrative and is not an expression of any kind of priority. Its order roughly follows the clauses set out in the proposed policy. It is clear that construction impact is a primary concern, but there are other concerns which are also important. No other policies in the Core Strategy are expressed in order of priority.

BAS 02 sets out a summary of the responses received at Regulation 18 and 19. The consultation responses indicated the main issues raised and the policy is presented as such.



## Matter 4: Restriction on the use of garden/open area

### ***Issue 4.1: Whether CL7 a. is justified by the evidence, consistent with national policy, and effective***

#### **17. What are key reasons for criterion CL7 a. not to exceed a maximum of 50% of each garden or open part of the site? Is it paragraphs 6.11 and 6.12 in BAS18?**

The reasons behind criterion CL7a are many:

- The character of the Royal Borough is one of being densely built-up with the highest household density (6,478 households per sq km) in England and Wales. The average for England and Wales is 155 households per sq km.
- Within this area there has been a significant increase in the number of planning applications relating to basement development.
- The construction of basements has significant impacts on the quality of life, traffic management and living conditions of residents through noise, disturbance and traffic movements.
- This leads to a need to manage the individual and cumulative impact of such developments. Limiting the extent of basement development on individual sites to 50% of the garden will reduce excavation volume and spoil removal and is one limb of an overall approach to reduce the construction impact of such schemes.
- Basement developments also have an impact on surface water drainage, trees future planting, biodiversity, carbon and visual impact; they can make previously green and leafy gardens appear sterile and artificial.
- Private gardens are not considered previously developed land by the NPPF and para 53 of the NPPF states *“Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”* London Plan Policy 3.5 states, *“Boroughs may in their LDFs introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified.”* Further paragraphs (3.19 – 3.26) of the Policy Formulation Report (BAS 18) also refer to these objectives of the London Plan policy and the GLA’s Housing SPG (November 2012).
- The Mayor of London’s Sustainable Design and Construction SPG at paragraph 2.2.27 states, *“In line with London Plan policy 3.5 to protect back gardens, boroughs may consider requiring a proportion of any basement that extends beyond the footprint of the existing building to be covered by soft landscaping to compensate for the loss of soil permeability, water storage capacity and biodiversity. Measures could include requiring sufficient margins to be left between the site boundaries and any basement construction or the provision of a sufficient depth of soil over the basement to enable natural processes to occur and for trees and vegetation to be retained or to grow naturally to*

*maturity, including trees that reflect the local vegetation (London Plan policy 7.21).*” The proposed policy is in accordance with the London Plan and the relevant GLA SPGs on Housing and Sustainable Design and Construction.

- In addition to paragraphs 6.11 and 6.12 in BAS18, paragraphs 4.2, 4.3, 4.4, 4.6, 4.7-4.10, 4.11, 4.12, 4.18, 4.22, 4.23, 4.24, 4.31, 4.32, 4.33 set out a summary of all the related evidence and this is all relevant.

**18. Are each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

The response to question 17 above lists out the reasons. The reasons are supported by evidence which is set out below. All the evidence is also summarised in section 4 of the Policy Formulation Report BAS 18 and is set out below:

- **Basements Development Data, RBKC February 2014 (BAS 27)** (increasing number of basement applications resulting in increased cumulative impacts)
- **Royal Borough of Kensington and Chelsea Monitoring Report, December 2013 (Chapter 2) (BAS 24)** (The Royal Borough is the smallest and the second most densely populated borough in London)
- **Royal Borough of Kensington and Chelsea, Population and Household Density, February 2014 (BAS 25)** (Extremely high household density in the Royal Borough of 6,478 household per sq km)
- **Urban Design Strategy – Draft SPD, Background Report, RBKC (Urban Initiatives), July 2006 (Relevant Extract) (BAS 26)** (a borough of predominantly residential character with a densely built up environment)
- **Basement Surveys (August/September 2012) (BAS 62 and 63)**
- **Basement Works – The Impact on Residents, RBKC, February 2014 (BAS 29)** (highlights that even when best practice is followed, the impact on adjoining properties is substantial (para 3.2)).
- **Residential Basement Study Report, Alan Baxter and Associates, March 2013 (BAS 30)** (Para 9.7.6 states that there should be a limit on how much of the garden can have a basement underneath to allow for flexibility in planting and surface water drainage. Paras 9.8.3 and 9.8.4 indicate that as a rule of thumb a minimum of 25% of the garden is sufficient to drain surface water when the sub soil is gravel and between 25% and 50% when the subsoil is clay. Para 9.8.6 states that another factor that needs to be considered when limiting the size of a basement is the ability to plant large trees).

- **Case Studies of basement excavation in relation to programme and vehicle movements, Alan Baxter and Associates, January 2014 (BAS 28)** (There is a direct correlation between the volume of excavation and the number of lorry movement as shown in Figure 7 and Figure 8).
- **Basements Visual Evidence, RBKC, February 2014 (BAS 33)** (The cumulative impact of a large number of basements can change the character of the gardens in the Borough and have implications for biodiversity in the longer term).
- **Basements Visual Evidence: External Manifestations, RBKC, February 2014 (BAS 34)** concludes that basement developments can manifest themselves externally and that planning policy is needed to address this issue.
- **Trees and Basements, RBKC, February 2014 (BAS 35)** (highlights that “the Council cannot accept the notion that roots are always going to be confined to the top metre of soil due to the various physical constraints that exist.”)
- **London Garden City? From green to grey; observed changes in garden vegetation structure in London, 1998 – 2008 (BAS 37)** (sets out the loss of garden land London wide. Whilst this loss is London wide and generally not related to basement development, the report highlights the importance of back gardens as a resource for biodiversity and vegetation).
- **The potential impact of basement excavation on biodiversity, RBKC, February 2014 (BAS 36)** (Notes that whilst biodiversity impact may not seem significant if considered for 1 property out of ten in a local area. However, if more than 4 properties out of ten undertook large-scale basement excavations at a similar time, then the cumulative impact on local biodiversity could become significant.)

**19. I note that one of Council’s reasons for limiting the size of basement extensions is to reduce carbon footprint/emissions. Council: is this a (or even the) reason and justification for the restrictive CL7 policy? If it were found to be unreliable and not robust would the policy be inadequately justified and thus unsound? If not, why not?**

There are many reasons for limiting the size of basement extensions, as set out in our answers to the previous questions. The reduction in the carbon footprint is only one of them, and if this were found to be unreliable and not robust (which we would dispute) the policy would still be strongly justified for all the other reasons.

Basements are more carbon intense than above ground development (see para 4.34-4.36 of the Policy Formulation Report (BAS 18)), and multi-storey basements are far more carbon intense than other forms of development, including single storey basements. Upgrades to the existing dwellings can achieve significant reductions in carbon emissions. This is particularly relevant for above ground extensions, where

upgrades to the existing building counterbalance the embodied and construction carbon emissions in a short period of time.

It is considered that upgrades to the existing building can counterbalance the embodied and construction carbon emissions of 1-storey basements within a 60-year lifecycle if advanced retrofit measures are used. However, for multi storey basements, even with advanced retrofit measures, it is unlikely that the carbon saving from upgrades to the existing dwelling would not be enough to compensate for the embodied and construction carbon. Therefore, whilst reducing the scale of basements to a maximum of 50% under the garden will reduce their carbon footprint, this is not the key or only reason supporting criterion a. of the proposed policy. The Council is confident that the evidence base BAS 38 is robust, but criterion a. of the proposed policy is not based purely on the evidence in BAS 38; it is robustly supported by a number of other reasons as explained in the response to questions 17 and 18 above.

Evidence BAS 38 has been produced in line with a standardised methodology and clearly provides all the data and methodological steps necessary for third parties to replicate, evaluate and comment on the findings of the study. The methodology was intentionally aligned with the best practice recommended by international standards such as British Standard ISO 21931-1, section 5. The report's structure and content follows all the steps recommended by this section of the British Standard, thus providing the required and requested depth and quality of information. Also, the case studies reviewed under the scope of the report were selected to be a representative sample of the reality of the projects submitted for planning to the Council. Therefore the results can be considered representative. When the results from the report are compared with benchmark studies from peer-reviewed journals the trends and results of the study are in line with these.

**20. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.**

We do not believe so. There is clear evidence (set out in question 17) to indicate that the restriction of no more than 85% coverage of garden space in the Council's current Subterranean SPD (BAS 93, section 9.2.1) has not been as effective as it could be in managing the impacts of basements in respect of living conditions, visual impact, biodiversity and drainage. We believe that the proposed limit to 50% would provide a better balance between the desire of people to extend their dwellings and the impact on living conditions and the environment.

The Council considered other alternatives but these were dismissed. The Policy Formulation Report (BAS 18) explains these on pages 18-20. The December 2012 SEA/SA (BAS 55) also appraised alternatives. As indicated in the response to question 4, the Council is also preparing an update of the SA/SEA to present the appraisal of alternative options and this will be available before the public examination.

**21. Why is CL2 g. iii. in the adopted Core Strategy not adequate to deal with the issues proposed to be addressed by CL7 a.?**

CL2 g iii refers to the loss of trees of townscape or amenity value, whereas the proposed criterion to policy CL7 deals not only with trees but with a number of other issues (see the response to question 17 above). The visual evidence (BAS 33)



demonstrates that gardens that have been subject to basement development granted under current or previous policies can generally be distinguished from those without basement development, appearing artificial and sterile compared to the informal leafy character that was present before. Gardens with basements below also seem to have less planting. The existing policies are therefore not as effective as they could be, and given the large number of basement planning applications in the Royal Borough the policy needs to respond to the latest evidence and offer better protection to private gardens.

The replacement for CL2 g iii would be criterion d. of the proposed policy which states “not cause loss, damage or long term threat to trees of townscape or amenity value.” The proposed policy not only protects loss and damage, it is also seeking to secure protection against a long term threat to trees of townscape or amenity value. Experience has shown that excavation for a basement may not immediately result in the loss of a tree, but it may well harm it, particularly the root system. This may reduce the tree’s vigour and life span and eventually kill it. Policy CL7a aims to deal with this aspect rather than just referring to loss of trees.

**22. Should the criterion contain an exception clause to cater for differing circumstances? (I am aware of the representations about small and/or paved over garden/open areas).**

The Council does not consider there should be an exception clause other than the one already included for large sites. However small the garden, a sufficient margin is required to allow for natural drainage and planting to take place. Moreover, allowing an exception for paved gardens would undermine the objective of one limb of the policy: to bear down on the impact of the construction phase, both individually and cumulatively, by reducing the volume excavated and removed. Based on the evidence, a 50% margin is considered the best option.

There is also an issue about permanency. A paved garden can in the future be easily changed into a greener garden with mature trees/vegetation if the paving is removed. However, a basement development is irreversible, and once built there is no flexibility for the space above to be readily transformed into a green and verdant one. The Local Plan runs up to 2028 and the Council has considered future proofing development to cater for the environment. The policy does have a flexibility at criterion j in relation to small paved courtyards and the provision of SuDS.

Finally, there is a practical point. Having too many exceptions in the policy would render the policy too lengthy, inflexible and largely ineffective. A policy cannot legislate for all circumstances. The reasons set out in response to question 17 apply to all gardens and a consistent borough wide approach is needed. In the practical consideration of planning applications, s38(6) will allow the local planning authority to take into account other material considerations so there is no need to try to predict potential exceptions.



## **Matter 5: One storey restriction**

### ***Issue 5.1: Whether CL7 b. and c. are justified by the evidence, consistent with national policy, and effective***

#### **23. What are key reasons for criterion CL7 b. and c. which restrict basement development to one storey?**

##### **CL7b**

The key reasons for a single storey restriction are –

##### **Increase in the number of planning applications**

The number of applications for basements with two or more levels is steadily rising; it has increased in from 6 in 2008 to 22 in 2012 and 33 in 2013 (Basements Development Data, RBKC February 2014 (BAS 27)). These basements generate very much greater public concern. Their cumulative impact is greater than that for single storey basements. It is right that the Council's development plan should address the issues they raise.

##### **Construction Impacts**

This part of the policy is another limb of our overall approach to manage the construction and vehicle impact of basement development by bearing down on the volume of excavation (see also our answer to Q17).

The submitted document, 'Case Studies of Basement Excavation, Alan Baxter and Associates, January 2014' (BAS 28) shows that there is a trend for larger two storey basements taking longer to construct (figure 3). The lorry movements are also greater where the volume of excavation is larger (figure 4).

The submitted document 'Basement Works – Impact on Residents' (BAS 29) presents an example of a large basement constructed over two or more levels. This is at section 7. The report states that the works lasted two years and had substantial impact on neighbouring residents.

The general impact of basement construction on the living conditions in residential street is an issue that has been highlighted throughout the various consultations that have been undertaken in formulating this policy. Key documents are the submitted 'Response to Neighbours Surveys' (BAS 62) and 'Response to Residents Associations Surveys' (BAS 63). The appendices present a number of comments on the construction impacts (dirt, dust, noise, vibration and construction traffic) experienced by the residents. Whilst these responses do not differentiate between single level and more than single level basements, it is clear from the evidence set out in BAS 28, and the Council's day-to-day practical experience, that larger, deeper basements have an even greater impact on residents' living conditions. A great deal of public concern is generated by these proposals when they come forward.

## Carbon Footprint

The Council's submitted document Life Cycle Carbon Analysis, Extensions and Subterranean Developments in RBKC (Eight Associates), February 2014 (BAS 38) compares the carbon footprint of above ground extensions, single storey basements and multi- storey basements using 16 case studies over their life cycle.

This study shows that multi storey basements are more carbon intense compared to other forms of development over their lifecycle. The proposed policy requires at criterion k. that existing buildings are upgraded to a high level of performance as a way of offsetting carbon emissions. However, it is considered that this is not sufficient to offset the carbon emissions from multi-storey basements.

BAS 38 presents the carbon payback in years for the case studies and it can take up to 77 – 395 years for the multi-storey basements to payback the carbon generated. It states (at page 44) that, *“The results above show that extensions will all have a negative carbon impact over a period of time, although the time frame varies greatly depending on the upgrade. Two of the single storey basements require the Intermediate upgrade before any payback is achieved. None of the multi storey basements are carbon negative under the Intermediate package. The Advanced upgrade achieves a payback of between 2 and 7 years for the extensions, between 21 and 395 years for the single storey basements and between 77 and 381 for the multi storey basements. Note that multi storey basements will not recoup the carbon emitted within the 60-year lifecycle used for the embodied and operational timeframe.”*

The size of the basement impacts on the potential to offset the carbon associated from subterranean extensions. The larger the basement is relative to the existing dwelling the longer it will take to payback the associated carbon from the works. This is because the ratio of carbon offset from retrofit works carbon generated from new works reduces.

As noted in the submitted document 'Carbon Offsetting, Basements Publication Planning Policy, February 2014' (BAS 40), it is not realistic within the Royal Borough to offset the emissions from multi-storey basements offsite, as there is a shortage of appropriate sites, or to take a financial contribution to offset the impact as it is not clear how this money could be spent.

### CL7c

The reason for CL7c is explained in the reasoned justification at para 34.3.58. The criterion is to ensure consistency of approach and stop a phased planning application process. For example where permission is granted for a basement at a property the Council could potentially receive a subsequent application for another basement below the approved basement. This would defeat the objectives of the policy which is being introduced for the reasons set out above.

#### **24. Is each of the reasons for the criteria justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

The reasons are justified by evidence as set out in the response to question 22 above. The evidence is presented in the following documents –

- Case Studies of Basement Excavation, Alan Baxter and Associates, January 2014 (BAS 28)
- Basement Works – Impact on Residents (BAS 29)
- Response to Neighbours Surveys (BAS 62)
- Response to Residents Associations Surveys (BAS 63)
- Life Cycle Carbon Analysis, Extensions and Subterranean Developments in RBKC (Eight Associates), February 2014 (BAS 38)
- Carbon Offsetting, Basements Publication Planning Policy, February 2014 (BAS 40)

**25. Is the restriction too limiting? Please explain briefly (referring to previous evidence).**

**26. Is the restriction too lax? Please explain briefly (referring to previous evidence).**

The restriction is not too limiting. The policy still allows basements to be built, consisting of a whole new floor under the footprint of the dwelling and a maximum of 50% of each garden. The Council considers that it has struck the right balance. On the one hand there is a huge amount of concern amongst residents and calls for further restrictions, whilst on the other the Council recognises that there is a demand for investment in the housing stock of the borough and for houses to be extended. The proposed approach is both reasonable and considered. The current policy does not encompass any consideration of the environmental impacts of multi level basements.

On a similar note the limitation is not too lax as further limitation would translate into a ban on all basements and this would be unreasonable. Clearly within the limits prescribed in Class A of the General Permitted Development Order (GPDO) (as amended) some properties will benefit from permitted development rights. The policy allows for a consistent and transparent approach which should not be more restrictive than current permitted development rights.

**27. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criteria.**

At present there is no limit to the depth excavation can be carried out. A deep basement is a major construction project, yet such developments can take place in the tightest of places such as in the middle of residential terraces. Given the dense urban context of the Borough, the current approach is considered to fall short of what is necessary to manage these major construction schemes. Most residents who have responded to the consultations are content with a single storey restriction. As shown in the evidence for bigger multi-storey basements, the construction time is longer and there is a significantly larger number of lorry movements. Even if excavation time can be reduced on unconstrained sites this would require intense activity concentrated over shorter times which would not offer any respite for those residents who live in close proximity.

Conventional above ground extensions do not have these effects as they are generally subordinate to the host building, involve limited excavation for footings, do not require major engineering work and involve smaller volumes of material. The Planning Acts were drafted with these extensions in mind. It is wholly reasonable to seek to manage, through the proposed size restrictions, the sheer amount of spoil and construction

material generated by basement development. The use of a Construction Traffic Management Plan, for example can manage vehicle routes and parking but does not address the volume of material or duration of the project. On this basis the Council considers that there is no other reasonable approach to take.

**28. Should the criteria contain an exception clause to cater for differing circumstances?**

The Council does not consider there should be any exceptions other than the one already included for large sites. The policy is written for what will happen in most cases and an exception for every eventuality in a policy is not a reasonable approach. This would render the policy too lengthy, inflexible and largely ineffective. A policy cannot legislate for all circumstances.

As per section 38 (6) of the Planning and Compulsory Purchase Act (as amended) applications are determined in accordance with the Plan unless material considerations indicate otherwise and this allows for exceptions to be taken into account and weighed up against the policy.

## **Matter 6: Restriction on excavation under a listed building**

### ***Issue 6.1: Whether CL7 f. is justified by the evidence, consistent with national policy, and effective***

#### **29. What are key reasons for criterion CL7 f. restricting excavation under a listed building?**

There are 4,000 listed buildings in the Borough. It is important to protect their integrity against the background of huge pressure for basement excavations.

The Council's existing policy CL2 g i restricts excavation underneath listed buildings and the proposed policy is carrying this forward. This approach has been effective in dealing with applications for listed building consent. The Council has a duty under section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

The potential harm caused by basement extensions beneath a listed building is multi-fold. Some examples are set out in points 1-4 below: - (taken from BAS 05/08)

1. The potential harm caused to the buildings overall special character and architectural integrity (evidential, historic and aesthetic heritage values) as a result of the creation of a non-original floor level(s) beneath the house and the impact upon the plan form, character and proportion and historic hierarchy of floor levels.
2. Potential impact upon the structural stability of the host building and neighbouring listed buildings.
3. The potential harm caused to both internal and external fabric of the listed building caused by the invasive nature of the works during construction.
4. The potential harm caused to the setting and character of the listed building resulting from the external manifestations of a non-original floor level.

The great majority of listed buildings within Kensington and Chelsea form part of the 19C townscape and are terraced houses. These 19C terrace properties are very similar in terms of their special interest and overall significance. (also see BAS 31)

A key element of these properties' special interest is gained through the retention of their plan form and historic hierarchy of floor levels. Many feature set internal layouts with small cellular spaces located directly off a principal stairwell. The character, proportions and decorative detailing within each of these floor levels also form a fundamental part of any such properties heritage significance.

The creation of additional floor levels of accommodation beneath buildings such as this would have a negative and harmful impact upon the buildings special interest in that it would serve to dilute and confuse the building's original plan form, character and proportion and set hierarchy of floor levels. This would be considered harmful to all four of the heritage values set out in Conservation Principles 2008, aesthetic, evidential, historic and social.

The Council acknowledges Paragraphs 133 and 134 of the NPPF and the potential to offset substantial and less than substantial harm against any potential 'public benefit'. However, the extension of a single private residential house for the sole enjoyment of its owner/occupier is considered to be a private rather than public benefit, which would not result in sufficient public benefits to merit approval in most cases.

**30. Are each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

The **Alan Baxter and Associates Basements Report (BAS 30)** highlights the risks in undertaking basement development particularly at paragraphs 9.2.6.2 and 9.2.7.3. This concludes that, "*it is beneficial for the existing adjoining buildings if ... basements are designed and built so that they are structurally independent.*"

The harm to character of a listed building of a basement caused by altering the set hierarchy of floor levels is highlighted in the response to question 29. This reflects the guidance within the English Heritage publication, **London terrace houses, 1660-1860 (BAS 31)** which considers the need for extensions to be "*integrated harmoniously with the character of the building as a whole.*" (page 12).

The Alan Baxter and Associates report, '**Basements in Gardens of Listed Buildings (BAS 32)**' recognises that there may be circumstances where the creation of any basement may not be appropriate as it may lead to differential settlement problems. However, where a basement is feasible in engineering terms, it should be constructed in such a way as to minimise the disturbance to the listed building and the loss of fabric. The preferred method is to position the basement away from the adjacent wall of the listed building, within the garden rather than beneath the listed building. Alan Baxter Associates recognise that the degree of separation will depend on the individual circumstances of the site.

The Alan Baxter Associates report also considers the need for an appropriate engineering approach when forming the link from the newly created basement to the rest of the listed building to avoid harm to the building.

**31. Is the restriction too limiting? Please explain briefly (referring to previous evidence).**

The restriction is not too limiting in relation to listed buildings and the Council's general duty section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A basement constructed beneath or close to a listed building can cause harm to the building's overall special character and architectural integrity (its evidential, historic and aesthetic heritage values). This is set out in more detail in the Council's response to questions 29 and 30.

**32. How is this criterion different in principle from that in the adopted Core Strategy in policy CL2 g. i. (apart from the inclusion of pavement vaults)?**

The proposed CF7(f) is intended to carry the previous policy CL2 g.i. forward. For clarity, and given the particular impact that basement proposals may have, it is



considered appropriate to include the elements of the policy which relate to basement development all within a single policy.

**33. If it is not substantially different, what has changed that I should now, unlike my colleague at the Core Strategy examination, find it to be unsound?**

The element resisting the creation of basements beneath listed buildings should not be found to be unsound as it itself remains unchanged from that adopted as part of the 2010 Core Strategy and there has been no material change in circumstances since that time (other than, of course, the unremitting growth in basement development). As stated earlier this approach has proved effective in preventing harm to listed buildings within the Borough.

**34. Why have pavement vaults been included?**

The Council considers that pavement vaults contribute to the special character of a listed building. The vaults would have originally been used for the storage of coal and their form, small proportions and limited ceiling height reflects this former use and is an important part of the listed building's character and special interest. The loss or substantial modification of these vaults in order to accommodate subterranean development is harmful to the original character of these small ancillary spaces and would detrimentally alter the original floor plan, hierarchy and status of this part of the building.

This harm has been highlighted within the Council's existing Subterranean Development SPD (BAS 93) which states that the "*Council will normally resist proposals for Subterranean Development under listed buildings or directly attached to existing basements, cellars or vaults of listed buildings.*" The specific inclusion of reference to pavement vaults within the proposed policy is necessary to reflect this continuing concern.

**35. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criterion.**

No, as stated in response to question 33 this is an existing policy in the Core Strategy and has proved effective. The policy has been used to refuse applications and has been upheld on subsequent appeals.

**36. Should the criterion contain an exception clause to cater for differing circumstances, such as where there is no special interest in the foundations and the original floor hierarchy can be respected?**

The policy is written for the great majority of situations and an exception for every eventuality in a policy is not a reasonable approach. This would render the policy too lengthy, inflexible and largely ineffective. A policy cannot legislate for all circumstances. The local planning authority will exercise the discretion provided by legislation to take into account any other material considerations.

The significance of the listed building can include not only the historic fabric or social significance but also the plan-form, setting, scale, detailing, foundations and the original floor hierarchy. When basements are constructed, it is often the case that a

significant amount of large equipment has to be moved on and off site (often through the listed building) which can have a harmful impact upon both internal and external fabric of the building. If basement development is permitted it can have other knock on effects such as alteration of the facades and boundary walls and can harm delicate internal features (such as wall panelling, joinery and plasterwork). Such work is invasive by its very nature and in most cases will be detrimental to the historic and architectural significance of a listed building.

## Matter 7: Light wells and railings

### Issue 7.1: Whether CL7 h. is effective

#### 37. Is the criterion for light wells and railings in clause h. of CL7 too limiting? Please explain briefly (referring to previous evidence).

The approach reflects the Council's existing policy.

The provision of light wells and railings to the front or side of the property can have a significant impact on the streetscape. More than 70% of the Royal Borough is within a designated conservation area. In many streets, light wells and railings are an integral part of the original design of buildings. However, in other streets the lack of light wells and railings form part of the character of the street scene.

The Council's existing Subterranean SPD (BAS 93) states in section 8.3.1 that, "*Light wells that are visible from the street will not be permitted where they are not a characteristic feature of that street. Light wells visible from surrounding properties will be considered on their merits.*" The proposed policy is in line with this existing approach. It allows an officer to assess the existing site context and note whether light wells are an existing and positive feature of the street-scene when assessing a planning application. As such it allows an appropriate degree of flexibility and the context to be taken into account.

The generally restrictive approach taken does, however, recognise that light wells and railings to the front or side of the property can have a significant impact on the character of the streetscape, and that this impact can be detrimental.

The Council's approach has been supported at appeal. Of relevance is the appeal decision for 32 Chelsea Park Gardens (APP/K5600/A/12/2182208). This was an appeal against the Council refusing a planning permission for a basement and associated light well and roof light. The appeal was dismissed. In the decision letter the Inspector stated:

"I saw that this distinctive part of the CA - notably the lengthy and generally unified frontages on the north side of Chelsea Park Gardens, but also elsewhere - in general retains much of its original, almost rustic suburban charm, with its unusual, layered front boundary treatments, traditional materials and well-balanced combinations of low walls and hard and soft landscaping; in my view it is particularly sensitive to radical alteration, and the hitherto few examples of basement development (and associated light wells) are not all suitably and appropriately unobtrusive, or very successfully integrated in the street scene. Moreover, because they are so few, they are not in my opinion (in the words of the Council's SPD) a "characteristic" or typical feature of Chelsea Park Gardens."

"While those elements would be partially screened from public view and would not be very conspicuous in the street scene, they could be seen from private properties and to my mind and eye would together appear as a somewhat atypical, over-sized and discordant element within the site frontage. This effect would tend to harm the character and appearance of the house, and (in so far as they would be visible from

them) those of the street and the CA, contrary to the aims of the relevant policies and subterranean design guidance. That is why the appeal should fail.”

The appeal decision can be found at Appendix A.

**38. Is the criterion too lax? Please explain briefly (referring to previous evidence).**

The Council does not consider the criterion to be too lax. There may be circumstances where the creation of a new light well will be appropriate as it may reflect the existing site context and respects the character of the street. This is further explained in the Council’s response to question 37.

**39. Could the aims of the criterion be achieved or satisfied in another way? If so, please suggest an alternative wording.**

The Council considers that the proposed criterion h. and accompanying reasoned justification at para 34.3.66 are appropriate. Reasonable alternatives were considered and dismissed for various reasons at different stages of the preparation of the policy (see answer to Q4).

The Council’s final SA (BAS 21) refers to the consideration of alternatives in the December 2012 SEA/SA (BAS 55). The Council is working on producing an addition to the final SA to include the reasons for the selection of the Plan’s proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. This will be ready prior to the public examination.

**40. Should the criterion contain an exception clause to cater for differing circumstances? For instance, where light wells and railings could be made acceptable by blending into the surroundings and/or hidden or disguised from public view?**

The policy is written for what will happen in most cases and an exception for every eventuality in a policy is not a reasonable approach. This would render the policy too lengthy, inflexible and largely ineffective. A policy cannot legislate for all circumstances.

In addition, as per section 38 (6) of the Planning and Compulsory Purchase Act (as amended) applications are determined in accordance with the Plan unless material considerations indicate otherwise. Therefore the starting point is to tailor the policy to respect the existing character of the street. Temporary measures such as the use of planters/ landscaping to screen light wells/railings can easily be altered by subsequent owners of properties and this cannot be controlled by the Council. Such an approach is also subject to seasonal variations as to the degree of foliage that may be present. In addition during hours of darkness light would be visible from these light wells along the frontage which would not be a characteristic of a street scene where no other light wells or light sources exist at this level.

## **Matter 8: Requirement for one metre of permeable soil**

### ***Issue 8.1: Whether CL7 j. is justified by the evidence, consistent with national policy, and effective***

#### **41. What are key reasons for criterion CL7 j. to have one metre of permeable soil above any part of a basement?**

The Council's existing Subterranean SPD (BAS 93) includes a requirement for 1m of permeable soil above the basement (section 9.2.1). The purpose of the 1m of soil is twofold: (1) allow landscaping on top of the basement rather than the hard edge of the top of the basement ceiling and (2) as a means of SuDS (as stated in the reasoned justification para 34.3.67).

The reports on the Visual Evidence for basements collected by the Council (BAS 33 and BAS 34) presents evidence of gardens before and after basement development. The Council accepts that it is possible to include landscaping on 1m of permeable soil but the evidence suggests that allowing basements under the large majority of gardens (even with the 1m of soil on top) can result in gardens appearing artificial and sterile.

A metre of **permeable** soil will help in slowing water run-off and assist it to percolate into the ground. This is unlikely to affect groundwater unless its level is already high in specific areas. This is supported by section 9.4 of the Alan Baxter Associates Basements report (BAS30). It is important to take into account that most of the Borough has a surface geology of either London Clay or Gravel (figure 4 'Geological Map Overview' of the Surface Water management Plan <http://www.rbkc.gov.uk/planningandbuildingcontrol/planningpolicy/flooding/leadfloodauthority/swmp.aspx>).

Geology has much more of a direct impact on groundwater levels in dictating about how water might move around within the ground than basement development.

#### **42. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

Evidence is as presented in the response to question 41 above.

#### **43. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.**

The Council does not consider that the aim/reasons can be achieved or satisfied in another way. An alternative would be not to require the 1m of soil. However, this would result in the roof of a basement being close to or at garden level which would be detrimental to any planting being established and would result in an increase in surface water run-off.

**44. Why is CL2 g. iii. and iv. in the adopted Core Strategy not adequate to deal with this issue?**

CL2 g iii requires that new subterranean extensions do not result in the *“loss of trees of townscape or amenity value”*. Proposed criterion CL7 j is about the provision of adequate topsoil above a basement extension and not about the protection of existing trees.

Proposed criterion d. of CL7 is concerned with the loss, damage or long term threat to trees of townscape or amenity value.

CL2 g iv states that *“adequate soil depth and material is provided to ensure sustainable growth”*. The existing policy does not state the depth of soil. However, the Subterranean SPD does (BAS 93). The Council has dealt with a large number of planning applications since the adoption of the SPD in 2008 and has found the requirement for 1m of permeable soil to be effective in so far as achieving sustainable vegetation. However, even with the 1m of soil as demonstrated by the Visual Evidence (BAS 33 and BAS 35) gardens can appear artificial and sterile and it is considered that the Council cannot continue to allow basements under majority of its residential gardens; hence this criterion will work alongside criterion (a) of the policy.

The provision of a metre of top soil may allow some adequate planting, but it will not support the long term future of trees. A tree may survive within a metre of top soil but it is unlikely to reach maturity and be able to thrive. Appendix B (attached) includes a brief illustrated commentary on the success of “constrained trees.”

**45. Has the one metre soil requirement in the May 2009 Subterranean Development SPD (BAS93) proven to be effective such that it should continue in this Plan?**

Yes, it has proved to be effective, as answered above in question 44.

**46. Should the criterion contain an exception clause to cater for differing circumstances? (I am aware of the representations about small and/or paved over garden/open areas).**

Criterion j of the proposed CL7 offers some flexibility with regard the provision of SuDS. It states that *“where the character of the gardens in the locality is small paved courtyards SuDS may be provided in other ways”*. This flexibility is considered to be sufficient.

For all other gardens a metre of permeable top soil is considered to be essential for the reasons set out in the response to question 41 above.

## **Matter 9: Energy, waste and water conservation**

### ***Issue 9.1: Whether CL7 k. is justified by the evidence, consistent with national policy, and effective***

#### **47. What are key reasons for criterion CL7 k. requiring a high level of performance in dealing with energy, waste and water?**

The Council's existing policy CE1 (c) requires *"an assessment to demonstrate that the entire dwelling where subterranean extensions are proposed meet EcoHomes Very Good (at design and post construction) with 40% of the credits achieved under Energy, Water and Material section or comparable when BREEAM for refurbishment is published"*. The existing policy has proven to be effective and has been successfully applied to the large number of basement planning applications since the adoption of the Core Strategy.

BREEAM for refurbishment was published in the summer of 2012 by the Building Research Establishment (BRE) and as per the existing policy the aim is to update the policy to require BREEAM for domestic refurbishment standards.

The objective behind this requirement is to ensure that the carbon generated by basement development is dealt with on-site. The evidence base document Basements and Policy CE1: Climate Change, Eight Associates, July 2013 (BAS 39) sets out the details and recommends the standards in the proposed policy. The evidence base also takes into account the high quality historic character of the Royal Borough and the need to balance the objective of offsetting carbon emissions with the need to protect the historic environment.

The submitted document Life Cycle Carbon Analysis, Extensions and Subterranean Developments in RBKC (Eight Associates), February 2014 (BAS 38) compares the carbon footprint of above ground extensions, single storey basements and multi-storey basements using 16 case studies over their life cycle. This study shows that basement development is more carbon intense compared to above ground development.

The NPPF also states at para 95 *"To support the move to a low carbon future, local planning authorities should: (second bullet) actively support energy efficiency improvements to existing buildings."*

The proposed policy also complies with London Plan policy 5.4: Retrofitting which states *"LDF Preparation: Within LDFs boroughs should develop policies and proposals regarding the sustainable retrofitting of existing buildings. In particular they should identify opportunities for reducing carbon dioxide emissions from the existing building stock by identifying potential synergies between new developments and existing buildings through the retrofitting of energy efficiency measures, decentralised energy and renewable energy opportunities."*

Criterion CL7 k also responds to policy evidence BAS 28, 62, 63 and 95 (Construction Impacts) as 60% of BREEAM DR credits address the site waste management strategies of the refurbishment.

**48. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

The reasons for the criterion are justified by evidence which is set out in –

- BAS 38 - Life Cycle Carbon Analysis, Extensions and Subterranean Developments in RBKC (Eight Associates), February 2014 and,
- BAS 39 - Basements and Policy CE1: Climate Change, Eight Associates, July 2013
- London Plan Policy 5.4

**49. Is the restriction too limiting? Please explain briefly (referring to previous evidence).**

The criterion is not a restriction rather a requirement. As set out above, the Council's approach is in-line with the NPPF and the London Plan. The Council has an existing requirement which has proved effective and the criterion is simply updating that to standards that have been introduced since. The criterion is supported by a robust evidence base which has taken a balanced view taking into account the high quality historic environment and the need to protect this together with the need to reduce carbon emissions. The proposed criterion does not require invasive fabric improvements which could be damaging to the Borough's historic environment but presents a sensible target which is achievable.

**50. Is the Plan consistent with the Government's zero carbon buildings policy as required by paragraph 95 of the Framework? In particular, should paragraph 34.3.68 refer to BREEAM targets given that most basement development will be to homes? Does the paragraph take account of the May 2014 BREEAM UK New Construction advice?**

The zero carbon buildings policy applies to new build, the target proposed is about retrofitting existing buildings and as such is in line with the NPPF para 95, *"To support the move to a low carbon future, local planning authorities should: (second bullet) actively support energy efficiency improvements to existing buildings."*

The target relates to BREEAM for domestic refurbishment which *"provides a design and assessment method for sustainable domestic refurbishment projects, helping to improve the sustainability and environmental performance of existing dwellings in a robust and cost effective way"* (<http://www.breeam.org/page.jsp?id=228>) .

As most cases of basement development relate to retrofitting a basement underneath an existing dwelling using BREEAM for domestic refurbishment is reasonable. Policy CL7 (k) should be read in conjunction with the remainder of the Partial Review of the Core Strategy (namely revised Policy CE1 under Miscellaneous Matters), and the strategic objective of respecting environmental limits. The supporting text has been updated with regard to using BREEAM methodology, with a view to achieving the Government's aim for all new homes to be zero carbon by 2016. It should be noted that the changes relate to the Code for Sustainable Homes and BREEAM standards which are nationally set. Policy CE1 sets the standards for all new developments including residential and commercial.



The BREEAM UK New Construction (BREEAM UK NC) Advice was published after the submission of the basements policy and was not considered in the formulation of this policy criterion. However, the Council has considered this now and BREEAM UK New Construction applies only to non-residential buildings (offices, schools, healthcare) and therefore it would not be applicable for this policy.

Both standards follow the BRE Global Code for a Sustainable Built Environment. The BRE Global Code for a Sustainable Built Environment is a set of strategic principles and requirements which define an integrated approach to the design, management, evaluation and certification of the environmental, social and economic impacts of the built environment.

The Code is interpreted through the BREEAM Core Process and Technical Standards. The Standards ensure that a common scientific and performance basis is used by all compliant schemes operated by National Scheme Operators whilst ensuring that these can be adapted to suit local demands, standards and practices.

The Council's target is more about improving the performance of the existing buildings to offset the carbon generated in the construction and operation of basement development. It is considered that BREEAM for domestic refurbishment is the appropriate standard in this case.

It should be noted that in 2007 the Government introduced a policy for all new homes to be constructed to meet a zero carbon standard from 2016. This was expected to be implemented through progressive tightening of the Building Regulations (Part L). As reflected in the Government's Housing Standards Review, the legislation being brought forward may provide powers to enable on-site energy standards and the framework for allowable solutions to be established through the Building Regulations. However, this has yet to be confirmed and the Council can only draft the current policy using the legislative framework as it stands and not some future scenario which may, or may not happen.

**51. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.**

As set out above the Council has an existing criterion which requires an EcoHomes assessment and the proposed criterion will update this to reflect standards that have been introduced since. The Council has carefully considered the evidence in coming to the proposed criterion and as such does not consider that the aim/reasons can be achieved or satisfied in any other way.

**52. Should the criterion contain an exception clause to cater for differing circumstances?**

The policy is written for what will happen in most cases and an exception for every eventuality in every policy is not a reasonable approach. This would render the policy too lengthy, inflexible and largely ineffective. A policy cannot legislate for all circumstances.

In addition as per section 38 (6) of the Planning and Compulsory Purchase Act (as amended) applications are determined in accordance with the Plan unless material

considerations indicate otherwise and this provides sufficient flexibility for exceptions to be taken into account and weighed up against the policy.

## **Matter 10: Structural stability**

### ***Issue 10.1: Whether CL7 n. is justified by the evidence, consistent with national policy, and effective***

#### **53. What are key reasons for criterion CL7 n. safeguarding the structural stability of the application building, nearby buildings and other infrastructure?**

Designing and constructing basements within dense residential areas with significant underground infrastructure is technically demanding. This is not always appreciated or understood by building owners and developers who see the construction of a basement as just another building operation.

Section 9 of the submitted document Residential Basement Study Report, March 2013 by Alan Baxter and Associates (BAS 30) sets out the structural and civil engineering considerations. Para 9.1.3 makes the point raised above, *“In most situations the design and construction are technically demanding and should not be underestimated. Problems generally do not arise when the design and construction are thoroughly and fully considered and the interaction between design and construction is properly explored and taken into account...”*

There are many examples of structural problems that have arisen as a result of poorly conceived and executed basements. Equally there are many complex basements that have been designed and built without causing structural problems for existing construction above or close to it. The planning criterion is indeed to make applicants aware of the need to take special care so that the issue of structural stability is properly addressed.

The Council has not collected specific evidence on the location of damage but is aware that damage has been caused. Planning officers have been on-site to view damage at 48/50 Abingdon Villas, 24 Pembridge Mews, 148 Kensington Park Road (listed building) and 3 and 5 Upper Phillimore Gardens. Other cases are cited in the various representations received as well as in the responses to the neighbours and residents associations' surveys (BAS 62 and 63).

#### **54. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.**

The evidence is as presented in the submitted document Residential Basement Study Report, March 2013 by Alan Baxter and Associates (BAS 30). Clearly a criterion requiring structural stability is required given the risks. It is also required in relation to the high quality townscape of the Royal Borough, the large majority of which is covered by conservation area.

#### **55. Is the criterion necessary given the existence of other legislation on the subject? Please explain briefly (referring to previous evidence).**

Basement construction requires a careful interaction between temporary works and the permanent works – temporary works are not covered by Building Regulations and the Building Regulations only provide a basic minimum protection for the permanent

works. The Party Wall Act provides a degree of protection to adjoining owners but it cannot prevent damage and it cannot be used for properties that are further away. Also the Party Wall Act only protects certain structures and the effects of basement construction may impact on other buildings, structures or infrastructure which are not covered by Party Wall legislation.

Other regulations such as Health and Safety relate to safe working practice but they cannot be relied upon to prevent ground movements or damage occurring to adjoining structures.

Whilst the above regimes offer some recourse on structural and health and safety issues, given their limitations and other issues which are material planning considerations, such as those relating to character or appearance, it is important that this criterion is included. It is entirely reasonable for planning controls to work alongside other legislation. This is in-line with the PPG (Ref ID: – 45-002).

**56. Is this criterion primarily related to land stability as a material planning consideration as set out in the Framework paragraph 120 and the PPG (ID: 45-001) in order to minimise the risk and effects of land stability on property, infrastructure and the public? If so, should the criterion be reworded to reflect that?**

The contents of the NPPF and PPG primarily relate to mining activities and areas of land that are inherently unstable. There are no such areas in the Royal Borough and the guidance is not relevant to the stability issues which arise from the construction of a basement.

However, the context of the borough is one of very high population density with residential properties in close proximity to one another. Given the context, stability issues connected with basement construction are of concern and are a material planning consideration. The NPPF has been drafted as a national planning policy and clearly cannot take into account every scenario and local circumstance. Just because such an issue does not appear in the NPPF does not mean that it is not material planning consideration and local circumstances need to be taken into account.

**57. Does the requirement to apply this criterion to the existing property comply with the national policy test in the PPG (ID 21a-004) that requirements should be relevant to the development to be permitted and not be used to remedy a pre-existing problem or an issue not created by the proposed development?**

The purpose of this criterion is not to remedy a pre-existing problem. It is intended to prevent a problem arising if planning permission is granted to construct a basement. It is directly related to the development and its consequences.

Section 9 of BAS 30 sets out the structural and civil engineering considerations. Para 9.1.3 states *“In most situations the design and construction are technically demanding and should not be underestimated.”* Structural damage has the potential to harm life and property as well as the character or appearance of the Royal Borough and therefore the criterion meets the relevant tests as set out in PPG (ID21a-004) and set out below -

**Necessary** – The criterion is necessary as it is directly related to character or appearance of the Royal Borough and the health and well-being of residents. Evidence (BAS 30) recommends that these issues are considered at an early stage.

**Relevant to Planning** – As set out above this is relevant to planning. The limitations of other regimes are set out in the response to question 55 above.

**Relevant to the development to be permitted** – It is directly related to the nature or impact of the development as set out in the PPG.

It is important that as part of the concept design for a basement, the nature and condition of the existing building and adjacent structures should be considered. The designs should then be developed to take account of the nature of the existing construction and ground conditions. A construction methodology and sequence should then be prepared to show how the new basement can be constructed without causing damage or instability to the property or to adjoining construction.

**58. I note that the wording of this criterion is similar to that existing in adopted policy CL2 g. ii. What has changed that I should now, unlike my colleague at the Core Strategy examination, find it to be unsound?**

As noted the criterion is similar to the existing criterion in the adopted Core Strategy at CL2 g ii. The existing criterion has proven effective in managing basement developments in the Borough and nothing material has changed that it should now be found unsound.

**59. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criterion.**

The Council does not consider that the aim/reasons can be achieved or satisfied in another way. The alternative would be not to require safeguarding structural stability. However, given the evidence this would be unreasonable with potential harm to life and property and the character or appearance of the high quality townscape of the Borough.



## **Matter 11: Other CL7 criteria and alternative policy wording**

### ***Issue 11.1: Whether the remaining criteria in CL7 are justified by the evidence, consistent with national policy, and effective***

#### **60. In criterion i. of CL7, should the need to limit light pollution be mentioned to reflect advice in paragraph 125 of the Framework?**

The reasoned justification refers to light pollution at para 34.3.66. The Council has referred to para 125 of the Framework in its response to comments during various consultations. The Council will accept the reference to 'limit light pollution' in criterion i of CL7.

#### **61. In respect of criteria d., g., i., l., m., and o. in policy CL7: are they justified by the evidence, consistent with national policy, and effective?**

##### **CL7 d. – Trees**

By its very nature a basement may have an impact upon the roots of a tree and have the potential to harm the ongoing health of the tree. This impact can be immediate, through the damage of existing roots, or longer term through the disturbance of the root protection area. The potential impact is discussed in some detail in the Council's report, 'Trees and Basements' (BAS35) and the Council's response to the 'Arboricultural Issues raised by Cranbrook basements and Basement Force,' (BAS05/14). This confirms the view that *"tunnelling beneath the root protection area of trees in the highly built up environment of RBKC represents a genuine threat to the Borough's current and future tree stock."* (BAS35).

Protecting existing trees of townscape or amenity value is consistent with national policy. NPPF paragraph 109 states that the planning system should enhance the natural environment by *"minimising impacts on biodiversity and providing net gains in biodiversity where possible,"*. Para 118 states that *"if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused"*. Much of the Borough is within conservation areas and most mature trees of merit are protected by virtue of this designation in any case.

The need to protect trees as articulated by proposed CL7 d. This reflects the Council's current policy CL2g iii, that basement extensions cause, *"no loss of trees of townscape or amenity value."* This was a policy considered and found to be sound at the examination into the Core Strategy in 2010. An expansion of this approach to resist "damage and long term threat" is of particular relevance to basement proposals. An ill conceived basement has the potential to be a stunt to the ongoing health of a tree as well as having an immediate detrimental impact.

##### **CL7 g (no harm to the special architectural and historic interest of listed buildings when proposed in the garden)**

This policy requirement is in accordance with NPPF. Paragraph 126 in particular considers:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- the desirability of new development making a positive contribution to local character and distinctiveness; and
- opportunities to draw on the contribution made by the historic environment to the character of a place.

Paragraph 129 states “Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal.”

Paragraph 136 states that “Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.”

This part of the policy is also in line with the Planning (Listed Buildings and Conservation Areas) Act. Provision 71 states,

“Formulation and publication of proposals for preservation and enhancement of conservation area.

- (1) It shall be the duty of a local planning authority from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas.”

The Alan Baxter Associates report, “Basements in gardens of Listed Buildings” (BAS 32) recognises that there may be circumstances where the creation of any basement in a garden may not be appropriate as may lead to differential settlement problems. However, where a basement is feasible in engineering terms, it should be constructed in such a way as to minimise the disturbance to the listed building and the loss of fabric. The preferred method is to position the basement away from the adjacent wall of the listed building, within the garden rather than beneath the listed building. Alan Baxter Associates recognise that the degree of separation will depend on the individual circumstances of the site.

The Alan Baxter Associates report also considers the need for care when forming the link from the newly created basement to the rest of the listed building.

As such it is reasonable to allow the creation of a basement beneath the garden of a listed building, where the applicant can demonstrate that the special architectural and historic interest of the building will not be compromised. A well designed “link” should be able to ensure that this can be the case.



**CL7 i – maintain and take opportunities to improve the character or appearance of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited.**

The need for high quality design is integral to section 7 of the NPPF, “Requiring good design.” Para 56 is explicit in noting the “*great importance*” of good design, it being, “*indivisible from good planning.*” Para 58 states that new development should be, “*visually attractive*” and “*responds to local character and history, and reflects the identity of local surroundings and materials.*” Para 64 goes on to state that, “*permission should be refused for development of poor design that fails to take opportunities available for improving the character and the quality of an area.*”

The need for high quality design is a golden thread which runs through the Council’s adopted Core Strategy. Policy CL6, for example, requires that any small-scale alterations and additions, “*do not harm the existing character and appearance of the building and its context.*”

The need for high quality design and the need to minimise the visual effect of basement development is considered in the Council’s Subterranean Development SPG (BAS 93). This states that the “*Council will aim to endure that any features associated with subterranean development, visible from the street or surrounding properties, are will designed to be discreet.*”

It will be for officers to make an onsite assessment on a case by case basis as to what is sensitively designed and discreetly sited. This is an integral part of onsite analysis.

**CL7 l and m– traffic and construction activity.**

Given the nature of a basement development, and the significant excavation phase, the impact of both the actual construction and the traffic associated can be considerable. This will be increased further in a given area when it experiences multiple basements, either concurrently or one after another.

This impact is highlighted throughout the various consultations that have been undertaken in formulating this policy. Key documents are the submitted: ‘Response to Neighbours Surveys’ (BAS 62) and ‘Response to Residents Associations Surveys’ (BAS 63). The appendices present a number of comments on the construction impacts (dirt, dust, noise, vibration and construction traffic) experienced by the residents. The impact of basement works is further set out ‘Basement Works – Impact on Residents’ (BAS 29).

The potential impact is also recognised through the Mayor of London’s “Sustainable Design and Construction Supplementary Planning Guidance” (BAS 95.) This document includes a number of the ‘Mayor’s Priorities’ and states that “*when planning and constructing a basement developments should consider the amenity of neighbours.*” Para 2.2.25 notes that “*some of the worst impacts for neighbours during the excavation of a basement, although temporary, can include noise, vibration, dust, air and light pollution, and can last for lengthy periods of time from both the excavation and construction process as well as due to the vehicular movements.*” It notes that “full

care and consideration” should be given to nearby properties. It endorses the use of demolition/ construction management plans to mitigate construction impacts.

The London Plan recognises that sustainable construction is a key consideration. Policy 5.3 of the London Plan, ‘Sustainable Design and Construction’, states that borough’s should develop detailed policies which seek to minimise pollution at the construction phase. This includes noise pollution.

Para 5.28 of the London Plan notes the importance of “*minimising emissions of dust and construction and vehicles emissions.*” This is further articulated by London Plan Policy 7.14, which seeks Councils to draft polices which promote sustainable design and construction of buildings to reduce emissions.

The Council is taking a multi faceted approach to mitigate/ control the construction impact of basement development. This includes limiting the size of basements , through the use of Construction Traffic Management Plans and through use of the mechanisms of the Control of Pollution legislation. These are outlined within the Council’s current Subterranean Development SPG (BAS93).

**CL7 o –need for protection of newly created basements from sewer flooding through the installation of a suitable pumped device.**

The element was included in response to a request by Thames Water. It reflects the vulnerability of basements to flooding from sewers during high rainfall events. There has been a particular history of such events within the Borough. The provision of a pumped devise to stop sewer flooding is considered to be reasonable and proportionate.

**62. Could the aims/reasons for the criteria be achieved or satisfied in another way? If so, please suggest an alternative wording for the criteria.**

The Council does not consider that the aim/reasons can be achieved or satisfied in another way.

***Issue 11.2: Whether the Plan and its policy CL7 sets out an approach that is consistent with the presumption in favour of sustainable development***

**63. Does the Plan and policy reflect the presumption in favour of sustainable development set out in the Framework? If not, why not?**

Yes, the policy has taken a balanced view and considered the social, economic and environmental impacts of basements in great detail in its formulation. The proposed criteria in the policy set out what is considered to be sustainable basement development and any planning applications which meet this criteria will be granted without any delay.

As set out at Para 9 of the NPPF, “*Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to): replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure.*” This is exactly what the policy is seeking to achieve.

Managing basement development is of direct relevance to maintaining the high quality of the Borough's townscape and, of even more importance, residents' quality of life.

**64. When applied, will the Policy allow reasonable development needs to be met in a way that is appropriate to the specific character of the Royal Borough?**

The Council considers that it has struck the right balance. On one hand there is a great deal of disturbance to residents and a huge amount of concern and calls for further restrictions whilst on the other, the Council recognises that there is a demand for investment in the housing stock of the Borough and for houses to be extended, particularly when this can be difficult above ground for townscape or amenity issues. The proposed approach is therefore reasonable and considered.

In coming to this balanced approach, the Council has considered a wide range of evidence and has given careful consideration to the views of all parties. The present approach which allows basements under a maximum of 85% has not been as effective as it could be and has had an impact on the environment. The existing policy has no limit on basement depth which is considered unreasonable and does not encompass any consideration of the environmental impacts of multi level basements. All the criteria in the policy are carefully considered and supported by robust evidence as set out in the responses above.

The policy is appropriately tailored to strike the right balance between each strand of sustainable development taking into account the dense urban context and the very high quality townscape.

**65. A number of representors have suggested that the policy should instead be an impact assessment led one (case by case) with an overall exception clause, and some have made suggestions. In the light of the Council's explanations to date, please would representors suggest their final wording for such a policy?**

Whilst this question is aimed at representors the Council considers that an impact assessment led (case by case) approach would be wholly inappropriate.

Para 154 of the NPPF refers "*Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan*".

Objective CO5 of the Core Strategy states "*Our strategic objective to renew the legacy is not simply to ensure no diminution in the excellence we have inherited, but to pass to the next generation a Borough that is better than today, of the highest quality and inclusive for all. This will be achieved by taking great care to maintain, conserve and enhance the glorious built heritage we have inherited and to ensure that where new development takes place it enhances the Borough.*"

A case by case approach would lead to inconsistency in decision making relying heavily on the consultants' reports submitted by applicants which can vary significantly. It would not be a proper planning response to a widespread planning issue in the Royal Borough and does not take the cumulative impact of basement

development into account. Furthermore it would not be transparent and would be difficult to enforce. Given the scale and increasing number of basement applications a considered policy approach based on robust evidence is required on a Borough wide basis and this is the only sustainable development approach. It is the only way of ensuring that developers and residents know where they stand at the outset of a project.

A case by case approach would neither be compliant with the NPPF nor with the Core Strategy objectives.

# Appendices



## Appendix A: Appeal Decision 32 Chelsea Park Gardens (APP/K5600/A/12/2182208)



The Planning  
Inspectorate

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### Appeal Decision

Site visit made on 11 March 2013

**by P E Dobsen MA (Oxon) DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 May 2013

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#### **Appeal Ref: APP/K5600/A/12/2182208 32 Chelsea Park Gardens, London SW3 6AB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr. and Mrs. J S Lindfors against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application (Ref: DPS/DCS/PP/12/00929), dated 14 March 2012, was refused by notice dated 15 May 2012.
  - The application sought planning permission for the "excavation of a single storey basement under the front garden, footprint of the house and the rear garden, with associated light wells, and for the erection of a single storey extension at the front of the building on the eastern boundary" - without complying with a condition attached to planning permission (Ref: DCS/DCPP/11/01807), dated 18 August 2011.
  - The condition in dispute is No. 2 which states that: "The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans: OS site map; KKL/08/FP.Ga-100, KKL/08/FP.Elev-100, KKL/08/FP.Elev-101, KKL/08/FP.Elev-102, KKL/08/FP.Ga-200 Rev.A, KKL/08/FP-200, KKL/08/FP.Elev-201 Rev.A, KKL/08/FP.Elev-202 Rev.A, KKL/08/FP.Elev-203 and traffic management plan dated 6/1/2011 Rev.B".
  - The reason given for the condition is: "The details are considered to be material to the acceptability of the proposals, and for the safeguarding of the amenity of the area".
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#### **Decision**

1. The appeal is dismissed.

#### **Application for costs**

2. An application for costs was made by Mr. and Mrs. J S Lindfors against the Council. This application will be the subject of a separate Decision.

#### **Procedural matters**

3. The appeal was originally submitted for determination under the "householder" procedure. Owing to the length and detailed nature of the representations submitted with it, the procedure was later changed by The Planning Inspectorate (PINS) to that of a Section 78 written representations appeal<sup>1</sup> involving an Inspector's accompanied site inspection. Further representations were subsequently submitted by both main parties.

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<sup>1</sup> The hearing procedure was also considered by PINS, but not found to be necessary



4. Building works to implement a previously permitted scheme (see below) were well under way at the time of my site inspection; however, I then pointed out omissions of, and discrepancies in the submitted drawings held by PINS. A complete, corrected set of application drawings was subsequently received from the appellants, as listed in their agent's letter dated 3 April 2013.
5. Apart from the change of procedure, the appeal process appears to have been further complicated by the parties' need to agree/reconcile various discrepancies in the description of development, and the drawings (etc.) I see no need to explore further that somewhat tangled history, but go on to state the relatively straightforward main issue.

### **Main Issue**

6. *Background:* There is an Article 4 Direction on the property that removes certain permitted development rights. The principle of a basement extension (etc.) there was first established by a grant of permission by the Council in 2010 (LPA Ref: PP/10/00569), and also by the 2011 planning permission (LPA Ref: PP/11/01807). Therefore that principle is not in dispute. The current scheme seeks to make modifications to the approved scheme.
7. I note that it was refused by the Council for 4 separate reasons. The first 2 reasons referred to the effect of the proposed development on the character and appearance of the host building and those of the terrace and the Chelsea Park/Carlyle Conservation Area (CA). These matters are first addressed in detail in the appellants' Planning and Heritage Impact Statement (March 2012), submitted with the application. They remain in dispute.
8. The other 2 reasons referred to the appellants' alleged failure to demonstrate that the proposed development would not exacerbate climate change, or cause structural damage to the existing or neighbouring properties. These 2 reasons were subsequently withdrawn by the Council following the submission of further information on both of those points. They are no longer in dispute.
9. The outstanding issue in the appeal, in the light of the relevant development plan and other policies, is therefore limited to the effect of the proposed development - in particular the front light well and roof light and the detailed design of the eastern flank extension - on the character and appearance of the property and those of the CA.

### **Reasons**

10. No. 32 Chelsea Park Gardens is a substantial and attractive semi-detached, single family dwelling which was built with 3 storeys in the early 20<sup>th</sup> century. It lies prominently on the corner of Chelsea Park Gardens and Beaufort Street, and within the predominantly residential Chelsea Park/Carlyle CA.
11. While densely built-up and generally urban in character, this CA also contains green-landscaped, quasi-suburban elements and settings, derived both from the principles of the Garden City movement, and from aspects of Arts and Crafts style. These are particularly evident in Chelsea Park Gardens, and especially its northern side, which as a result has a distinctive character of its own.
12. No. 32 has had relatively minor extensions at the rear on various occasions since the 1960s, but (as mentioned above) the principle of a substantial



- extension at basement level has now been approved and building works are well advanced.
13. I have considered the proposed modifications<sup>2</sup> to the approved scheme in the light of the relevant development plan design and conservation area policies in the RB Kensington and Chelsea Core Strategy (adopted 2010, including policies CL1 *Context and character*, CL2 *New buildings, extensions and modifications to existing buildings* and CL3 *Heritage assets – conservation areas and historic places*), and the saved policies in the borough's Unitary Development Plan (UDP, first adopted 2002), in particular CD47 *Extensions*, CD48 *Conservatories* and CD63 *Development in Conservation Areas*.
  14. In brief summary, where new development is proposed the policies seek to conserve and protect the valued features of buildings and their surroundings, and the character and appearance of CAs, both as seen and appreciated in public views of the street scene and in more private views from nearby houses and gardens. There is no particular dispute as to the relevance, due weight, or interpretation of these CS and UDP policies, and no need here to rehearse them in detail. I would note, however, that where new development is proposed the policies, even in combination, are not precisely prescriptive, but require an exercise of judgement to be made as to its physical/visual impact and planning merits.
  15. Also with respect to local policies, I have considered the information, advice and guidance in the CA Proposal Statement (1992), including its references to the particular character of the CA, and the architectural/design influences post World War I which helped to shape it.
  16. There is in addition the Council's Subterranean Development supplementary planning document<sup>3</sup> (SPD, adopted 2009), which gives advice particularly on the design and location of light wells and other external manifestations of basement development. I have given this significant weight. The SPD states at para. 8.2.1 (headed *Minimising the visual effect*) that any features associated with subterranean development (including light wells and roof lights) which are visible from the street or from surrounding properties should be "*well designed to be discreet*". Para. 8.3.1. adds that those which are visible from the street will not be permitted where they are not a characteristic feature of the street. Those visible from surrounding properties will be considered on their merits.
  17. The National Planning Policy Framework, published in March 2012, is also a material consideration as it contains design-related core principles, and policies and advice on development within heritage assets, including CAs. There is no suggestion in this case that the Council's policies conflict with those of the Framework.
  18. So much for the policy background. During my site visit I looked closely at the character and appearance of the house itself and of those in the rest of Chelsea Park Gardens and in nearby streets, as well as at existing examples of basement development. Since the basement at No.32 had been excavated and its general form was established I was also able to see the light well/roof light

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<sup>2</sup> These are described in detail in the appellants' statements and appendices

<sup>3</sup> Particularly its section 8, Design



openings already made, both from the inside and externally, although the latter views were obscured somewhat by construction site safety hoardings.

19. *Conclusions on the main issue:* I saw that this distinctive part of the CA - notably the lengthy and generally unified frontages on the north side of Chelsea Park Gardens, but also elsewhere - in general retains much of its original, almost rustic suburban charm, with its unusual, layered front boundary treatments, traditional materials and well-balanced combinations of low walls and hard and soft landscaping; in my view it is particularly sensitive to radical alteration, and the hitherto few examples of basement development (and associated light wells) are not all suitably and appropriately unobtrusive, or very successfully integrated in the street scene. Moreover, because they are so few, they are not in my opinion (in the words of the Council's SPD) a "characteristic" or typical feature of Chelsea Park Gardens.
20. On the main issue, I agree in essence with the Council, and particularly with respect to the modified arrangement now proposed of the significantly enlarged light well and roof light. The appellants are adamant that these would not be seen from the street. While admittedly hampered slightly by the aforementioned site hoardings in making my assessment, I disagree. While those elements would be partially screened from public view and would not be very conspicuous in the street scene, they could be seen from private properties and to my mind and eye would together appear as a somewhat atypical, over-sized and discordant element within the site frontage. This effect would tend to harm the character and appearance of the house, and (in so far as they would be visible from them) those of the street and the CA, contrary to the aims of the relevant policies and subterranean design guidance. That is why the appeal should fail.
21. I am more sanguine, and can be very brief about the relatively minor proposed changes<sup>4</sup> to the single storey extensions on the eastern flank side of the house, fronting Beaufort Street. In my view, unlike the enlarged front light well and roof light they would not jar with the architectural style or setting of the house, nor with any features in the street scene along this part of Beaufort Street. While they would not necessarily enhance the character or appearance of the house, compared with the previously approved scheme, they would nevertheless tend to preserve them, and those of the CA.
22. For the above reasons, on balance the appeal must fail. I have considered all the other points made in the main parties' appeal statements, including references to other appeal decisions. However, it is axiomatic that, while they may have various points in common with other sites and schemes, individual proposals are unique and must be determined on their own merits.
23. I have also considered the representations from consultees at the application and appeal stages, but they do not alter or outweigh my conclusions on the main issue.

*Paul Dobsen*

INSPECTOR

## Appendix B: Containerised Trees

1. In certain rear garden basement scenarios trees are effectively being “containerised”. The following examples show that such constraints can greatly affect their establishment.
2. **Example 1 – Lime Street.** Four plane trees were planted outside the Willis building in Lime street approximately 8 years ago. Despite having auto-irrigation the trees started dying back in the first year and two died during the second year after planting. Supplementary watering and feeding is necessary during dry spells. Considering the hardiness of this species it provides a good example of the difficulty in establishing containerised trees.





### 3. Example 2 – Hammersmith Broadway.

Fig.1 – Lime tree in soil filled raised planter 1971. Available soil volume estimated at 40 cubic metres.



Fig 2. – Same lime tree in 1978. Height: 6 metres approx.



Fig 3. – Lime tree in 2012. Height: 9 metres approx



Fig's 4 & 5. - Tree felled in 2014.





4. The lime tree was only 9 metres in height in 2012 and the diameter of the stem, taken after the tree was felled in 2014, was only 29cm. (Measured 75cm above ground level). The tree is a particularly small specimen for such a fast growing species that generally thrives in harsh urban conditions. A tree of this species and age would normally be expected to be between 15-20 metres high and have a stem diameter closer to 50cm.
5. It is estimated that the soil volume available to this tree was in excess of 40 cubic metres. This should be sufficient for a tree of this size to mature normally. Hammersmith and Fulham Council's arboriculturist has informed us that the planter was constructed onto the existing highway, which makes this example similar to having a large tree above a basement with lateral constraints such as building/wall foundations.

