

Matter 5: One storey restriction

Issue 5.1: Whether CL7 b. and c. are justified by the evidence, consistent with national policy, and effective.

1. By way of summary, we firmly believe CL7 b. and c. are not justified by the evidence, are not consistent with national policy, and will not be an effective means of achieving the policy's 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 size of a person's property (residential or commercial) and its number of storeys are matters for them.
3. Paragraph 22 asks what are the key reasons for the criterion. 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 24 asks whether each of the reasons for the criterion is justified. We have understood that the number of storeys is limited for two principal reasons, namely an assumed correlation between storey numbers and (a) impact on the amenities of the locality during the construction phase (which in turn assumes that a greater number of storeys means a greater volume of excavated material and a lengthier period of excavation); and (b) issues of structural stability.
5. We believe there is no such correlation: both these issues are addressed by using high quality, considerate, contractors; both these issues are addressed by other regimes outside planning control. Our views are summed up in paragraph 75 of our Representations, namely "Quality and impact not size should be the measures by which the development is judged". In addition we address issues of impact on amenity at section 7 of our Representations [paragraphs 131-179] and of structural stability at section 12 [paragraphs 276-294].
6. We do not believe the Council's response diminishes the force of these arguments. It would seem from BAS 06/02 that
 - a. The Council has no particular argument with the good sense of paragraph 75;
 - b. The Council imposes a condition on granting planning permission that contractors are members of the Considerate Contractors scheme.
 - c. The Council takes enforcement action where CTMPs are breached. It would be helpful if the Council could provide more data on this: the number of breaches; the proportion of breaches which led to enforcement action; and the outcome of enforcement action taken. Without such data we will take the statement at paragraph 151 of BAS 06/02 as a statement of policy.
 - d. The Council is not claiming there have been wide spread health issues related to basements. (We say there is no evidence of any related health issues and this is not rebutted with any evidence).

- e. There is no rebuttal of our view that road safety problems are not a major concern for residents (see comment on paragraph 156 of our Representations and the lack of a comment on our paragraph 157). We do contend that poor quality contractors cause road safety problems by not complying with basement CTMPs, see page xx to appendix 1 to this hearing statement.
 - f. The Council relies on survey material to seek to establish a correlation between volume of extraction and lorry movements. This does not demonstrate a correlation between number of storeys and impact of construction on the amenity of the locality.
 - g. Thus there is no substantial response or dispute of our Representations at paragraphs 158 and 174. In short, we contend that the Council's own evidence suggests there is no clear correlation between basement size (volume) and duration of construction. Of course there is also no necessary correlation between number of storeys and the volume of the subterranean development.
 - h. The Council does intend the policy to prohibit any harm to road safety and disruption. Their comment that "the policy is the starting point and each case is assessed on its own merit" (see BAS 06/02 paragraph 167) is a profoundly flawed approach to the drafting of policy: the Development Plan is a framework for the delivery of sustainable development [NPPF paragraphs 150-154, in particular those two named paragraphs]. From this it is quite clear that, while other material considerations can justify decisions which do not accord with the Development Plan, the Plan should not be drafted on the basis that it will be departed from.
 - i. The Council may have misunderstood the force of paragraph 175 of our Representations. It is our contention that there is a great difference between the quality of the basement and the experience of neighbours where landowners and companies take a considerate approach. It is exactly our point that the Council cannot regulate this issue through the planning system.
7. It would seem from the Council's response to our Representations at paragraph 290 that they do not seek to justify the limit on storeys by reference to issues of structural stability. Therefore we say nothing further about that here.
 8. It would seem from the specific response to our comments on the Council's evidence on noise and nuisance¹ at BAS 06/04 that there is a large measure of agreement on this point.
 9. First, we have made an error in our paragraph 142 and 143 by misreading BAS 29 paragraph 1.5 [BAS 06/04 paragraph 1]. We misread that the 5,700 noise complaints were the total noise complaints received during the period that the 129 complaints about basement (given in the table at the end of BAS 29) were received, July 2013 to Sep 2013, which is wrong. In fact the 5,700 general / total complaints were received in eight months, April to November 2013.

¹ These are not, as the Council states at paragraph 141 of BAS 06/02 "noise and nuisance issues raised by Basement Force". It is the Council which raises noise and nuisance issues.

10. Correcting for our error means that:
 - a. Our paragraph 142 d should be deleted - in reality far more general noise complaints are likely to have been made over the 39 month period rather than over the 8 month period previously taken.
 - b. Our paragraphs 143 a, b and d remain correct.
 - c. Our paragraph c is wrong and most likely overstates the proportion of total complaints that are due to basement works. Assuming that 5,700 general / total complaints are received every 8 months then the percentage due to basement works is likely to be in the order of 0.5% (1 in 200 of all complaints).
11. Second, from section 2 it appears that the Council employs a Noise and Nuisance Team which is dedicated to addressing the risk of complaint in a proactive way, so as to ensure that the need for residents to use the Council's service is minimised. Thus it would seem that issues of amenity and nuisance are taken seriously by the appropriate authority within RBKC.
12. However, we do not accept the assertions made at 4.4 and 4.5 which appear simply to repeat the incorrect and unfortunate assumptions which have led the Council to promote this misguided policy.
13. We are not sure what the evidence underpinning 3.1 is, if any, and disagree that the Council has demonstrated that the "majority" are experienced and well run companies. We contend that it is at least likely that there are a significant number of poor quality contractors who pay little to no regard to CTMPs or other measures, including to health and safety and that this, rather than basement development per se, could be a, or the, most significant underlying cause of the problems faced by residents and others. We present the following additional evidence to support our view:
 - a. We completed a 45 minute drive through Notting Hill, Holland Park and Kensington between 8.15am and 9am on Wednesday 3 September 2014. The route was not planned with any knowledge of the location of current developments. RBKC basement CTMP general requirements are that deliveries and collections should not take place before 9.30am meaning that no deliveries or collections should have been taking place. Any deliveries or collections would almost certainly be breaches of a development's CTMP. **We identified six sites where deliveries or collections were taking place within this 45 minute period.** Information on each of these is given at appendix 1 to this hearing statement.
 - b. The Health and Safety Executive (HSE) completed safety checks on 107 basement sites across Hammersmith and Fulham, Kensington and Chelsea, and Westminster on 20 / 21 November 2013. Enforcement action was taken at 36 of these sites, 34%. The HSE press release is included at appendix 2 to this hearing statement.
14. . It would seem too that the majority of basement developments do not result in complaints to the Noise and Nuisance Team.
15. We note what is said about enforcement of the CTPM at 3.2, addressed above. Paragraph 3.3 responds to paragraph 147 of our Representations with speculation which we find

unhelpful (“Those comments may well simply be a reflection of the frustration residents feel...”). We do not know what “our 6.2” is or where to find it. We have direct experience of poor quality contractors working in the borough who do not comply with their CTMPs and have provided evidence of this.

16. Paragraphs 25 and 26 of ID/9A ask whether the restriction is too limiting, on the one hand, or too lax on the other. We consider that it is too limiting for the reasons given above.
17. Paragraph 27 asks whether the aims of the criteria could be achieved or satisfied in another way. Like the restriction on the extent of the garden under which a basement lies, we consider the criteria to be arbitrary and so flawed that it has no place in a Development Plan policy. Any legitimate objectives of the policy are achieved by straightforward criteria such as those we have suggested.
18. Paragraph 28: 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.
19. Appendices:
 - a. Appendix 1 - Basement developments - CTMP breaches on 3 Sep 2014.
 - b. Appendix 2 - HSE press release - "One in three basement projects fail safety checks"; 17 Dec 2013.

- END OF HEARING STATEMENT -