

Dear Mr Bore

This is ECRA's response to the Council's Basements Policy Formulation Report. ECRA welcomes and supports the Council's decision to introduce policies in relation to basement developments in the Royal Borough. However, we note with extreme concern the disproportionately adverse results arising from the construction of a relatively few number of basements. ECRA would strongly urge that these policies be as restrictive as possible given the risks (based on recent experience) of protracted development periods of significant disturbance, damage to and possible visual incongruity within the generally high architectural quality in the Royal Borough, coupled with its attractiveness as a residential location, its high population densities and small surface area and the adverse impacts that basement developments are likely to have on tree cover, residential gardens and carbon emissions.

We have the following detailed comments.

#### General

A balance should be struck between the social need for additional subterranean living space and the impacts that its construction would cause in the Royal Borough.

The Royal Borough, in relation to other local authorities in the UK *prima facie* enjoys many advantageous characteristics. These include it having a set of attractive, highly-desirable and, in a number of cases, relatively very expensive areas in which to live, work and visit, with many of its populations having high income levels.

However, the obverse of this is that many of these areas have high population densities in multi-storey terraces, mansion blocks and similar structures of (mostly) pleasing appearance, while the public and private green spaces surrounding these buildings are significantly constrained. Many accommodation units are particularly small (studio, one- or two-bedroom flats), with no or poor access to large outside green spaces.

Therefore, while it would be desirable for basement policies to be in line with the principles of sustainable development and the positive presumption for development, in the case of the Royal Borough these policies should:-

- respect both practical and aesthetic constraints;
- represent a consistent approach in considering different types of heritage assets;
- seek to minimise losses in terms of existing amenity; and
- incorporate appropriate degrees of flexibility so as to determine different types and levels of restriction in different areas of the Royal Borough.

The need for such policies is underscored by the following:-

#### Paragraph 3.2

We welcome the reference to the five principles of sustainable development. In the case of these proposed policies, we would say that the Royal Borough has already achieved a sustainable economy (allowing basements is unlikely to make its economy any more sustainable).

However, we would argue that introduction of 'laissez faire' basements policies is directly undermines the principle of ensuring a strong, healthy and just society, when under Paragraph 4.11 below, we note that 900 properties in the Royal Borough are expected to have been adversely affected by just 53 basement developments, a ratio of c.18:1. Assuming a roughly uniform population density around each, it would not appear that a development which benefits one person, while bringing disbenefits to 18 of their neighbours, will be, "ensuring a strong, healthy and just society". Given this scale of community disbenefit, these policies should be extremely restrictive in their approach, implementation and, where necessary, robust in their enforcement.

We note that the fourth principle is, 'promoting good governance'. We would take this to mean here that basement policies should be detailed enough to offer adequate protection of different types of areas and their buildings.

Finally, we welcome the principle of using sound science responsibly and with linking this with the previous principle and the precautionary principle mentioned in paragraph 3.3, so that in the light of the Alan Baxter report, appropriate detailed policies can be developed to cover, for example, particular soil conditions in different parts of the Royal Borough

#### Paragraph 3.3

This refers to Para 8 of the NPPF which states that *"...to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system."*

We would contend that the word missing in the phrase, *"sought jointly and simultaneously through the planning system"*, but which it is reasonable to assume should be present is, *"fairly"*, and that in ensuring that *"the planning system should play an active role in guiding development to sustainable solutions,"* such fairness should also be taken into account when the planning system is to be relied upon to ensure the right course is taken between the desire for development and the concerns of existing communities.

#### Paragraph 3.4

We welcome the reference to following the 'precautionary principle' and would ask that the regimen to be applied to basement policies here be a tight one.

#### Paragraph 3.6

Para 9 of the NPPF states that *"Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to): replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure."*

We do not believe that poor design is a feature of the Royal Borough, and especially not in its Conservation Areas. On the other hand, we do believe that the quality of life for a possible eighteen-fold number of people suffering from, as opposed to taking advantage of, a basement development should be a material planning concern when considering applications.

It could be argued that a basement development is the one type of development that will have the greatest significant adverse affect on living conditions of more of the Borough's residents that would outweigh the gains for the relatively small number of those who will ever have theirs improved by it

and only where it is conclusively shown there will be no or minimal adverse impacts from a basement's construction, should it be allowed.

#### Paragraph 3.7

We would strongly contend that while the Royal Borough's proposed basements policy may be bespoke, it does not take into sufficient account its exceptional local circumstances, either looking at the Royal Borough as a whole as opposed to the rest of the country, or at looking at its individual areas.

It should be noted particularly that its residential and household densities are, respectively, over 35 and 41 times the national average (paragraph 4.4). These would imply, for example, assuming that applications for basement development are to be spread evenly across the borough, 35 times more of this borough's residents are going to be affected by each such development than those living elsewhere across the country.

In addition, the Royal Borough has a proliferation of small, rather than large, private gardens and a lack of public open space, again in relation to most other local authority areas, and this being the case it should be prepared to develop policies that may not reflect national norms. Moreover, private garden and open space provision varies across the Royal Borough; different detailed policies may need to be developed for different areas.

#### Paragraph 3.10

We would contend that the development of basements does cause harm to their individual local vicinity and proportionately more to the Royal Borough as a whole, given both its very small size and its desirability as a residential location, than would be the case in other local authorities. Thus under Para 53 of the NPPF, the Council would be entitled to – and should – develop and implement policies that would restrict such development that is demonstrably inappropriate within the Royal Borough to a considerably greater restrictive degree than would be the case in other local authorities.

#### Paragraph 3.11

ECRA remains very concerned that evidence presented so far indicates that extensive development of gardens as a result of basements can harm the character of the Royal Borough, especially when so many of its gardens are relatively small.

#### Paragraph 3.12

ECRA welcomes and supports the statement, in line with that on paragraph 126 of the NPPF, that the basement publication policy requires that basement development should not cause harm to the significance of heritage assets.

However, ECRA would point out that, while the Council, under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to Listed Buildings, "shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses", the Council, in relation to Conservation Areas, should also be working in accordance with Section 72 of the same Act, namely:- "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

Given the almost exact wording in these two Sections, we would strongly contend that the approach being taken towards Listed Buildings should also be adopted towards properties in Conservation Areas, as both are heritage assets in the Royal Borough, and similar protection should be afforded to both.

This would be particularly so where adjoining buildings in a Conservation Area have been built as a terrace. This is because the insertion of a basement under one part of such a terrace is as likely to have the same - if not greater - negative impacts on the structure of the terrace, particularly the parts closest to the inserted basement, as a basement under a Listed Building. A crack, arising from a basement development, down the middle of a historic terraced frontage in a Conservation Area may have an equal or possibly greater set of adverse visual, safety and/or rectification implications as damage to a detached Listed building.

Therefore, we would argue that the protection that is to be given to Listed Buildings should also be given to buildings in a Conservation Area where these are in a terrace that is either continuous or one in which consecutive buildings are less than 10 metres apart.

#### Paragraph 3.13

The architectural theme or themes of a Conservation Area are considered to be part of their special architectural or historic interest. The Publication policy should also preclude basements where such continuity of theme would be at risk in a Conservation Area. It should also require applicants to demonstrate that there would be no harm to the special architectural and historic interest of the Conservation Area when development is proposed in a garden in the Conservation Area.

#### Paragraphs 3.14 – 3.16

We welcome and support these paragraphs. We would ask that details of all works to be done are submitted to the Council and agreed before work is started to ensure that paragraphs 109 and 120 of the NPPF will be complied with. Where these cannot be complied with permission should be not be granted.

In the light of paragraphs 109 and 120 of the NPPF, ECRA would contend that no owner or occupier of a building has an automatic right to develop it, especially where it is, or would be, likely to cause considerable disruption to the setting, appearance and stability of neighbouring buildings. The classic, unaltered precedent is that normally no building shall be extended forward of the building line established when the building was first planned and constructed. By the same token, we would contend that no building should be extended downwards beyond its original foundations, especially where this would undermine its original foundations and/or those of adjoining buildings.

#### Paragraphs 3.17 – 3.26 (The London Plan)

In relation to these paragraphs, ECRA would add that in the case of the Royal Borough, given the lack of public green space among much of its residential areas and the small amount of green space in private gardens in relation to the residential units that they serve, particular note would need to be taken as to the loss of general amenity from basement developments, even as separate constructions under gardens.

As such losses may vary from one area of the Royal Borough to another, we would suggest that there be more than the one limit of 50%. For example, where a 50% limit may be considered appropriate in areas near to large green public spaces, such as Kensington Gardens, a lower limit of,

say, 20% would more appropriate for areas such as Earl's Court, which has very small gardens serving multi-storey buildings with virtually no public open space.

In addition to this, particular regard should also be given to tree provision in the gardens or buildings where a basement is proposed. We would urge that, for each proposal, a tree planting and management scheme must be submitted to and agreed by the Council. The aim of each scheme would be to maximise the amenity value from the trees involved and would therefore need to take into account the expected future of existing trees and the feasibility of planting more (with sufficient depth for future root growth) around and above any basement development.

We would ask that the Council confirm the assertion in paragraph 9.7.1 in the Alan Baxter report, namely:- " all trees in conservation areas...are protected."

We would also ask that the Basement Policy adopts as a minimum the British Standard 5837, 2012 (Trees in relation to design, demolition and construction) which suggests that basements should not be constructed within a distance of twelve times the diameter of the trunk of a [presumably existing?] tree.

We would ask that all the other points in paragraphs 9.7.1 – 9.7.5 in the Alan Baxter report be included in the Basements Policy, save that we believe that the 1 metre minimum soil cover as mentioned in paragraph 9.7.5 is insufficient and that this should be increased to a minimum of 2 metres.

We would ask now for the opportunity to be able to put these points in person to the Examination.

I look forward to hearing from you.

Yours sincerely

Mark Balaam  
Chairman