

Basement Publication Consultation; July-Sep 2013

Representations submitted on behalf of Cranbrook Basements on Planning Matters by Bell Cornwell LLP.

In order to assess whether the most recently published consultation draft of the Basement Publication Planning Policy July 2013 has been prepared in accordance with legislative requirements, each part of the proposed policy and proposed supporting text has been assessed to establish whether it is Sound. In determining the soundness of a Local Plan policy, it is necessary to establish whether this policy is:

-Justified;

-Effective; and

-Consistent with National Planning Policy.

Paragraph No.	Basement Publication Planning Policy July 2013 Text	Cranbrook Comments and Soundness Compliance Assessment
34.3.46	<p>The policy applies to all basement proposals whether constructed as part of new buildings, or as extensions under or in the gardens of existing buildings across all land uses. 'Basement' is any storey that is completely below the prevailing ground level of the back gardens within the immediate area.</p>	<p>There are properties in the Borough which are built across sloping land, such the front may be a storey lower than the rear, as well as vice versa.</p> <p>The definition of "basement" needs to acknowledge this and to be changed to include both front and back gardens and the "curtilage areas" of non-residential properties. Use of the latter term also overcomes the uncertainty of the definition of "the immediate area".</p> <p>The restriction of the definition to "back gardens" is not therefore justified.</p> <p>The last sentence should therefore read:</p> <p><b><i>"Basement" is any storey that is completely below the prevailing ground level of both the front and back curtilage areas of the property.</i></b></p>

34.3.47	<p>Basements are a useful way to add extra accommodation to homes and commercial buildings. Whilst roof extensions and rear extensions add visibly to the amount of built development, basements can be built with much less long term visual impact – provided appropriate rules are followed. This policy, and the associated supplementary planning document which will be produced on basements, set out those rules.</p>	<p>RBKC’s heritage assets and their preservation or enhancement is a key principle embedded in the Core Strategy policies covering the majority of the borough.</p> <p>As such, the minimal visual impact of basement extensions is integral to providing additional accommodation in a manner which is consistent with preserving the heritage assets of the borough.</p> <p>The draft policy is significantly more restrictive than the Core Strategy policies adopted in December 2010, imposing greater limitations on the ability to adapt accommodation to meet the prevailing social needs of the borough’s residents and businesses, with concomitant adverse social and economic impacts. These outweigh any possible beneficial environmental impacts that reducing the size of basement extensions may or may not achieve.</p> <p>That is not taking a balanced approach to social, economic and environmental sustainability and is therefore in conflict with national policy as set out in the National Planning Policy Framework (“the Framework”) paragraphs 7 and 8.</p>
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34.3.48	<p>Basement development in recent years has been the subject of concern from residents. Basements have given rise to issues about noise and disturbance during construction, the management of traffic, plant and equipment, and concerns about the structural stability of nearby buildings. These concerns have been heightened by the growth in the number of planning applications for basements in the Royal Borough with 46 planning applications in 2001, increasing to 182 in 2010, 186 in 2011 and 307 in 2012. The vast majority of these are extensions under existing dwellings and gardens within established residential areas.</p>	<p>The increased number of proposals which include basement extensions reflects the improved construction techniques now available, the prevailing social and economic needs to be able to adapt housing and non-residential buildings to meet 21<sup>st</sup> century living and working requirements, within the context of the restrictive heritage constraints which apply in a borough predominantly developed in the 19<sup>th</sup> century.</p> <p>That increase of itself does not justify changing the recently adopted permissive policy, which applies the appropriate principle of seeking to manage the impact of basement development through applying Conditions to “how” the construction process is undertaken, and not as in the draft to “if” the principle of the basement extension is acceptable.</p> <p>This new draft policy thereby fails to comply with the regulatory approach established by <i>Gateshead Metropolitan Borough v. Secretary of State for the Environment (1995) Env.L.37</i> [a copy is appended at the back of these representations], and embodied in Circular 11/95.</p> <p>The onus should not be placed on the applicant at the original application stage to demonstrate that a proposal can be implemented without unacceptable impacts on residential amenity. It is for the planning authority to demonstrate that exceptional circumstances may exist that cannot be overcome by the imposition of Conditions if a refusal of planning permission is to be justified. To demand that level of evidence at the application stage is inappropriate, as well as being disproportionate and thereby in conflict with the Growth and Infrastructure Act 2013 and Paragraph 158 of the Framework.</p>
34.3.49	<p>In the Royal Borough, the construction impact of basements is a significant material consideration in planning. This is because the Borough is very densely developed and populated. Tight knit streets of terraced and semi-detached houses can have several basement developments under way at any one time. The duration of construction is longer than for above ground extensions, the excavation process has a high impact on neighbours and the removal of spoil requires many more vehicle movements.</p>	<p>The cumulative impact on the highway network of simultaneous construction can only be accurately assessed at the time that construction on any individual project commences. That is undertaken by the highway authority already and their powers provide adequate and appropriate controls to manage the impacts.</p> <p>To the extent that noise and disturbance are material planning considerations, they too are best managed through the Environment Acts regulatory provisions, as at present, and again should be dealt with by Conditions on planning permissions where necessary and not</p>

		<p>as part of determining whether planning permission should itself be granted.</p> <p>In evidential terms, the impacts of the excavation (noise and disturbance) are not directly proportionate to the depth of excavations, but in principle relate to the methodology employed to undertake the works. For example hand digs for a single storey extension can take the same length of time and create the same disruption as three storey extensions done with mechanical methods. To this end each application should be assessed on a case by case basis- if deeper excavations can be achieved mechanically, these should be approved.</p>
34.3.50	<p>A basement development next door has an immediacy which can have a serious impact on the quality of life, whilst the effect of multiple excavations in many streets can be the <b>equivalent of having a permanent inappropriate use in a residential area</b> with long term harm to residents' living conditions. There are also concerns over the structural stability of adjacent property, character of rear gardens, sustainable drainage and the impact on carbon emissions. For all these reasons the Council considers that careful control is required over the scale, form and extent of basements.</p>	<p>This text in red should be removed. Applying the <i>Gateshead</i> principles, the onus is on the planning authority to demonstrate that construction activity of whatever extent and duration is incapable of being managed through other directly related regulations if that is to be a material consideration in the determination of the planning application.</p> <p>The word "inappropriate" in planning terms means "unacceptable in principle".</p> <p>There is no evidential basis for suggesting that is the case with basement extensions. Each planning application should be determined on its merits.</p> <p>The appropriate form of "control" by the planning authority is as with the current Core Strategy approach, namely by the imposition of Conditions when they are deemed necessary.</p>
34.3.51	<p>The policy therefore restricts the extent of basement excavation under gardens to no more than half the garden and limits the depth of excavation to a single storey in most cases. The extent of basements will be measured as gross external area (GEA).</p>	<p>There is no evidential justification to demonstrate why the existing policy of 85% of the garden area being available for a basement extension is harmful to residential amenity.</p>

34.3.52	Restricting the size of basements will help protect residential living conditions in the Borough by limiting the extent and duration of construction and by reducing the volume of soil to be excavated. Large basement construction in residential neighbourhoods can affect the health and well-being of residents with issues such as dust, noise and vibration experienced for a prolonged period. A limit on the size of basements will reduce this impact.	<p>The period of construction (and cumulative impact) is not directly related to the size of any given basement extension; it is equally likely to be a function of individual site constraints and of construction methodology.</p> <p>To seek to control the duration of construction by limiting the size of a development is therefore neither justified nor effective, even if in exceptional circumstances it may be a material planning consideration at the planning application stage.</p>
34.3.53	<p>The carbon emissions of basements are greater than those of above ground developments per square metre over the building's life cycle<sup>1 2</sup>.</p> <p>The embodied carbon<sup>3</sup> in basements is almost three times the amount of embodied carbon in an above ground development per square metre. This is because of the extensive use of concrete and particularly steel both of which have high embodied carbon. Climate change mitigation is a key policy in the London Plan which promotes sustainable design and construction (including avoiding materials with a high embodied energy) and reducing carbon dioxide<sup>4</sup>. Limiting the size of basements will therefore limit carbon emissions and contribute to mitigating climate change.</p>	Please refer to the "Comments by Cranbrook Basements – August 2013" on CL7J box Refs 87.00 to 89.00 and the associated Document 11 report, which refute the Council's claims in the first three sentences. There is no evidential justification for this policy criterion.
34.3.54	<p>The townscape of the Borough is urban and tightly developed in character. However, rear gardens are often a contrast, with an informally picturesque and tranquil ambience, regardless of their size. Whilst basements can preserve the remaining openness of the townscape compared with other development forms, it can also introduce a degree of artificiality into the garden area and restrict the range of planting<sup>5</sup>.</p> <p>Retaining at least half of each garden will enable natural landscape and character to be maintained, give flexibility in future planting (including major trees), support biodiversity and allow water to drain through to the 'Upper Aquifer'<sup>6 7</sup>. 'Garden' is the private open area to the front, rear or side of the property, each assessed separately, and includes unpaved or paved areas such as yards. This policy takes into account the London Plan<sup>8</sup> and the Mayor of London's Housing SPG<sup>9</sup> both of which emphasise the important role of gardens. The National Planning</p>	<p>London Plan EIP panel report specifically acknowledges that basement extensions are not a strategic matter for the policy to consider</p> <p>With regard to London Plan Policy 3.5, on which the Council seek to rely, all reference is to the 'presumption against development <b>on</b> back gardens' (Policy 3.5 A) and it relates to '<b>new</b> housing developments'.</p> <p>Paragraph 3.34 of the London Plan reaffirms that the policy concerns the <b>loss</b> of gardens through development <b>on</b> back gardens.</p> <p>Basement extensions do not result in either the loss of back gardens or development on them.</p> <p>London Plan Policy 3.5 does not provide a justification for the change in the Core Strategy Basement Extensions Core Strategy policies.</p>

	Policy Framework (NPPF) <sup>10</sup> also supports local policies to resist inappropriate development of residential gardens and excludes private gardens from the definition of previously developed land.	
34.3.55	Keeping the unexcavated area of a garden in a single area and adjacent to similar areas in other plots allows better drainage, and continuity of larger planting supporting biodiversity. In back gardens this area will usually be the end of the garden furthest from the building.	Please refer to “Comments by Cranbrook Basements” on CL7A box Refs 16.00, 19.00, 25.00, 28.00, 32.00, 36.00, 37.00, 38.00 and the associated Documents 11, 20, 30 reports. There is no evidential justification for this policy criterion.
34.3.56	As well as causing greater construction impacts and carbon emissions, deeper basements have greater structural risks and complexities <sup>11</sup> . In order to minimise these risks to the high quality built environment of the Royal Borough the policy takes a precautionary approach by limiting basements to a single storey.	Please refer to “Comments by Cranbrook Basements” on CL7A box Refs 49.00, 51.00 to 53.00 and the associated Documents 3, 16, 23, There is no evidential justification for this policy criterion.
34.3.57	A ‘single storey’ is one that cannot be horizontally subdivided in the future to create additional floors. It is generally about 3 to 4 metres floor to ceiling height but a small extra allowance for proposals with a swimming pool may be permitted.	
34.3.58	A greater garden coverage and more than one storey may be permitted on larger comprehensively planned sites. These will generally be new developments located in a commercial setting or of the size of an entire or substantial part of an urban block <sup>12</sup> and be large enough to accommodate all the plant, equipment and vehicles associated with the development within the site.	
34.3.59	Building additional basements underneath existing ones will result in deep excavations which have greater structural risks. Basements will therefore be restricted to single, one-off schemes and, once a Basement is built, a further basement underneath or in the garden will not be acceptable at the same site.	Please refer to “Comments by Cranbrook Basements” on CL7B box Refs 54.00 57.00 and the associated Documents 1, 3, 22, 23. There is no evidential basis for this policy criterion.
34.3.60	Trees make a much valued contribution to the character of the Borough, and bring biodiversity and public health benefits. Works to, and in the vicinity of, trees, need to be planned and executed with very close attention to detail. All applications for basements likely to affect trees <sup>13</sup> either on-site or nearby must be accompanied by a full tree survey and tree protection proposal for the construction phase. Core Strategy Policy CR6 Trees and Landscape will also apply.	
34.3.61	The significance “of heritage assets” needs to be identified so	

	that it is not harmed.	
34.3.62	<p>The special architectural or historic interest of listed buildings goes beyond appearance. It includes the location and hierarchy of rooms and historic floor levels, foundations, the original purpose of the building, its historic integrity, scale, plan form and fabric among other things. Consequently, the addition of a new floor level underneath the original lowest floor level of a listed building, or any extension of an original basement, cellar or vault, will affect the hierarchy of the historic floor levels, and hence the original building's historic integrity.</p> <p>Basements under listed buildings are therefore resisted by the policy.</p>	<p>The heritage asset impact test needs to be applied on a case-by-case basis, to assess what is of significance and what is not, in accordance with the National Planning Policy Framework requirements.</p> <p>It is wrong to impose an "inappropriate" development presumption. The Inspectors' appeals decisions have undertaken the National Planning Policy Framework process and where the hierarchy of floor levels is considered to be of significance and harmed by an additional floor below the building, then appeals have been dismissed. That does not amount to a justification for a blanket refusal policy.</p> <p>Please refer to "Comments by Cranbrook Basements" on CL7F box Refs 68.00 to 73.00 and the associated Documents 16, 32.</p> <p>There is no evidential justification for this policy criterion and it is in conflict with the National Planning Policy Framework paragraphs 128 to 140.</p>
34.3.63	<p>Foundations are part of the historic integrity of a listed building. Basements in the gardens of listed buildings can result in extensive modifications to the building's foundations. This can harm the historic integrity and pose risks of structural damage to the building. Basements under the gardens of listed buildings are therefore also normally resisted. However, they may be acceptable in a large garden where the basement can be built without extensive modifications to the foundations by being substantially away from the listed building so that it does not harm the significance of the listed building and the link between the listed building and the basement is discreet and of an appropriate design.</p>	<p>It is factually wrong to state that basements under the gardens of listed buildings are normally resisted – on the contrary they are normally approved even in small gardens, two examples of which from the last 12 months are at 16 Halsey Street and 25 Holland Park, in which Bell Cornwell LLP was involved in each case – Please also note Listed Building Consent for Construction of Garden Basements at 10a Holland Park Road and 75 Clabon Mews</p> <p>There is no evidential justification for this policy criterion and it is in conflict with the National Planning Policy Framework paragraphs 128 to 140.</p>
34.3.64	<p>In conservation areas, development should preserve or enhance the character or appearance of the conservation area.</p> <p>Basements by themselves with no external manifestations are not considered to affect the character or appearance of conservation areas. It is the other aspects such as the externally visible elements that can affect their character or appearance.</p>	

34.3.65	Archaeological remains are a finite and fragile resource. The conservation, protection or setting of such remains must not be threatened by development, directly or indirectly, to ensure the Borough's past is not lost forever. Policy CL 4(g) of the Core Strategy requires development to protect the setting of sites of archaeological interest.	
34.3.66	The impact of basements on non-designated heritage assets must be assessed on their merits to avoid harm to their significance.	
34.3.67	It is very important to minimise the visual impact of light wells, roof lights, railings, steps, emergency accesses, plant and other externally visible elements. Care should be taken to avoid disturbance to neighbours from light pollution through roof lights and other forms of lighting. Introducing light wells where they are not an established and positive feature of the streetscape can harm the character or appearance of an area. Where external visible elements are allowed they need to be located near the building, and sensitively designed reflecting the existing character and appearance of the building, streetscape and gardens in the vicinity.	<p>Each case must be judged on its merits. There is no evidence of light wells causing disturbance to neighbours. There is no reason to assume that introducing any new lightwell in an area not already characterised by them will necessarily harm that character.</p> <p>Please refer to "Comments by Cranbrook Basements" on Policy CL7g box Refs 74.00, 75.00 and the associated Document 1.</p> <p>There is no evidential justification for this policy criterion and it is not in accord with the National Planning Policy Framework paragraphs 58 to 60.</p>
34.3.68	Policy CE 2 of the Core Strategy requires surface water run-off to be managed as close to its source as possible. A minimum of one metre of suitably drained permeable soil above any part of a basement within a garden provides for both reducing the amount and speed of water runoff to the drainage system and the long term future of shrub and other garden planting. Other SUDs measures may also be required.	
34.3.69	The carbon emissions of basements are greater than the equivalent above ground development and the policy contains a provision to mitigate this impact. A BREEAM methodology is used as a proxy to achieve energy savings across a whole dwelling or commercial property to which the basement relates. For residential development (including listed buildings), the standard is BREEAM Domestic Refurbishment "very good" including a minimum standard of "excellent" in the energy section and a minimum of 80% of credits in the waste category. For non-residential development, the standard is BREEAM "very good".	<p>Please see comments above on paragraphs 34.3.53. There is no evidential justification for this policy criterion.</p> <p>Requiring the upgrade of an existing property to a higher BREEAM standard, rather than just the part proposed for extension, is in conflict with Circular 11/95 advice and National Planning Policy Framework paragraph 206</p>

34.3.70	Basement construction can cause nuisance and disturbance for neighbours and others in the vicinity, through construction traffic, parking suspensions and the noise, dust and vibration of construction itself. The applicant must demonstrate that these impacts are kept to acceptable levels under the relevant acts and guidance, taking the cumulative impacts of other development proposals into account. The building compound and the skip location should be accommodated on site or in exceptional circumstances in the highway immediately outside the application site.	This change of approach from the adopted Core Strategy is conflict with the <i>Gateshead</i> principles and there is no evidence base to justify that change.
34.3.71	Basement development can affect the structure of existing buildings. The applicant must thoroughly investigate the ground and hydrological conditions of the site and demonstrate how the excavation, demolition, and construction work (including temporary propping and other temporary works) can be carried out whilst safeguarding structural stability. Minimising damage means limiting damage to an adjoining building to Category 121 (Very Slight - typically up to 1mm). These are fine cracks which can be treated easily using normal decoration. 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.	
34.3.72	Given their nature, basements are more susceptible to flooding, both from surface water and sewage, than conventional extensions, and applicants are advised to see Policy CE222. Fitting basements with a 'positive pumped device' <sup>23</sup> (or equivalent reflecting technological advances) will ensure that they are protected from sewer flooding. Fitting only a 'non return valve' is not acceptable as this is not effective in directing the flow of sewage away from the building.	
34.3.73	Applicants wishing to undertake basements are strongly advised to discuss their proposals with neighbours and others, who will be affected, commence party wall negotiations and discuss their schemes with the Council before the planning application is submitted. Sharing emerging proposals related to traffic and construction with residents and businesses in the vicinity is beneficial as local knowledge and their needs can be more	The distinction between submission of a Construction Management Plan at the application stage and a Construction Traffic Management Plan at that stage is that the former is applicable at whatever date the permission is implemented, whereas the acceptability of the latter is dependent upon the circumstances prevailing at the date of implementation, which could be at any time within the normal 3 year period of the planning permission.

	readily taken into account. Construction and traffic management plans and demolition and construction management plans should be discussed with the Council at pre-application stage, and submitted with the planning application.	It is not effective therefore to require this traffic information at the application stage, nor is it justified.
<b>Policy CL7</b>	<p><b>Policy CL7</b>  <b>Basements</b>  All basements must be designed, constructed and completed to the highest standard and quality.  Basement development should:</p> <p>a. not exceed a maximum of 50% of each garden. The unaffected garden must be in a single area and where relevant should form a continuous area with other neighbouring gardens. Exceptions may be made on large comprehensively planned sites;</p>	NOT JUSTIFIED – see paragraphs 34.3.51 and 34.3.54 responses above.
	b. not comprise more than one storey. Exceptions may be made on large comprehensively planned sites;	NOT JUSTIFIED – see paragraph 34.3. 59 response
		NOT ACCORD WITH NATIONAL POLICY – see paragraph 34.3.48
	c. not be built under an existing basement;	NOT JUSTIFIED – see paragraph 34.3.59 response
		NOT ACCORD WITH NATIONAL POLICY – see paragraph 34.3.48
	d. not cause loss, damage or long term threat to trees of townscape or amenity value;	
	e. not cause harm to the significance of heritage assets;	

	f. not involve excavation underneath a listed building (including pavement vaults) or any garden of a listed building, except for gardens on large sites where the basement would not involve extensive modification to the foundation of the listed building by being substantially separate from the listed building;	NOT JUSTIFIED – see paragraphs 34.3.62 and 34.3.63
		NOT IN ACCORD WITH NATIONAL POLICY – see paragraphs 34.3.62 and 34.3.63
	g. not introduce light wells and railings to the front or side of the property unless they are already an established and positive feature of the local streetscape;	NOT JUSTIFIED – see paragraph 34.3.67
		NOT IN ACCORD WITH NATIONAL POLICY – see paragraph 34.3.67
	h. maintain and take opportunities to improve the character or appearance of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited;	
	i. include a sustainable urban drainage scheme (SUDs), including a minimum of one metre of permeable soil above any part of the basement beneath a garden. Where the character of the gardens within an urban block is small paved courtyards SUDs may be provided in other ways;	
	j. ensure that any new building which includes a basement, and any existing dwelling or commercial property related to a new basement, is adapted to a high level of performance in respect of energy, waste and water to be verified at pre-assessment stage and after construction has been completed;	NOT JUSTIFIED – see paragraph 34.3.69
		NOT ACCORD WITH NATIONAL POLICY – see paragraph 34.3.69
	k. ensure that traffic and construction activity does not harm pedestrian, cycle, vehicular and road safety, affect bus or other transport operations (e.g. cycle hire), significantly increase traffic congestion, nor	NOT JUSTIFIED – see paragraph 34.3.73
		NOT EFFECTIVE – see paragraph 34.3.73

	place unreasonable inconvenience on the day to day life of those living, working and visiting nearby;	NOT ACCORD WITH NATIONAL POLICY – see paragraph 34.3.48
	l. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;	NOT JUSTIFIED – see paragraph 34.3.48
		NOT ACCORD WITH NATIONAL POLICY – see paragraph 34.3.48
	m. be designed to minimise damage to and safeguard the structural stability of the application building, nearby buildings and other infrastructure including London Underground tunnels and the highway;	
	n. be protected from sewer flooding through the installation of a suitable pumped device.	
	A specific policy requirement for basements is also contained in Policy CE2, Flooding.	