

## Questionnaire Responses: Borough-wide Non-immediate Article 4 Direction – Basement Development, Consultation 24 April 2015 to 8 June 2015

### Question: 1. Do you have any comments on the Article 4 Direction?

Respondent Name	Consultation response	Council's response
Mary White	We are delighted that K&C are taking action to prevent noisy and intrusive works on over-sized basements across the borough and are fully supportive of your work.	Noted.
Stephen Crompton	I support the Direction.	Noted.
Michael Spencer-Smith	It is high time that basement development was brought under control. These developments have made life in some parts of the borough a nightmare.	Noted.
Sam Gordon Clark	I warmly support the Article 4 direction, and am pleased that the Council is considering the interest of residents who wish to have quiet enjoyment of their properties. I trust the Council will resist any objections from developers whose only interest in the borough is financial gain.	Noted.
Harry Salmon	I support the Council's proposal re planning consent requirements for basements.	Noted.

<b>Respondent Name</b>	<b>Consultation response</b>	<b>Council's response</b>
Ng	I am writing to you in support of The RBKC (Council) proposal to Article 4 Director to remove permitted development rights in relation to basement development.	Noted.
Anthony Temple	<p>Thank you for your letter of 20 April.</p> <p>In common with other local residents we fully support the Council's proposed adoption of the Article 4 direction removing specified permitted development rights in relation to basement development. All the reasons that justified the adoption of the updated basement policy support the proposed direction.</p> <p>We are pleased to forego such rights as now remain – anomalously - following the recent adoption of the basement policy. Residents across the Borough should benefit from this additional protection from basement development. The Council deserves full support for this step.</p>	Noted.
London Borough of Lambeth (Emer Costello)	<p>Thank you for the receipt of the 'Consultation on a non-immediate Article 4 Direction to remove permitted development rights in relation to basement development'.</p> <p>The London Borough of Lambeth do not have comments but we welcome being kept informed.</p>	Noted.

Respondent Name	Consultation response	Council's response
n.a. (Marco Vianello-Chiodo)	I am fully in favour of the new policy of restricting basements to one level only, and to very strict controls by the Borough. Onwards and upwards!	Noted.
N/A (Andrew Morritt)	No doubt you will be faced with opposition from all the developers and their clients. Few who agree with you will bother to write in. That is why I am doing so. I strongly support the making of this direction.	Noted.
N/A (Charles Bezoari Elder)	I am against the imposition of "planning permission requirements" to basement development by an owner of a property in the borough. Owners with families are caught in a trap, given the recent enormous taxes and tax increases imposed on home ownership by this Conservative Govt. Basically, we can no longer sell a house bought a few years ago(when stamp duty etc was much lower) in order to move to a bigger property(which now attracts enormous new and higher stamp duty, and other taxes levies etc). So, if we wish to have more space, our only alternative is the develop a basement. Another possibility of extending upwards by adding a floor is currently completely excluded by the council- and perhaps this should be looked at and reviewed as a way of allowing families to have more space. We would all prefer to just sell our existing property and move to a slightly larger one, rather than develop a basement. No one develops a basement just for fun,	Noted. The property tax regime is not within the remit of planning.  The reasons for making an Article 4 Direction were set out in the <a href="#">Cabinet Report</a> of 19 March 2015. A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report “ <i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough.</i> ”

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	<p>it is always a very distant option to the preferred purchase of another slightly bigger property. But the economics of purchasing a slightly bigger property have been put out of the reach of families by the Conservative government's attack on home ownership and families, through its imposition of an unheard of burden of taxation on the buying and selling of homes in our borough. No other country in Europe taxes the purchase and sale of a residence the way the UK does. And , let's face it, this is essentially a tax on London. And this is before the even more hair brained schemes that will come after the election. It seems that unscrupulous politicians are determined to tax to death the last bastion of savings and pride that is home ownership.</p> <p>Imposing further restrictions through planning permission and the associated costs and levies and VAT on home owners, who need more space for a growing family, is just another nail in our coffin. We need space. Basements are the only tax free option left to us for more space. And you want to take this away from us by restrictions and the ensuing imposition of levies, taxes, costs etc.</p> <p>Shame on you.</p>	<p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built through 'permitted development' rights.</p> <p>The Article 4 Direction has not been made to introduce a new burden of tax but it has been made to mitigate harmful impacts of such development in the Borough.</p>
N/A (Gordon Grender)	I fully agree with the Council's plan.	Noted.

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Jacqueline S Pruskin	<p>I wish to congratulate you for creating this Article 4 Direction, and bringing it up for consultation.</p> <p>This is an entirely sensible Direction considering how invasive and disruptive basement developments are to our neighbourhoods, road users, and the invaluable peace of mind of the neighbours directly involved.</p> <p>I have been incredulous that basement development does not require Planning permission, and this Directive will hopefully put an end to a contentious and out of step matter.</p> <p>I sincerely hope this Directive is passed.</p> <p>Thank you very, very much.</p>	Noted.
Pembrige Association (Victoria Butler)	<p>I would like to endorse your intention to impose Article 4 Directions to bring more control to basement development planning applications.</p> <p>This is long overdue in my opinion, as the detrimental impact of basement development on its local environment has been hugely underestimated. Everyday life in affected communities is effectively put on hold while these developments are realised- the fulfilment of some house owners dreams become the nightmares of their neighbours. Peace and quiet and residents rights to live without having to endure seemingly endless, relentless mechanical noise</p>	Noted.

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	<p>and mud and mess and streets disrupted by manoeuvring lorries and equipment, seem to have taken a back seat to the endless march of property development. The real fear neighbours also experience is that the structural integrity of their own properties could be damaged and it falls to them to get the necessary professional advice (incurring not insubstantial costs ) to safeguard their homes. The intention now to impose Article 4 Directions in basement development applications reflects common thinking and will hopefully bring some relief to residents of properties that neighbour future basement development sites. I fully support this intention.</p>	
<p>Schmetterling Associates (Dori A Schmetterling)</p>	<p>Wholeheartedly endorsed.</p>	<p>Noted.</p>
<p>Pembridge Association (Jan Brown)</p>	<p>I would like to endorse your intention to impose Article 4 Directions to bring more control to basement development planning applications. This, in my opinion, is long overdue. It would be almost impossible to overestimate the detrimental impact on the local environment and the distress and harm caused to residents, during these basement development works. Relentless noise from mechanical sawing and drilling, loss of parking spaces, traffic congestion and hold ups when materials are delivered</p>	<p>Noted.</p>

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	<p>or removed, broken and inaccessible pavements, builders' dirt and dust which constantly penetrates our homes, the removal of mature trees and all that this entails, (not least the loss of noise-reducing and traffic-calming effects and the health benefits provided by tree coverage,) and the general destruction of aesthetic and visual amenities whilst the works are taking place, are the types of issues that neighbours of these basement developments have been having to endure.</p> <p>In Chepstow Villas, where I reside, there have been several such basement excavations, three of these taking place concurrently at numbers 27, 31 and 33. We residents will have experienced around five (5) years' of the disruption and unpleasantness I describe above when these works are finally completed.</p> <p>As you know, we are asked to 'love the streets we live in' but this is nigh impossible when we find them noisy, dirty and innaccessible. I would go as far as to say that there is a loss of a 'community feeling' whilst industrial vehicles, barriers, hoardings etc etc make neighbours less inclined to want to stop and talk on the noisy street.</p> <p>As is well-documented, people throughout the borough are experiencing similar very distressing circumstances. The intention now to impose Article 4 Directions in basement development</p>	

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	applications reflects general opinion. Hopefully this will bring some respite for neighbours of future basement development sites.	
Joanna Morritt	I fully support it.	Noted.
charles hopkins	I strongly support it - I wish it were more immediate.	Noted.
ASUC (Rob Withers)	<p><b>On behalf of ASUC we make the following representations against the implementation of this proposed directive:</b></p> <p>The Council's new basement planning requirements are overly onerous and out of proportion to small basement developments, which the Council has stated they are not against ( i.e. single storey basement developments). PD rights are granted by Parliament so it is against the spirit of British planning law and practice that PD rights are broadly restricted across a whole borough.</p> <p>No distinction is made in the amount of information required in a basements planning application between small and large developments. The new draft SPD does not distinguish large and small basements – and the cost of promoting an application for a small basement will act as a substantial deterrent. This will have an economic effect on the borough which has not been considered.</p> <p>The unfairness given the fact that the policy which provides the rationale for the Article 4 direction (according to the Council's own report), is the subject of an ongoing legal challenge and may be</p>	<p>Permitted development rights are granted by legislation and the same legislation also includes powers for local authorities to withdraw such rights through the use of Article 4 Directions. The Council has made the Article 4 Direction in compliance with the General Permitted Development Order (GPDO) 2015.</p> <p>Comments related to the emerging Draft SPD and the material required in support of a planning application are unrelated to the making of an Article 4 Direction. The Council requires material that is proportional and necessary to determine planning applications of different nature.</p>

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	<p>quashed. No evidence has been presented that basements built under PD have been a cause of any construction impact or other problems.</p> <p>The Councils' previous evidence from the main basements planning policy consultation process did not distinguish between the construction impact from basement work and from other above ground building works.</p> <p>Economic impact – there has been no assessment of the economic impact of the PD restriction.</p>	<p>The legal challenge to the policy was dismissed by the High Court.</p> <p>Comments regarding the evidence base for the policy were made at the time of policy preparation. That policy (CL7) has since been found sound and adopted by the Council. These comments do not relate to the making of an Article 4 Direction.</p> <p>It is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>In any case the Article 4 Direction is not</p>

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		banning development but requiring that such development should be the subject of a planning application so that steps can be taken to mitigate the well documented harmful impacts of basement development.
Historic England (David English)	<p>Thank you for the opportunity to provide comments on the proposed Article 4 Direction. Historic England is the Government's advisor on all matters relating to the historic environment and a statutory consultee on a broad range of applications affecting the historic environment including the Environmental Impact Assessment (EIA) of projects.</p> <p>Accordingly, we have reviewed this consultation in the context of the National Planning Policy Framework (NPPF) and its core principle that heritage assets be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.</p> <p>Historic England notes that the proposed Article 4 Direction, which will require planning applications for all basement development that previously benefited from permitted development rights, could have advantages for the assessment and management of the Royal Borough's archaeological resource. If you wish to discuss this further I can advise you to speak to Gillian King in the Greater London</p>	We note that basements built through the use of permitted development rights may have the potential to harm archaeological resources.

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	<p>Archaeological Advisory Service (0207 973 3732).</p> <p>It must be noted that this advice is based on the information that has been provided to us and does not affect our obligation to advise on, and potentially object to any specific development proposal which may subsequently arise from this Article 4 Direction, and which may have adverse effects on the environment.</p>	
Christopher Hunt	<p>I am writing in support of the immediate adoption of the proposed Article 4 Direction.</p> <p>My reasons for being supportive of the Article 4 Direction are quite personal. Several years ago, an off-shore entity applied to construct a double basement application to excavate to the equivalent depth of four stories below street level, expanding out to the extreme boundaries of the property on all side (including under the party wall of my terrace home).</p> <p>When planning permission was not granted, the offshore entity attempted to use purported permitted development rights to commence partial works, with the expressed intent of starting works to complete the more invasive portions to "persuade" the Council into letting them subsequently complete the full four story excavation.</p>	<p>Noted. The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p>

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	<p>This is an abuse of the planning system. If this practice is not banned, such abuses will surely continue.</p> <p>The Direction should not be deferred and must have immediate effect as there is considerable abuse and consequent suffering. There is no justification for allowing such disruptive and potentially dangerous works without the full controls and conditions that attach to a planning permission.</p>	
<p>Seymour Walk Residents Association (Nigel Lax)</p>	<p>Dear Sirs,</p> <p>Our residents association are strongly in favour of the adoption of an Article 4 Direction and would like to see it being implemented immediately.</p> <p>Our street and the immediate neighbourhood have been blighted by the threat of inappropriate basement development for too long and we celebrated the recent adoption of Basement Policy CL7. The prospect that this could potentially be overturned by the cynical use of permitted development rights causes us grave concern and we struggle to understand why RBKC did not see this coming and thus run the Article 4 process in tandem with CL7 rather than allowing the well funded and highly motivated basement industry a further 12 months to cause misery in the borough. For reasons that are well known to the Council and on legal grounds supported by case law, planning decisions and Counsels' opinions, we do not believe that</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2,</p>

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	<p>Schedule 2 Part 1, Class A of the GPDO permits excavation or engineering operations (other than those which are minimal or incidental). There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO. This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, we strongly support the adoption of an Article 4 Direction that requires ALL "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such extensive, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls within Schedule 2, Part 1, Class A.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p> <p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p>

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Private individual (Patrick Hope-Falkner)	<p>I am writing to support the Basement Direction under Article 4 of the General Permitted Development Order as strongly as I can. For far too long the RBKC has been completely misdirected by its planning people about the application of Permitted Development to basement developments. Developers and construction companies are well aware of the Planning Department's lenient and developer-friendly interpretation of the scope of Permitted Development, and routinely take advantage. This is inevitably to the detriment of neighbours and other residents. This is abuse of the planning regulations, yet the RBKC Planning Department routinely condone it by allowing basement permitted developments by granting Certificates of Lawful Development. When efforts are made to question the appropriateness of a proposed certificate, they are brushed aside saying there is no public consultation, and then dealt with under departmental delegated authority rather than in public committee.</p> <p>This is obviously unlawful, utterly undemocratic and could easily look like shoddy collusion between the Planning Department and developers. If that was the case it would suggest misconduct within the Planning Department.</p> <p>And in this context, the planned deferral of the operative date of the Direction is simply wrong. There is nothing to stop the Council making and confirming the Direction shall have immediate effect.</p>	<p>Noted.</p> <p>It is not accepted that the Council has somewhat taken a lax approach to the interpretation of permitted development rights as suggested. The Council is obliged to interpret the law as stated in the General Permitted Development Order. In fact the Council appealed against two decisions made by the Planning Inspectorate granting Certificates for basement development. The Judge deciding on these cases found the Council's approach correct in some respects (and the Planning Inspectors' approach incorrect) but more stringent (not lax) in other respects. The Court judgement also seems to confirm that basement development does fall within Schedule 2, Part 1, Class A of the GPDO 2015.</p> <p>The reasons for not confirming the Article 4</p>

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	<p>The 'non-immediate' proposal might be seen as fairer but that is a distortion, legitimate basement developments can still be authorised on a proper planning application. Giving one year's 'Notice' merely encourages developers to use their dubious Lawful Development Certificates, and foster the idea that there is something very wrong and pro-developer going on in RBKC's Planning Department.</p> <p>I totally support the Basement Article 4 Direction but it must have immediate effect</p>	<p>Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p>
<p>The Markham Square Association (David Cox)</p>	<p>We are strongly in favour of the adoption of an Article 4 Direction. We would like to see it have immediate effect. For reasons that are well known to the Council and on legal grounds supported by case law, planning decisions and Counsels' opinions, we do not believe that Schedule 2 Part 1, Class A of the GPDO permits excavation or engineering operations (other than those which are minimal or incidental). There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO. This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, we strongly support the adoption of an Article 4 Direction that requires ALL "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted</p>

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	<p>permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
Resident (Alexander Murbach)	<p>Dear Sirs,</p> <p>I am strongly in favour of the adoption of an Article 4 Direction. I would like to see it have immediate effect. Case law, planning decisions and Counsels' opinion support my belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4</p>

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	<p>permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, I strongly support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>

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Resident (Jane Weyman)	<p>I am strongly in favour of the adoption of an Article 4 Direction. I would like to see it have immediate effect. Case law, planning decisions and Counsels' opinion support my belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, I strongly support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p>

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		<p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
<p>Resident (Ellen Lyons)</p>	<p>I am strongly in favour of the adoption of an Article 4 Direction. I would like to see it have immediate effect.</p> <p>Case law, planning decisions and Counsels' opinion support my belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applies in any event, irrespective of the adoption of an Article 4 Direction.</p> <p>Strictly without prejudice to this, I strongly support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwelling house or its curtilage" to be carried out only if planning permission is granted by the</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2,</p>

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	<p>Council.</p> <p>The Direction should not however be non-immediate, or on 12 months notice. It should have immediate effect.</p> <p>There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>Part 1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
Simpson	<p>We strongly support the article 4 direction to remove permitted development rights in relation to basement development. Allowing basement development in the Borough without planning permission is not compatible with the new Basement Policy and creates situations where developers can 'play the rules' in order to avoid compliance with the environmental, traffic and other requirements that now apply to basement works. The article 4 direction is needed in order to enable the new Basement Policy to work effectively and to</p>	Noted.

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	<p>avoid an unjust situation where similar works can be submitted to different requirements.</p> <p>NB Comments submitted on behalf of Nick Tarling of 13 Markham Square and myself.</p>	
<p>Thames Water Utilities Ltd (Mark Mathews)</p>	<p>Thank you for consulting Thames Water Utilities Limited (Thames Water) on the proposals for a non-immediate Article 4 Direction to remove permitted development rights in relation to basement development.</p> <p><b>Comments</b></p> <p>Thames Water are working on proposals to alleviate the risk sewer flooding to basement properties within the Royal Borough of Kensington and Chelsea which can arise when storms overload the existing sewer network.</p> <p>In order to prevent additional basement properties being at risk of sewer flooding Thames Water seek to ensure that positive pumped devices are provided for new basement construction and a requirement for such devices is stipulated in Policy CL7 of the RBKC Core Strategy.</p> <p>The application of the requirements of the policy would not apply to basement developments constructed using permitted development rights. Consequently, such developments delivered with the benefit of permitted development rights could be at risk from sewer flooding.</p>	<p>Noted. The Council has made the Article 4 Direction to mitigate the potential impacts of basement development which include the impact stated.</p>

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	<p>Thames Water therefore support the use of an Article 4 Direction in relation to basement development which will ensure that any proposals for new basement development are subject to consideration against planning policy including the requirement for a suitable pumped device to prevent sewer flooding.</p> <p>I trust the above and enclosed comments are satisfactory, but please do not hesitate to contact me if you have any queries.</p>	
<p>Natural England (Gillian Fensome)</p>	<p>Thank you for your consultation on the above dated 20 April 2015 which was received by Natural England on 20 April 2015.</p> <p>Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.</p> <p>Natural England does not consider that the non-immediate Article 4 Direction to remove permitted development rights in relation to basement development poses any likely or significant risk to those features of the natural environment 1 for which we would otherwise provide a more detailed consultation response and so does not wish to make specific comment on the details of this consultation.</p> <p>We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.</p>	<p>Noted.</p>

Respondent Name	Consultation response	Council's response
	<p>For any queries relating to the specific advice in this letter only please contact Gillian Fensome on 07879 800855. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk. We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.</p>	
<p>Gover Horowitz &amp; Blunt (Chrissie Horowitz)</p>	<p>I am strongly in favour of the adoption of an Article 4 Direction. I would like to see it have immediate effect.</p> <p>Case law, planning decisions and Counsels' opinion support my belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applied in any event, irrespective of the adoption of an Article 4 Direction.</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm</p>

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	<p>Strictly without prejudice to this, I strongly support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 month' notice. It should have immediate effect.</p> <p>There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>that basements do benefit from permitted development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
Nicholas Beytes	<p>Thank you for notification of the above matter. I am responsible for a house in the Royal Borough of Kensington and Chelsea. I would say:</p> <ul style="list-style-type: none"> <li>▸ As you appreciate, the foot print of influence of a basement development goes beyond the boundary, sometimes far</li> </ul>	<p>Noted. It is for the reasons stated (as supported by the evidence for Policy CL7) that the Council has made an Article 4 Direction.</p>

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	<p>beyond the boundary of the subject house</p> <p>during the period of construction and in some cases it may last for years after construction. Significant intrusive disturbance can be caused to residents and businesses by road traffic and building work during months of construction. In some cases new basements may cause worry (justified or unjustified it is still worry) for local people, about the basement at the time of construction and for years afterwards.</p> <ul style="list-style-type: none"> <li>▸ K &amp; C is one of the most densely populated boroughs in London, according to the Government's figures. Most of the houses in K &amp; C under which basements are likely to be built seem to be over 100 years old and in a Conservation Area. Residents and others are concerned about the influence of new basements under old houses. It is useful to know permission is required from a disinterested competent third party, such as Planning and Borough Development, before the new basement work begins in a densely populated area and there is an element of monitoring the work.</li> <li>▸ Assuring appropriate planning permission and regulation of construction work, for building basements under old houses</li> </ul>	

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	<p>may help sustain high quality work. Participation by, for example, the LPA in the arrangements for developing basements may help ward off unscrupulous developers, provide reassurance about the work to current residents and to generations yet unborn when they have to refer back to basements built now.</p> <ul style="list-style-type: none"> <li>▸ From anecdotal accounts, controls such as CTMP and noise conditions play an essential part in preserving order and protecting amenities</li> <li>▸ It seems the issues of basements creates considerable work for the Council, notably the LPA, and I believe many people are grateful for the work they do for protecting and promoting the public interest in the matter.</li> <li>▸ For your reference, I do not have problems with neighbours building basements at present. I do not plan to build a basement, at present. If I was to do so, I would be willing to work with a competent monitoring authority for the benefit of our household and all concerned, for reasons stated above.</li> </ul> <p>I am aware of problems of considerable noise, disturbance, worry</p>	

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	<p>and financial cost caused to residents and others by new basements or the prospect of new basements being put in under old houses. I am aware of some of the issues faced by an owner who aims to build a basement under his house. I have the impression the local Council, notably the LPA, have a role to play, and it recognised that it is additional work for them.</p>	
<p>Panorama Property Services Ltd (James Agace)</p>	<p>To whom it may concern,</p> <p>I live in RBKC and am a property owner and I oppose the introduction of the new restriction for the following reasons -</p> <p>I have previously built a basement in the borough under permitted development rights and did this without causing problems for my neighbours and other residents. If I wanted to do the same thing again I would wish to do so. I would also want other residents to have this right preserved.</p> <p>The proposed removal of PD rights does not accord with national planning policy which requires that good justification is needed in order to remove PD rights across a whole area. I cannot find anything from the Council giving any justification for the removal let alone good justification.</p> <p>The Council has not shown that basements built under PD have</p>	<p>Noted. The Council cannot base its decision on a single case. The respondent has also not stated the address of the property so it is not possible to verify that there were no complaints from the neighbours.</p> <p>The impacts that basement development can cause are well documented and were examined in great detail when preparing the Local Plan Policy CL7: Basements. A basement built using permitted development rights would have no safeguards that the policy provides. This is a strong justification for making the Article 4. The reasons for making the Article 4</p>

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	<p>caused problems – I know that mine did not.</p> <p>The restriction is broad brush and does not address the individual nature of each development in each location. I imagine that this is why PD rights are not meant to be removed broadbrush.</p> <p>The removal will have a negative impact on the local economy both in terms of the creation of valuable real estate and on the construction sector. The Council have not given any evidence to the contrary.</p> <p>The Council will probably say that development can still be achieved with planning. However the new basement policy makes it overly difficult to obtain permission and costs a great deal of time and money to achieve.</p>	<p>Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The Article 4 Direction has been made in accordance with the legislation governing it as set out in the General Permitted Development (England) Order 2015.</p> <p>The cost of applying for a planning permission is proportionately small compared to the overall cost of building a basement.</p> <p>It can also be argued that if the impacts are not mitigated appropriately this may have an impact in the quality of life and attractiveness of the Borough in turn leading to a negative impact on the economy.</p> <p>It is correct to state that the Article 4 Direction does not ban development but</p>

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		<p>makes it necessary to obtain a planning permission. The new basement Policy CL7 does include a number of requirements which are necessary to mitigate the impacts of basement development. These requirements were all examined in great detail and found sound by a Planning Inspector. This provides the justification for why the policy should apply to all basement development (including those that may be granted by the GPDO).</p>
<p>Atoussa Parsa-Davis</p>	<p>I live in Chelsea and have done so for over ten years. I object to the further restriction on development within the borough.</p> <p>From what I can find no evidence for this restriction has been given. I can only find the notice and the direction documents on the consultation webpage.</p> <p>The restriction will certainly reduce the amount of development and will have a negative economic impact within the borough and in the wider area. There has been no assessment of this negative economic impact which surely, correctly, there should.</p> <p>PD rights are usually used with small basement developments. The Council's new basement planning requirements are overly onerous</p>	<p>Noted.</p> <p>The impacts that basement development can cause are well documented and were examined in great detail when preparing the Local Plan Policy CL7: Basements. A basement built using permitted development rights would have no safeguards that the policy provides. This is a strong justification for making the Article 4. The reasons for making the Article 4</p>

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	<p>and out of proportion for small basement developments or cellar conversions.</p> <p>The Council has repeatedly said that they consider the problem is with large basements and has repeatedly said they're not seeking to ban basements. The direction indicates otherwise.</p> <p>Overall the policy seems to be anti-sustainable development and is reactive to the desires of some vocal residents who are anti-development.</p>	<p>Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The cost of applying for a planning permission is proportionately small compared to the overall cost of building a basement.</p> <p>It can also be argued that if the impacts are not mitigated appropriately this may have an impact in the quality of life and attractiveness of the Borough in turn leading to a negative impact on the economy.</p> <p>The Article 4 Direction does not ban development but makes it necessary to obtain a planning permission. The new basement Policy CL7 does include a number of requirements which are necessary to mitigate the impacts of basement development. These</p>

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		<p>requirements were all examined in great detail and found sound by a Planning Inspector. This provides the justification for why the policy should apply to all basement development (including those that may be granted by the GPDO).</p>
<p>N/A (Atoussa Parsa-Davies)</p>	<p>I live in Chelsea and have done so for over ten years. I object to the further restriction on development within the borough.</p> <p>From what I can find no evidence for this restriction has been given. I can only find the notice and the direction documents on the consultation webpage.</p> <p>The restriction will certainly reduce the amount of development and will have a negative economic impact within the borough and in the wider area. There has been no assessment of this negative economic impact which surely, correctly, there should.</p> <p>PD rights are usually used with small basement developments. The Council's new basement planning requirements are overly onerous and out of proportion for small basement developments or cellar conversions.</p> <p>The Council has repeatedly said that they consider the problem is with large basements and has repeatedly said they're not seeking to ban basements. The direction indicates otherwise.</p>	<p>Noted.</p> <p>The impacts that basement development can cause are well documented and were examined in great detail when preparing the Local Plan Policy CL7: Basements. A basement built using permitted development rights would have no safeguards that the policy provides. This is a strong justification for making the Article 4. The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The cost of applying for a planning permission is proportionately small</p>

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	<p>Overall the policy seems to be anti-sustainable development and is reactive to the desires of some vocal residents who are anti-development.</p>	<p>compared to the overall cost of building a basement.</p> <p>It can also be argued that if the impacts are not mitigated appropriately this may have an impact on the quality of life and attractiveness of the Borough in turn leading to a negative impact on the economy.</p> <p>The Article 4 Direction does not ban development but makes it necessary to obtain a planning permission. The new basement Policy CL7 does include a number of requirements which are necessary to mitigate the impacts of basement development. These requirements were all examined in great detail and found sound by a Planning Inspector. This provides the justification for why the policy should apply to all basement development (including those that may be</p>

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		granted by the GPDO).
Farrar (Julian Chambers)	<p>As a resident and an estate agent that understands the reasons that compel other residents to consider the need to extend their homes in the Royal Borough I and am against this removal of permitted development rights for basements. With recent stamp duty changes, many residents are financially unable to consider a physical property move to meet their space requirements and the creation or extensions of sympathetic basement extensions are now one of the last chances to keep long term residents anchored to the Borough rather than having to resign their fate to departing and selling to the plethora of overseas nationals that are displacing long term residents and therefore changing, irreparably, the makeup of the Royal Borough.</p> <p>Also, there are many properties in the Borough which have existing cellars, vaults and lower ground floors. Alternations to these that involve any change in floor level would now require full planning permission which is disproportionate and will stifle development. Furthermore, no reasons have been given for the removal of basement permitted development rights. I can see the notice and the direction, but nothing beyond this. This cannot be right and surely is not following correct process for a public consultation. It does appear as if the Council is seeking to introduce a restriction without a proper</p>	<p>Noted. The property tax regime is not within the remit of planning.</p> <p>The reasons for making an Article 4 Direction were set out in the <a href="#">Cabinet Report</a> of 19 March 2015. A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report “<i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough.</i>”</p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now</p>

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	<p>consultation.</p> <p>Development is already limited in The Royal Borough of Kensington and Chelsea and permitted development rights are one of the few ways of getting limited building work done. To remove these rights without reason or good consultation must be wrong.</p>	<p>superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built though 'permitted development' rights.</p> <p>Once confirmed the Article 4 Direction would introduce the requirement that all basement development in the Borough takes place using the same planning policies. As stated above the policy has been carefully formulated to mitigate harmful impacts and requires consideration of a range of essential parameters.</p> <p>This may result in an additional cost but it will not stop development from taking place. Also the costs associated with getting a planning permission are small in comparison to the overall costs of building a basement and the subsequent increase in value.</p>

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		<p>The reasons for making the Article 4 Direction were set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The Council has followed the procedures specified in the General Permitted Development Order 2015 in making and consulting on the Article 4 Direction.</p>
Simon & Michala Maughan	<p>REPRESENTATION FOR THE NON-IMMEDIATE ARTICLE 4 – BASEMENT DIRECTION We are strongly in favour of the adoption of an Article 4 Direction and we would like to see it have immediate effect. Case law, planning decisions and Counsels' opinion support our belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, we strongly</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted</p>

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	<p>support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
Jeremy Bevan	<p>I am a long term resident in Chelsea and have brought up my family in Milborne Grove where we have lived for almost 20 years. We would like to develop our property at some stage in the future, as our children are requiring more space, and may want to do so using permitted development rights. I object to the removal of these rights.</p>	<p>The impacts that basement development can cause are well documented and were examined in great detail when preparing the Local Plan Policy CL7: Basements. A basement built using permitted</p>

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	<p>I have seen no good reasons why they are being removed, and have not been provided with any evidence supporting the decision. I found out about the proposed restriction by chance, without being sent any formal notice, and suspect that many other residents who will be affected are unaware that their permitted development rights are about to be removed.</p> <p>Having done some research online, my understanding is that permitted development rights are granted by Central Government and are not meant to be removed by Local Planning Authorities (LPAs), except with very strong grounds for doing so.</p> <p>To my knowledge, the Council has not given any grounds for doing this, far less strong ones. With this in mind it would be wrong for the Council to proceed with the article 4 direction.</p> <p>If the Council does want to remove these rights, then a full and proper consultation, circulated to all residents, and with due consideration of all the facts being presented, needs to be undertaken. It would be underhand and perhaps even illegal to slip these changes in below the radar as would appear to be happening in this case.</p> <p>I look forward to your response at your earliest convenience.</p>	<p>development rights would have no safeguards that the policy provides. This is a strong justification for making the Article 4. The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report “<i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough.</i>”</p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now</p>

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		<p>superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built though 'permitted development' rights.</p> <p>Once confirmed the Article 4 Direction would introduce the requirement that all basement development in the Borough takes place using the same planning policies. As stated above the policy has been carefully formulated to mitigate harmful impacts and requires consideration of a range of essential parameters.</p> <p>This may result in an additional cost but it will not stop development from taking place. Also the costs associated with getting a planning permission are small in comparison to the overall costs of building a basement and the subsequent increase in value.</p>

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		<p>The Council has followed the procedures specified in the General Permitted Development Order 2015 in making and consulting on the Article 4 Direction.</p> <p>The Council publicised the making of the Article 4 Direction on its website, press release, notices were put up in notice boards in all local libraries, site notices outside Kensington Town Hall, Central Library, Chelsea Old Town Hall, Holland Park, direct mailout to those who subscribe to the Planning Bulletin, direct mailout to those who have subscribed to be on the Council's Local Plan database. Notice of making the Article 4 Direction was published in the London Weekly News (formerly Kensington and Chelsea News) on 23 April 2015 and in the London Gazette on 24 April 2015. The Council did not try to 'slip these changes under the</p>

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		radar' as stated.
Five Paper (Sonia Rai)	<p>I endorse what Mr Beyts has stated</p> <p>In particular</p> <p>1) Basements are not simple to construct. They involve engineering works and can have a profound effect on the neighbours, as well as the neighbourhoods, and works last for a significant period of time.</p> <p>2) It is clear when one looks at the General Permitted Development Order ('GPDO') and the guidance, that it did not envisage that the said Order would apply to basements. Rather the GPDO was meant to remove bureaucracy from simple extensions such as conservatories.</p> <p>2) The new CL7 , CTMP proforma and forthcoming SPD (which I am assured will contain a condition on noise (construction noise being relevant to any consideration as to whether planning permission is granted)) are essential to ensure that basement construction does not lead to unnecessary loss of amenity to neighbours and other persons in the neighbourhood. They are essential in a borough such as ours where we live 'cheek by jowl'</p> <p>3) Having lived next to a basement development without any planning permission (and thus not subject to any planning control), I can state categorically that an article 4 order is necessary to prevent the severe loss of amenity that I and others in the street suffered, as</p>	Noted. The Article 4 Direction has been made to mitigate harmful impacts. Once confirmed it will enable all basement development to be considered using the same set of planning policies and in particular Policy CL7: Basements.

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	<p>well as personal injury.</p> <p>4)In conclusion, I fully support an application being made for an Article 4 direction</p>	
<p>Nicolas James Group (Nicolas Roach)</p>	<p>I own a property in RBKC and am a resident.</p> <p>To my mind the article 4 direction does not accord with national planning policy that requires sound justification for removal of permitted development rights across a broad area. No justification has been given (I can only find the notice and direction but nothing more than this on the consultation page on the Council's planning web page) so the direction clearly does not comply.</p> <p>Further the consultation – which does not include full information on the reasons for the restriction – cannot be valid. At a minimum the consultation should be rerun with full information on the reasons and proportionate evidence being provided.</p> <p>There has been no consideration of the impact on the development or construction industry, or of the more general economic effects of the restriction. I am reasonably confident that this is a requirement.</p> <p>The direction will affect every street and property in the borough. No information has been given on the extent of basements built under permitted development across the borough. The restriction could affect streets and areas in which there has been no development under permitted development rights; it would be hard to justify the</p>	<p>The impacts that basement development can cause are well documented and were examined in great detail when preparing the Local Plan Policy CL7: Basements. A basement built using permitted development rights would have no safeguards that the policy provides. This is a strong justification for making the Article 4. The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report “<i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character</i></p>

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	<p>restriction in these streets or areas.</p> <p>No distinction is given in the Council's new basement planning policy dependent on the size of the proposed basement. Permitted development rights provide an avenue for small developments to be completed without the burdensome and unnecessary requirements of the new basements planning policy.</p> <p>I am happy to discuss further if you are available.</p>	<p><i>of the Borough."</i></p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built through 'permitted development' rights.</p> <p>The Article 4 Direction was made in accordance with Article 4(1) of the General Permitted Development Order (GPDO) 2015. The GPDO does not have a specific requirement to undertake an economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the</p>

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		<p>Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Article 4 Direction may result in an additional cost in making a planning application but it will not stop development from taking place. Also the costs associated with getting a planning permission are small in comparison to the overall costs of building a basement and the subsequent increase in value.</p> <p>The Article 4 Direction is not banning development but once confirmed will require that such development should be the subject of a planning application so that</p>

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		<p>steps can be taken to mitigate the well documented harmful impacts of basement development.</p> <p>Once confirmed the Article 4 Direction would introduce the requirement that all basement development in the Borough takes place using the same planning policies.</p>
Maeda Friederike	<p>Although I live in a block of flats , and one might think , that this matter only concerns single dwelling houses , I wonder if it does ...? I have one further comment on A4 : I live in a building , where some years ago we were fortunate enough to jointly buy the freehold (i.e. each leaseholder is also a shareholder - all 19 shares are equal in size/ voting power) . We are thus freeholders and owner occupiers rolled into one . While we are respectful of the law , one hears stories of others , who would wish to add additional income by extending upward , downward and sideways . While in conservation areas the possibilities for extending upward and sideways may be slim , someone might set their mind on creating an extra flat by digging down . You may laugh at the thought of this , yet it has happened in</p>	<p>Noted.</p> <p>The permitted development rights that the Article 4 Direction will remove relates only to single dwellinghouses and not flats. Development linked to flats requires planning permission and will be subject to the relevant planning policies.</p>

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	<p>our street (Courtfield Road) .</p> <p>All basement extensions should be regulated , so they fall under the control of the council , and to avoid all the problems that can arise , when wannabe developers are left to their own devices .</p>	
Ornella & Christopher Moscucci & Bridgett	<p>We are strongly in favour of the adoption of an Article 4 Direction. I would like to see it have immediate effect. Case law, planning decisions and Counsels' opinion support our belief that Schedule 2 Part 1, Class A of the General Permitted Development Order (GPDO) does not permit excavation or engineering operations beyond the purely incidental. There is nothing in Part 1 Class A that permits engineering operations and they do not therefore benefit from deemed permission under Article 3 of the GPDO.</p> <p>This analysis applies in any event, irrespective of the adoption of an Article 4 Direction. Strictly without prejudice to this, we strongly support the adoption of an Article 4 Direction that requires all "basement development, lightwells or any other development below the dwellinghouse or its curtilage" to be carried out only if planning permission is granted by the Council. The Direction should not however be non-immediate, or on 12 months' notice. It should have immediate effect. There can be no justification for allowing such</p>	<p>The reasons for not confirming the Article 4 Direction with immediate effect are stated in the <a href="#">Cabinet Report</a> of 19 March 2015. These primarily relate to the potential liability for compensation. As explained in the Cabinet Report the Council is not in a position to confirm the Article 4 immediately.</p> <p>Most recent judgements in the High Court on the issue of how the limits in the GPDO 2015 should apply to a permitted development basement seem to confirm that basements do benefit from permitted development rights set out in Schedule 2, Part1, Class A of the GPDO. There is no</p>

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	<p>exacting, disruptive and potentially dangerous works to be carried out without the full controls and conditions that attach to a planning permission.</p>	<p>case law that the Council is aware of that has directly dealt with the issue of whether or not a basement falls with Schedule 2, Part1, Class A. There are a number of conflicting legal opinions on the issue.</p> <p>There is nothing in Class A that states 'enlargement, improvement or alteration' <u>but not associated engineering works</u>. Most above ground extensions also require engineering works to construct for example.</p>
<p>Cranbrook Basement (Robert Walker)</p>	<p>We wish to object to the proposed removal of Permitted Development Rights in respect of basement construction across the Borough on the following basis:</p> <ul style="list-style-type: none"> <li>▸ There is no evidence that the removal of Permitted Development Rights for Basement Construction is warranted.</li> <li>▸ No consultation and/or investigation or assessment of the financial implications for business and employment has been</li> </ul>	<p>The reasons for making the non-immediate Article 4 are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The Article 4 Direction has been made following the procedures set out in Schedule 3 of the General Permitted Development Order (GPDO) 2015. The GPDO does not have a specific</p>

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	<p>carried out by the Local Authority.</p> <ul style="list-style-type: none"> <li>▶ The Local Authority have failed to carry out any assessment of the economic impact of the proposed removal of Permitted Development Rights.</li> <li>▶ The removal of Permitted Development Rights places an unreasonable financial burden upon householders who would otherwise be allowed to carry out basement construction under "General Planning Consent" granted by Parliament through Permitted Development Rights.</li> </ul>	<p>requirement to undertake an economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Council adopted Policy CL7: Basements in January 2015. Similar comments regarding an assessment of the economic impact of the policy were made during consultations on the policy. The Inspector who examined the policy also considered such comments and stated in the examination report (paragraph 21) that</p>

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		<p>to have attempted to quantify the economic effects of basement development in more detail using monetary amounts would not have necessarily brought any more clarity to the Sustainability Appraisal process.</p> <p>The Article 4 Direction may result in an additional cost to the applicant in making a planning application (which may benefit basements constructor and consultants) but it will not stop development from taking place. Planning application fee does not apply where the application solely relates to development which would otherwise have been permitted development. Also the costs associated with getting a planning permission are small in comparison to the overall costs of building a basement and the subsequent potential increase in value.</p>

Respondent Name	Consultation response	Council's response
James Dawson	<p>I am an RBKC resident and live with my family in Ladbrooke Road in Notting Hill.</p> <p>There is a lot of development and building work going on at the moment close to where I live. There is large building site immediately behind my house and several smaller one within a few hundred metres.</p> <p>However, I do not object to these. I see development as part and parcel of living in London and in RBKC in particular given the relative shortage of space and high property values. My suspicion is that this is the case of many residents but that a vocal minority of residents has made their opinions heard to such an extent that they have gained considerable influence with the planning department and the Council. As a result of this, the Council feels compelled to introduce overly restrictive rules without proper consideration. The Article 4 direction is a case in point.</p> <p>The consultation seems to me to be ineffective. No material other than the Notice and the Direction have been provided, or at least I cannot find any. One cannot conduct effective consultation when the basis of the matter being consulted has not been given.</p> <p>If, as I suspect, the main reason for the restriction is about noise and nuisance from construction then the Council needs to say so and a meaningful consultation could then be conducted.</p>	<p>Noted.</p> <p>The Article 4 Direction has been made to ensure consistency across all basement development in the Borough.</p> <p>The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report “<i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough.</i>”</p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence</p>

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	<p>In addition, the extent of the efforts made to publicise the restriction are not known. For something that will affect the rights of all residents than all efforts should be made to let residents know what is going on and to provide them with full information.</p>	<p>demonstrated the harmful impacts of basement development that has taken place in accordance with the now superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built though 'permitted development' rights.</p> <p>The Council publicised the making of the Article 4 Direction on its website, press release, notices were put up in notice boards in all local libraries, site notices outside Kensington Town Hall, Central Library, Chelsea Old Town Hall, Holland Park, direct mailout to those who subscribe to the Planning Bulletin, direct mailout to those who have subscribed to be on the Council's Local Plan database. Notice of making the Article 4 Direction was published in the London Weekly News (formerly Kensington and Chelsea News)</p>

Respondent Name	Consultation response	Council's response
		on 23 April 2015 and in the London Gazette on 24 April 2015.
Port of London Authority (Catherine Whyte)	Thank you for consulting the PLA on the above document. The PLA has no comments to make on this.	Noted.
James Copinger-Symes	<p>I have lived in Chelsea on and off over a period of 15 years. I do not understand why this removal of permitted development rights is needed or on what it is based. I could not find any reasons or any factual support for it on the council's webpage. As no logic for it has been given it is hard to find fault with what is proposed, which does not seem right.</p> <p>However having lived in the borough for some time I do object to it for the following reasons:</p> <ul style="list-style-type: none"> <li>▸ Development in RBKC is difficult so removal of these permitted rights, without good cause, seems wrong.</li> <li>▸ The Council appears, from my experience, to be doing everything it can to stop as much development as it can due to the pressure against building it experiences from some</li> </ul>	<p>The Article 4 Direction has been made to ensure consistency across all basement development in the Borough.</p> <p>The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report "<i>Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on</i></p>

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	<p>residents. It is not just the rules themselves but the way that the rules are applied that stops development. Planners look for reasons to stop permissions being given or make the add-on rules to a planning permission difficult or effectively impossible to achieve. And so a restriction like this that brings more development within the ambit of the planners and planning rules means further strangulation of development.</p> <ul style="list-style-type: none"> <li>▸ The Council has not given the reasons why it is bringing in this limitation. Though I suspect it is as a response to the anti-development lobby.</li> </ul> <p>As an aside I can say that I have responded to consultations on basement policy before and my responses were not replied to coherently with stock, copy and paste, answers being given. I ask that this is not repeated at this consultation.</p>	<p><i>the residential character of the Borough.”</i></p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built though 'permitted development' rights.</p> <p>The figures for planning applications granted and refused show that permissions are granted rather than refused for a large proportion of planning applications.</p> <p>The local planning authority has to work within the legislation and determine planning applications in accordance with its</p>

Respondent Name	Consultation response	Council's response
		<p>development plan. It cannot unreasonably refuse planning permissions. Applicants have recourse to the planning appeal process where they are aggrieved by a planning decision.</p> <p>The previous consultations related to basement policy generated a significant volume of responses. Many respondents submitted very similar or identical responses. If on a particular issue the same/similar points had been raised the Council provided a common response. The same approach is used in all consultation responses.</p>
Jane Heffron	<p>This has come to my attention today. We would be opposed to having development rights removed in connection with basements. However, we would favour appropriate controls on basement construction to prevent noise, dirt, traffic problems and danger to adjacent residents and their properties. Works should be contained behind wooden enclosures (as many now are) to minimize noise and dirt. Traffic handling needs to be</p>	<p>Noted.</p> <p>The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>If the Council does not make and confirm the Article 4 Direction there will be little</p>

Respondent Name	Consultation response	Council's response
	<p>smooth. Structural impact needs to be taken into account and provision made for any damage to other houses.</p> <p>We own a house in Astwood Mews.</p>	<p>control over the issues mentioned in the response. The Article 4 Direction will ensure that all basement development needs planning permission and comply with Policy CL7: Basements. Policy CL7 has been carefully designed to mitigate harmful impacts on residential living conditions.</p>
Andrew De Bertodano	<p>I am a resident in the borough and live in Chelsea.</p> <p>I oppose the removal of permitted development (PD) rights as this seems unfair, unwarranted and not supported by justification.</p> <p>I can find no justification given by the Council for the article 4 direction. This in itself seems wrong and probably against correct process but furthermore it makes it difficult to respond to the consultation when the basis of the Council's restriction is not known.</p> <p>No consideration has been given for the negative impact that the restriction will have on the economy both on the space that will not now be created or on the development sector more broadly.</p> <p>Basement development across the borough happens in specific streets and areas. There are many streets, even in Chelsea, where there has been little or no basement development. It cannot therefore be right or justified to bring in a borough-wide restriction of</p>	<p>Noted.</p> <p>The Article 4 Direction has been made to ensure consistency across all basement development in the Borough.</p> <p>The reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>A short summary of reasons was set out in paragraph 3.1 of the Cabinet Report "<i>Such development would not be caught by any of the requirements of Policy CL7 which</i></p>

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	this type.	<p><i>have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough.”</i></p> <p>The Council's new policy CL7 on basements was supported by a range of evidence base. The evidence demonstrated the harmful impacts of basement development that has taken place in accordance with the now superseded policy. Clearly the same (or worse as there would be very limited safeguards) impacts would occur if there was a proliferation of basements built through 'permitted development' rights.</p> <p>The Article 4 Direction has been made following the procedures set out in the General Permitted Development Order (GPDO) 2015. The GPDO does not have a specific requirement to undertake an</p>

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		<p>economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Article 4 Direction may result in an additional cost in making a planning application but it will not stop development from taking place.</p> <p>There may be some streets where basement development has not taken place but given the increasing trend such development may take place within any</p>

Respondent Name	Consultation response	Council's response
		dwellinghouse in the Borough. Given the known issues (documented in the Council's evidence for Policy CL7) the Council is taking a proactive stance.
Chris Owens	<p>Thank you for the opportunity to comment on your non-immediate Article 4 Direction with regard to removing development rights for basements. I write as an home owner within the Borough where extensive damage was caused throughout my building from an adjacent basement development and which has now been blighted by a successful application on a second aspect which has not proceeded for over a year and where now the property has been sold on. May I comment in an abbreviated form and add that I wish to totally endorse the observations already made to you by Mr Nick Beytes.</p> <p>1. The right to development in congested urban areas de facto potentially confers disadvantage on adjacent owners and members of the public who live or conduct their daily business nearby. The extent of the disadvantage relates directly to the magnitude and complexity of the project and is mostly expressed in terms of pollution (noise etc) and/or structural damage.</p> <p>2. Underground developments of any kind, basements included, are particularly fraught by structural and hydrological considerations of</p>	<p>Noted. The adopted Policy CL7: Basements has been carefully designed to mitigate the harmful impacts of basement development. Some of these impacts are as described in the response.</p> <p>Not making an Article 4 Direction would mean that basements built under permitted development rights would be exempt from all the planning requirements imposed by planning policy.</p> <p>Therefore it has been made to ensure that there is consistency in applying the planning policy to basement development.</p> <p>The detailed reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet</a></p>

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	<p>considerable magnitude. Where they are embarked upon under or adjacent to old (most of the Borough) or poorly built (e.g. Mews) buildings these difficulties are compounded.</p> <p>3. There is a general presumption in favour of allowing the right to be exercised with few grounds for successful opposition. A home owner may thus be quite innocently involved, by virtue of the nature of the work, in a protracted and substantial interference to the enjoyment of their home or business. This can, not infrequently, extend over years.</p> <p>4. RBKC is in possession of data that refer to the frequency with which properties are damaged and the extent to which home owners unwittingly or otherwise find themselves enduring such intrusion without the limited protection of Party Wall Agreements. These fractions are sizeable and by some standards unacceptable.</p> <p>5. It is also in possession of opinions that state that The Party Wall Act (most frequently invoked in the event of damage) pre-dates the advent of basement development in its current extensive form and is not well furnished to settle disputes. For example changes in surface appearance do not establish causality and it is quite possible for the cost of establishing causality to be greater than the cost of repair which then inevitably falls on the Adjoining Owner.</p> <p>6. The nature of basement building demands effective ('Building Control') supervision, the detail required for adequate supervision</p>	<p><a href="#">Report</a> of 19 March 2015.</p>

<b>Respondent Name</b>	<b>Consultation response</b>	<b>Council's response</b>
	<p>places a substantial over-head in terms of time and resource on the local authority, self-certification is not an option and the notion that a Council may choose to gather a collection of accredited builders would be costly to set up, police and be most likely very unpopular.</p> <p>7. There is limited experience on the long-term success or otherwise of under-ground living as opposed to recreation. The absence of outlook and direct light are probably less than optimal for continued good mental health. To this may be added the absence of long term knowledge of the risks associated with fire, flood and the ingress of water. All mitigate against basements contributing to quality housing.</p> <p>8. There is similarly as yet limited experience on the effects on adjacent properties of diverting underground water to which much of the Borough territory is exposed.</p> <p>9. A secondary effect of the addition of a basement to a property is a very considerable uplift in its value and it suggested by some that this is the driving force behind the current explosion in the activity. Such a manoeuvre also removes from the market a property that might otherwise be affordable to another more modest owner. Although one defence is that the work provides employment and is therefore justified, the employment span is limited and not necessarily sustainable.</p> <p>I I apologise for the length of this catalogue but hope it might provide</p>	

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	<p>the suggestion that, in the absence of any particularly strong argument other than personal choice and/or freedom, it is justified to argue that basement development rights be curtailed particularly in confined spaces amongst old building where the activity can, not only be damaging but on occasions verge towards being dangerous.</p>	
<p>Planning Edge Ltd (David Jobbins)</p>	<p>Further to your recent consultation, as a Chartered Planner working within the Borough, I would like to raise strong objections to your proposed Article 4 for the following reasons;</p> <p>The proposed Article 4 is contrary to the clear advice within the NPPF and NPPG as no material justification has been given to remove PD for householders across the whole Borough rather than on a more specific, justified basis. As the Council will be aware, the introduction of Art. 4 Directions can only be made in exceptional circumstances which do not exist within the Borough.</p> <p>The whole purpose of PD is to give a degree of freedom and the introduction of a Borough-Wide direction is contrary to national advice and gives a message that the Council is anti-business and overly prescriptive.</p> <p>The Council already has an adopted SPD which limits those basements which require permission and to remove PD would be an excessive reaction to the concerns of few residents.</p>	<p>The detailed reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The map appended to the Cabinet Report shows that it may be possible to undertake basement development across the Borough using permitted development rights.</p> <p>The General Permitted Development Order (GPDO) sets out permitted development rights and it also gives powers to local authorities to withdraw such rights.</p> <p>For all Article 4 Directions the legal</p>

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	<p>Finally, the Council has not considered the impact of the removal of PD upon both the rights of individual homeowners and the harmful impact upon local businesses which would suffer as a result of the removal of such PD.</p> <p>I look forward to your consideration of the above.</p>	<p>requirement is that the local planning authority is <i>“satisfied that it is expedient<sup>1</sup> that development should not be carried out unless permission is granted.”</i> The recent examination into the policy and supporting evidence demonstrate that this requirement would be satisfied.</p> <p><i>It is also in-line with the NPPF and NPPG (ID: 13-038) in that “The use of Article 4 Directions to <b><u>remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified.</u></b>” (our emphasis)</i></p> <p>The strong justification for making an Article 4 Direction i.e. requiring that Policy CL7 applies to all basement development</p>

<sup>1</sup> Para (1) of Article 4 of the GPDO 1995 (as amended)

Respondent Name	Consultation response	Council's response
		<p>is essentially the same as the reasons and evidence behind Policy CL7. The Council has extensive evidence for Policy CL7 demonstrating the harmful impacts that can be caused by basement development. The evidence for Policy CL7 has been considered by a Planning Inspector and the policy was found sound. It is considered that use of Policy CL7 for all basement development <b><u>is necessary to protect local amenity or the wellbeing of the area.</u></b></p> <p>The Article 4 Direction is not banning development but once confirmed will require that such development should be the subject of a planning application so that steps can be taken to mitigate the well documented harmful impacts of basement development.</p>

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		<p>Once confirmed the Article 4 Direction would introduce the requirement that all basement development in the Borough takes place using the same planning policies. This will enable consistency of approach across all basement developments.</p> <p>The Article 4 Direction may result in an additional cost in making a planning application but it will not stop development from taking place.</p> <p>The GPDO does not have a specific requirement to undertake an economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and</p>

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		<p>potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Council's SPD cannot and does not restrict permitted development rights as suggested. The role of an SPD is to provide further guidance and clarity on a planning policy.</p>
Sonata Persson	<p>To whom it may concern:</p> <p>I apologise for being late with my comments, I have been having problems with my email account for the last few days, hence missed the deadline. I would appreciate if my comments could still be accepted for your consultation.</p> <p>I am an RBKC resident living in Chelsea.</p> <p>I object to the article 4 direction.</p> <p>No evidence has been given by the Council on why the direction is being introduced. I do not understand the basis for the restriction.</p> <p>It makes sense to me that small cellar extensions or making the</p>	<p>The detailed reasons for making the Article 4 Direction are set out in the <a href="#">Cabinet Report</a> of 19 March 2015.</p> <p>The Article 4 Direction has been made following the procedures set out in the General Permitted Development Order (GPDO) 2015. The GPDO does not have a specific requirement to undertake an economic assessment of making Article 4</p>

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	<p>ceilings of existing lower ground rooms be full height is a good thing that should be supported and made simple. This new regulation will mean that a full planning permission is needed and will make some people not do their development or means that money by the owner and the Council will be wasted. I do not think that this has been thought through fully by the Council.</p> <p>The impact on the development / building industry has also not been thought through.</p> <p>In practice the Council seems to be trying to stop basement development (and indeed all building) to the maximum amount possible. I am sure that they are under great pressure to limit basement construction from some residents but this of itself is not a good reason for introducing restrictions with correct consideration and consultation.</p> <p>Many RBKC residents are in favour of development but do not know that they need to oppose these sort of rules or how to do so. I doubt if most RBKC residents even knew that this restriction is happening. Is the Council supposed to let residents know that new restrictions are planned and are they meant to let residents know why the restrictions are being introduced?</p>	<p>Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Article 4 Direction may result in an additional cost in making a planning application but it will not stop development from taking place.</p> <p>There may be some streets where basement development has not taken place but given the increasing trend such development may take place within any dwellinghouse in the Borough. Given the</p>

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		<p>known issues (documented in the Council's evidence for Policy CL7) the Council is taking a proactive stance.</p> <p>The Council publicised the making of the Article 4 Direction on its website, press release, notices were put up in notice boards in all local libraries, site notices outside Kensington Town Hall, Central Library, Chelsea Old Town Hall, Holland Park, direct mailout to those who subscribe to the Planning Bulletin, direct mailout to those who have subscribed to be on the Council's Local Plan database. Notice of making the Article 4 Direction was published in the London Weekly News (formerly Kensington and Chelsea News) on 23 April 2015 and in the London Gazette on 24 April 2015.</p>

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<p>Richard Max &amp; Co Solicitors (representing Zipporah Lisle-Mainwaring) (Gemma R...</p>	<p>Representation for the Non-immediate Article 4 - Basement Direction  We are instructed by Mrs Zipporah Lisle-Mainwaring ("our client"), the owner of 19 South End, London WB 5BU.</p> <p>We write in response to the Article 4 - Basements Direction made by the Council on 15 April 2015 ("the Direction").</p> <p>The Direction seeks to restrict the development described in Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"), that being, <i>"the enlargement, improvement or other alteration of a dwellinghouse by way of basement development, lightwells or any other development below the dwellinghouse or its curtilage"</i>.</p> <p>Our client objects to the making of the ("the Direction") on that basis that:</p> <p>It is directly contrary to national government policy regarding Article 4 directions - no "particularly strong justification" (as required by policy) has been made out that a borough-wide direction is necessary;</p> <p>The alleged "need" for the Direction is entirely of the Council's own making through the adoption of Core Strategy Policy CL7;</p> <p>Core Strategy Policy CL7 is currently under challenge- any decision to confirm the Article 4 Direction should await the outcome of these</p>	<p>The Article 4 Direction has been made in accordance with Article 4(1) and the procedures set out in Schedule 3 of the General Permitted Development Order 2015.</p> <p>The legal challenge to Policy CL7 was dismissed by the High Court. In relation to the text relating to ground 1 of the legal challenge, the Council has no further comments to add to the High Court Judgement.</p>

Respondent Name	Consultation response	Council's response
	<p>proceedings.</p> <p>Background It is necessary to set out the circumstances which have led to the making of the Direction. The Council's decision to make the Direction is linked with its recent adoption of Core Strategy Policy CL7 ("Policy CL7") on 21 January 2015.</p> <p>The purpose of Policy CL7 (as stated by Jonathan Bore in the public examination) is to <i>"bear down on the volume of excavation in the Borough"</i>.</p> <p>Policy CL7 is currently the subject of a High Court challenge under section 113 of the Planning and Compulsory Purchase Act 2004 ("the Policy CL7 Challenge") which has been brought by Mrs Lisle-Mainwaring and Force Foundations (trading as Basement Force) Limited. The substantive hearing to determine the challenge has been listed to take place on 7, 8 and 9 July 2015.</p> <p>Ground 1 of the Policy CL7 Challenge is based on the failure of the Council to consider the existence and effect of permitted</p>	

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	<p>development rights ("PD Rights") for basement development in the process of adopting Policy CL7.</p> <p>The Council has belatedly acknowledged that one impact of the adoption of Policy CL7 will be to force developers and property owners to pursue basement development under PD Rights over which the Council has no control. There is no evidence the Council gave any consideration to this impact prior to the adoption of Policy CL7.</p> <p>We wrote to the Council on 12 November 2014 to submit our client's representations on Policy CL7 as part of the last public consultation requested by the Inspector. That letter set out in detail our concerns that the Council had failed to adequately assess the relationship between the proposed Policy CL7 and PD Rights for basement development.</p> <p>On 2 December 2014 the Inspector published his report concluding that, with the proposed modifications, Policy CL7 was "sound" and met the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004.</p>	

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	<p>By a Letter Before Action to the Council dated 19 December 2014, we explained that the adoption of Policy CL7 would be unlawful due to the failure of the Council and Inspector to have regard to the effect of PD Rights.</p> <p>Following the publication of the Executive Decision Report ("the ED Report") on 19 March 2015 the Council's Cabinet resolved to make the Direction.</p> <p>The Council has confirmed that the proposal to make the Direction was only added to the list of Key Decisions on 3 March 2015. At which point it was treated as an urgent decision.</p> <p>At no point prior to our representations on 12 November 2014 or our Letter Before Action on 19 December 2014 did the Council take any steps to make the now proposed Direction neither was the prospect of the making of the Direction the subject of any discussion at the public examination in respect of Policy CL7.</p> <p>Summary of Council's justification The Council's justification for the making of the Direction is outlined at various points throughout the ED Report, paragraph 3.1 provides,</p>	

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	<p><i>"Basements within certain limits can be built (in the curtilage of houses) without the need for planning permission through the use of 'permitted development' PO rights. With the introduction of [Policy CL7]: Basements and its stringent planning requirements, there would be an incentive for some owners to construct basements using their permitted development rights rather than applying for planning permission. Such development would not be caught by any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on residential character of the Borough. The risk of basements being built using PO rights is Borough-wide ..."</i></p> <p>Paragraph 4.9 confirms the Council's key concern that, <i>"even for a basement that is restricted to the footprint, the impacts of its construction on residential living conditions can be significant."</i></p> <p>Paragraphs 5.1 - 5.8 of the ED Report outline the potential impacts and risks of basement construction under PO Rights including that they are,</p> <p><i>"...exempt from all the requirements imposed by the new Policy CL7... includ[ing]... draft Construction Traffic Management Plan[s];... Construction Method Statement[s]; proposals for the mitigation of noise, vibration and dust ...; providing 1m of soil on top of the</i></p>	

Respondent Name	Consultation response	Council's response
	<p><i>basement to enable drainage; planting and mitigat[ion of] harmful visual effects;"</i></p> <p>The ED Report acknowledges:  <i>"...there would be an incentive for some owners to construct basements using their permitted development rights rather than applying for planning permission. This would enable them to get around any of the requirements of Policy CL7 which have been carefully designed to mitigate harmful construction and other impacts on residents and on the residential character of the Borough. There is also the risk that owners start using a two stepped approach. They build a PO basement and apply for planning permission just for the lightwells and external manifestations."</i></p> <p>Against this background we set out our client's objection to the Direction below:</p> <ul style="list-style-type: none"> <li>▸ Breach of National Policy and Guidance</li> </ul> <p>The National Planning Policy Framework ("the NPPF") provides guidance on Article 4 directions, paragraph 200 states,  <i>"The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is</i></p>	<p>Response to specific comments under the various bullet point heading is provided below -</p> <ul style="list-style-type: none"> <li>▸ Breach of National Policy and Guidance</li> </ul> <p>The Article 4 Direction is in-line with the legal test that the local planning authority is <i>"satisfied that it is expedient<sup>2</sup> that development should not be carried out</i></p>

<sup>2</sup> Para (1) of Article 4 of the GPDO 1995 (as amended)

Respondent Name	Consultation response	Council's response
	<p><i>necessary to protect local amenity or the wellbeing of the area".</i></p> <p>The NPPF is supported by the Planning Practice Guidance ("the PPG") which restates the precise wording of paragraph 200 of the NPPF and adds, at paragraph 38, <i>"The potential harm that the direction is intended to address should be clearly identified . There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area (eg. those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)." (our emphasis)</i></p> <p>PD rights are granted by Parliament to remove from the planning system defined categories of development which the Government considers to be acceptable without the need to obtain planning permission.</p> <p>The Government's policy and associated guidance make clear that these rights should only be removed where it is absolutely necessary to protect residential amenity. Where a blanket, borough-wide removal is sought the justification must be "particularly strong". Development is already heavily restricted in the Borough and PD Rights are one of the last remaining avenues for development for property owners. Confirmation of the Direction would be an unfair</p>	<p><i>unless permission is granted."</i></p> <p><i>It is also in-line with the NPPF and NPPG (ID: 13-038) in that "The use of Article 4 Directions to <b><u>remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified."</u></b> (our emphasis)</i></p> <p>The strong justification for making an Article 4 Direction i.e. requiring that Policy CL7 applies to all basement development is essentially the same as the reasoned justification and evidence for Policy CL7. The Council has extensive evidence for Policy CL7 demonstrating the harmful impacts that can be caused by basement development. The evidence for Policy CL7 has been considered by a Planning</p>

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	<p>restriction on the rights of property owners in the Borough.</p> <p>Against this background the Direction is directly contrary to the spirit and purpose of PD rights and the associated government policy and guidance on Article 4 directions.</p> <p>The ED Report provides no detailed analysis of the need or justification for the Direction and fails to consider the full impact of confirmation of the Direction as set out below.</p> <ul style="list-style-type: none"> <li>▸ No "strong justification" for borough wide direction</li> </ul> <p>As set out above, governmental guidance provides that, in the case of a borough-wide direction, the <i>"justification should be particularly strong"</i>.</p>	<p>Inspector and the policy was found sound. It is considered that use of Policy CL7 for all basement development <b><u>is necessary to protect local amenity or the wellbeing of the area.</u></b> Also see paragraphs 11.1, 1.2 and 12.2 of the Cabinet Report which directly relate to the guidance in the NPPG.</p> <ul style="list-style-type: none"> <li>▸ No "strong justification" for borough wide direction</li> </ul> <p>The Cabinet report does provide a strong justification for making an Article 4 Direction. The respondent may not agree with the Council on the strength of the reasons nevertheless it is the Council's view that there are particularly strong reasons in this Borough linked to the evidence for Policy CL7: Basements.</p>

Respondent Name	Consultation response	Council's response
	<p>A borough-wide direction should be wholly exceptional. There is no evidence that the Council has given detailed consideration of whether there is any need to control basement development in the entirety of the Borough. The RBKC Basements Development Data from February 2014 shows that there are several areas in the Borough where there is very little basement development. However the ED Report fails to adequately address this issue. A map is appended to show where basement development may be possible. There is no analysis of the likelihood of widespread basement development in these areas.</p> <p>The Council should have undertaken a more thorough and precise exercise of whether there is a genuine need to impose the Direction over the entirety of the Borough.</p>	<p>As stated in paragraph 12.2 of the Cabinet Report – <i>“The Article 4 will not prevent basement development but will make sure that the impacts of such developments are properly assessed in accordance with policy CL7 and that controls are imposed to mitigate their harmful impacts.”</i></p> <p>Once confirmed the Article 4 Direction would introduce the requirement that all basement development in the Borough takes place using the same planning policies. This will enable consistency of approach across all basement developments.</p> <p>The Basement Development Data report from February 2014 states at paragraph 1.8 <i>“The cases are prevalent in all residential neighbourhoods in the Borough with the exception of areas where there is</i></p>

Respondent Name	Consultation response	Council's response
		<p><i>a high concentration of social housing, particularly in the north of the Borough. In addition areas that are characterised by institutional buildings such as in South Kensington with its museums and university buildings do not have any cases. Other gaps are in areas with mansion blocks, hotels, designated Employment Zones, garden squares or within parks.”</i></p> <p>The Article 4 Direction only relates to single dwellinghouses and cannot affect permitted development rights across other uses such as in the areas noted above. The Council considers it is expedient that planning permission should be required for basement development (as defined in the Direction) across all dwellinghouses in the Borough (the reasons are as explained for Policy CL7). The areas where the maps in the Basement Development Data, February 2014 do not show a prevalence</p>

Respondent Name	Consultation response	Council's response
	<p>▶ Inconsistency between need and proposed non-immediate</p>	<p>of basement development are not characterised by single dwellinghouses but are not completely devoid of dwellinghouses.</p> <p>It would not serve any benefit to try and identify only dwellinghouses across the Borough and draw complicated outlines around them. Such an approach would have potential for errors with some dwellinghouses being left out resulting in anomalies and inconsistency.</p> <p>The map appended to the Cabinet Report on the Borough-wide non-immediate Article 4 Direction for basement extensions to single dwellinghouses dated 19 March 2015 shows that the properties where such development can take place are spread across the Borough.</p> <p>▶ Inconsistency between need and</p>

<b>Respondent Name</b>	<b>Consultation response</b>	<b>Council's response</b>
	<p style="text-align: center;">direction</p> <p>The decision to make the Direction was added to the list of the Council's Key Decisions on 3 March 2015. At this stage it was noted as an "urgent" decision.</p> <p>The Council made the Direction on 15 April 2015 which will only come into force, if confirmed, on 28 April 2016. The Council has undertaken to make a non-immediate Direction in order to avoid its statutory liability for compensation in respect of immediate Article 4 directions.</p> <p>The Council would otherwise have been liable to pay compensation for loss or damage directly attributable to the withdrawal of PD Rights, including the difference in the value of land or property. Given the property values in the Borough this would have likely lead to liability to pay compensation in the region of nine figures.</p> <p>It is fundamentally inconsistent of the Council to class the issue as urgent on its list of Key Decisions in March 2015 but delay the implementation of the Direction until 28 April 2016.</p> <p>If, on the Council's analysis, the adoption of Policy CL7 has created an urgent need to protect residential amenity the Direction should come into force immediately.</p> <p>However, if the Council considers the likely increased impact until 28</p>	<p style="text-align: center;">proposed non-immediate direction</p> <p>There is a risk of a greater number of permitted development basements for one year (9 months at the time of writing this response). The Council has to take a balanced view and as explained in the Cabinet Report the compensation liability precludes an immediate confirmation. However, making a non-immediate Borough-wide Article 4 Direction does not preclude the Council from making an immediate Article 4 Direction on a single property if required.</p>

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	<p>April 2016 to be acceptable it casts doubt on whether there is any genuine need to make the Direction in order to protect residential amenity on a permanent basis.</p> <ul style="list-style-type: none"> <li>▸ No analysis of effect of non-immediate direction</li> </ul> <p>The Council has acknowledged in the ED Report that the consequence of the non immediate Direction is that there will be an increase in basement development undertaken under PD Rights in the year before the Direction comes into force.</p> <p>Confirmation of the Direction will force property owners to rush through basement development before the Direction takes effect. This will inevitably increase the risk of unsatisfactory or unsafe build quality and poorly considered basement development.</p> <p>There is no evidence that the Council has given any consideration to this issue in the ED Report.</p>	<ul style="list-style-type: none"> <li>▸ No analysis of effect of non-immediate direction</li> </ul> <p>The Council has not stated in the Cabinet Report that there 'will be an increase'. It has stated in paragraph 6.25 of the Cabinet Report that <i>"In the one year before the Article 4 Direction is confirmed <b>it is possible</b> that there will be an increase in the numbers of basements built through permitted development."</i> (our emphasis)</p> <p>The Council has provided sufficient reasons in the Cabinet Report to make a non-immediate Article 4 Direction. As stated above the Council also has the powers to make immediate Article 4 Direction on a single property if required.</p>

Respondent Name	Consultation response	Council's response
	<ul style="list-style-type: none"> <li>▸ Detrimental Impact on the construction Industry in the borough and associated economic activity</li> </ul> <p>The Direction will have a stark impact on the basement construction industry in the Borough, which the Council has failed to consider. The adoption of Policy CL7 has already had a significant detrimental effect on the basement construction industry, including staff cut-backs and lay-offs.</p> <p>The confirmation of the Direction will only exacerbate the adverse impact of the adoption of Policy CL7 on the construction industry in particular and the economy of the borough as a whole. The ED Report fails to give any consideration to this issue.</p>	<ul style="list-style-type: none"> <li>▸ Detrimental Impact on the construction Industry in the borough and associated economic activity</li> </ul> <p>The Article 4 Direction is not banning basements. It is requiring that such development (as defined in the Direction) should be subject to planning permission. It may well be the case that putting together a planning application may in fact generate more work for consultants and basement contractors and have a beneficial economic impact, especially regarding business and employment.</p> <p>The GPDO does not have a specific requirement to undertake an economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting</p>

<b>Respondent Name</b>	<b>Consultation response</b>	<b>Council's response</b>
		<p>the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role in making it a desirable place to live.</p> <p>The Article 4 Direction may result in an additional cost to the applicant in making a planning application (which may benefit basements constructor and consultants) but it will not stop development from taking place. Planning application fee does not apply where the application solely relates to development which would otherwise have been permitted development. Also the costs associated with getting a planning permission are small in comparison to the overall costs of building a basement and the subsequent potential increase in value.</p>

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	<ul style="list-style-type: none"> <li>▸ Impact on minor works and existing basements</li> </ul> <p>The Direction will also limit property owners' ability to undertake minor works to any existing subterranean developments (for example existing cellars) without first seeking planning permission from the Council.</p> <p>Increasing the head height or undertaking certain structural repair works to a small existing basement will now require planning permission.</p> <p>The cost and time taken to produce a planning application that complies with Policy CL7 will be unduly prohibitive particularly for relatively small scale works.</p> <p>Such small scale works will not have any adverse impact on residential amenity . However they will be unnecessarily prohibited by the broad scope of the Direction.</p> <p>The Council has failed to give any consideration to the impact of the Direction on properties with existing subterranean floorspace.</p>	<ul style="list-style-type: none"> <li>▸ Impact on minor works and existing basements</li> </ul> <p>It is accepted that the Article 4 Direction will include what may be considered as relatively minor works. The Article 4 Direction will not 'prohibit' such works but require a planning application to be made.</p> <p>It would lead to inconsistencies if the Council attempted to define these minor works to exclude them from the Article 4 Direction and set out some kind of threshold for these. The Article 4 Direction relates to (defined) works which benefit from permitted development rights set out in Schedule 2, Part 1, Class A of the GPDO. However, some works may not fall within the definition of development as set out in section 55 of the Town and Country Planning Act 1990. Such works would not require planning permission which is the</p>

Respondent Name	Consultation response	Council's response
	<ul style="list-style-type: none"> <li>▸ Prematurity pending the result of the Policy CL7 Challenge</li> </ul> <p>The Policy CL7 Challenge has not yet been fully determined. The substantive hearing is listed for 7, 8 and 9 July 2015. While the status of Policy CL7 is uncertain, it would be inappropriate for the Council to confirm the Direction before the outcome of the Policy CL7 Challenge is known. If Policy CL7 is quashed, and a more proportionate basements planning policy adopted, the rationale for the confirmation of the Direction as set out in the ED Report will fall away.</p> <p>We therefore request that the Direction is not confirmed and that in any event, the Council's decision is put on hold pending the final determination of the Policy CL7 Challenge proceedings.</p>	<p>same position whether or not an article 4 Direction is made.</p> <ul style="list-style-type: none"> <li>▸ Prematurity pending the result of the Policy CL7 Challenge</li> </ul> <p>The Council has made it clear that confirmation of the Article 4 will not take place until April 2016. Therefore these comments are not relevant.</p> <p>The legal challenge in the High court was dismissed. The application for leave has also been refused by Court of Appeal so the outcome is that the policy has been upheld.</p>

Respondent Name	Consultation response	Council's response
Basement Force (Simon Haslam)	<p><b>Introduction</b></p> <ul style="list-style-type: none"> <li>▸ Basement Force (Force Foundations Ltd) builds / designs and builds basements across London primarily beneath or close to existing building The company has been operating since 1993 at which time its primary business was foundation and structural repairs. The company has been building basements for the last fifteen years. The Managing Director is the Vice Chairman of the Association of Specialist Underpinning Contractors (ASUC) a trade body of more than 30 of the leading contractors involved in subterranean work. ASUC is working with the Health and Safety Executive (HSE) on guidelines to improve health and safety standards across the sector. The Grosvenor and Cadogan Estates both require contractors who complete basement work in their areas to be ASUC members.</li> <li>▸ We oppose the introduction of the Article 4 Direction that removes permitted development rights for the enlargement, improvement or other alteration of a dwelling house, by way of basement development, lightwell or any other development below the dwellinghouse or its curtilage. These rights are valued by many of those who live in Kensington and Chelsea</li> </ul>	<p><b>Introduction</b></p> <ul style="list-style-type: none"> <li>▸ Noted.</li> <li>▸ Noted.</li> <li>▸ There were strong reasons for</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>where domestic living space is at a premium.</p> <ul style="list-style-type: none"> <li>▸ A summary of the reasons why permitted development rights for basements should not be removed are:</li> <li>▸ Permitted development rights should only be removed where necessary in the public interest, and in accordance with national policy. The particularly strong justification required for the proposed removal of rights throughout the Borough is completely lacking.</li> </ul> <ul style="list-style-type: none"> <li>▸ The consultation process is undermined by the fact the</li> </ul>	<p>introducing Policy CL7: Basements including to protect residential living conditions and the character and appearance of the Borough amongst other reasons. Clearly the same issues/justification apply to all basement development including those that could potentially be built using permitted development rights. The Article 4 Direction is not banning development but once confirmed will require that such development should be the subject of a planning application so that steps can be taken to mitigate the well documented harmful impacts of basement development.</p> <ul style="list-style-type: none"> <li>▸ The detailed reasons for making the Article 4 Direction were set out in the <a href="#">Cabinet Report</a> of 19 March</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>Council has not published any reasons for the removal of these right It has not been widely publicised and many of those who wish to object do not know why the Council is making the Article 4 Direction.</p> <ul style="list-style-type: none"> <li>▸ The effect of the Direction will affect small developments, and give rise to a number of anomalie For example, even to increase the head height of existing cellars, a full application will be required, increasing dramatically the regulatory burden and deterring many from undertaking minor beneficial works of this kind.</li> </ul>	<p>2015. This document was publicly available. It is of course possible for any member of the public/interested parties to call the planning department if they have any queries. The consultation material included the email address for the planning policy team.</p> <p>It would lead to inconsistencies if the Council attempted to define these minor works to exclude them from the Article 4 Direction and set out some kind of threshold for these. The Article 4 Direction relates to (defined) works which benefit from permitted development rights set out in Schedule 2, Part 1, Class A of the GPDO. However, some works may not fall within the definition of development as set out in section 55 of the Town and Country Planning Act 1990. Such works would not</p>

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	<ul style="list-style-type: none"> <li>▸ No assessment of the economic impact of the restriction has been carried out.</li> </ul>	<p>require planning permission which is the same position whether or not an article 4 Direction is made.</p> <p>Where planning permission is required the Council requires supporting material that is proportional the scale and nature of the proposed development.</p> <p>The Council is bound by statutory tests for planning applications in relation to its local requirements being reasonable having regard, in particular, to the nature and scale of the proposed development; and about a matter which it is reasonable to think will be a material consideration in the determination of the application. These statutory tests are set out in <a href="#">section 62 (4A) of the Town and Country Planning Act 1990</a> (inserted by the Growth and Infrastructure Act) and <a href="#">article 11(3)(c) of the Town and Country Planning</a></p>

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	<ul style="list-style-type: none"> <li>▸ If the restriction is based on the assumed negative impact on amenity caused by basement development then the Council's own evidence presented as part of the basements policy CL7 supporting evidence does not support a restriction.</li> </ul>	<p>(Development Management Procedure) (England) (Order) 2015. (Also see NPPG paragraph 40)</p> <ul style="list-style-type: none"> <li>▸ The procedures for making Article 4 Directions are set out in the General Permitted Development Order (2015) (GPDO). The GPDO does not have a specific requirement to undertake an economic assessment of making Article 4 Directions. However, it is not considered that introducing the Article 4 Direction would have a detrimental economic impact in the Borough. It could be argued that protecting the residential amenity of the Borough against harmful construction impacts and potential impacts on the character and appearance would be beneficial to the Borough's economy as its special character plays a strong role</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>The particularly strong justification required for the proposed removal of permitted development rights throughout the Borough is completely lacking</p> <ul style="list-style-type: none"> <li>▶ Permitted development rights are granted by Parliament in order to reduce, as far as possible, the regulatory burden on developers and others (including the local planning authority) at the planning stage. The spirit and practice of British planning law is to support sustainable development and small scale subterranean extensions to dwellings are in principle sustainable development.</li> </ul>	<p>in making it a desirable place to live.</p> <ul style="list-style-type: none"> <li>▶ The Council's evidence was considered by an independent Planning Inspector. The point made here by the respondent was made at length to the Inspector. However, the Inspector found the policy sound and was convinced by the evidence presented on the impacts.</li> </ul> <p>The Cabinet report does provide a strong justification for making an Article 4 Direction. The respondent may not agree with the Council on the strength of the reasons nevertheless it is the Council's view that there are particularly strong reasons in this Borough linked to the evidence for Policy CL7: Basements.</p>

Respondent Name	Consultation response	Council's response
	<ul style="list-style-type: none"> <li data-bbox="472 308 1384 579">▸ They should only be removed in accordance with national policy as set out in the NPPF, and PPG. They should only be removed where necessary to protect local amenity or wellbeing. Borough wide directions (such as this) should be confined to exceptional cases and require particularly strong justification.</li>   <li data-bbox="472 1233 1384 1311">▸ The onus must therefore be on the Council to show why it is necessary to remove the right to carry out ALL subterranean</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="1480 344 2029 520">▸ The GPDO grants permitted development rights and also gives local planning authorities powers to withdraw such rights.</li> <li data-bbox="1480 536 2047 807">▸ The <b>Article 4</b> Direction is in-line with the legal test that the local planning authority is "<i>satisfied that it is expedient<sup>3</sup> that development should not be carried out unless permission is granted.</i>"</li> <li data-bbox="1480 823 2047 1294">▸ It is also in-line with the NPPF and NPPG (ID: 13-038) in that "<i>The use of Article 4 Directions to <b><u>remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be</u></b></i></li> </ul>

<sup>3</sup> Para (1) of Article 4 of the GPDO 1995 (as amended)

Respondent Name	Consultation response	Council's response
	<p>extensions THROUGHOUT the Borough.</p> <ul style="list-style-type: none"> <li>▶ The Council is removing these nationally granted development rights without good reason and without any supporting evidence (either as to the need to remove the pd rights, or as to the need to do so right across the Borough). This runs completely counter to the NPPF and PPG and to the recognition that led to the grant of these rights in the first place.</li> <li>▶ Article 4 Direction restrictions on permitted development should only apply across a whole area in exceptional circumstances. No evidence has been given as to why this is an exceptional circumstance.</li> <li>▶ On the contrary the evidence put forward by the Council as part of the evidence to support the introduction of new Core Strategy policy CL7 shows that basement planning applications and, (based on the logic that the Council has used previously), therefore basement development is not spread across the borough but instead takes place in some</li> </ul>	<p><b><u>clearly identified.</u></b>” (our emphasis)</p> <ul style="list-style-type: none"> <li>▶ The Council is not removing <b>the</b> right to carry out “ALL subterranean extensions THROUGHOUT the Borough”. The Direction relates to Schedule 2, Part 1, Class A of the GPDO and only affects dwellinghouses.</li> <li>▶ The Basement Development Data</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>areas and does not take place (or takes place only occasionally) in some other area See RBKC Basements Development Data, Feb 2014, page 10, Map1: Spatial Distribution of Basement Applications 2001 - 2013. This page is attached to these representations. This map clearly shows that there are several areas where there is little or no evidence of basement development.</p> <ul style="list-style-type: none"> <li>▸ Furthermore Map 1 shows basement applications and covers a period of ten years.</li> </ul> <p>Thus, it needs to be viewed with some care and can give the impression that the number of basement developments happening at all or at any one time in any area is significantly greater than in reality. Map 1, if used for this purpose, is misleading. Most of the streets shown on Map 1 as having multiple basements will in reality be free of any basement developments.</p> <ul style="list-style-type: none"> <li>▸ When this was pointed out previously, the Council argued that the areas where basement development does not take place are either non-residential areas or areas of public housing. However the Council has never supported this assertion with</li> </ul>	<p>report from February 2014 states at paragraph 1.8 <i>“The cases are prevalent in all residential neighbourhoods in the Borough with the exception of areas where there is a high concentration of social housing, particularly in the north of the Borough. In addition areas that are characterised by institutional buildings such as in South Kensington with its museums and university buildings do not have any cases. Other gaps are in areas with mansion blocks, hotels, designated Employment Zones, garden squares or within parks.”</i></p> <ul style="list-style-type: none"> <li>▸ The Article 4 Direction only relates to single dwellinghouses and cannot affect permitted development rights across other uses such as in the areas noted above. The Council considers it is expedient that</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>evidence.</p> <ul style="list-style-type: none"> <li>▸ If it is said that areas of public housing are unlikely to wish to make use of pd rights to expand their homes, we would contest that. Not only is there likely to be a growth in home ownership driven by the ability of tenants to buy housing association houses, but these properties, once in private ownership, will often be the sort of property where additional space would be useful but the burden of planning would stop development. Furthermore, it is surely unfair to “pull up the drawbridge” now that some of those within the higher-value areas of RBKC have been able to benefit from the pd rights and so stay in their homes when they required additional space but remove this right from potential future owners in lower-value areas of the borough.</li> <li>▸ Future claims for compensation from the Council may come from new owners of previously social housing who will have suffered a loss due to the imposition of the Article 4 Direction at a time when the new owners were tenants and could not exercise their permitted development right</li> </ul> <p>The consultation process is undermined by the fact the Council has</p>	<p>planning permission should be required for basement development (as defined in the Direction) across all dwellinghouses in the Borough (the reasons are as explained for Policy CL7). The areas where the maps in the Basement Development Data, February 2014 do not show a prevalence of basement development are not characterised by single dwellinghouses but are not completely devoid of dwellinghouses.</p> <ul style="list-style-type: none"> <li>▸ Social housing is generally flatted development which does not benefit from permitted development rights. The Council is not liable to compensation one year after making the Direction.</li> <li>▸ The Council publicised the making</li> </ul>

Respondent Name	Consultation response	Council's response
	<p>not published any reasons for the removal of these rights. It has not been widely publicised and many of those who wish to object do not know why the Council is making the Article 4 Direction</p> <ul style="list-style-type: none"> <li>▶ The Council has published the NOTICE OF MAKING OF A DIRECTION UNDER ARTICLE (4)1, and the DIRECTION MADE UNDER ARTICLE 4(1). No other information was provided as part of the consultation.</li> <li>▶ Neither of these documents provides a reasoned justification or any evidence to support the Article 4 Direction. In addition, the direction has not been publicised widely, so many of those affected by it may well not even know it is happening.</li> </ul>	<p>of the Article 4 Direction on its website, press release, placing notices in notice boards in all local libraries, site notices outside Kensington Town Hall, Central Library, Chelsea Old Town Hall, Holland Park, direct mailout to those who subscribe to the Planning Bulletin, direct mailout to those who have subscribed to be on the Council's Local Plan database. Notice of making the Article 4 Direction was published in the London Weekly News (formerly Kensington and Chelsea News) on 23 April 2015 and in the London Gazette on 24 April 2015.</p> <ul style="list-style-type: none"> <li>▶ The Council has prepared the Article 4 Direction and undertaken the consultation in accordance with the procedures set out in the GPDO. The GPDO does not require that</li> </ul>

Respondent Name	Consultation response	Council's response
	<ul style="list-style-type: none"> <li>▸ Although we have seen the Cabinet report (which makes it clear that the Article 4 direction is thought necessary as a direct result of the new policy and would not have been made otherwise) it has not been published by the Council as part of this consultation and nowhere is there a clear statement of reasons for making the Article 4 Direction. We don't go into any detail on the Cabinet report but for the reasons given throughout these representations would confirm our view that it comes nowhere near justifying this Direction and doesn't meet the test of providing a particularly strong justification.</li> </ul>	<p>reasons are set out during the consultation. However, the reasons were available in the publicly available Cabinet Report of 19 March 2015. Residents always have the option to contact the Council if they have any queries. The email address of the planning policy team was available on the consultation material. The Planning Line number is available on the Council's website and receives a high volume of phone calls. Such queries were not received during consultation.</p> <p>The policy has introduced a number of safeguards which did not exist before. The Cabinet report acknowledged that the adoption of the policy and its stringent requirements may provide an incentive for some owners to use their permitted development rights. The Council has not stated that it "<i>would not have been made</i></p>

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	<ul style="list-style-type: none"> <li>▸ It is therefore impossible to make meaningful representations that consider or provide practical alternatives to the restriction. A reasonable and better alternative can only be offered if the Council's concerns about basement development under permitted development rights are made known as part of the consultation process. Clearly this is not proper or effective consultation, but a meaningless process being paid no more than lip service.</li> <li>▸ No evidence has been given (or is provided in the report) that any problems have been caused by basement construction completed under permitted development rights. While we recognise the Council is more able to control the impact of construction if an application for planning permission is</li> </ul>	<p><i>otherwise.</i>" With the new policy in place the Council is aiming for a consistent approach across all basement development. As stated before the Council is not banning basement development but requiring that a planning application made. This will ensure that the impacts can be given due consideration and measures to mitigate any harmful impacts are put in place in accordance with the policy.</p> <ul style="list-style-type: none"> <li>▸ This point has been made above and responded to.</li> <li>▸ The respondent is the second claimant for the legal challenge to the Basements Policy. In the legal challenge one of the grounds of</li> </ul>

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	<p>required, it does not follow that the scale of development permitted by the GPDO requires the bureaucracy involved. The examination into CL7 did not consider the removal of pd rights so the Council cannot pray in aid anything said by the Inspector about amenity: the target of the Council's policy was large basements which necessarily already required planning permission. Anyway we contend that construction impact can be effectively and correctly controlled through existing regulations, other than planning, if these are used correctly.</p> <ul style="list-style-type: none"> <li>▸ Basements built under permitted development rights can sometimes have externally visible changes to the rear and to the side elevation No evidence has been given that external changes in appearance under permitted development have</li> </ul>	<p>challenge was that the Council did not give weight to the extent of permitted development rights. In other words the policy was more stringent than permitted development rights. The argument being made here regarding "the scale of development permitted by the GPDO" runs counter to those put forward for the legal challenge. As stated in the Cabinet report it may be possible in a large number of properties across the Borough to have a basement under the entire footprint of a dwellinghouse. Such development will result in a similar (or worse as the limited powers to mitigate will be reactive) impacts to any other basement development.</p> <ul style="list-style-type: none"> <li>▸ It is considered that there are sufficient safeguards in the General Permitted Development Order for</li> </ul>

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	<p>been the cause of any problems.</p> <p>The effect of the Direction will affect small developments, and give rise to anomalies.</p> <ul style="list-style-type: none"> <li>▶ The cost of making a basement planning application that will comply with policy CL7 is at least £12,000 including VAT.</li> </ul>	<p>above ground changes. The Council also has a number of previous Article 4 Directions which relate to external alterations.</p> <p>Point about small development and anomalies has been made above and responded to.</p> <ul style="list-style-type: none"> <li>▶ As stated above if the works proposed do not fall within the definition of development as set out in section 55 of the Town and Country Planning Act 1990, planning permission cannot be required. In any case the material required to determine a planning application is proportional to the scale and nature of the development proposed.</li> <li>▶ These costs quoted are small compared to the overall cost of</li> </ul>

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	<ul style="list-style-type: none"> <li>▸ The process time for completing the Council's desired planning approval process is a minimum of 22 weeks (if this sounds like a lot it is – and it is the effect of the restrictive and bureaucratic process introduced via the new CL7 and associated – currently draft – SPD). This covers the pre-application (6 weeks), main application (8 weeks) and discharge of planning conditions (8 weeks)<sup>1</sup>. This time does not include for preparing the information needed as part of the planning application which includes site investigation (boreholes), consultation with local residents as part of the Construction Traffic Management Plan, architectural and engineering designs, and a Construction Method Statement. In practice the Council has also made it known that they will not allow any changes to a planning application once submitted, no matter how small. The likely time to achieve planning permission even for the smallest basement</li> </ul>	<p>constructing a basement. It can also be argued that these costs reflect the additional work for those engaged in property development and may have an economic benefit.</p> <ul style="list-style-type: none"> <li>▸ Planning applications can affect a number of people and the target timescales are set nationally. These reflect the need to consult and consider the issues thoroughly and are the same across all types of development.</li> </ul>

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	<p>development is 35 to 40 week</p> <ul style="list-style-type: none"> <li>▸ In order to dig down one metre to turn an coal cellar with restricted head height into a usable utility room, plant room or store room will, once permitted development right are removed, require a full planning permission under basements policy CL7 involving the cost, time, and bureaucracy referred to above.</li> <li>▸ Given the expense and time to gain planning permission in line with policy CL7, development of existing cellars and small basements will cease or their number be severely reduced. The only people who benefit in this situation are the economically secure who do not wish to carry out development.</li> </ul>	<ul style="list-style-type: none"> <li>▸ For very small applications there may be no need for pre-application. Also as stated above planning permission can only be required if the proposed works fall within the definition of development as set out in section 55 of the Town and Country Planning Act 1990. The material required with planning applications is proportionate to the scale and nature of development.</li> <li>▸ Please see response above. It is not considered that such development will cease. More often than not for such home improvements, owners apply for a Certificate to get a formal confirmation in any case. This provides the owners with the assurance that what they are doing is lawful and helps with the</li> </ul>

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	<ul style="list-style-type: none"> <li>▸ If the justification for the restriction is the construction impact on amenity, it is not explained why a similar blanket removal of pd rights is not required for above ground development. This direction, if confirmed, could therefore be the thin end of the wedge and may be used by those opposed to development of all kinds to restrict it in areas perceived to be subject to development pressure.</li> </ul> <p>There has been no assessment of the economic impact of the restriction</p> <ul style="list-style-type: none"> <li>▸ Basement development drives economic activity throughout</li> </ul>	<p>conveyancing for any future sale of the property. The Article 4 Direction will require a planning application rather than an application for a Certificate. The timescales involved are very similar. It is unclear why the respondent considers that the economically secure do not wish to carry out development.</p> <ul style="list-style-type: none"> <li>▸ The Council has a large number of Article 4 Directions which do relate to above ground development. These have been made over many years to address an issue where the Council has considered it necessary to make an Article 4 Direction.</li> </ul> <p><i>The respondent has not considered that the Council has not banned such development. Those who wish to embark on a time consuming and challenging</i></p>

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	<p>the construction supply chain. This includes architects, engineers, other designers, contractors on site, material suppliers, manufacturers of building materials, plant and equipment hire firms, plant and equipment manufacturers, and spoil removal companies. Materials include everything from concrete and structural steel to bathroom furniture, carpets and audio visual equipment. Each development drives economic activity locally and across the region.</p> <ul style="list-style-type: none"> <li>▶ The economic multiplier effect of construction activity is recognised by central Government and is used as the rationale for encouraging construction to drive overall economic growth at a local, regional and national level.</li> <li>▶ Creating habitable living space in high value areas is value creation that increases tax revenue Stamp Duty Land Tax is charged at 12% for property values above £1.5 million. The value created by basements developed under permitted development rights leads to increased tax revenues.</li> <li>▶ The Council has not considered at all the economic impact of the Article 4 Direction to remove permitted development rights for basement. It would be hard to conclude that there will be a</li> </ul>	<p>basement build normally do apply for a Certificate to confirm the position. A Certificate provides owners with the assurance that what they are doing is lawful and helps with the paperwork for any future sale of the property. With the Article 4 in place they will be applying for a planning application rather than a Certificate. This may result in an additional cost (quoted as £12,000 by the respondent) but this will be a benefit for those working on basement projects creating more work and not detrimental to the economy. It will also have environmental and social benefits in mitigating harmful impacts and improving residential living conditions.</p> <p>Similar comments about undertaking an economic impact of Policy CL7 were made. The Inspector's Report (paragraph 21) on Policy CL7 stated that the impacts considered in the Sustainability Appraisal</p>

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	<p>negative economic impact. The question, not addressed by the Council, is to the amount.</p> <ul style="list-style-type: none"> <li>▸ An economic impact assessment needs to be completed and included in a public consultation before the Council decides on implementing a restriction on permitted development rights.</li> </ul> <p>If the restriction is based on the assumed negative impact on amenity caused by basement development then the Council's own</p>	<p>of Policy CL7 were adequate. He stated <i>"To have attempted to quantify the economic effects in more detail using monetary amounts (perhaps as a cost/benefit analysis) would not have been appropriate or proportionate, and would have taken more resources than would be justified to assess a policy of this type. It would not necessarily have brought any more clarity to the SA process as its figures would have been open to interpretation and vigorous dispute."</i></p> <p>This point has been made before and responded to. The respondent has made all of these points about the evidence not only to the Council on a number of occasions during policy formulation but also to the Planning Inspector who examined the policy and to the Judge for the legal challenge to the policy. As such the Council will not be adding to the previous responses provided by the</p>

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	<p>evidence presented as part of the basements policy CL7 supporting evidence does not support a restriction</p> <ul style="list-style-type: none"> <li>▶ The Council included evidence<sup>2</sup> on the impact on amenity of basement development as part of the supporting evidence for basements policy CL7.</li> <li>▶ The Council has stated that this evidence shows that basements have a high negative impact on amenity. This is incorrect. The evidence does not show that basements have a high negative impact on amenity. Further, the Council were then saying it was only large scale basements that caused an unacceptably adverse impact and that they were not “anti-basement”. This would imply that they had no difficulty with the construction of modest extensions to people’s home</li> <li>▶ In summary the results of the Council's neighbours survey were:</li> <li>▶ Less than one in ten residents (9.1%) questioned were sufficiently motivated to respond by completing a tick back form stating that construction impact caused more than minimal traffic disruption or that levels of noise, vibration or</li> </ul>	<p>Council, the Planning Inspector and Mrs Justice Lang on these points about the evidence for Policy CL7.</p>

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	<p>dust were not acceptable. i.e. over 90% of those questioned did not respond stating that construction impacts or traffic were at unacceptable level</p> <ul style="list-style-type: none"> <li>▸ Less than 1 person in every 24 people questioned was sufficiently motivated to send a written response to the questionnaire stating that construction or traffic impact was unacceptable. i.e. more than 95% of respondents did not return a negative written response.</li> <li>▸ The sample questioned by the Council was skewed. It was not a plain sample across the borough but was limited to residents who were thought to have lived near to a basement development. The questionnaire was asking people who lived near to building sites if they thought that building sites created more than minimal traffic disruption or that levels of noise, vibration and dust from a building site were not acceptable.</li> <li>▸ Those questioned were not shown to have differentiated between above ground and basement construction as the source of noise, vibration, dust or traffi The questionnaire responses, which did not evidence unacceptable loss of amenity anyway, did not confirm that any negative impact</li> </ul>	

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	<p>came from basement rather than above ground development.</p> <p>Summary</p> <ul style="list-style-type: none"> <li>▸ We are concerned the Council is not listening and has already decided to confirm the Article 4 direction because of the perceived impact its own policy CL7 is expected (by the Council) to have on the use of pd rights and the expected (by the Council) impact on amenity that would follow from the construction phase of the development if there were to be such a growth in their use.</li> <li>▸ In these representations we make five important points and support each of them with a logical, evidence based analysis In summary:</li> <li>▸ In restricting all permitted development rights to extend a dwellinghouse at basement level across the whole borough, and in the absence of any evidence of the need for this extension of the need to apply for planning permission, the Council's Direction runs against the spirit and practice of</li> </ul>	<p>Summary</p> <p>The Council has to follow a statutory process and consider all the representations before confirming the Article 4 Direction. The reasons for making the Article 4 Direction were set out in the Cabinet Report of 19 March 2015.</p>

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	<p>British planning law and policy.</p> <ul style="list-style-type: none"> <li>▸ The Article 4 Direction has not been widely publicised and no reasoned justification or evidence has been given for the restriction. This makes the consultation a meaningless exercise, a token gesture by the Council.</li> <li>▸ Cellar enlargements and small basement developments will cease or their number be significantly reduced due to the high cost and effort needed to obtain planning permission under policy CL7.</li> <li>▸ No assessment of the economic impact of the restriction has been completed.</li> <li>▸ The Council's own evidence does not show that basement development causes a significant loss of amenity.</li> <li>▸ For all of these reasons the Council should withdraw its Article 4 Direction to remove permitted development rights for basements.</li> <li>▸ 36. In the event that the Council considers that permitted development rights for basements should be limited then a</li> </ul>	<ul style="list-style-type: none"> <li>▸ Last bullet point – the process of making an Article 4 Direction is different from policy formulation. It</li> </ul>

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	<p>consultation should be completed on a draft Article 4 Direction that includes reasoned justification and proportionate supporting evidence. Alternatively, the Council should restrict the Article 4 direction to specific areas and/or to specific types of basement development.</p>	<p>does not require a 'reasoned justification' or a 'proportionate evidence base' which are regulatory requirement for planning policies. Nevertheless the Article 4 Direction as explained earlier is based on strong justifications as set out in the Cabinet Report of 19 March 2015.</p> <ul style="list-style-type: none"> <li>▸ The Council considers that the correct procedures have been followed as set out in the General Permitted Development Order 2015. There is no provision to make a 'draft' Article 4 Direction or undertake the other processes (normally undertaken for planning policy documents) stated in the response.</li> </ul>