

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.

1. By way of summary, we firmly believe CL7 a. is not justified by the evidence, is not consistent with national policy, and will not be an effective means of achieving its stated objectives.
2. By way of context, we recall that planning is generally concerned with the balance of public and private interests. Subject to legitimate public interest issues, the character and treatment of a person's garden is a matter for them. There are many reasons for preferring a paved or tree-less garden which have nothing to do with the construction of a basement and which fall outside the reach of planning control.
3. Paragraph 17 asks what are the key reasons for the criterion and suggests that it may be paragraphs 6.11 and 6.12 of the Policy Formulation Report. We recognise that it is for the Council to answer this question and therefore we may wish to add to this Hearing Statement in the light of anything they say.
4. Paragraph 18 asks whether each of the reasons for the criterion is justified.
5. Our Representations have addressed in detail the question whether there is any link between the proportion of the garden lying at least one metre above basement development and the ability to deliver a naturalistic garden, to plant major trees, and to achieve a sustainable urban drainage system. We refer to paragraphs 35-51 (dealing with garden character, trees, and biodiversity), and paragraphs 249-264 (dealing with Sustainable Urban Drainage) of our Representations together with the supporting expert evidence which was shared with the Council at an early stage.
6. In response to paragraphs 35-51 the Council has referred to its Response to Arboricultural Issues [BAS 05/14]. We believe the best evidence is provided by the expert advice of arboriculturalists and not the anecdotal evidence relied upon in this "Response". We can confirm that Adam Hollis, whose expert opinion we provided to the Council as part of the Working Group, is familiar with soil conditions and planting constraints in London and other urban areas, and that his four summary points set out at paragraph 39c of our Representations apply and are valid in Kensington and Chelsea.
7. We have replied to the Council's Response to Arboricultural Issues [BAS 05/14] at appendix 1. The most significant points are:
 - a. Evidence of large (greater than 10 metres tall) mature trees growing successfully in containerised ground; significantly more restricted than a garden over even a moderate garden basement.
 - b.
8. We note too that the Council's arboricultural officer considered in 2007 that 1m was sufficient to "allow future flexibility in planting" [paragraph 38 of our Representations], a point not disputed by the Council.

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9. We also draw attention to the fact that the Council's anecdotal survey of rear gardens through the Borough does not show what the Council claimed for it. Where we show an improvement, the Council answers that "the policy is not based on a single case" and where our review showed that some had no basements at all "the objective of the report was to present evidence of a range of gardens". [in both cases see the RBKC Response to our Representations at paragraph 47].
10. The Council justifies reliance on the 44 examples permitted before the policy requirement of 1m soil above basements was introduced on the basis that the Council imposed a condition to the same effect prior to that time. We do not believe that the Council can say for sure that such a condition was imposed in each of those cases. If they can, then they would need to consider whether that condition was complied with and what the effect of development on that particular property was (e.g. did it have a naturalistic garden prior to development?). As far as we are aware that exercise has not been undertaken.
11. In short we maintain all our criticisms of this misleading and anecdotal source of evidence. The Council's reliance on photographs (almost 25% of which were taken during construction of the basement) in place of expert evidence demonstrates how genuinely weak is their case for this arbitrary and damaging criterion.
12. All of the Council's original and more recently added concerns on matters of planting, drainage and ecology can be addressed by good design. For example the recently added Council concern about trees in gardens over basements being containerised by the garden walls can be overcome by design. Structural openings can be formed in the walls below ground level - like underground windows - which would allow root growth between gardens. This design would often improve the opportunity for roots of large trees to pass between gardens compared to the existing condition without a basement and should therefore lead the Council to support basement development. At each turn the Council appears to be looking for new justifications to support its policy. In reality all of the Council's concerns can be allayed by good design and innovation.
13. Paragraph 19 refers to the Council's concern about carbon emissions. We reiterate our Representations at paragraphs 180-215 to the effect that the Council's evidence as to the lifetime carbon footprint of basement development is flawed and should not be used to impose stricter environmental controls on basement development than apply for above ground development. Please also refer to our Hearing Statement for Matter 9.
14. It is also hard to identify any logic to the argument that, even if basement development does have a higher carbon footprint per square metre than above ground development, it should be subject to a cap which is related not to its carbon footprint but to the area of the garden which is proposed to cover a basement.
15. In response to paragraph 20, the aims of criterion a. are flawed at their root. Any legitimate objectives of the policy are achieved by straightforward criteria such as those we have suggested.
16. Paragraph 21: we believe CL2 g iii and iv are appropriate criteria which need no strengthening.

17. Paragraph 22: we believe that including an exception within the criterion just demonstrates that the criterion is itself inappropriate, and would make the operation of the policy over detailed and unnecessarily complex. However, it is obviously less harmful than that proposed by the Council.
18. To provide evidence on these issues I will be attending the Hearing Session together with
- a. Adam Hollis, Arboriculturalist, Landmark Trees. Registered Consultant and Fellow of the Arboricultural Association, a Chartered Forester, Environmentalist and Surveyor with a Masters Degree in Arboriculture and 25 years experience of the landscape industry - including the Forestry Commission and Agricultural Development and Advisory Service. He is Chairman of the UK & I Regional Plant Appraisal Committee, inaugurated to promote international standards of valuation in arboriculture.
 - b. Jennifer Brookes BS, Civic Trees. Civic Trees leads the industry in transplanting mature trees, and has been in business since 1963. Jennifer has been in the horticulture industry since 2002, after graduating from Purdue University with a Bachelor of Science in Agriculture, specifically landscape-horticulture and design. She has extensive experience on landscape-installation teams and in the production zone of garden centres, as well as heading a design studio from 2007-2012. She has worked at Civic Trees for the past two years, transplanting semi-mature and mature trees, and installing both rootballed and containerized trees from whips to semi-mature.
 - c. Giles Sutton MSc MCIEEM CEnv, Ecologist, Director, GS Ecology Ltd. Chartered Institute of Ecology and Environmental Management and a Chartered Environmentalist with more than 10 years' experience working as a professional ecologist in both the public and the private sector. Giles has a BSc (Hons) in Agriculture and Environmental Science from the University of Newcastle upon Tyne and an MSc in Ecological Management from Imperial College London. He is the director and proprietor of GS Ecology Limited, an independent ecological consultancy based in Berkshire. Giles wrote the London Borough of Enfield's Biodiversity Action Plan and advises Reading Borough Council on the ecological impact of development and the management of its parks. He has extensive experience of dealing with biodiversity and planning issues, including undertaking hundreds of ecological surveys of development sites, and inputting into planning policy.
 - d. Michael Chendorain PE, Senior Hydrogeologist, Infrastructure London Group, Arup. Michael has been at Arup since 2012 and has worked on groundwater assessments and modelling, remediation, dewatering design, ground source heat pumps, deep geothermal assessments, environmental impact assessments, and recently on shale gas and unconventional oil and gas evaluations. He is a Professional Engineer certified through the California Board for Professional Engineers and was a post graduate Research Associate at UC Berkeley from 1996 to 1999. Michael has had multiple papers published within the fields of hydrology and hydrogeology - attendance to be confirmed on return from holiday.

19. Appendices:

- a. Appendix 1 - Reply to Council's Response to Arboricultural issues [BAS 05/14].

- END OF HEARING STATEMENT -