Basements Consultation Event – 8 April 2013
Question and Answer Session
Small Hall, Kensington Town Hall

Introduction
The Council organised a Question and Answer session as part of the on-going consultation on the Second Draft of the Basement Policy. This event was held on the 8th of April 2013 at Kensington Town Hall and was attended by about 40 people.

This document presents the questions and answers provided at this event. Please note that the Q & As presented here may not be a verbatim record but aim to capture the essence of what was raised at the event. People have the opportunity to send detailed written comments to the Council during the six week consultation which ends on the 2nd of May 2013.

All the information related to basement policy development can be found on the Council's website http://www.rbkc.gov.uk/planningandconservation/planningpolicy/corestrategy/basements.aspx.

Format of the event
The event was led by Penelope Tollitt (Head of Policy and Design). Preeti Gulati-Tyagi (Senior Planning Officer) and Jonathan Wade (Policy Team Leader) were also in attendance. Penelope Tollitt provided a short summary of the previous consultations undertaken in reaching the second draft of the policy stage. A brief overview of the policy formulation process was provided. The policy can only be adopted and implemented once it has been examined by a Government appointed Planning Inspector and his/her report has been received by the Council. This is likely to happen in early 2014.

The event was structured by the second draft policy itself with questions invited on each part of the policy as follows.

Q&As

First para (chapeaux) of the policy and CL7 a

Q1. **A Borough resident raised the point that this was the first time he had heard about the basements policy and consultation. How valid is the consultation? In the summer of 2012 the surveys conducted by the Council, why were questionnaires only sent to people who lived next door to a basement development?**

A. It was explained that the consultation was perfectly legitimate. Planning regulations had been followed in undertaking consultation. The procedures are checked during the examination by the Planning Inspector. It is not possible to notify every resident in the Borough individually. The Council relies on residents associations to convey, it uses its website and libraries to publicise consultation, it has a

database which is constantly updated and interested residents can be added on and notified by email.
The questionnaires were deliberately targeted at people who had experienced basement development. There would have been no point in asking people who did not have any experience. The aim was to quantify real rather than perceived issues.

Q2. **What is an existing basement?**

A. Para 34.3.56 of the reasoned justification explains what is an existing basement. One way of understanding it is that if the lowest floor of a building can be extended into the back garden with no part of the extension visible above the garden then it is an existing basement.

Q3. **What is a single storey?**

A. This is defined in para 34.3.61

Q4. **There is a very real risk and danger from existing utility infrastructure below ground such as gas, water etc. when excavating to build a basement. This has not be covered in the draft policy? I was forbidden to fill in the questionnaire as part of the summer surveys as the basement has not yet been constructed.**

A. The risk is there with any development not just basements. This should be considered by the applicant/ developer undertaking the development.
As mentioned before it was a deliberate choice regarding the questionnaire to target it at those who have experienced basement development.

Q5. **Why has the Council introduced greater restrictions under gardens. The reasons mentioned deal with trees, contours/natural landscape and hydrology. If a basement is built underneath 2m of soil the tree issue can be addressed, the contours/natural landscape can be replicated, Baxter's report does not recommend 50% restriction based on hydrology rather on gravel soil 'rule of thumb' is stated as 25% of free garden. The Council has no evidence for the 50% restriction.**

A. Each site will have specific conditions regarding hydrology and development needs to take that into account. The 50% restriction is based on a number of reasons including construction impact, maintaining natural gardens and not just on hydrology. 50% is an easily understood figure and is reasonable in balancing development with natural landscape. The figure is considered appropriate and a response to the cumulative impact of a basement extension.

Q6. **The Council has not used the technical evidence in the Baxter's report which recognises that in the Notting Hill area there are particular drainage issues?**

A. The Council cannot define specific areas as sites even in close proximity can have different conditions. It is not possible to have evidence for every site. However, the policy requires detailed ground conditions to be taken into account for each site at planning application stage.

Q7. **The Council has no technical evidence to back up the policy. It is based on disruption to residents as a result of the construction?**

A. The policy is based on a number of reasons as mentioned before. Disruption/ construction impact is one of the reasons. Policy also recognises that extensions should be based on proportionality to the original house and 50% is a reasonable figure to achieve this.

Q8. **What does 'large comprehensively planned development' mean? How would a developer interpret this? For example would a large house in Holland Park qualify for the exemption?**

A. Para 34.3.63 provides supporting text on this. As stated this will depend on the character of the site such as wide access, ability to fit plant on-site and will be decided on a site by site basis. The forthcoming revised SPD may provide further information on this.

Q9. **Why should this apply only on larger sites and not on all sites?**

A. This would render the policy too flexible and there will be no need for the planning policy. There would be inconsistency in every planning decision as it would be left open to interpretation.

Q10. **Will there be a further explanation of 'comprehensively planned'?**

A. This can be explained in the revised basements Supplementary Planning Document.

Q11. **In a large scale development will it be sufficient to demonstrate that there will be no negative construction impacts?**

A. The nature of the site will still have to be taken into account. It would be difficult to guarantee before work took place that there could be no impacts but each case will be treated on its merits.

Q12. **Will the SPD be subject to consultation?**

A. Yes, there will be a consultation. The SPD is not subject to an examination as it is there to amplify/supplement the policy.

Q13. **A statement was made that 50% is an easily understood figure and everyone needs to know what the % is – residents and well as developers.**

Q14. Does the Council have any legal opinion on whether construction impact/ (disruption/nuisance) is a planning matter?

A. No, but the Council is perfectly confident that this is a planning matter. It has been long established that it is a material consideration.

Q15. Surely on larger sites there would be massive disruption. Is this not a contradiction in the policy?

A. It is possible that a larger site could have greater disruption. What we are saying is that they can have a bigger basement if these impacts can be mitigated on-site.

Q16. What does the term 'highest standard and quality' mean?

A. The criteria of how to achieve this is set out in the various parts of the policy. The meaning of the term is based on common understanding of the English language. It would not be possible to define everything and it probably would not assist in any case.

Q17. A statement was made that the first para of the policy was now better than the last iteration. It has the right words there to prove how a site can be planned comprehensively.

CL7b

Q18. Basement development next door was 3.5m deep but they excavated up to 8m to get the footings? My building has shifted structurally and the problems are a lot worse than a bit of cladding coming off.

A. Under the draft policy if the applicant submitted plans showing 8m of excavation the Council would refuse permission. The structural damage is beyond the remit of planning.

Q19. How is planning monitoring the long term cumulative effects of basement development. Next door built a swimming pool but the heave is coming through now after several years?

A. The Party Wall Act is better suited to deal with such issues. All the issues linked to basements will not be solved through planning, even with the new policy in place. Everyone must be realistic as to what can be achieved under the Planning Acts.

Q20. Setting aside the issue of disruption, the Baxter's reports says that basements should be designed and constructed to Category 1 damage standards. Many contractors design to this standard in RBKC including multi-storey basements. On what basis is the Council restricting basements to a single storey?

A. The Baxter's report also states that there are greater risks associated with multi-storey basements. The Council has a duty to protect its Conservation Areas, 70% of the Borough is designated Conservation Area. There is a risk associated with basements to the integrity of the built environment. The Council is trying to introduce a Borough wide policy to reduce this risk.

Q21. **It can be reasonably assumed that for a double storey basement, people are likely to use better engineers. What other routes have the planners looked at in minimising the risks other than a single storey restriction?**

A. Several other measures have been looked at. The Party Wall Act cannot deal with this adequately. Evidence in the Baxter's report states that risks are greater in multi-storey basements.

Q22. **Why are larger basements not a risk on larger sites?**

A. The Council is saying that larger sites are capable of being planned comprehensively. There will a whole raft of issues that will be considered on these. As stated in the reasoned justification this will depend on the character of the site.

CL7c

Q23. **A mature tree on a site was allowed to be cut down and now they can have their development?**

A This is not our policy and seems to be an anomaly. It is not possible to comment on individual cases. It is best to talk to the planning case officer about individual cases.

Q24. **What is being proposed is also the Council's current policy?**

A Yes and this is being taken forward in the review.

CL7d

Q25. **What are heritage assets?**

A. Defined in the footnote to the policy. This is a definition from the NPPF but it needs more clarity. Heritage assets include listed buildings, conservation areas, area with archaeological importance etc. This should be clarified in the footnote.

Q26. **What is the meaning of the word harm? Can harm not be replaced with something more precise like 'significant change'?**

A. Change could be positive as well as negative and the intention is to prevent negative change. The word significant would imply that some harm can be allowed. The intention is that there should be no harm as currently expressed in the draft policy.

Q27. **Is 'harm' as defined by English Heritage?**

A. Harm is an old and well established test in planning.

CL7e

Q28. Does part e mean that there can be no basements in the gardens of listed buildings for example in a terraced house with a small garden? If so why has this change been made?

A. The 50% rule on the extent of basements in gardens is likely to have the unintended consequence of pushing the basement closer to the listed building. This would inevitably result in partial underpinning of the listed building. The change is fundamentally to minimise risk to listed buildings. Basements in the gardens of listed buildings would only be allowed where they can be substantially away from the listed building.

Q29. The Council has been allowing basements in the gardens of listed buildings for a long time. Does it have any evidence to show the harm this has caused to listed buildings over the years?

A. The Council does not need additional evidence to stop development which would result in changes being made to the foundations of listed buildings.

Q30. I live around a communal garden. A number of basements have been built around it and they have started to cause ponding/ water logging in the communal gardens. The incremental effects are a big issue. Why does the Council not monitor this?

A. The Council cannot monitor everything. It does monitor development data but the planning department does not monitor the implementation and impacts on-site once constructed.

CL7f and g

Q31. I have an existing light well. Will I be allowed to extend this downwards if I build a basement in my property?

A. The policy allows light wells where these are an acceptable feature of the streetscape. If that is the case the extension downwards will be allowed if it won't impact on the character of the streetscape and a new light well is not being created, it is simply being extended.

Q32. Why should a light well not be allowed in the frontage if it is not visible from the street?

A. The character of the Borough is such that these are generally visible from the street. They may also be visible from adjoining properties if not from the street. Where they are not an existing feature, quite often they are screened by planters, vegetation etc. These are of a temporary nature and may well become visible in the future if the planters are removed. In any case light wells at front would be visible at night due to light spillage.

Q33. **If there is a light well which is not an original feature, can it still be considered an acceptable feature?**

A. A view will need to be taken depending on the site but if well designed it could hypothetically be an acceptable feature.

CL7h

Q34. **What happens to the water that is collected in the SUDs. The policy needs to make sure that this water does not end up in the drains.**

A. The intention is to slow down surface water flows. The SUDs requirement would achieve this. In an extreme event instead of causing a sudden surge in the drainage system, SUDs would soak up the water which would be slowly released later on. The policy is not concerned if then it ends up in the drains.

Q35. **Which event are the SUDs designed for?.**

A. It is thought to be a 1 in 30 year event. Comment was made that if this is the case it needs to be in-line with the BREEAM Domestic Refurbishment requirements.

Q36. **If there is an existing small paved garden, would the policy still require 1m of soil?**

A. Para 34.3.71 states that where the character is small paved courtyard 'other' measures of SUDs can be provided. Therefore there will still be a requirement to provide SUDs, to ensure there is an improvement on the current situation.

Q37. **Existing gardens are not connected to drains. Is it the case that the 1m of soil on top of basements, water is channelled and connected to drains?**

A. No, not always the case. It depends on how it has been designed.

Q38. **How does the Council implement SUDs at the moment?**

A. Through planning conditions. As SUDs is extended to all developments this will be rolled out.

Q39. **A statement was made that where the ground is clay, water sits on top and where it is gravel it drains quickly into the ground.**

CL7i

Q40. **In my experience of basement development, most people do not want to make any changes to the house/building above. There is an established Government policy that enables buying carbon credits. Can we not buy credits and comply with the requirements of this policy?**

A. The intention is that local impacts should be mitigated locally. The policy is set at a level that does not require taking the house apart to achieve its requirements and it is not as onerous as implied by the question.

Q41. **How does requiring the whole house to be retrofitted fit in with the issues about disruption/construction impact?**

A. As stated above the policy is set at a level that does not require taking the house apart to achieve. The associated disruption should be minimal and the benefits outweigh the inconvenience.

Q42. **Every house will require different measures to meet the requirement. For example a run-down house neglected for many years will require a lot more work to meet the standard?**

A. Yes, it will depend of the existing situation.

Q43. **What is a high level of performance?**

A. This is explained in para 34.3.72.

Q44. **BREEAM Domestic Refurbishment requires 8m shower flow rates. People may replace shower heads after the assessment. This is not policeable?**

A. Yes, it is possible that people may change shower heads and it would not be an efficient use of the Council's resources to police this. Need to recognise that Planning cannot deal with everything.

Q45. **Is it possible to mitigate with another measure where it is clear that the client does not have any genuine intention?**

A. The fact that a client may not be genuine will just have to be accepted. The Planning system cannot deal with everything.

Q46. **As a resident it is terrifying to think that a stranger would be coming along to check the showers?**

A. This is part of a national assessment method. As mentioned before the Council does not intend to police flows in shower heads.

CL7j and k

Q47. **Policy is okay but the reasoned justification just covers generalities. Is it saying enough? It should say that the impacts should be kept on-site where possible or immediately outside the application site?**

A. We can have a look at the text to check if it can/should be saying more.

Q48. **Who is the arbiter of 'acceptable' levels? Is it the Council?**

A. Initially, it is the Council. Ultimately there is an appeal process if the Council's interpretation is not considered fair. The system is in place to make sure that the Council does not overstep the mark.

Q49. **Parts j and k are the most important to residents? Clearly the Council does not think these are important and they are way down below in the list. They should be at the top. Construction impacts are an issue not just in relation to one development but there can be several going on at the same time. This can result in roads being blocked for long periods of time on a daily basis.**

A. The order does not imply priority as all parts of the policy apply equally. At the top the criteria about the size and other requirements have been set and these points are now dealing with the mitigation.
As a Council we have a duty under the Highways Act to keep highways open but not through planning.
The new policy would allow us to refuse planning permission if traffic impacts cannot be mitigated.
It would be wholly unreasonable and out of planning remit to require developments to be implemented at a specified time. However the CTMP is required to take account of other developments being carried out or granted permission in the vicinity.

Q50. **Statement was made that people doing works seem to think they can do whatever they like. They don't care about how they are affecting others. CTMPs are not followed. Residents are always complaining about this.**

Q51. **In my experience planning control on traffic impact does seem to work. We need to notify highways to put up temporary structures so highways do know what is going on. Sometimes they tell us that there is another development going on in the vicinity which can delay when work can be done. Highways is the place to deal with this issue.**

Q52. **CTMPs are submitted as part of the planning application. Will they be required to be approved by Highways who have no particular timescales in determining these?**

A. This needs to be better expressed when we revise the SPD. The Highways 'vetting' should take place at the pre-application stage and should not cause delays in determination of the planning application.

Q53. **Would 'Sloane House/ Sloane Lodge' development be classed as comprehensively developed sites as it causes a nuisance to residents. If so is there a conflict between the comprehensively developed clause and part k?**

A. No, as the policy will consider each site on its merit. If construction impacts cannot be mitigated permission will be refused.

Q54. **What is the Council expecting applicants to demonstrate in relation to the cumulative impacts. Best/worse case?**

A. Need to clarify this in the SPD but likely to be the worse case, in that they should demonstrate that their scheme can be implemented even if all other existing permissions in the area are also being implemented at the same time.

Q55. **I pay my taxes and rates. Why should I be penalised and not allowed a basement if my access road is narrow?**

A. Planning permission is not linked to taxes and rates. It is linked to the physical environment and the impact of a development including site access, site size etc.

Q56. **If CTMP is a condition of planning permission, how can the Council disregard number of developments being implemented at the same time. Part k is key for residents. A condition should be put in general terms, quantify the level of noise. Why is the Council unwilling to put a limit on the noise, vibration etc.?**

A. Planning permission by law cannot require people to implement permissions at certain times or dates. We have attempted to build in a mechanism that consent takes cumulative development into account. This may be explained in the SPD/procedural note. Levels of disturbance are set out in the SPD. The Council is also now requiring a Demolition and Construction Management Plan to be vetted by Environmental Health prior to submitting the planning application. This will allow residents to comment on these issues as part of the planning application process.

Q57. **The CTMP mechanism is not in the policy document?**

A. This will be in the revised SPD.

Q58. **Part k is ripe for positive exploitation. All the monitoring is possible. BREEAM Domestic Refurbishment has removed the requirement for dust prevention and ground water pollution. This should be mandated. The principles are well established?**

A. This could be done through a revision of the Council's 'Advice to Builders'.

Q59. **CL7m: Sewer flooding – is the Council taking into account the studies being undertaken in conjunction with Thames Water concerning critical drainage and flood risk?**

A. Yes.

CL7l

Q60. **Quite a lot of damage can be caused without causing issues with structural stability? Damage should be included in the policy.**

A. Yes, we can look at whether this can be included, but we have little power under the Planning Acts.

Q61. **Part k is a deal breaker. Digging creates unreasonable noise, there is no reasonable/acceptable level of noise/vibration associated with any basement. Lived through three years of noise/disruption and another one is starting. It is not possible to live in your own house when these developments are taking place. The only way is if they were digging by hand.**

A. Many people would agree with you but planning cannot put an outright ban on basement development in the Borough.

Q62. **When we respond to the consultation, does the name/ address become public.**

A. The name does but contact details such as your address does not.

Q63. **What about permitted development rights?**

A. The Council has not made a firm decision on this but is minded to introduce an Article 4 direction to take away permitted development rights in relation to basements. The Council is not liable to compensation if 12 months notice is given. There is a one year consultation during which if someone wanted to, they could exercise their right to implement a basement before the Article 4 direction came into force.

Q64. **Is there any reference to the Human Rights Act? What the residents have to go through is beyond Human Rights Act. There is a judicial review case in relation to this.**

A. The policy is in-line with the NPPF which has regard to Human Rights Act.