

RBKC Basement Policy Review
Austin Mackie Associates for Waltonwagner
Representor Reference 183
Matter 10

Issue 10.1

Whether CL7 n (structural reports) is justified by the evidence, consistent with national policy, and effective

The criterion requires an applicant to submit information prior to determination (indeed prior to registration of an application) to address matters that are dealt with under different legislative controls; principally Building Regulations as a statutory requirement and under 'Party Wall' agreements as a private neighbour issue.

On this basis, it goes above and beyond what is necessary in order to determine the impact of a proposal upon the character and amenity of the area.

These principles are accepted by the Council in BAS 01 at 34.3.70, but despite this, within BAS 01 there is no further justification for the additional requirement for this separate legislative obligation to be preceded under planning policy.

On this basis it is, in principle an unnecessary and onerous obligation for relatively minor domestic extensions.

In various parts of the evidence base it is suggested that the Borough's character and appearance is dependent upon the integrity of buildings, almost as if the Borough's built fabric is at risk of unsightly fracture or collapse as a result of basements that are granted planning permission but not subsequently adequately addressed through the building control or party wall processes.

No evidence is presented to support such assertions represent a real risk.

Having reviewed numerous structural reports that have been submitted in support of basement applications, the degree of impact that they address in terms of settlement or cracks risk is normally in the lower millimetres, hardly a risk to the character and appearance of the Borough that of a scale that needs to be addressed as a planning policy matter.

The Council suggests that its approach is justified under the NPPF, but we consider that this is not at all clear within the RJ and needs to be substantiated. We also question whether paragraphs 120-122 of the NPPF were meant to be applied to urban development of this type, as they appear to fall under a section relating to the natural environment. Nor are we convinced that this section of the NPPF was

envisaged to be used as justification for controlling urban development at such a relatively micro scale.

All that said, our experience has been that for some time, applicants have broadly accepted the requirement and submitted structural statements in accordance with the request; as it has been a necessity to do so in order to obtain planning. Although an additional procedural obligation for what are only domestic extension works, the majority of reports have been accepted by the LPA.

On this basis, criterion (n) is unlikely to prevent applications coming forward.

The main issue for us lies with the manner in which the Council applies the criterion.

For example, there is no guidance within CL7 or the RJ to define what in planning terms are acceptable impacts, other than to refer to separate legislation.

If, in the future, the Council sought to resist as many basement developments as it could, it might seek to apply a 'no tolerance' approach to structural impacts; for example, resisting even the most minor movements which have otherwise been defined as acceptable under other legislative regimes.

On appeal, determining the acceptability of any impact would have to look way beyond policy and any supporting evidence base or SPD.

On this basis, the criterion is arguably not sound. It creates considerable uncertainty as to what the policy, or the application of the policy, would define as an acceptable impact. It relies on a separate area of legislation / process, but as a planning policy test is not objectively defined within either the policy or RJ and as such is arguable neither justified nor effective.