

1. The Heritage Team at Turley Associates have been appointed to consider the Royal Borough's draft policy CL7 (relating to basement extensions) so far as it relates to heritage assets¹, with particular reference to statutorily listed buildings. We have considered the draft policy as well as the relevant supporting material.

Statutory Duty

2. Before considering the merits of the draft policy we firstly review the Planning (Listed Buildings & Conservation Areas) Act 1990 (hereafter referred to as 'the Act'), which sets out the statutory duties with regard to listed buildings and conservation areas, national policy as set out in the National Planning Policy Framework (NPPF) and the adopted Development Plan.
3. The Act requires decision makers to have special regard to the desirability of preserving the special interest of a listed building² and its setting³ and to preserve or enhance the character or appearance of a conservation area⁴. The NPPF provides further guidance on the Government's approach to delivering sustainable development with the key tenets being a general presumption in favour of granting planning permission and proportionality. The NPPF requires applicants to prepare proportionate assessments of the significance of heritage assets in order to inform decision making⁵ with a general presumption in favour of conserving, and where possible, enhancing this significance⁶ although acknowledging that not all elements of a heritage asset will contribute positively to its significance. The NPPF makes clear that the greater the significance of a heritage asset the greater the presumption in favour of its conservation⁷. The policy is not prescriptive and in accordance with the principles of the NPPF seeks to achieve sustainable development. Contrary to this, policy CL2(g) of the Core Strategy, relating to subterranean development, states that basements are not permitted below listed buildings and places a bar on such development.

Tests of soundness

4. Paragraph 182 of the NPPF states that when examining local plans, the Inspector will consider whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. The NPPF identifies four criteria for considering the tests of soundness, which includes demonstrating that the policy is:
 - Positively prepared;
 - Justified;
 - Effective;
 - Consistent with national policy.
5. We consider that policy CL7 does not satisfy the first, second and fourth points above.

Context for subterranean development

6. It is important to consider the context in which proposed basement extensions have been promoted. It is accepted that 'basements are a useful way to add extra accommodation to homes and commercial

¹ NPPF Annex 2 Glossary

² Section 7

³ Section 66

⁴ Section 72

⁵ Paragraph 128

⁶ Paragraph 131

⁷ Paragraph 132

buildings⁸. Given the generally prescriptive nature of the Royal Borough's policies relating to other form of modifications and alterations to properties, such as roof and rear extensions, it is entirely understandable that residents and businesses seek to provide much needed and valuable additional commercial and living space within basements. Put simply if one is discouraged from extending upwards or outwards it is natural to develop proposals to provide additional space below ground.

Conformity with NPPF and local policy

7. In seeking to totally resist basement extensions below gardens associated with statutorily listed buildings, with only a limited number of exceptions, draft policy CL7 seeks to go beyond the extent of the existing local policy context for basement extensions as well as the NPPF.

Lack of supporting evidence

8. The supporting information, particularly the 'Royal Borough of Kensington & Chelsea Residential Basement Study Report (March 2013) prepared by Alan Baxter & Associates LLP, Basements Policy Formulation Report and Basements Visual Evidence prepared by the Royal Borough, does not provide any evidence to support the restriction of this form of development in the manner outlined in the draft policy.

Reliance on Alan Baxter Report

9. The draft policy 'prays in aid' of the Alan Baxter report to support assertions that basement proposals, as a matter of principle, pose unavoidable and undesirable risk to the integrity, stability and significance of statutorily listed buildings. Whilst acknowledging that basement proposals can be complex and difficult developments, the Alan Baxter report does not conclude that such extensions will necessarily lead to harm. Instead, the report notes that the success of a basement extension(s) relies on securing the necessary expertise to develop an appropriate solution which is responsive to the particular characteristics of the site, building and adjoining context. There is no suggestion that there should be a moratorium of basement development under listed buildings (or their gardens) on either structural or aesthetic grounds (subject to some limitations on the amount of retained garden and the provision of a suitable growing medium amongst other criteria). There is simply no evidence within the report to warrant the overly restrictive approach adopted in this draft policy.

Effect on the significance of a listed building

10. We note that within the supporting text of the draft policy and the Basement Policy Formulation report, great weight is placed on the significance of a listed building with the assertion made that any basement extension will, as a matter of principle, have a harmful effect on this significance. Similar claims are made regarding the contribution of original/historic foundations to the significance of heritage assets. Whilst it is true that in some cases the particular significance of a listed building could preclude a basement extension, the approach adopted in the draft policy and supporting text is an unsubstantiated generalisation and cannot be regarded as being correct and applicable in all instances. This approach is contrary to national policy. The correct approach, in line with policy set out in the NPPF, would be to determine the particular significance of a heritage asset and then to assess whether the proposals would have a beneficial, neutral or harmful effect on this significance. Each case has to be considered on its merits.

⁸ Alan Baxter & Associates LLP (2013) Royal Borough of Kensington and Chelsea Residential Basement Study Report & supporting text to draft policy CL7

'Soundness' of policy

11. Accordingly, draft policy CL7, as far as it relates to heritage assets and statutorily listed buildings in particular, is not supported by a credible evidence base. Furthermore, given this lack of a robust evidence base the proposed restrictive approach to subterranean development is not in conformity with the presumption in favour of sustainable development and requirement to adopt a proportionate approach to assessing the effects of development upon the significance of heritage assets as set out in the NPPF. It is also not in compliance with existing local policy. This element of the draft policy is therefore not 'sound'.

Amendments to policy

12. Notwithstanding these concerns, we consider that the draft policy could be modified to reflect the available evidence and relevant statutory and planning policy framework by rewording subsections (e) and (f) as follows:

"Basement development should:

(e) Not cause harm to the significance of heritage assets unless it is necessary to deliver public benefits which would outweigh this harm."

(f) Not involve excavation underneath a listed building (including pavement vaults)."

13. These amendments would bring the policy in to line with the NPPF and existing local policy.