

**Matter 1: Legal Compliance**

*Issue 1.1: Whether the Plan is legally compliant*

1. In our original Representations submitted in response to the Publication Planning Policy of February 2014 (ref “0” in the Council’s website to be referred to below as “our Representations”) we argued that the partial Review of the Core Strategy was not legally compliant for two reasons
  - a. First, that it was not in general conformity with the London Plan;
  - b. Second, that the Sustainability Appraisal process is flawed.

Conformity with the London Plan

2. Please refer to paragraphs 11-19 of our Representations.
3. The Council responded as follows [BAS 06/02]: *The Council has received a letter of compliance from the GLA. GLA’s Draft Sustainable Design and Construction SPG, July 2013 (page 12, 27 and paragraph 2.2.25) lists London Plan Policy 3.5 as relevant to basement development.*
4. IN RBKC ED/1 the Council answers the Inspector’s question re GLA confirmation as to compliance with the London Plan as follows *“Yes, the GLA has confirmed that the policies being reviewed are in compliance with the London Plan. The letter from the GLA in response to the February/March 2014 Publication Consultation is attached (Appendix 3). This has been submitted with the bundle of representations and is numbered 109 on the Index of Representations for Basements.”*
5. We have read the letter from the GLA, written in March 2014. It shows no sign that the GLA had been informed of our concerns and arguments (also raised in our September 2013 Representations<sup>1</sup>). None of this grapples with the points we have made.
6. In particular the reliance of the Council on the draft SPG of 2013 is entirely spurious. Plainly, the fact that the draft SPG listed Policy 3.5 as “relevant” to basement development does not begin to justify the contention that the criteria by which it is sought to control basement development are consistent with Policy 3.5, nor even that those criteria are relevant to, the objectives of Policy 3.5.
7. Considering the references to the draft SPG in detail
  - a. The only reference to London Plan policy 3.5 on pages 12 and 27<sup>2</sup> states *Where there is pressure for basement developments, boroughs should consider whether there are any particular local geological or hydrological issues that could particularly effect their construction, and adopt appropriate policies to address any local*

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<sup>1</sup> Listed on the Council’s website as Basement Force document 21.

<sup>2</sup> Pages 12 and 25 in the April 2014 SPG – document BAS 95

*conditions*. We are not aware that the individual criteria are in any way related to “local geological or hydrological issues ...”.

- b. Paragraph 2.2.25<sup>3</sup> is more consistent with our approach than that of the Council. There is no support within this paragraph for a cap on the proportion of the garden under which a basement lies. There is instead a suggestion, not taken up by the Council, for a requirement to provide soft landscaping over a proportion of the garden under which the basement lies.
8. Nowhere has the Council recognised the emphasis within the London Plan and SPG on providing for growth and on optimising the use of land. References to these imperatives are legion and no assessment of the conformity of a policy document with the London Plan can properly ignore them, as the Council has.
  9. We would usually accept the GLA’s view on general conformity, but where there is nothing in the way of a reasoned response to our arguments, we consider this inappropriate. Therefore, we maintain our case that the Core Strategy Partial Review is not in general conformity with the London Plan. Our principal reasons are that it is
    - a. Demonstrably “anti-basement development” for no reason which finds support within the London Plan. At the same time it runs counter to the presumption in favour of sustainable development, and to the policy imperative, repeatedly referred to within the London Plan and its SPG, namely to provide for significant levels of growth, and to optimise the use of land.
    - b. Based on a flawed interpretation of Policy 3.5 which can provide no support for the arbitrary and restrictive criteria proposed.

#### Sustainability Appraisal

10. Please refer to paragraphs 20-28 of our Representations.
11. There are two main points: namely, first, the Council has failed to assess reasonable alternatives, and second, it has failed to give reasons for rejecting them. The reasonable alternative of particular significance is a policy with criteria that regulate outcomes (e.g. identify where impacts will be considered unacceptable) [see Section 2 of our Representations] and not arbitrary inputs (e.g. prohibiting more than one storey).
12. The Council responded [in BAS 06/02] that a criteria-based policy such as that proposed above “... would leave all aspects of the policy open to interpretation offering no certainty to applicants or the planning officers. 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”.” [see under paragraph 5 of our Representations]
13. This, together with the other comments on our Representations confirms our view that the Council has not considered our suggestion as a reasonable alternative. If its reasons for

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<sup>3</sup> Paragraph 2.2.27 in the SPG April 2014 – document BAS 95.

doing so are found within its response to our Representations, they are so weak that they demonstrate in themselves that the failure to include a simple criteria based policy was unreasonable. Furthermore, these reasons are not found within the final SA [BAS 21] where they should be clearly stated in order that public consultation on the development of the Basement Policy can be meaningful and fully informed.

14. We rely on the cases referred to in our Representations. The SA in this case is considered flawed for the same reasons as given in *Heard* at paragraphs 62 and 66. Our proposed alternative is not an obvious non-starter. It is to the contrary, we suggest, the most obvious alternative, in the form of a criteria based policy designed to achieve the legitimate objectives of the Council's partial Review of its Core Strategy.
15. Accordingly, we maintain our case that the SA/SEA process is flawed and as a result the Plan is not legally compliant.

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

16. Please see our Representations paragraphs 1-4. We do not consider there is a need for a bespoke basement policy within the Core Strategy, but nor do we object to the policy on that basis.

*Issues 1.3-1.4*

17. We did not address these issues at any length in our Representations and accordingly do not do so in this Hearing Statement.

- END OF HEARING STATEMENT -