

Our Ref : KOC/ab/071114

7 November 2014

Mr D Vickery DIPTCP MRTPI
The Planning Inspectorate
c/o Royal Borough Kensington & Chelsea
Kensington Town Hall
Hornton Street
London W8 7NX

Dear Mr Vickery

Re: RBKC – Independent Examination – Partial Review of Core Strategy – Basement Submission Planning Policy

With reference to the above and further to the recent conclusion of the examination in public we write to make further representation in connection with the following documents:

1. ID/25 – Correcting Addition to Sustainability Appraisal/Strategic Environmental Assessment September 2014
2. ID/23 – Main Modifications to Basements Submission Planning Policy
3. ID/24 – Policy CL7 Basement Monitoring Indicators

A significant number of matters were discussed during the Examination in Public (EIP) and it is not the intention of this submission to revisit evidence previously submitted although naturally there is a cross-over between previously submitted evidence and the modified policies.

For the record we rely upon all of the evidence and reports that we have previously submitted and will now turn to the modified documentation upon which comments have been invited.

Correcting Addition to Sustainability Appraisal/Strategic Environmental Assessment, September 2014

The Royal Borough of Kensington & Chelsea (RBKC) stated during the EIP that they have carried out **no assessment** of the economic impacts of the proposed Basements Submission Planning Policy.

Following a Freedom of Information Request made by Cranbrook Basements (CB) on the 30th June 2014 (see Appendix 1) RBKC confirmed in writing that they had carried out no economic or financial calculations to calculate the impact that the proposed Basement Planning Policy would have upon the local or wider economy.

The National Planning Policy Framework (NPPF) contains 45 references to the economic impact of planning, stating at Paragraph 19

“significant weight should be placed on the need to support economic growth through the planning system”.

Within the NPPF there is specific reference to plan-making and in developing Local Plans – Paragraph 152 makes the following statement,



FS 39931



“Local Planning Authorities should seek opportunity to achieve each of the economic, social and environmental dimensions of sustainable development..... significant adverse impact on any of these dimensions should be avoided”

At Paragraph 158 of the Framework Local Authorities are required to use a Proportionate Evidence Base when developing local plans. Specifically, Local Authorities are required to

“ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area”.

The failure by RBKC to carry out any economic research into the impact of the proposed Basement Policy fails to meet the requirements of the NPPF – namely, that such research and evidence gathering should take place and provide the foundation and information required to enable the objective development of appropriate planning policy.

At Paragraph 182 of the framework under the heading Examining Local Plans – Local Authorities are required to demonstrate that in submitting a plan for an examination it is “Sound”.

The criteria is as follows:

- **Positively Prepared** – *the plan should be prepared based on a strategy which seeks to see objectively assessed development and infrastructure requirements including un-met requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.*

The proposed Basement Planning Policy has **not been positively prepared** because having failed to carry out any assessment of the economic impact of the policy proposals it is automatically impossible to carry out an objective assessment of development and infrastructure requirements due to lack of inaccurate information. NPPF Paragraph 182

- *The Plan should be the most appropriate strategy when considered against the reasonable alternatives based on proportionate evidence.*

The proposed Basement Planning Policy is therefore **Unjustified** because RBKC have not carried out any assessment of the economic consequences of the proposed policy and therefore the plan cannot be “based on proportionate evidence”. NPPF Paragraph 182

- *Consistent with National Policy – the Plan should enable the delivery of sustainable development in accordance with the policies in the framework.*

The proposed Basement Planning Policy is therefore **Inconsistent with National Policy** because if implemented it will prevent what might otherwise be a sustainable development due to the application of blanket restrictive policies which have been determined in the absence of proportionate evidence.

As a consequence of the failure by the Local Authority an economic impact assessment of their new planning proposals it is certain that if implemented the restriction of basements to a single storey coupled with the restriction of garden basements to not more than 50% of garden area will result in the destruction of value which in turn will prevent sustainable development despite the requirements of the NPPF at Paragraph 17 under the heading of Core Planning Principles – Planning Policy should

“Proactively drive and support sustainable economic development....”

The economic consequence of effectively banning basements of a greater depth than a single storey and restricting basements to no more than 50% of garden area will be to drive down the value of residential and commercial property by restricting what is undoubtedly highly sustainable development.

The destruction of value which will inevitably flow from the restrictions proposed by RBKC will discourage and prevent the redevelopment of properties which are possible under the current rules.

The significant reduction in investment which will flow from the highly restrictive policies will stifle the local economy, lead to loss of employment both in terms of the construction process and harm the long term employment prospects for the area quite simply because development schemes will become non-viable. It is already acknowledged by RBKC that 75% of the Borough is designated a Conservation Area, extensions and alterations above ground are already very severely restricted.

The key issue here is that RBKC are seeking to implemented a highly restrictive planning policy which will inevitably have consequences for sustainable development but there has been an absolute failure by RBKC to meet the requirements of the NPPF to positively and objectively prepare local plans as this has been rendered impossible due to the lack of any economic consideration.

Carbon & Emissions

RBKC have relied upon two reports produced by Eight Associates to inform the proposed Basement Planning Policy.

The first Eight Associates Report was produced in 2010 and is entitled “Life Cycle Carbon Analysis of Extensions & Subterranean Development in RBKC”. This report informs current basement policy within RBKC.

Critical analysis of that report by leading industry specialists resulted in the admission by both RBKC and Eight Associates that the report was fundamentally flawed and inaccurate.

The admission is contained within (Appendix 2) RBKC Document BAS 05_01 Page 1 Numbered Paragraph 79, Where RBKC make the following statement with regard to the Eight Associate Report,

“the Council accept that the (Eight Associates) report had some arithmetical errors, was out of date and relied upon a small number of case studies. As a result this report was superseded by the Life Cycle Carbon Analysis, Eight Associates, February 2014”.

RBKC have stated that Eight Associates original report was flawed, inaccurate and contained arithmetical errors. As such that report cannot be relied upon.

As part of the evidence base used by RBKC in attempting to implement change to the current Local Plan they commissioned Eight Associates to produce a further report – Reference BAS 38 – Life Cycle Carbon Analysis, Eight Associates, February 2014.

The Eight Associates Report was subject to a painstaking analysis by the leading international sustainability consultancy, Waterman’s Associates who were highly critical of the Eight Associates methodology and findings.

Waterman's carried out their own technical review which demonstrates that basement construction is no more carbon intensive than above ground extensions or other types of building. This conclusion was endorsed and supported by other independent expert contributors at the Examination in Public.

During the Examination in Public the Eight Associates Report was once again found to be inaccurate and contained arithmetical errors.

Representatives of Eight Associates issued a formal apology to the Examination for the errors and inaccuracies contained within their report.

Eight Associates then issued a written apology – (Appendix 3) – by email within which they

“took full responsibility and apologised unreservedly”.

Eight Associates have also stated within their discredited report that a number of case studies were relied upon and that **“construction details in the desired level of detail were not available for RBKC for most of the project”.** (Appendix 3)

Eight Associates have now produced two reports both of which are accepted by RBKC and Eight Associates to contain not only *arithmetical errors* but also they have been produced whilst relying upon *insufficient construction information*.

Clearly the information produced by Eight Associates cannot be regarded as a “*Proportionate Evidence Base*” as required at Paragraph 158 of the NPPF and for the Local Authority to have relied upon it in making their plan it fails to meet the requirement at Paragraph 182 to be justified given that it is *not based upon proportionate evidence*.

Hydrology – Surface Water Drainage

In producing the proposed modified basement planning rules RBKC have given considerable weight to their unsubstantiated concerns relating to groundwater movement and flooding.

In evidence to the Examination in Public – RBKC confirmed that they had not retained any specialist professional hydrologist and advised them on either groundwater movement or flooding despite the very significant weight which they had given to this issue.

It is wholly unreasonable for RBKC to seek to restrict basements without having a credible or proportionate Evidence Base upon which to consider the matter.

RBKC have produced no professional evidence or reports prepared by a suitably qualified Hydrologist to support their concern relating to unsubstantiated groundwater problems

In response to a Freedom of Information Request RBKC have confirmed that they have not received advice from a Chartered Hydrologist or other formally qualified groundwater expert to justify their requirement that at least half of each garden should be retained to allow water drainage to the upper aquifer – please refer to Cranbrook Basement submission (Appendix 4) *Document 1 – RBKC Response to Freedom of Information Request – Page 14 Item 6*.

RBKC has confirmed in writing and stated at the Examination in Public, that they have relied entirely upon Alan Baxter Associates in connection with all groundwater related matters – despite the admission by Baxter's that they are not professionally qualified to comment on groundwater related issues.

During the EIP – Mr Jim Gardiner, author of the Alan Baxter Report relied upon by RBKC, stated that he “*was not an expert in Hydrogeological matters and would usually retain a qualified specialist to advise on those matters*” although in producing his report he had failed to do so.

In direct questioning at the EIP Mr Gardiner stated that in all the basements Alan Baxter had Designed and Built across RBKC he had not experienced any problems with groundwater.

RBKC have confirmed in writing that the report Authors for Alan Baxter Associates do not hold any professional Hydrogeological or Groundwater related qualifications that would enable them to comment at an expert level on subterranean water related matters – (Appendix 5)

Alan Baxter Associates also confirm in writing that they have carried out no scientific assessment or calculation of garden areas that should remain undeveloped – (Appendix 6) - Cranbrook Document 35 – RBKC Response to Draft Policy – March 2013, where Baxter’s make the following statement regarding restriction on garden basement size

..... it is a “rule of thumb... the key issues are to allow some garden area to drain any rainwater to the upper aquifer.... the 50% garden coverage figure is being used by other boroughs so this on its own will help to justify this as a figure which is generally acceptable”.

The statements made by Alan Baxter Associates which have been relied upon by RBKC in policy formulation cannot be regarded as evidence because they have not been produced by professionally qualified experts following a considered review of all of the issues.

As admitted by Baxter’s they have simply used a **rule of thumb which is wholly unacceptable** in determining Local Plan Policy not least because it fails to meet the requirements of the NPPF at Paragraph 182 that **to be justified the plan must be based upon a Proportionate Evidence Base.**

To address the issue of groundwater movement and surface water drainage Cranbrook Basements commissioned a report by the highly respected Environmental Protection Group (EPG) whose author Mr Steve Wilson BEng MSc CEng MICE CEnv CSci MCIWEM FGS ROGEP is a leading consultant to DEFRA on draft National Standard for SUDS which will shortly be introduced across England and Wales

The conclusion of the EPG report – (Appendix 7) - is that there is no reason or evidence to justify the implementation of a policy to restrict basement size within a garden below 85% based upon either surface water or below ground water flows.

The EPG report concludes that:

“the existing requirement to limit basement to 85% of the garden area is more than sufficient to allow reasonable SUDS provision and aquifer recharge on most sites”.

The EPG Groundwater Report is endorsed by the following fully qualified professional experts:

- Steve Wilson BEng MSc CEng MICE CEnv CSci MCIWEM
- Anthony McCloy BEng CEng MIEI
- Andy O Dea MSc BAI BA DIC CEnv MIEEnvSc FGS
- Nick Langdon MSc BEng DIC CEnv CEng FICE FGS

RBKC have failed to produce a single case study where groundwater problems have arisen as a consequence of Basement construction.

In June 2008 RBKC instructed international experts ARUP Geotechnics to produce a detailed report on Subterranean Development within the Borough. Please refer to (Appendix 8) – Original Submission to Examination by Cranbrook Basements – Document 3 – ARUP Geotechnics – RBKC Town Planning Policy on Subterranean Developments.

The detailed report by ARUP to RBKC focuses specifically on the issue of groundwater and contains the following statements, (Appendix 8)

“Groundwater where it is present and if it is moving simply finds another route if it becomes blocked by a subterranean structure at a particular location”.

“It is understood that, within the Borough, it has been suggested that it may be useful to require subterranean developers to leave a buffer of soil between adjacent basements in order to enable groundwater to flow around and between individual basements. This provision is unlikely to be necessary as the groundwater in the upper aquifer can tend to find an alternative route even under obstructions as large and entire city blocks”.

Section 7 Conclusions – Arup Geotechnics

“In general where the sub surface conditions are not unusually adverse flowing groundwater will usually simply find an alternative route when it meets an underground obstruction and static groundwater will redistribute itself. It is therefore likely that in general the effect of a new basement on groundwater levels will be relatively small and may be less significant than natural seasonal or other variations in the groundwater table.”

The conclusions of the ARUP Report to RBKC are clear – groundwater and groundwater movement should not be used as a reason to restrict size or depth of basement construction below the existing policy limits.

RBKC have not relied upon a proportionate evidence base as required under paragraph 182 of the NPPF and consequently the Policy Modifications are **Unjustified**

Construction Impact

RBKC rely upon BAS 38 which is an internally produced document “Environmental Health – Basement Works” – this is the entire RBKC “evidence base” for restricting basements based on Construction Impacts.

The document is factually inaccurate – to a large extent this point has been accepted by RBKC – Please see (Appendix 9) – Email from Jonathan Wade RBKC

At the EIP the Inspector instructed RBKC to respond to the detailed analysis and criticism of the Environmental Health Department’s evidence of complaints – See Inspectors Get Backs – Item 11

The detailed Report and Analysis of the RBKC Complaints Evidence Base is contained within (Appendix 10) and can be summarised as follows

- 54 Alleged Complaints over a 4 Year Period – this is a little more than **one complaint per month** that Environmental Health receive in relation to Basements

- 28 of the alleged complaints are **factually disproven** by analysis of dates and publicly available records – Please refer to RBKC Planning Website
- 23 of the alleged complaints **Pre-date the Grant of Planning Consent** and/or Approval of Planning Conditions
- 2 of the alleged complaints relate to projects that do not contain a basement
- 2 of the alleged complaints relate to projects that did contain a Basement – but where works had physically not started
- 1 alleged complaint – simply detailed that a neighbour had called Environmental Health to state that construction works had started
- Of the 54 alleged complaints only 12 Schemes were standalone Basements –
- The evidence shows that in these cases a significant majority of complainants had failed to distinguish between the works that actually related to the wider approved scheme rather than actual Basement Construction

This confusion is understandable given the Statement by ARUP – in the Document - Arup Geotechnics - RBKC Town Planning Policy on Subterranean Development - Page 23 - Paragraph 5.4 where they equate construction impact to that of traditional above ground Residential Construction. (Appendix 11)

Clearly on an evidential basis document BAS 38 is deeply flawed and unreliable – as such it should be afforded no weight.

Between April and November 2013 RBKC received 877 Construction Complaints – but Environmental Health report that only 9 relate to a Basement (BAS38).

Any proposal to restrict basements based upon the almost non-existent level of complaint cited as evidence in BAS 38 – would be wholly disproportionate given that all construction leads to some degree of temporary inconvenience – The Local Authority have produced no evidence to justify the very significant restriction on Basement Construction based upon temporary inconvenience

RBKC Planners are seeking to restrict basement construction at a Planning Consent level – simply because they are not satisfied that the mechanisms already in place and authorised by alternative legislation are being adequately enforced and operated by the relevant authorities – such an approach is *Ultra Vires*

All construction leads to temporary inconvenience during the construction phase and this matter was specifically addressed by Lord Justice of Appeal, Sir Nicholas Underhill, who ruled upon the issue of inconvenience during construction when considering an Application for Judicial Review of a Decision by RBKC to grant Planning Consent for a basement.

In his Judgment Lord Justice Underhill made the following statement – (Appendix 12) Cranbrook original Evidence Submission Document 5 – Judicial Review Judgment – Mr Justice Underhill – Spiro v RBKC.

“I do not underestimate the disruption which the carrying out of the development for which permission has been given is likely to cause the Claimant..... for what it is worth the Claimant has my sympathy. But it is a

fact of life that in urban environment, development in neighbouring properties will from time-to-time cause real disruption to neighbours. That is not a reason for refusing the Grant of Planning Permission”.

RBKC do not have a credible evidence base to justify the significant restrictions proposed – this is contrary to the requirements of NPPF Paragraph 182 which requires Local Authorities to be Justified and based upon proportionate evidence

Trees – Future Planting

RBKC state that they have concerns over future tree planting within gardens that contain a basement. This is a key reason why they wish to restrict basements below gardens to a maximum of 50% garden area

In reaching this Policy Decision – RBKC rely upon the report by Alan Baxter Associates and the statements contained therein that relate to trees.

On 18th September 2013 – RBKC confirmed in a written response to Freedom of Information Request (Appendix 13) that the Authors of the Alan Baxter Report held no Arboricultural qualification that allowed them to comment professionally on tree related matters.

RBKC has one further piece of evidence that it relies upon in reaching decision to restrict basement size within gardens – BAS 35 – Trees and Basements.

RBKC has failed to produce evidence of **a single case** where a tree has been harmed as a consequence of basement construction.

RBKC has failed to produce any evidence of a single location where it has not been possible to plant a Tree above a garden basement

Within Document BAS 35 – Tree’s and Basements – Local Authority Tree Officers make the following statements:

- **New Tree Planting** “ *It is certainly possible to plant tree’s within 1m of Soil ”*
- **Summary** “ *It is difficult to argue that tree’s will not survive in 1m of Soil ”*

Cranbrook Basements commissioned an initial Expert Report written by Jeremy Barrell - BSc FArborA DipArb CBiol FICFor FRICS (Appendix 14) which reaches the following conclusions:

Please note that Jeremy Barrell is an invited member of Steering Panel producing BS 8545 on Tree Production and Planting

- RBKC has not provided any compelling evidence or credible reasoning to justify its position that a new upper limit of basement coverage of 50% of the garden area is now necessary, compared to the existing 85% rule; or that that such an approach with a 1m depth of soil above will not sustain substantial mature trees; or that excavating beneath existing trees is not acceptable.
- The apparent failure of RBKC to seek professional advice on the tree issues has resulted in a misleading position based on lay opinion to influence the emerging policy.

There are three main areas where the lay analysis of the tree issues was flawed because there was no credible evidential support for:

- a) Changing the maximum basement area coverage of gardens from the current limit of 85% down to 50%;
- b) The RBKC position that a depth of soil of 1m above basements will not sustain substantial mature trees, and
- c) The RBKC position that excavating beneath existing trees is not acceptable.

Cranbrook Basements commissioned a second Expert Report written by Julian Forbes-Laird-BA(Hons), MICFor, MRICS, MEWI, M.Arbor.A, Dip.Arb.(RFS) (Appendix 15) which reaches the following conclusions:

Please note that Julian Forbes Laird is Technical Editor of BS 5812 – Tree’s in Relation to Construction

RBKC supporting document Trees and Basements

“ My review of the Trees and Basements document, although it purports to set out an evidential case against those matters relating to basements with which RBKC takes issue, in fact it does no such thing. Instead, it is effectively an opinion piece which deserves to be afforded very little weight. In truth, the broad conclusions of sections 2, 3 and 4 effectively endorse case by case assessment as the correct approach, and on this principle I concur ” – Julian Forbes-Laird

RBKC Draft Core Strategy Policy CL7

“ Draft Policy CL7 is supported by a Reasoned Justification. The text of this relies in part on the Trees and Basements document referred to already, which it cites as though it were some form of authority. Clearly, one internally produced document praying in aid a second such document (with in all probability common authorship), entirely lacks credibility ” – Julian Forbes Laird

In summary – RBKC accept they have no evidence of any harm being caused to trees as a consequence of basement construction and RBKC Tree Department agree that trees can be planted in 1m of soil and survive.

Clearly in the absence of any evidence of short or long term harm to trees - it is wholly unreasonable to reduce basement size within gardens from the current 85% to a new lower limit of 50%.

The proposal is an unjustified restriction on what is clearly a highly desirable form of sustainable development and as such fails to meet the requirement of NPPF.

Biodiversity

RBKC state they have concerns over potential negative impacts on biodiversity within gardens arising as a consequence of Basement Development.

RBKC agree in writing that Basement Construction has not led to a reduction in vegetated area within London Gardens – Appendix 17) Response to Freedom of Information Request FOI 2014 804

RBKC accept that they have no evidence of any harm whatsoever being caused to Biodiversity as a consequence of Basement Construction they make the following unsubstantiated statement:

“It is considered that in this Borough constructing basements under a maximum of 85% of gardens.....can change the composition of the gardens permanently and contribute to the further decline in vegetation”

A request was made to RBKC under Freedom of Information dated 24 June 2014 – to produce evidence to substantiate this extremely serious claim – RBKC advised that there is no evidence save the report within which the entirely unsubstantiated claim is made – (Appendix 17) – Response to Freedom of Information Request FOI 2014 804.

Cranbrook Basements instructed the highly regarded International Experts - AMEC Environmental & Infrastructure UK to review the report “Impact of Basement Development on Biodiversity” produced by RBKC.

The AMEC Report was produced by highly qualified professional expert - Amec Associate Director Emma Toovey – MSc BSc CIEEM – currently Project Leader for Ecology Impact Assessments at four Nuclear Power Stations Sizewell, Hinckly, Dungeness and Bradwell.

Conclusions of the AMEC report as follows: (Appendix 18)

It is concluded the need for a new policy to restrict basement development to a maximum of 50% of back gardens and no more than a single storey cannot be justified on grounds relating to adverse effects on biodiversity.

- *The current legislation and policy context is deemed sufficient to ensure the conservation of biodiversity interests within gardens in RBKC.*
- *The proposed bespoke basement policy does not add additional levels of protection for biodiversity within the borough but instead provides an inappropriate blanket policy that would be better suited to be dealt with on a case by case basis as is currently the procedure.*
- *Garden design is permitted development as such it is not possible to control design for the benefit of biodiversity except at planning stage though appropriate planning conditions.*
- *As stated in the RBKC biodiversity basement paper (Gunnell 2014) the primary reason for changes in garden composition in recent decades relates to a shift in garden design choices and management. None of the documentation cited refers to basement developments contributing to these changes.*
- *In the context of assessing the impact of development every site warrants consideration in a case by case basis. The blanket assumption that all domestic gardens offer biodiversity value, and all gardens with subterranean development offer limited biodiversity value does not adequately address the complexity of the subject and is factually incorrect.*
- *Broad brush restrictions, as outlined in the bespoke basement policy, will potentially and unnecessarily restrict legitimate developments on sites where there are no trees, vegetation or biodiversity value of note thereby missing an opportunity for enhancement through planning conditions.*

In summary AMEC state “It is concluded the need for a new policy to restrict basement development to a maximum of 50% of back gardens and no more than a single storey cannot be justified on grounds relating to adverse effects on biodiversity”

Overall Conclusion

RBKC are attempting to introduce drastic restrictions on the rights of private individuals and business to legitimately and reasonably construct Basements.

RBKC have not carried out ANY economic assessment of the impact of the proposed Planning Policy.

RBKC seek to restrict sustainable development in contravention of National Planning Policy Framework.

RBKC fail to meet the requirements of the NPPF – primarily because they have no evidence base to support the Policy changes.

RBKC have failed to demonstrate why any change is required from existing Policy Basement Planning Policy.

RBKC Carbon Calculations are error strewn and have been discredited on two separate occasions.

RBKC produce no evidence of harm or threat to Trees.

RBKC produce no evidence of harm or threat to Biodiversity.

RBKC fail to produce ANY evidence of flooding or flood harm related to Basements.

RBKC confirm in writing that no evidence exists to demonstrate that construction of a Basement has led to long term harm to a Listed Building.

RBKC confirm that a number of their report Authors hold no professional qualification to comment on matters referred to within their respective reports – rendering the report nothing more than lay comment.

The proposed Basement Planning Policy is Unsound for the following reasons

- The Proposed Policy as not been Positively Prepared
- The Proposed Policy Is Unjustified
- The Proposed Policy Is Inconsistent with National Policy

We urge you to find the entire Policy Unsound.

Yours sincerely



Kevin O'Connor
Managing Director