

Response Form

Partial Review of the Core Strategy for the Royal Borough of Kensington and Chelsea with a focus on North Kensington

Development Plan Document policies

All representations **must** express a view regarding the soundness or legal compliance of a planning policy. If the representation does not comment on soundness or legal compliance, or deal with how a policy can be altered to make it sound the representation will **not** be valid.

Name: Mr & Mrs M Haggard

Company/Organisation: Private Resident

Please complete the form and email it or send it to:

The Executive Director of Planning and Borough Development
f.a.o The Policy Team
The Royal Borough of Kensington and Chelsea
The Town Hall,
Hornton Street,
London W8 7NX

Email address: planningpolicy@rbkc.gov.uk

Publication Stage Representation Form

To be **“sound”** the contents of a local plan should be POSITIVELY PREPARED, JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY.

“Positively prepared” means that the planning policy needs to:

- be prepared based on a strategy which seeks to objectively assess development and infrastructure requirements, including those of neighbouring authorities where it is reasonable to do so.
- It must also be consistent with achieving sustainable development.

“Justified” means that the planning policy must be:

- founded on a proportional evidence base
- the most appropriate strategy has been selected when considered against the reasonable alternatives.

“Effective” means that the planning policy must be:

- deliverable over its period
- based on effective joint working on cross – boundary strategic priorities.

“Consistent with National Policy” means that the planning policy should enable the delivery of sustainable development in accordance with the guidance contained within the National Planning Policy Framework (NPPF).

It must also be **legally compliant** which means that the planning policies have been prepared in accordance with legal and procedural requirements.

State planning policy or paragraph number to which you are referring

Paragraph 34.3.71

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

N/A – except as stated in the text below

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

Paragraph 34.3.71

Our own recent experience in Montpelier Walk

Many dwellings across RBKC and WCC (including the Montpeliers) were not built with proper foundations. This has direct consequences for terraced houses when a developer excavates a new basement. Our experience at 18 Montpelier Walk

illustrated this when 30 Montpelier Place excavated a new basement in 2010.

18 Montpelier Walk, did not have a Party Wall Award (PWA) with 30 Montpelier Place as we are two houses away from them. However, 18 Montpelier Walk suffered internal and external cracking and wall shift, as did both 17 and 19 Montpelier Walk. The property at 19 Montpelier Walk, being adjacent to 30 Montpelier Place, had the benefit of a PWA with 30 Montpelier Place whereas 17 and 18 Montpelier Walk did not.

In the absence of a Party Wall contract, the internal and external cracking at 18 Montpelier Walk became the subject of a circa £12,000 Accidental Damage claim under 18 Montpelier Walk's Household insurance policy. This affected our no-claims bonus, increased our insurance premium the following year and constrained our ability to seek competitive insurance quotes from alternative suppliers.

Support for the policy as a whole

We support the direction of RBKC's proposed Basements' Planning Policy in all other respects and welcome the publication of this consultation document. However, we do **not** believe the mechanisms proposed in paragraph 34.3.71 support the statements in paragraphs 34.3.49 / 50 and 34.3.56 with regard to minimising structural damage to other properties in a Terrace of houses resulting from basement excavations.

Policy points of importance and reasons for their importance to our family

It is important for us (and the occupants of other Terraced houses) that basement developers retain responsibility for the collateral damage they inflict on properties **in the proximity** of their excavations; and not just those with whom they conclude PWAs. In fact, current evidence at 29 Montpelier Place demonstrates that developers will go to great lengths to avoid having to conclude a PWA. For these reasons we do not think the Basement Planning Policy proposal is sound as the terms of paragraph 34.3.71 are not consistent with achieving sustainable development. The reasons for our position are amplified below along with some suggested remedies.

Yes

No

Do you consider the Planning Policy Document to be legally compliant?

 No

Please give the reasons for your choice below and be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

Why the proposals are NOT sound

Paragraph 34.3.71 states:-

“The structural stability of the development itself is not controlled through the planning system but through Building Regulations and the Party Wall Act is more suited to dealing with damage related issues.”

This abrogation of responsibility by the planning system for the consequences of its planning decisions means that the circumstances described in the paragraphs above fall inevitably between Planning, Building Regulations and Party Wall law and, in consequence, will not be covered by any one of them. This cannot be a Sound policy.

The following provide potential avenues of remedy requiring further analysis:-

1. Party Wall Agreements (PWA) to be extended to include properties one or two removed from the site of basement excavation. The Planning Authority would need to make this a condition of planning consent. Any such determination would need to be made on a case by case basis, taking into account a range of factors specific to the development site **and the immediate surrounding buildings.**
2. Basement developers to be required to post a “Retention Bond” which could be called upon by properties suffering damage attributable to basement redevelopment for a period of time following works completion. Retention Bonds of 5-10% are a common feature of many construction contracts.

In the absence of such measures, there is a risk that RBKC could face legal challenge for granting planning consents that result in damage to neighbouring properties from basement excavation while leaving property owners without recourse through a PWA or any other avenue apart from their own Household insurance policy, the negative consequences of which are described above.

Do you wish to appear at the Examination on any of these matters?

Yes

X

No

Please specify on what matter

Paragraph 34.3.71 as explained above.