

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

Basements Publication Planning Policy

Matters, Issues and Questions for Examination

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)?**
- 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.**
- 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").**
- 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>.

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).**

We strongly endorse The Kensington Society's detailed response on this point.

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?

No, a policy is very far from unnecessary. In our view and based upon our experience over the last four years and that of other residents, there is no legislation which deals satisfactorily with the impact of basement development or its aftermath. That is largely because the legislation was not drafted with subterranean development in mind. By way of example, The Party Wall etc Act 1996 offers no protection for buildings more than 6 metres from the basement development. It is also completely unreasonable and unfair to expect neighbours to seek redress through the courts after they have suffered harm.

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.

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?

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?

We strongly agree that the requirement for DCMPs and CTMPs be added to policy CR7 and that these policies should be required for all major construction projects, not just basements. As we mention in our Response to the Basements Publication Policy of July 2013 (dated 2 September 2013) we have specific experience of the traffic problems caused by basements projects. The requirement for DCMPs and CTMPs should be enforced in the most effective way possible. These management plans should be applied to every basement application and all basement proposals should proceed only by way of full planning applications.

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?

As indicated in our Response dated 2 September 2013 at paragraph 34.3.46, we are concerned about the definition of basement. We believe the word "completely" should be deleted and replaced by the words "50% or more" below the prevailing ground level of the back gardens within the immediate area.

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

No, we do not believe that the word "significantly" should be inserted before the word "harm". No harm is acceptable in respect of pedestrian, cycle, vehicular and road safety and the Council has rightly committed itself to improving road safety and reducing risk.

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

No, we do not believe that the word "substantial" should be inserted before "harm" in clause e. of CL7. We think that clause e. accords with paragraph 132 of the NPPF, which provides that, as heritage assets are irreplaceable, **any** harm or loss must require clear and convincing justification. We see that paragraph 133 provides that if a proposed development will lead to substantial harm to the designated heritage asset, consent should be refused, unless the harm etc is necessary to achieve substantial public benefits that outweigh the loss. Basement developments have no public benefit.

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.

We agree entirely with The Kensington Society's response to this question. Putting these concerns into an order is very difficult as they are all matters of great concern to residents.

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?**

While we are not sure what the Council's key reasons for these requirements are, we agree with the Council's conclusion in paragraph 6.12 that a substantial amount of garden should be available for planting. Our own view is that, for this and other reasons, considerably more of the garden should be available. Indeed, we expressed the strong view in our Response dated 2 September 2013 that no basement development should be permitted under gardens. This is based upon serious concerns about flooding, the duration and extent of construction and the enormous volume of soil which has to be excavated.

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 Alan Baxter and Associates Report and the Thames Water letters dated 31 January 2013 and 2 May 2013.

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?

We believe that this is a very important reason, but not the only or main reason for CL7. Basements are inherently unsustainable. Their impact is permanent, irreversible and cumulative and their long term effects on the environment are impossible to predict. We cannot even know how many there are (or how many there will be). The carbon footprint relates directly to the depth of the basement and the area it covers. Reducing both very considerably, in the light of the growing number of schemes, is essential.

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

As stated above, we believe that more of the garden should be left for planting. The 50% should be a maximum, not a minimum entitlement.

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?**

Please see our 2 September 2013 Response at points 34.3.52 and 34.3.53. We believe that key reasons are that a one-storey basement is smaller (than a two or more storey basement on the same footprint) and therefore creates less waste, takes less time and causes less disruption. A one-storey basement is less deep (than a two or more storey basement) and therefore the engineering operations involved are, relatively, less complex. The Alan Baxter Report and common sense indicate that deeper basements have greater structural risks and complexities.

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

No, there are relatively few applications for more than one storey.

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

Yes. In particular the definition of a single storey should be smaller – 3 metres or less. We see no reason why a new basement should be deeper than the floor immediately above it – which in our case is 2.5 metres or less. There should be no exceptions to this policy.

27. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criteria.**28. Should the criteria contain an exception clause to cater for differing circumstances?**

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?
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.
31. Is the restriction too limiting? Please explain briefly (referring to previous evidence).
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)?
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?
34. Why have pavement vaults been included?
35. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criterion.
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 Markham Square Association

Matter 7/118

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).

No. Reference should also be made, after the "side of the property" to "or facing communal gardens".

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

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

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?

No.

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?
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.
43. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.
44. Why is CL2 g. iii. and iv. in the adopted Core Strategy not adequate to deal with this issue?
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?
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).

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?**
- 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.**
- 49. Is the restriction too limiting? Please explain briefly (referring to previous evidence).**
- 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?**
- 51. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.**
- 52. Should the criterion contain an exception clause to cater for differing circumstances?**

We do not believe that compliance with BREEAM Regulations is adequate for the environmental harm caused. The aim should be achieved by reducing the size and depth of the basements.

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?**

We believe that the Council owes a duty to its residents and others to safeguard these buildings and to resist proposals which place them at risk.

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

Yes, it is very necessary. Our experience is that existing legislation is not designed for this purpose and is inadequate.

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?**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?**

We believe that these requirements are relevant to the proposed development and that very serious issues are created by the new development.

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

We have suggested throughout that the words "be designed to" are omitted from CL7n, leaving it to be governed by the opening sentence "All basements must be designed, constructed and completed to the highest standard and quality".

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?

Yes.

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?

With respect to CL7o, we believe very strongly that the advice provided by Thames Water to the Council in its letter dated 31 January 2013 should be heeded and followed, as it has by Hammersmith and Fulham Council in its Policy DMA8, which confines new basements to the footprint of the building and any approved extension. Please see our 2 September 2013 Response.

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.

No.

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?

We do not believe that basements are sustainable as the social and environmental harm caused far outweigh the advantages, which are chiefly financial and exclusively private.

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?

We believe so as they will permit basements that are appropriate to the character of the Borough.

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?

We endorse the Council's criteria-based approach.