

RBKC basement Policy Review  
Proposed Main Modifications ID / 23  
Austin Mackie Associates Ltd for Walton Wagner  
Rep Number 183

Introduction

The proposed modifications do nothing to address the principle objections that our Client has raised and which remain outstanding.

We note that both the LPA's website and the introductory paragraph to ID/23 suggest that these Main Modifications:

*...were discussed and agreed by the Council during the course of the above hearing sessions.*

For the avoidance of doubt it should be emphasised that the content of the modifications were not agreed by any party, simply that these were areas the Council indicated it was willing to consider submitting modifications on. There should be no suggestion that these modifications have been pre-agreed either by objectors or the Inspector.

The following comments set the context for our responses to the Mods as set out below.

The Inspector may be aware that following the last EIP session, Elected Members of the LPA's Planning Committee took it upon themselves to reverse the LPA's active policy position, and refused a number of schemes on the basis of emerging policy. Despite clear advice from Officers that there remained substantial unresolved objections and that the main Modifications did not address these outstanding objections, Committee Members chose to apply full weight to emerging policy, without considering whether any weight should be applied to adopted policy, indeed they ignored adopted policy altogether.

The reasons for the LPA's revised policy stance included the following statements from Members:

*"the substance of policy had not been challenged" and therefore they were entitled as a Committee to "give more weight" as "it has survived very well".*

Whilst the Committee's decisions are not a matter for this Inspector, we are concerned that the position adopted by Committee is intended in-part to bring pressure upon the Inspector to support the position adopted by the LPA. This would clearly not be an acceptable position to adopt and relies upon a gross misrepresentation by Members of the position of draft policy thus far.

It is, however, relevant for the Inspector to note the substance of one recent reason for refusal that relies upon draft policy CL7, in effect an indication of how the LPA proposes to refuse future development. A copy of the decision letter (and the officer recommendation) is attached. The reason for refusal of the double basement scheme states:

***"The proposed basement, because of the depth of the excavation, is contrary to emerging Core Strategy Policy CL7."***

It is clear that even under the proposed new policy, the Council is unable to identify any specific harmful effects arising from development and that in relation to, for example, controlling basement depth, there is no justification or need for control.

Despite seeking to apply draft CL7, the limited wording of the reason for refusal reflects the fact that the Council has no evidence to suggest that there would be harmful impact arising from (i) construction impacts on site (ii) construction traffic impacts off-site.

It is thus clear that in operation, relevant elements of draft policy CL7 represent no more than a blanket ban on a particular type of development with no evidence of harmful impacts on either an individual or cumulative basis.

This process is fundamentally contrary to the NPPF and the broader principles of growth in the economy as set out in Government statements. If adopted, what is to prevent this, or the suggested large number of London Boroughs monitoring this process, to not only prevent basement development (which is after all principally no more than one type of householder development), but to then adopt similar (supported by no evidence) grounds to begin to oppose many other forms of development, much of which is a fundamental element of the Government's economic growth strategy and which is necessary to meet identified development targets and regeneration objectives?

Such an anti-development policy position can have no basis in planning law or policy and risks setting a highly dangerous precedent that could have a cataclysmic impact upon development of all types.

The LPA's Modifications s are in red/black, ours are in blue.

34.3.47

'Rules' or 'Requirements' or 'whatever' – the policy still sets out an unnecessarily rigid stance which is contrary to NPPF. The modifications would need to go considerably further, for example:

Basements, *irrespective of their scale, make efficient use of urban land and* are a useful way to add extra accommodation to homes and commercial buildings. Whilst roof extensions and rear extensions add visibly to the amount of built development, basements can be built with much less, *or as is often the case, no* long term visual impact – provided *that regard is had to* appropriate ~~rules~~ *requirements* ~~design guidelines are followed~~. This policy sets out these ~~rules~~ *requirements* ~~design guidelines are followed~~.

34.3.57

The modification offers limited additional flexibility and would do little to address one of the LPA's principle objections to the depth and footprint of basements; that of cumulative off-site impacts. The policy, even as modified, would allow large urban blocks which could have many many residential neighbours, in which case it serves no beneficial purpose in terms of immediate neighbours affected.

Arguably, small individual sites are far more discreet. Further, having regard to the character of the Borough, the number of circumstances in which there is likely to be a wholly commercial site with no residential neighbours is very limited. The amendments do

not explain why larger sites, arguably with greater flexibility than smaller sites, should be allowed to avoid, for example, controls that seek to deliver landscape or drainage benefits.

The assumption that larger sites offer amenity advantages over smaller sites is not proven. For example, it is unlikely that a vehicle would be able to enter and leave in forward gear, so there would be more manoeuvres and for example, reversing sirens that would not necessarily be experienced on smaller sites. Larger sites often still involve pavement closures and on-street servicing, often involve a greater number and frequency of lorries. There is simply no evidence before the EIP to suggest that smaller sites lead to greater on-street impacts. If, as is suggested below, a formal CTMP will not be required until planning conditions are requested, how can it be assumed that larger sites will have a lesser impact?

The modifications do not justify controls over depth and footprint being maintained on smaller sites and does not represent any meaningfully balanced approach.

~~On larger sites, basements of more than one storey and greater than half the garden or open part of the site may be permitted in certain circumstances. These will generally be new developments located in a commercial setting or of the size of an entire or substantial part of an urban block, and They should be large enough to accommodate all the plant, equipment and vehicles associated with the development within the site larger sites can and offer more opportunity to mitigate construction impacts and carbon emissions on site.~~

In the context of our outstanding objection to this element, we would suggest the following alternative:

Applicants will be encouraged to examine how the impact of construction processes and traffic on-site, within the immediate vicinity and wider street network can be minimised. On larger sites, applicants will be encourage to identify how constructions processes such as loading and unloading can be contained within the perimeter of the development site to reduce on-street impacts.

34.3.58

We support the clarification, but would suggest some minor clarification.

Where a basement has already been implemented following the grant of planning permission or through the exercise of permitted development rights, the policy does not allow (i) further basement floors or (ii) basement extensions that would exceed 50% of the garden or open part of the site, ~~or not exceed the projection of the existing basement if this is greater than ##%. This first provision would not apply to a basement which forms part of the original property, or where a later addition, was constructed prior to 1 July 1948.~~ This is to ensure consistency and fairness of approach.

The reference to rearward projection is a necessary addition as there would be no point in restricting the projection of a new sub basement level -2 to 50% of an open area if the existing level -1 above it already exceeded that limit.

34.3.66

Whilst the proposed modifications improve the wording slightly, they still in our view seek to exert unnecessary control over lightwells etc in all areas, despite the fact that outside say conservation areas or areas of notably uniform character, there may be capacity to allow alterations to dwellings without adversely affecting the character of an area.

In recent months the LPA has refused (including Members overturning Officer recommendations) a number of schemes referring to the appearance of lightwells despite there being no objective assessment of their character. The existence of this test would allow the LPA to object to otherwise acceptable basements on upon highly subjective grounds in circumstances where design considerations are less significant. In effect the test is a 'back door' route to opposing a greater number of basements than would otherwise be possible.

We would suggest:

Introducing light wells [into sensitive areas such as conservation areas or streets of uniform character](#) where they are not an established and positive feature of the streetscape can harm the character or appearance of an area. [Other less sensitive locations will be more capable of accommodating new external features.](#) Where external visible elements are [allowed proposed](#), they need to be ~~located near the building,~~ and sensitively designed [and sited](#), ~~reflecting~~ and [where necessary, respecting](#) the existing character and appearance of the building, streetscape and gardens in the vicinity.

34.3.70 / 73

The proposed content of the SPD is somewhat unclear. Previous SPD's, be they adopted or draft have contained far more guidance than is suggested in these few bullets, which suggests that the future SPD will exceed these topics.

We note that the Council is willing to allow, for example, structural tests to continue to be addressed through other legislation (with the SPD indicating how it expects the planning process to offer a necessary level of comfort) but; as it has admitted through the EIP, considers that it is justified in controlling what are no more than temporary effects such as construction noise or highway traffic through a planning policy that cuts across the very principles of National Policy and other legislation.

It is not appropriate that the Council 'cherry pick' which other legislative controls it will trust and those which it will seek to supplant through planning policy.

At recent planning committees, (post the EIP sessions), Council officers have clearly stated to Members that whilst a CTMP would not initially be a reason for refusal, it can refuse to grant permission for a CTMP that is submitted pursuant to a condition. Again this offers a back door / SPD route to preventing development from taking place.

It is suggested by the Council that a CTMP should, for example, have regard to the cumulative impacts of other nearby construction works or even the activities of statutory undertakers. Such a requirement is onerous and could lead to CTMP refusals on non-planning grounds.

No individual applicant can necessarily obtain clarity on what is taking place or what may be planned at any time between permission being granted and development commencing. One applicant has no control over when another permission commences or whether they keep to a suggested programme. Many 'active construction sites' which might involve say hoardings and traffic could be related to works that do not require planning permission such as the comprehensive internal refurbishment of a building, which can take place over a long period. With no obvious planning records an applicant could simply not know what was planned. Utility companies rarely publicise their planned programmes and often commence emergency works without notice. Again it would be impossible for an applicant to know about such plans.

The effect would be to require an applicant to submit a CTMP at the very last minute before commencing works, which is simply not practical with the need to book contracts well in advance.

What if another site is developed more slowly than anticipated, might the Council refuse another CTMP in the street due to cumulative impacts and risk (secure) an application lapsing? We know from comments made by Members at recent Planning Committees that the CTMP route is being considered as a further option for preventing schemes that otherwise accord with policy.

These circumstances all illustrate the risks associated with either policy or even the SPD allowing CTMP's to be a post-planning test of acceptability.

There would be nothing to stop the LPA refusing CTMP's submitted pursuant to conditions on matters wholly unrelated to planning, such as traffic in an adjoining street.

It is simply not acceptable for even an SPD to allow CTMP's to be used as a means of delaying one type of development development that otherwise satisfies planning policy, in effect introducing Environmental Health and Highways legislation into the planning approval process after the principle of development has been permitted.

We suggest the following....

A draft construction traffic management plan (CTMP) will be required to be submitted with the application and where planning permission is granted the Council will attach a condition requiring a full final-CTMP to be submitted. The CTMP will not be used to introduce non-planning tests of acceptability post the grant of planning permission, but will be expected to demonstrate how the applicant will, through the implementation of the scheme, seek to manage where possible the overall impact of development as far as is possible. The CTMP should consider address issues relating to highway safety, the free flow of traffic, noise associated with construction vehicles and the availability of parking. Detailed matters to be considered will include vehicle stationing, manoeuvring and routeing, parking suspensions and issues in relation to residential and workplace disturbance, arising from vehicle stationing, loading and unloading and movement. Whilst the Council accepts that an individual applicant has no control over other developments or wider highway conditions the CTMP should, wherever practicable, take into account and allow for other active or permitted construction works nearby (including those of utility companies). Whilst the Council will not reject an individual CTMP due to matters beyond an applicant's control, it represents a useful tool for exploring related effects and the Council expects any relevant conditions within the vicinity to be explored as far as possible and where appropriate, liaison between different developers and undertakers to take place.

#### Criterion CL7(h)

~~within areas of heritage sensitivity or uniform built character~~ not introduce light wells and railings to the front or side of the property ~~unless they are already~~ where they would seriously harm the character and appearance of the locality, particularly where they are not an established and positive feature of the local streetscape; ~~within other locations where greater flexibility may exist, to ensure that they are sensitively designed.~~

#### Criterion CL7 (l)

In accordance with our comments on 34.3.70 / 73 above, we consider that this criterion imposes inappropriate non-planning controls when assessing the form of a basement development. The matters listed are not operational or occupational tests, but in effect construction tests. The proposed amendments do nothing to remove the unacceptability of the criterion.

Even if the Council reduces construction activity by limiting the depth and projection of basements, it is in effect still seeking to impose yet further construction activity tests, despite these not applying to other forms of development.

For example, if the 'water board' were to dig up a road or TfL were to divert a bus route, the Council would arguably be able to refuse a CTMP and thus block a basement from proceeding, even if an applicant had limited or single choices over, for example, access routes.

This could affect a small basement scheme on one property, but do nothing to stop a large partial demolition, new extension storey extension and full internal refurbishment next door.

The Inspector should not be drawn in by any suggestion that the Council would be reasonable. The very fact that Officers seek to introduce non-planning tests, together with clear statements from Members that they can view CTMP's subjectively 'as they wish', demonstrates that a reasonable approach cannot be expected. The criterion simply introduces a wide range of non-planning tests over which an applicant has no control.

It also introduces considerable uncertainty. The only option is for the criterion to be deleted and for the SPD to be taken forward as highlighted above.

~~ensure that traffic and construction activity does not cause unacceptable harm to pedestrian, cycle, vehicular and road safety, ; adversely affect bus or other transport operations (e.g. cycle hire), significantly increase traffic congestion, nor place unreasonable inconvenience on the day to day life of those living, working and visiting nearby;~~

#### Criterion CL7 (n)

The SPD is to state that structural reports will accompany but not be part of an application, yet the criterion effectively demands evidence that there will be no harm; so in effect the Council takes at face value each and every structural report?

It is strange that the Council will adopt a position of trust in relation to fundamental matters such as structural impact and the stability of neighbouring buildings, but at the same time feels the need to intervene far more closely on less significant, indeed non-planning matters such as construction noise and the route of lorries some distance from the site etc etc.

Again this demonstrates that the Council is cherry picking which non-planning controls it will trust and those it wishes to unjustifiably usurp upon principally household developments.

We offer no modifications to CL7(n).