

RBKC Basement Policy Review
Austin Mackie Associates for Waltonwagner
Representor Reference 183
Matters 1, 3, 4, 5 and 11

Matters 1, 3, 4, 5 and 11 - Overarching Statement

The Council claims that its proposed approach supports the principles of sustainable development (see for example its penultimate response in BAS 05/02).

However, at no stage does it justify with robust or credible evidence the strict thresholds “rules” that it seeks to apply and how these define what may or may not be considered sustainable development.

It is therefore not clear whether, for example, the Council considers the net or cumulative impacts of what the proposed policy would allow to be unsustainable, but nevertheless a balanced response to the central principles of NPPF, or whether it truly believes that there is a distinguishable benchmark of sustainability that would be breached if, for example, a basement were two storey rather than single storey.

The evidence base offered by the Council wholly fails to demonstrate that the latter ‘threshold’ exists.

It is notable that in assessing basement planning applications currently before it, which include a significant number of basements greater than single storey; these are not being reported as unsustainable forms of development. Nor is there any suggestion that the Council is, for the moment, in advance of any policy change, having to balance the assessment of proposals which on the one hand accord with current local policy but which are unacceptable and unsustainable under NPPF.

For example, in a recent approval at 43 Sloane Gardens (approval granted 16 August 2014) (see link to officer report below) the application for a two level basement scheme is assessed in the officers’ delegated report as follows:

“4.2 The contents of the Government’s National Planning Policy Framework ... have also been taken into account.”

After listing core strategy policies, the Officer’s report continues:

“4.4 The proposed double basement is acceptable. Once complete, the works would have no appreciable impact on the living conditions of neighbouring properties in compliance with Core Strategy policy CL5. There would be some disturbance during construction, however permission cannot be refused on these grounds and conditions are attached to mitigate this disturbance as far as possible under planning control. “

<http://www.rbkc.gov.uk/idoxWAM/doc/Report-1302547.pdf?extension=.pdf&id=1302547&location=Volume2&contentType=application/pdf&pageCount=1>

This report is typical of many similar applications which exceed the proposed new policy's limits, but which continue to be determined in a positive manner.

It is clear from the evidence base that the Council's principle motive behind the significance policy change is a response to the concerns raised about the increased number of individual basement schemes coming forward and their perceived individual or cumulative impact upon amenity of residents both on and off-site (as highlighted by the Inspector under Matter 3).

The Council cites reasons for the increase in the popularity of basements, such as built heritage constraints etc. However, it fails to acknowledge that the single greatest driver in the increase in the number of basements applications before it is the significant concern generated since early 2012 by its own proposed policy change. Chart 1 in BAS 27 demonstrates that the dramatic increase in basement applications occurs around the time that the Council began to review basement policy.

The proposed policy change has been widely reported in the national press, local press specialist property and design journals and even regional TV. From our own experience of advising property owners in the Borough, talking to other professional and architects, even preparing evidence for submission to the First Tribunal, it has been clear for some time that property owners have been progressing basement applications far sooner than they might have otherwise, due the clear threat of a significant policy change.

In practice, the Council is to a significant extent, a major contributor to the cause of the single most significant concern it raises. I have no doubt that without the proposed change in policy or the degree of significance of change proposed, then there would be materially fewer applications proposed and the significance of the perceived threat and impacts would be far less than suggested in the Council's evidence base.

In effect, if there had been some stability or consistency in policy, then the number of applications being progressed (and subsequently built) would be fewer in number and the potential cumulative impacts reduced.

This is very much a case of the Council 'locking the cellar door after'

As we highlight under other Matters and in our suggested alternative policy, we do not oppose the principle of a reasonable and balanced policy approach. However, the submitted policy is fundamentally unsound for a significant number of reasons, which seriously undermine the Council's approach.

Firstly, the Council seeks to use planning policy to control what are temporary construction impacts, despite acknowledging itself in both its evidence base, RJ and on-going LPA functions, that this is not a planning matter. Indeed, in the above referenced planning application, they are identified as not being a planning consideration.

If cumulative construction impacts were a material planning consideration sufficient to be encapsulated within a highly restrictive local plan policy, then there would be a serious threat to development and regeneration as a whole across London.

The policy goes beyond what is necessary and reasonable and the inability of the evidence base to offer credible support further exposes the weakness of the Council's approach.

The rigid thresholds that have been adopted are not based upon any robust or scientific assessment of impacts. BAS 03 (s4), for example, demonstrates that the 50% garden area was effectively 'plucked' from the public consultation process; but has not been subsequently justified as the threshold necessary to ensure development is sustainable.

Similarly, the limitation to a single basement level is an entirely arbitrary cap intended to reduce the impacts of construction traffic and nuisance to neighbours, but is not justified by any credible evidence base.

Basements are being uniquely singled out in the Borough as the only form of development that is to be controlled on such grounds.

One wonders whether, if it succeeds in stifling the scale of basement development, the Council will face an increase in pressures for roof extensions, rear extensions, commercial to residential conversions. Will it then seek to chase after these forms of development and impose further draconian restrictions upon them? Such a scenario would seem ridiculous, but in a way the process has arguably started.

We consider that the evidence base is not only weak, but lacks objectivity and fails to support many of the elements of proposed policy CL7.

Having regard to the priorities within the Council's justification, such as, scale of developments and the degree of residents concerns as to impacts, one would have expected the evidence base in respect of these matters to be particularly robust.

For the Council to translate residents concerns into justification for a draconian Borough-wide approach to this form of development, the evidence base must be extremely robust and there must be very clear and material planning grounds to support such an approach.

Looking firstly at the degree of concern and the weight that should be applied to this, both BAS 03 and 18 seriously undermine the Council's position. The simplest analysis of the consultation process highlights a lack of widespread support for the Council.

- The early consultation with residents was in a 'tick box' form that allowed no qualitative analysis of responses, so it offer no more than statistics, yet those statistics do not support the LPA's approach.
- Only 17% of neighbours to basement schemes felt it necessary to respond
- Of those, only 25% felt that the basement had negative impacts
- More than half felt that the noise and vibration experienced was within limits
- Thus, around 2.25% - 4.5% of those surveyed, ie, those most likely to have relevant experience of potential impacts, were sufficiently concerned to express their view.

Such a low figures offers no platform upon which to progress the mandate of CL7. Notably, the very low response rate has been consistent throughout the Councils consultation process from early 2012.

The evidence base has a number of inconsistencies which are not investigated, for example, both BAS 18 (at para 4.7 to 4.10) and BAS 03 (at paras 3.3 and 3.4) report that:

- 50-60% of residents neighbouring basements scheme felt impacts were acceptable, but also reports, but
- residents associations report 50-70% experienced problems.

There is clearly a significant divergence in the reported sensitivity to basement development, yet this is never investigated further by the Council.

We also consider that there is a lack of objectivity and a failure of the Council to appropriately balance opinions expressed.

For example, at para' 6.14 of BAS 03 it reports that it continued with its proposed policy approach despite there being "strong objections" with local residents being one of the objecting groups.

It is also clear from BAS 03 at 6.1-6.13, that as the draft policy progresses, the level of concerns raised about the policy increase significantly as it becomes a more real threat.

At no stage does the Council stop to assess and balance these diverging views. It is clearly already committed to a single approach regardless and it therefore its evidence base in this respect fails the test of objectivity / positivity / justified / proportionate evidence / reasonable alternatives.

In the absence of any robust evidence that the concerns are justified, one turns to the evidence of potential impacts; this is, after all, the Council's principal driving force behind the strict limitations that it proposes on the scale of any individual basement development.

BAS 29 appears to stand alone and extremely vulnerable in this corner.

The Council claims that its urban characteristics and population density make it particularly sensitive. We would argue that (i) these are not unique within London (ii) arguably the scale of activity such as traffic is such that it would be impossible to discern the net impact of basement construction against (a) other forms of construction and (b) other local commercial traffic in general and (c) London-wide commercial or construction traffic passing through the Borough's streets.

The limited and weak evidence within BAS 29, in effect 5 pages in total (much of which is generic commentary rather than evidence) is not as suggested in BAS18 para 3.4 'strong scientific evidence'. To the contrary it represents a series of relatively unsubstantiated comments, none of which offer firm evidence that basements, but specifically basements that extend beyond one storey and 50% of a garden will suddenly create an additional impact that turns sustainable development into something that must be prohibited regardless of site circumstances.

At no stage does BAS 29 offer robust evidence to justify the claimed disproportionate impact of the single storey criterion.

It can only be concluded that in the absence of any credible evidence base, the restrictive approach of criterion (a) and (b) cannot be supported as sound policy.