
Examination of the Partial Review of the Kensington and Chelsea Core Strategy:

Basements Publication Planning Policy

Matters, Issues and Questions for Examination

Representations by the **Norland Conservation Society**

Matter 1: Legal Compliance

Issue 1.1: Whether the Plan is legally compliant

- 1. Is the Plan legally compliant as is indicated by the Council in its ED/1 replies to the Preparatory Questions on this topic (Question 6)?**
- 2. If the Plan is not considered to be legally compliant, please explain in what areas it does not comply and what needs to be done to make it compliant.**
- 3. If it is considered that public consultation requirements were not properly carried out, please explain where the Council has not complied with either the 2012 Regulations or its own Statement of Community Involvement (“Involving People in Planning”)**

This was by far the most thorough consultation exercise of all the consultations to date on the Core Strategy, with a series of detailed discussion sessions which gave Cranbrook Basements and other contractors plenty of opportunity to discuss their concerns, but it also involved subsequent workshops with detailed discussion of the wording of policies.

- 4. Does the final Sustainability Appraisal (SA) at BAS21 deal adequately with all the reasonable alternatives in assessing a policy for this type of development? Was there consideration of an impact assessment led policy approach alternative?**

Note: paragraph 4.2 of the final SA (BAS21) says: “*Alternative policy options were specifically considered in the December 2012 SA/SEA. As these were dismissed at that time, it is not considered appropriate to address them again in this document.*” However, legally the final SA must clearly set out the reasons for the selection of the Plan’s proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. These choices may not have been made within the SA process (e.g. at a committee), but the final SA should set out those reasons. It should also state whether these reasons are still valid at submission. If this has not been done, I will consider asking the Council to prepare a correcting addition to the final SA. These legal principles have been set out in various court cases, e.g. see *Heard v Broadland District Council & Ors* [2012] EWHC 344 (Admin) (24 February 2012) at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2012/344.html>.

Issue 1.2: Whether there is a "need" for the Policy

- 5. Is there a requirement in law for there to be a proven "need" for a particular policy in a local plan before a LPA can include it? I have been unable to find such a requirement in the 2004 Act, the 2012 Regulations, the Framework, or the PPG. I am aware of the soundness criteria in the Framework (elaborated upon in the PPG) for a Plan to meet the requirements (or "need") for particular types of development (e.g. housing, if housing policies are included) and for it to be justified by proportionate evidence. It is also possible for a policy to be unnecessary (see below).**

No – there are no defined tests for what policies should be included in plans, other than planning for objectively-assessed need for housing, town centre uses and social infrastructure, and few if any tests for what should be excluded. Due to the diverse nature of the Borough, and extreme pressures that arise from its high density of development, the large number of listed buildings and wide coverage of conservation areas, the high value of property and the high level of public concern about the impact of development pressures, policies for managing development in the Core Strategy are more detailed than most other Local Plans. Therefore, in the scheme of things, basement developments have become a very high-priority planning issue in the Borough over the last 15 years, in which these development have grown greatly in number and scale, and in their impact, including the cumulative effect of concentrations of such developments, that there has been a strong demand for a stronger set of controls designed not to stop basements, but to make them better neighbours.

Looking at the development of the policy, the Council's response has consistently lagged behind the development pressures. The 2002 UDP was the first local plan to include a policy to manage basement developments. Policy CD32 said it was the Council's policy:

"To resist subterranean developments where:

- a) the amenity of adjoining properties would be adversely affected; or
- b) there would be a material loss of open space; or
- c) the structural stability of adjoining or adjacent listed buildings or unlisted buildings with conservation areas might be put at risk; or
- d) a satisfactory scheme of landscaping including adequate soil depth has not been provided; or
- e) there would be a loss of trees of townscape or amenity value;
- f) there would be a loss of important archaeological remains."

The reasoned justification said that "it is important that such development does not harm the amenity and character of the surrounding area, or the structural stability of the surrounding buildings and in particular of listed buildings and buildings with conservation areas."

From this policy it is clear that subterranean development was already a significant planning issue in 2002. Over the following eight years there was a huge increase in the number and scale of applications for such developments. This prompted the Council to commission research from Arups in 2008 to assess the impacts of such projects and to develop a list of information requirements to enable the Council to assess the likely impacts of such projects, which over time became the validation criteria to ensure that the local planning authority could assess the risks and the likely impacts.

However, because of the large elapse of time between the 2002 UDP and the production of the LDF that was not adopted until December 2010, the 2002 policy was seen as wholly unfit for purpose and the Subterranean Development SPD was commissioned to flesh out/interpret the 2002 UDP Policy. As a result, the SPD was adopted in May 2009, well ahead of the revised policy which appeared in the December 2010 Core Strategy. This SPD contained more detailed "policy" than the policy finally adopted in the 2010 plan. Thus, while the reasoned justification in the Core Strategy rehearsed some of issues (Paragraph 34.3.20), and recognised "controlling the impact of proposals for subterranean development is considered to be of strategic importance", the policy, CL2 (g) plus CE1(c) allegedly to cover the CO2 impact of "excavation and transportation of spoil, use of concrete, ventilation and lighting" (para 36 3.12), it was only a skeletal policy with subterranean extensions required to meet the following criteria:

- i. the proposal does not involve excavation underneath a listed building;
- ii. the stability of the existing or neighbouring buildings is safeguarded;
- iii. there is no loss of trees of townscape or amenity value;
- iv. adequate soil depth and material is provided to ensure sustainable growth.

Plus Policy CE1 which requires the entire dwelling to meet EcoHomes Very Good standard.

The 2010 Core Strategy had less policy than the 2009 SPD and increasingly the SPD was relied on extensively to negotiate applications and to provide the policy criteria against which proposals were assessed. For example, on the issue of site coverage of the basement the Core Strategy is effectively silent, whereas the SPD sets a minimum of 15% of the garden without a basement underneath. This produced major problems of interpretation. What should have been the starting point for discussing the coverage of a site became seen as the "minimum expectation/entitlement" by both developers and the beleaguered planning officers. Instead of a policy with a clear framework to guide this type of development it became management by SPD.

It very soon became clear that the 2010 Core Strategy policy was also considered not fit for purpose. The policy was following the guidance rather than the guidance following and elaborating the new policy. Meanwhile the pressures had continued to grow inexorably, as basement development became an industry in its own right for speculative development to meet an international investment market, rather than, as some suggested, to enable a family to get some more space instead of having to move out of the Borough to find a extra bedroom. Most of the basement space now being built in the Borough is given over to swimming pools, saunas, gyms, cinemas/media rooms, storage areas and even a ballroom, an art gallery or, in one case, a multi-storey car museum. They rarely contain bedrooms and if they do they are for staff rather than an expanding family.

The primary motive for building basements is financial, which is why an increasing proportion of basement applications are speculative schemes by developers rather than householders often for resale on the international investment market. The scale of the development and financial pressures overwhelmed the policy and basement development became **the** main development and planning issue. This was reflected in the scale and level of detail in the SPD, although the 2010 policy remained sketchy.

Almost before the adoption of the Core Strategy there was growing grass-roots pressure for a stronger, more detailed policy to manage basement developments. The growing number and scale of basement schemes, as well as growing concerns about CO2 emissions, energy, flooding, damage to neighbouring properties, and the impact on neighbours during the long time that these developments took to be completed and the nuisance caused, had become a major issue. The 2010 policy failed to provide a strong, clear policy framework to manage

what was now acknowledged to be a strategically important issue. Instead it sought to manage the detail through a pre-existing SPD.

The current proposed Policy CL7 is trying to get things back in the right order, with the policy in the local plan leading and the interpretation to assist its implementation in a new SPD to follow the adoption of the new policy. Local residents have been waiting patiently but with increasing concern about what is happening for at least two years to get a new policy for basements which will provide a more effective framework for assessing basement proposals. The interregnum has been extremely frustrating for both residents and councillors who are eager to get greater clarity with regard to the basement policy.

Is a policy needed? Most definitely - it is a locally-defined strategic issue with huge grass-roots demand for effective management. The rate of growth and the sheer quantity of this type of development over the last ten years and its major impact on local communities in environmental and social terms, has made this a key area of policy stress which the Council has been forced to address. There is a strong need to restore the balance between the adverse impacts on sustainability and the social impacts on local communities and their minimal benefits, let alone public benefits in a densely-developed area, three-quarters of which is covered by conservation areas. Without meeting any objectively-assessed needs, it has become increasingly difficult to reconcile the adverse impacts on residential areas, conservation areas and particularly listed buildings, in the manner suggested by Paragraphs 14 and 133 of the NPPF. Indeed, in a number of appeals recently Inspectors have dismissed basement schemes in the absence any public benefits. The policy is essential for assessing basement schemes to enable the Council to strike the right balance.

Is there a "requirement" to build basements? Basements are not being built to provide additional housing units or, in most cases, even additional bedrooms. There is no "objectively-assessed need" to be met, other than for private leisure facilities, which neither the NPPF nor the Core Strategy has identified as a requirement.

Is there evidence of a need for the policy? Over the last ten years this type of development has been one of the main development pressures in the Borough, dominating the planning debate in local communities and increasing their demand for a stronger, clearer policy to manage the continuing pressure from developers and others to maximise the scale of basement development. The Society **strongly supports** the Council's proposed policy to manage these development pressures, subject to various clarifications and tightening with regard to basements under the gardens of listed buildings. **The proposed Policy CL7 is essential and is the most important of all the changes currently being proposed in these alterations.**

The accelerating invasion of basements causes increasing fury from, and stress for, residents who cannot see the need for swimming pools, gyms, media rooms etc in Conservation Areas: if people want a larger house, why not go elsewhere?

As it is, neighbours' all round are subjected to a succession of disturbance, noise, dirt etc, and lives wrecked - possibly over the course of several years, as new neighbours decide to do the same, without any form of compensation.

CL7 is essential, but does not impose tight enough controls - particularly in relation to Conservation Areas and LB's

6. Is policy CL7 unnecessary because the issue can be dealt with through other local or national policies or legislation? Does other legislation primarily deal with the aftermath and/or the resulting impacts of basement development permissions?

NO: This issue needs/demands a clear, unambiguous policy framework of its own which sets out in one place clear ground rules to manage this type of development by setting out what the policy should achieve and providing clear parameters for such development. It provides a clear, positive policy framework. It needs to consider the life-time impacts – those, like CO2 emissions, that, although front-loaded in the construction phase, accumulate during the life time of the building.

It is not an issue that is unique to this Borough – Hammersmith and Fulham, Camden, Westminster and other London boroughs have or are developing similar (sometimes almost identical policies). National legislation, policy and guidance is totally silent on this issue as it is regarded as a local issue, as is the London Plan (2011), although the Mayor's Housing SPG (GLA, November 2012) (para 1.2.25) sets out the list of London Plan policies that should be considered when assessing subterranean developments, namely:

- sustainable design and construction (5.3) now supported by an SPG (April 2014) which contains considerable advice on basements, especially paras 2.2.4-27 and 3.4.36-38;
- retrofitting (5.4),
- overheating and cooling (5.9),
- flood risk (5.12),
- sustainable drainage (5.13),
- construction and demolition waste (5.18),
- water use and supplies (5.15),
- trees (7.12), and
- biodiversity (7.18/19)

However, having policies scattered around the plan with no “consolidating” text such as in the Mayor's Housing SPG or direct cross-references, makes it imperative that there is clear policy set in one place – in the Local Plan. This is the justification for new Policy CL7, although a reference to the CO2 emissions of basements over their total life cycle deserves more attention than is given in para 34.3.54 of the proposed new reasoned justification. Reference (8) and (9) in relation to para 34.3.55, although referring to the right parts of the London Plan and the Mayor's Housing SPG, only do so in the context of stating the important role of gardens. The Society considers that there should, in this case, be a fuller cross reference to the range of sustainability issues that seem to have been conflated and then emerge

Enforcement

Experience with basement developments demonstrates that getting the design and engineering right, ensuring that sufficient safeguards are in place through conditions and, if necessary, planning obligations, provides stronger and more effective controls than leaving everything to enforcement action after the event when problems arise. Increasing construction traffic with several basements being built at the same time on a single street has become a major problem. Council has tried to control the process and conflict through construction traffic management plans (CTMP), however, in the latest enforcement report notes 8 breaches of construction traffic management plan. Working hours and noise are other major issues. The construction process has become a major management issue for

the Council.

Securing action under other legislation covering working hours, noise, vibration, dust, traffic and parking only after protracted exposure does not provide relief or redress to neighbours.

Issue 1.3: What policies will be superseded by the Plan?

- 7. The Council has confirmed in its Question 17 response in ED/1 that policy CL7 "will supersede Policy CL2: New Buildings, Extensions and Modifications to Existing Buildings criteria (g) (Chapter 34 of the Core Strategy (RBKC 1)) and CE1: Climate Change criteria (c) (Chapter 36 of the Core Strategy (RBKC 1))." Unfortunately, the Plan does not state this as required by Regulation 8(5). The Council should prepare a suggested main modification to correct this for my consideration and for discussion at the hearings.**

There will in fact be a replacement chapter on "Renewing the Legacy" reorganising and consolidating existing policy, but it will also contain a new basement policy to replace and consolidate existing policy on basements. The Society considers that **both** these modifications should be flagged up at the beginning of the new chapter.

Issue 1.4: Legally, can a supplementary planning document (SPD) be used for the purposes proposed by the Council, and is its use and purposes clearly and effectively set out in the Plan?

- 8. Regulations 5 and 6 of the Local Planning Regulations 2012 set out what should be in a local plan and therefore what should not be in a SPD. In the light of this [particularly Regulation 5(1)(a)(iv)], should the information proposed to be in the Basements SPD (paragraph 34.3.70) be in a local plan?**

Yes – the **policy** should be set out in the local plan, whilst the interpretation, elaboration and guidance on implementation should be in the SPD. The previous problem with the sequence of the SPD preceding the Core Strategy policy needs to be rectified by the amended local plan leading and a revised SPD following. The Society would support the information requirements for basements being more explicitly stated within the policy as these are basic requirements for validation and assessment of basement proposals.

- 9. The Council's responses to the representations in BAS04 say that the Basements SPD will include the details of the Demolition and Construction Management Plans (DCMPs) and the Construction Traffic Management Plans (CTMPs) which will be required with planning applications for this type of development. However, the Plan does not actually say this. Should it, in order to be effective? And should such Management Plans apply to all basement development applications or just to certain ones?**

The Society has proposed that the need for a Construction Traffic Management Plan (CTMP), which applies to all major construction projects not just basements, should be included in the Miscellaneous alterations – and **added to Policy CR7**. At present there is a proposed amendment for servicing by coaches – very much the day-before-yesterday's issue – whilst failing to address one of today's burning issues – CTMPs. These must be a policy requirement for all large extensions and basement applications and are the main way in which issues involving traffic, parking and use of the highway for skips and storage of materials etc are managed. Whilst there is a new draft SPD on Transport and Streets (yet to be adopted) which will hopefully set out the parameters of CTMPs, and new para 34.3.69 covers a small part of its content in passing, there is no policy in the local plan. The Society recommends that this be rectified. The London Plan Policy 6.3C covers this, but as far as possible and especially for this subject, **the policy for requiring CTMPs, particularly for basements, should be in the local plan.**

The Council has suggested that there are existing policies within the Core Strategy that can be used to secure CTMPs not least Policy CT1 (b). The Society strongly disagrees – the title “Improving alternatives to the car” does not suggest that Policy CT1 covers this nor are CTMPs mentioned anywhere in the plan. They are a policy requirement - they should be in the plan.

Matter 2: Definitions and use of terminology

Issue 2.1: Whether the Plan is effective and consistent with national policy in its definitions and use of terminology

10. Is the term 'basement' adequately defined in the reasoned justification at 34.3.46? If not, how should it be defined?

No – Paragraph 34.3.46 states that for the purpose of this policy a basement is the construction or extension of one or more storeys of accommodation below the prevailing ground level of a site or property. For buildings from the Georgian period onwards basements were developed as a means of gaining additional accommodation on narrow terraces by a combination of excavation to find a suitable bearing soil and raising the level of the roadway at the front over vaults often extending out under the roadway and infilling with excavated material. As a result the 'basement' was generally more or less totally below the front roadway and partially below the back garden.

Concerns over very deep basements (8feet) were expressed from the outset (Life in the Georgian City Cruickshank and Burton page 53). Early basements were a combination of storage and some servant working spaces but cellar dwelling was banned in the late 19th century and from about 1840-50 basements were often partly raised. (Stefan Muthesius, The English Terrace House, P88-89)

Thus the traditional basement was carefully controlled so as to provide suitable accommodation benefiting from natural light and ventilation.

We consider that the proposed definition is liable to a very wide range of interpretation and does not provide certainty in the interpretation of the policy for either an applicant nor for officers. It is not clear whether it means that the whole basement up to the floor above it should be below the prevailing ground level or whether just the floor surface should be below level the prevailing ground level. The prevailing ground level is equally not determined and can be substantially different back to front of the building. Since there is usually a light well at the front of the terraced building and the back often looks out over a garden we suggest that the ground level at the back of the building should be taken as the prevailing level unless there are compelling reasons to vary from this. We then propose that the basement should be set at least 50% of its height into the ground. This approach would be consistent with the historic nature of this form of development.

Without these constraints there could be a storey and a half variation in interpretation of the policy which with smaller houses could be 50% of the height of the existing dwelling. We suggest that a lower floor which is less than 50% sunk into the ground would be termed a lower ground floor but anything 50% or more than that would be called a basement.

CL(c) is unclear: What constitutes a "basement" - versus "lower ground floor" (34.3.46) requires clearer definition.

It should also relate to actual circumstances: there are few houses in Norland where there is an existing basement/lgf at least 50% below the level of the garden; if this criteria were to be applied, there would be more or less no houses which could not have a basement built underneath.

A more practical point of reference would be street level, so that no new basement would be allowed, if there is an existing basement/lower ground floor which is more than 50% below street level

11. In paragraph 34.3.47, should the word 'principles' (or 'guidelines' or other similar term) be substituted for the word 'rules'? The word 'rules' implies the application of inflexible, immutable laws which is contrary to the Framework, the PPG, the law as it relates to Local Plans, and to planning practice.

The Society considers that the term "rules" is appropriate. Definitions of "rule":

- one of a set of explicit or understood regulations or principles governing conduct within a particular activity or sphere: *eg the rules of the game were understood.*
- a principle that operates within a particular sphere of knowledge, describing or prescribing what is possible or allowable: *the rules of grammar.*
- a code of practice.

None of these imply inflexibility, immutability or rigidity – in British practice reasonableness provides a safeguard against misuse. "Rules" are, therefore, quite an acceptable description of the guiding principles, although principles sound both fundamental and yet vague. Guidelines are general rules, principles or advice sound general, advisory and certainly non-binding.

12. In paragraph 34.3.50 should the word 'management' be substituted for the word 'control'? The Framework and the NPPG no longer uses the term 'control'.

Most definitions of "management" include the word control as the active verb – such as "The process of dealing with or controlling things or people" and "the responsibility for and control of a company or organisation". It may sound less regulatory, but in practice the meaning is the same. In this context (para 34.3.50) "management" sounds a bit vague when in fact the Council is trying to get control over the scale, form and extent of basements. The Society supports the Council's desire to exercise more control over these aspects, not just to "manage" them. In this case we consider the word "control" is appropriate.

The NPPF and NPPG may not use the word "control" frequently – it does in relation to advertisements (paras 67 and 68), to controlling development in the Green Belt (para 92), to other legislation (see Para 122), but also in terms of "tailoring planning controls to local circumstances" (para 199), to enforcement (para 207) and in the Glossary in relation to provisions for the restoration of land (Previously-developed land).

13. Is the term 'large site' adequately defined in the reasoned justification at 34.3.57? If not, how should it be defined?

No – it is not adequately defined, but we fundamentally disagree with the proposed exception.

The Society is very concerned about making any exceptions, but particularly not with such a vague definition as "larger sites" (34.3.57) or "large sites" (CL7 (b)). Whilst some of the

disbenefits might be contained within the site, the fact remains that it is the scale of the excavation that affects duration of the project, the amount of waste to be removed from the site and the traffic and noise implications, the amount of piling and concrete pouring, delivery of materials, the machinery needed, the ground water management and the need for staff facilities and the number of staff. The benefits of larger sites – as listed in para 34.3.57 – are only realised if the scale of the basement development remains the same, otherwise any “advantages” of large sites are overtaken by the increase in scale of the basement.

The Society, therefore, considers that there should be no provision for an exception; if the circumstances are truly exceptional, they should be considered on their particular merits and not by reference to some generalised bases for exception, which may or may not be appropriate in a particular case and are both unnecessary and undesirable as they will fetter the proper consideration whether an exception is justified.

14. In clause i. of CL7 should the word ‘significantly’ be inserted before the word ‘harm’ as otherwise any harm, no matter how small, would be unacceptable?

The Society does **not** agree in this particular case – which involves road safety not traffic or congestion. The NPPF (para 14) requires any adverse impacts to significantly and demonstrably outweigh benefits before leading to refusal. Increasing congestion is seen as something that requires no action until it is significant, but increasing the risk to pedestrians and other road users is not acceptable and, in this case, the risk of harm is the key test, rather than the need to demonstrate significant harm. The safety of pedestrians, cyclists or drivers is not something that should be traded off – the aim has been to consistently reduce accidents.

The Society proposes that the text should be differently ordered and punctuated and the impact on parking should be added to read:

“i. ensure that construction traffic and activity does not harm pedestrian, cycle, vehicular and road safety, affect bus or other transport operations (eg cycle hire); significantly increase traffic congestion; significantly affect residents’ parking; nor place unreasonable inconvenience on the day-to-day life of those living, working and visiting nearby;”

15. In clause e. of CL7 should the word ‘substantial’ be inserted before ‘harm’ to reflect the advice in paragraph 133 of the Framework?

No – The NPPF section 17, bullet point 10 makes it clear that heritage assets should be conserved in a manner appropriate to their significance. Section 12, in particular paragraphs 126 and 128, amplify this aspect. Paragraphs 131- 135 describe the balance to be struck between harm to the significance of the heritage asset and public benefits.

In order to comply with these requirements there is a need for a mechanism to review the impact on the significance and assess whether or not an appropriate balance has been struck between harm and benefit, including potential harm or benefit since until an alteration has taken place it can only be considered as potential harm or benefit.

Harm ranges from the impact on the significance as defined in the NPPF as archaeological, architectural, artistic or historic interest, harm to the setting or actual physical harm in terms of structural harm or loss of historic fabric either with regard to the designated heritage asset or to nearby assets of the designated heritage asset in the form of a conservation area.

Changes to the form of a building or the relationships between the rooms can harm their significance by changing their relationship in a way not reflected by the form or architectural detail.

In addition, to quote a recent Inspector's comments relating to an appeal "It is an established principle that the fabric of a historic building will always be an important part of its significance. The retention of as much historic fabric as possible is a fundamental part of any good alteration or extension. It is not appropriate to sacrifice old work simply to accommodate the new." Often to remove the soil from the garden of a listed building the windows, doors and even walls are removed and then later replaced. The result is the texture and quality of the historic fabric is lost. If excavation under a listed building were allowed even more of the fabric would be lost as well as the historic room arrangement.

Matter 3: The order of the reasoned justifications for the Policy

16. From my reading of the Plan's reasoned justification, paragraph 3.14 of BAS02 and other documentation, I understand that the Council has a priority order for the reasons justifying the Policy. These are, in order:
- the increasing number of basement planning applications;
 - **the increasing size of basement proposals, in terms of volume, floorspace and number of storeys and the resulting scale of excavation and of the duration of the development activity;**
 - that these developments are primarily under existing dwellings and gardens within established residential areas;
 - that the Royal Borough is very densely developed and populated;
 - the adverse impact on residential amenity, primarily on residents' health, well-being and living conditions, due to factors such as
 - noise and disturbance, vibration and dust; and
 - **large numbers of heavy vehicles, loss of residents' parking spaces and unreasonable restrictions on traffic flow** over prolonged time periods;
 - **concerns about** structural stability;
 - the desire to limit carbon emissions, **from demolition, excavation, construction and operation of basement developments, including from heating, cooling and ventilation;**
 - the need to retain **rear gardens, planting** [natural gardens] and trees to maintain the character and appearance of the Royal Borough, along with sustainable drainage and biodiversity requirements;
 - the adverse impact on the large number of listed buildings and conservation areas in the Royal Borough;
 - the adverse visual impact of certain externally visible aspects of these developments, **including light pollution; and, finally**
 - **the need to protect basements from the risk of both sewer flooding and surface water flooding and to restrict ground water pumping into the existing sewer system.**

Is this correct? If so, should it be more clearly stated in the Plan? If the above is not correct, please explain.

Yes The Society considers that this list conveys the priorities although it is incomplete.

After the first one add **"the increasing size of basement proposals, in terms of volume, floorspace and number of storeys and the resulting scale of the excavation and of the duration of the development activity"**

The fourth (**now fifth**) bullet conflates too many issues, whilst omitting traffic and loss of residents' parking. Loss of rear gardens should be covered in the sixth bullet.

We have added to/amended the list in **red**.

The Society considers that if this were set out in the reasoned justification it would be clearer to the reader what the Council's and the community's main concerns are and why they consider that a specific set of policies are required for basements.

Matter 4: Restriction on the use of garden/open area

Issue 4.1: Whether CL7 a. is justified by the evidence, consistent with national policy, and effective:

17. What are key reasons for criterion CL7 a. not to exceed a maximum of 50% of each garden or open part of the site? Is it paragraphs 6.11 and 6.12 in BAS18?

NPPF (March 2012) Para 53 says:

“Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”

London Plan (2011) and Housing and Sustainable Design and Construction SPGs

Policy 3.5 A of the London Plan (2011) says that:

“Boroughs may in their LDFs introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified.”

Para 3.34 – the reasoned justification – says that:

“This Plan therefore supports development plan-led presumptions against development on back gardens where locally justified by a sound local evidence base.”

As the GLA said in their representation (BAS 96):

As stated in the reasoned justification, this proposed policy is to apply to all land uses and is being introduced due to the impact of basement excavations on local amenity during construction, traffic management, on the structural stability of adjoining properties, on the character of the area (including the provision of trees and landscaping), on flooding and increased carbon emissions. The Council’s approach is therefore also consistent with London Plan Policies 5.3 (Sustainable Design and Construction), 5.12 (Flood risk), 5.13 (Sustainable drainage), 5.18 (Construction, excavation and demolition waste), 6.3 (Assessing effects of development on transport capacity), 7.15 (Reducing noise and enhancing soundscapes), 7.12 (trees), 7.13 (Safety, security and resilience to emergency), 7.19 (Biodiversity), 7.12 (Trees and Woodland).

This list of policies relevant to subterranean development is in para 1.2.25 of the Housing SPG (November 2012)

The GLA’s approach has now been set out in the Mayor’s Sustainable Design and Construction SPG, which also lists the considerations that boroughs may want to take into account when developing their local policies on basements and lightwells.

In July the Mayor proposed further changes:

<https://www.london.gov.uk/sites/default/files/FALP%20SUGGESTED%20CHANGES%207%20July%202014.pdf>

Amend third sentence of para 3.33:

“New development, **including that on garden land and that associated with basement extensions**, should also take account of the Plan’s more general design policies (Policies 7.2 to 7.12) and those on neighbourhoods (Policy 7.1), housing choice (Policy 3.8), sustainable design and construction (Policy 5.3), as well as those on climate change (Chapter 5), play provision (Policy 3.6), biodiversity (Policy 7.19), and flood risk (Policy 5.12).”

Need for Sustainable Urban Drainage Systems, Trees and Planting

According to the Alan Baxter Report, sustainable urban drainage systems require a minimum of 25% of the garden, plus any additional amount needed for retaining or planting trees.

The Society **strongly supports** the choice of 50%, which is similar to the Government’s choice of a maximum for conservatory extensions to leave half of the space free from development and available as green/open space. However, where the garden is small and has limited area for planting and/or surface water drainage, the proportion of the garden left undeveloped may need to be larger. The size of the area left undeveloped must be such that it can provide adequate drainage, planting and space for SUDS.

- The Norland Conservation Society considers 50% too generous: The proportion of a garden that may be excavated for a basement is excessive (3.4.51) in relation to the considerations given in 3.4.50 and 3.4.55: the proposed policy is in conflict with the reasoned justification. Apart from the reasons given, and the importance of maintaining soakaway, we are particularly concerned to protect the character and appearance of historic open spaces and gardens in Conservation Areas: it is not good enough to remove mature trees, and then replant.

SUDS: The strategic importance of SUDS has not been recognised, nor the amount of space required. Thames Water is increasingly concerned by the cumulative effect in the Counters Creek catchment area where the amount of permeable greenspace has decreased by 17% over the last 40 years.

Even with **groundwater** investigations and boreholes prior to construction, underground water is often found to pour into a basement. The contractor’s solution is to pump the ground water into the local sewer until the basement is fully tanked. Tanking is not always the final solution and can fail in time, so the new solution is to install pumps which in some cases pump water 24/7 into the sewer system. Stop valves and non-return valves only stop water coming in. The problem is to remove the groundwater within the site. A permit or licence is required from Thames Water for any additional pumping into the sewer. During construction this may be the only means to allow the construction to continue. After the construction when groundwater is still present, large SUDS and pumping may still be required. The sewer system of RBKC is in most areas over 150 years old and was not planned for this quantity of water. The result is that whilst one basement may not cause a problem, we face hundreds of basements with potential groundwater problems. We ask that the two Thames Water letters commenting on the proposed basement policy be considered.

If this continues the danger of **surface water and sewer flooding** as a result of rapid **runoff** in the event of a storm like the one we had in July 2007 will put basements at risk from these two types of flooding. The 2007 flood was caused by rapid run-off from surface water causing a back flow from the overtaxed sewer system. Where a new basement is protected the knock-on effect to the neighbouring properties can be major.

Thames Water have therefore urged the Council to take a much stronger line in maintaining and improving the permeability of gardens by resisting development under all gardens. <http://www.thameswater.co.uk/about-us/9344.htm>

In Thames Water's comments dated 31 January 2013 in response to the first consultation on basements they said:

"because of the specific sewer flooding risk in this area, Thames Water has concerns about any development taking place outside of the current footprint of buildings."

Further in their letter of 2 May 2013, Thames Water had further concerns that: "there is a risk that permeable surfaces provided in connection with basement developments could subsequently be covered with impermeable surfaces installed using permitted development rights." Thames Water proposed that: "planning conditions could be used on any approvals to ensure the permanent retention of the approved permeable surfaces and SUDS."

However, please note that the Society is **opposed** to building under the garden of listed buildings.

The Society is aware that Hammersmith and Fulham have an approved basement policy which limits basements to the footprint of the house.

http://www.lbhf.gov.uk/Images/DM%20LP%2001.07.13_tcm21-181585.pdf

Policy - DM A8 Basement accommodation and lightwells

New basement accommodation in existing dwellings will be permitted where:

- it does not extend beyond the footprint of the dwelling and any approved extension (whether built or not);
- there is no adverse impact on the amenity of adjoining properties and on the local, natural and historic environment; and
- it does not increase flood risk from any source.

All other new or extended accommodation below street level should be designed to minimise the risk of flooding to the property and nearby properties from all sources of flooding.

To minimise the risk of sewer flooding, developments will be required to provide active drainage devices.

Where there is a medium to high risk of fluvial flooding and no satisfactory means of escape can be provided, new self-contained basement flats will not be permitted."

18. Are each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

The Alan Baxter and Associates report and the Thames Water letters.

19. I note that one of Council's reasons for limiting the size of basement extensions is to reduce carbon footprint/emissions. Council: is this a (or even the) reason and justification for the restrictive CL7 policy? If it were found to be unreliable and not robust would the policy be inadequately justified and thus unsound? If not, why not?

This is only one, but a very important reason and justification for a restrictive/precautionary approach to basements. To date this issue has only manifested itself through a "mitigation" requirement with regard to energy and water consumption. Since basements are fundamentally unsustainable in environmental terms, this factor should play a larger part in any assessment which weighs the harm against any public benefits from the development. Most of the elements of Policy CL7 seek to reduce the potential adverse impacts of these developments, given the limited public benefits that these developments display, since they would not provide additional units nor rarely additional sleeping accommodation.

The size of the carbon footprint/CO2 emissions relates directly to the size – the cubic capacity - of the basement, as it affects the scale of:

- the excavation and the task of removing the excavation waste;
- the concrete pouring; and
- the heating, cooling and ventilation, especially as the larger basements tend to include swimming pools, saunas, gyms, as well as cinemas, games rooms, etc.

The size is a function of the depth/number of storeys and the area, which is usually bigger the larger the house and garden.

But it is only one of several equal or more important reasons for reducing the size of basements. Others relating to reducing the impact of these developments are listed in Question 16.

20. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.

No

21. Why is CL2 g. iii. in the adopted Core Strategy not adequate to deal with the issues proposed to be addressed by CL7 a.?

CL2 g iii appears to be about the loss of trees – rather than the extent of the basement.

22. Should the criterion contain an exception clause to cater for differing circumstances? (I am aware of the representations about small and/or paved over garden/open areas)

The "50% rule" is similar to that for the limit to permitted development of extensions – it seems reasonable. However, most gardens in Kensington and the vast majority in Chelsea

are small and may be paved. The need to create space for SUDS and the need to retain or plant trees may reach a physical minimum requirement which for small gardens would be greater than 50%.

Previously paved gardens, however, should not be an excuse for covering the same extent of the garden by a basement – see Thames Water’s comments. The aim should be to reduce, not just attenuate rainwater run-off, which means that permeability needs to be required in all cases.

The Society considers that more of the garden should be left for planting both trees and plants and the 50% should be a maximum, with the final figure depending on the particular circumstances of the case. It should be the starting point for negotiations, not a “minimum entitlement”.

A distinction should be made between "Heritage Assets" - ie Listed Buildings, as well as unlisted buildings in Conservation Areas, and elsewhere. Para 34.3.60 does not make this clear.

The Society **strongly supports the policy of no excavation under listed buildings** and, as far as it goes, the policy is **sound**. However, because of the risks to the main building, outbuildings (such as vaults in the front garden or under pavements which are attached to the building and to studios in the gardens) and to boundary walls which all form part of the listed structures within the curtilage, the Society considers that **allowing basements under the gardens of LB's could put these elements of the structure at risk. No basements should be allowed in the gardens of LB's.**

We would further ask: Why only LB’s? There are many houses in Norland which are not listed, of much the same age and building construction as the LB’s, where basements would be just as inappropriate and arguably risky (eg Princedale Road 9 – 33 cf Darnley Terrace).

Matter 5: One storey restriction

Issue 5.1: Whether CL7 b. and c. are justified by the evidence, consistent with national policy, and effective

23. What are key reasons for criterion CL7 b. and c. which restrict basement development to one storey?

CL7 b: The limit of one storey is the issue of limiting the size of basements, which, with size, increases:

- the amount of excavated material produced – once compacted soil is excavated it occupies more cubic capacity than in its compacted state;
- the depth and amount of piling;
- the amount of concrete pouring;
- the length of time for the project to be completed;
- the lack of natural ventilation and light, which results in the reliance on sophisticated mechanical systems; and
- the amount and duration of disruption caused to the neighbourhood

A single storey basement is smaller than a two-storey basement with the same footprint and therefore creates less waste, takes less time to build and causes less disruption. A one-storey basement also means a less complex engineering problem – deeper basements have greater structure risks and complexities and are more likely to hit groundwater.

For the same reasons, Norland Conservation Society considers that the limit of one storey is sound, - though 4m, (with an extra allowance for swimming pools) seems to require unnecessary depth of excavation, use of energy, concrete etc. **We would suggest max 3m in the interests of sustainability.** Any possible extra allowance for a swimming pool should be restricted to the area occupied by the swimming pool, and not include the whole basement.

CL7 c: The limit in CL7 c. is to ensure that serial or cumulative applications do not undermine the limit in CL7 b. It is also a safeguard for neighbours - living through one basement dig is more than enough!

All parties need clarity as to what will be permitted and what will be resisted – all need certainty as basements are the most intrusive form of development – even than total redevelopment – that residential areas can experience. Setting clear, unambiguous limits on the scale provides certainty to all parties.

24. Is each of the reasons for the criteria justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

Bigger/more basements increase the scale and duration of the impact of the development process, increase the amount of excavation, transport of waste, concrete pouring and require heating, cooling and mechanical systems to ventilate – ie increase the carbon footprint.

25. Is the restriction too limiting? Please explain briefly (referring to previous evidence)

No – there are relatively few applications for more than one storey and few seeking to build a second one after completing the first one.

26. Is the restriction too lax? Please explain briefly (referring to previous evidence)

Yes - It depends on clarifying/tightening up the definition of a “basement” – that it should be smaller - and removing “exceptions” that would compromise the policy.

27. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criteria.

No – it is only by limiting the scale – depth and extent - of basement excavation that the right balance can be struck between:

- the adverse impacts on short and long-term sustainability and short-term impacts on the community; and
- the desire of the owner/developer to increase the floorspace for underground leisure facilities rather than bedroom accommodation.

28. Should the criteria contain an exception clause to cater for differing circumstances?

The Society is concerned about exceptions for “large sites”, as these are not clearly defined, nor does it address the issue of the impact of large-scale excavations, even though some of the impacts of the development process could be contained within the site. This does not address the sustainability concerns nor the fact that certain impacts of the development process, such as traffic generation and noise will still remain. In practice, however, if larger sites accommodate larger basement projects any “gains” from the “opportunity to mitigate construction impacts and carbon emissions on site” (para 34.3.57) are likely to more than off-set such “opportunities”.

The Society had previously suggested 1 hectare, but on further consideration this may merely enable larger projects, which mean even more unsustainable developments.

For the reasons given in answer to Question 13, therefore, the Society does not consider that the policy should define “exceptions”.

Conservation Areas should be treated as exceptions - with no basements allowed except under the footprint of the house, in order to protect precious open spaces and mature planting/trees.

Matter 6: Restriction on excavation under a listed building

Issue 6.1: Whether CL7 f. is justified by the evidence, consistent with national policy, and effective:

29. What are key reasons for criterion CL7 f. restricting excavation under a listed building?

The NPPF (paragraph 17, bullet point 10) makes it clear that heritage assets should be conserved in a manner appropriate to their significance. Section 12 in particular paragraphs 126 and 128 amplify this aspect. Paragraphs 131- 135 describe the balance to be struck between harm to the significance of the heritage asset and public benefits.

In order to comply with these requirements there is a need for a mechanism to review the impact on the significance and assess whether or not an appropriate balance has been struck between harm and benefit, including potential harm or benefit since until an alteration has taken place it can only be considered as potential harm or benefit.

Harm ranges from the impact on the significance as defined in the NPPF as archaeological, architectural, artistic or historic interest, harm to the setting or actual physical harm in terms of structural harm or loss of historic fabric either with regard to the designated heritage asset or to nearby assets of the designated heritage asset in the form of a conservation area.

Changes to the form of a building or the relationships between the rooms can harm their significance by changing their relationship in a way not reflected by the form or architectural detail.

30. Are each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

Even supposedly simple basements ie single levels frequently exceed the estimate of construction period by substantial amounts ie 2 Abingdon Villas at well over two years, 10 Abingdon Villas nearly four years and 46 Abingdon Villas where the construction period was prolonged and substantial damage caused not just at the immediate party wall but at the next one along.

31. Is the restriction too limiting? Please explain briefly (referring to previous evidence).

We consider the policy appropriate since any proposals would need to be tested according to the guidance in the NPPF requiring an assessment of harm to significance and where this is the case a balance against public benefit. While with private dwellings public benefit may not exist in the case of other building types there may be considerable public benefit to offset against any harm. This is consistent with national policy.

NO. Because of the sensitivity of LB's and their garden walls, no basements should be allowed under the gardens of LB's

32. How is this criterion different in principle from that in the adopted Core Strategy in policy CL2 g. i. (apart from the inclusion of pavement vaults)?

The existing SPD Subterranean Development includes many of the aspects which are now proposed in CL7 however in practice the supporting policy has not been sufficiently robust.

The principle differences are:

- The proportion of open space and greenery to be supported has been set at a realistic level to protect the green and leafy character of the Borough
- The number of levels has been restricted to one storey and the justified reasoning has set out the height anticipated. Many of the applications for basements have been even recently for several storeys sometimes including bicycle stores at the bottom level with only staircase access.
- The protection of trees has been extended to long-term damage.
- There is a specific requirement not to cause harm to the significance of heritage assets which is in accordance with the NPPF requirement as outlined above and protects not only designated heritage assets including conservation areas but also any buildings identified as being of significance which is now being built into the emerging Conservation Area Appraisals. This will provide a significantly greater degree of protection.
- There is a specific requirement not to harm the architectural or historic interest of a listed building when a basement is proposed in the garden. Harm may be caused by changing the relationship between the principle rooms and ancillary accommodation, through creating different spatial relationships within the building, by causing harm or the risk of harm to the historic fabric or by affecting the setting of the designated asset by the provision for access including means of escape, the introduction of skylights, lightwells, ventilation equipment or outlets and similar installations or by unnatural constraints on the planting and green appearance of the area. This clarifies the requirement to protect a designated heritage asset even when not in physical contact.
- There is a specific requirement for any energy assessment to be verified after construction has been completed.
- There is a specific requirement for a Construction Traffic Management Plan

33. If it is not substantially different, what has changed that I should now, unlike my colleague at the Core Strategy examination, find it to be unsound?

We consider that it is significantly different and provides greater strength than the existing policies combined with the existing SPD

34. Why have pavement vaults been included?

Pavement vaults should be part of the curtilage of the designated heritage asset. They frequently are a significant part of the setting of the main house. We believe that they need to be considered as part of the assessment of any harm to the significance of the building to be balanced by public benefits.

In a recent dismissed appeal the Inspector noted: "The front vaults and lightwell of the appeal building are an important part of its special significance. The Council indicates these vaults would originally have been used for the storage of coal; their vaulted form, small proportions and limited headroom reflects their former use. The lightwell also allows an appreciation of the historic servicing arrangements. (Appeal Decisions APP/K5600/E/13/2206077, APP/K5600/A/13/2206139)

35. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criterion.

NO

36. Should the criterion contain an exception clause to cater for differing circumstances, such as where there is no special interest in the foundations and the original floor hierarchy can be respected?

We do not consider it practical to seek to describe all the possible circumstances in which there may be an exception. We consider, as outlined above, that the application of paras 131-135 of the NPPF will provide sufficient opportunity to argue a balance between harm to significance and public benefit.

Matter 7: Light wells and railings

Issue 7.1: Whether CL7 h. is effective:

37. Is the criterion for light wells and railings in clause h. of CL7 too limiting? Please explain briefly (referring to previous evidence).

No – The Kensington Society considers that criterion needs to add reference, after referring to the “side of the property”, to “or facing communal gardens”.

We would also like a reference in clause i. to avoiding light pollution.

The Norland Conservation Society considers that this policy (not introducing light wells and railings) is **sound as far as it goes**, however, it should be extended to cover the rear of properties facing communal gardens.

38. Is the criterion too lax? Please explain briefly (referring to previous evidence).

Yes - see answer to question 37.

Front flush grills are visible from the street, and may often alter the appearance of the terrace and produce light pollution. In addition, deep light wells at the rear are alien to most gardens but have become the way to allow very deep basements. If the single-storey policy is not achieved, there will be a need to ensure that the depth of lightwells and the distance from the rear elevation is limited. The current (SPD para 8.3.2) limits lightwells to one storey. A similar clause should be introduced in the new SPD.

39. Could the aims of the criterion be achieved or satisfied in another way? If so, please suggest an alternative wording.

The policy should be here, whereas the forthcoming SPD could provide good practice guidance on how to best to implement the policy.

40. Should the criterion contain an exception clause to cater for differing circumstances? For instance, where light wells and railings could be made acceptable by blending into the surroundings and/or hidden or disguised from public view?

No – The Society does not think there are any reasons to do so – in any case there will still be issues like light pollution.

Matter 8: Requirement for one metre of permeable soil:

Issue 8.1: Whether CL7 j. is justified by the evidence, consistent with national policy, and effective:

41. What are key reasons for criterion CL7 j. to have one metre of permeable soil above any part of a basement?

The purpose of having a one metre of permeable soil above the basement is to absorb rainwater and release it slowly into a SUDS or into the sewer system. For the latter, the intention is to attenuate the rainwater run-off so as not to overwhelm the sewer system leading to Counters Creek and lead to storm water and sewage backing up and flooding basements. There was a bad flood event in July 2007 which resulted a large number of basements flooding as a result of sewer flooding. (See Thames Water's comments)

The Society strongly supports SUDS, but is concerned that there is at present nothing to stop householders from complying with the requirement for one metre of soil above the basement in the garden, but then paving it over with impermeable paving, as the legislative changes only deals with removing permitted development rights for front gardens and does not apply to side and rear gardens.

The Society is also concerned that the aim of the one metre of soil only seeks attenuation (deferring/slowing down) of the run-off going into the sewer rather than a reduction in the amount of run-off going to the sewer.

42. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

Yes – the evidence of the rapid run-off of the storm water following a severe rain storm in July 2007 (and previous events) and the observed increase in land covered by impermeable surfaces resulted in the combined sewer, carrying sewage and stormwater, backing up from the Counters Creek Sewer and resulting sewer flooding of existing basements. Surface water flooding was also a problem with a large number of premises being flooded.

As a result Thames Water has introduced FLIPS to stop sewer floodwater flooding into basements and has been negotiating with OFWAT to secure funding for the Counters Creek Sewer to be enlarged. This will take at least 10-15 years. However, a FLIP may protect the basement from sewer water flowing into the basement, but there is also a need for a policy which restricts groundwater being pumped into the sewer system from basements, both during construction and in completion.

Thames Water are also experimenting with small-scale SUDS.

43. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.

Yes – by ensuring that all basement schemes have a SUDS that would handle all run-off and that permitted development rights are removed for impermeable paving in all garden areas. In addition there is need to ensure that groundwater is not pumped into the sewer system.

44. Why is CL2 g. iii. and iv. in the adopted Core Strategy not adequate to deal with this issue?

The new policy at CL7 (d) in relation to trees and CL7 (j) are improvements on the Core Strategy Policy CL2 g. iii and iv based on practice over the last five years, but a much firmer approach needs to be taken to the issue of retention and, where required, appropriate replanting.

45. Has the one metre soil requirement in the May 2009 Subterranean Development SPD (BAS93) proven to be effective such that it should continue in this Plan?

Yes – but it needs to be tightened in two ways:

- to ensure that attenuated run-off goes to the SUDS not to the sewer and that
- permitted development rights are withdrawn for using impermeable paving on top of the one metre of soil cover over the basement.

46. Should the criterion contain an exception clause to cater for differing circumstances? (I am aware of the representations about small and/or paved over garden/open areas).

Perhaps – to indicate the space needs of SUDS and only if no groundwater or surface water is to be allowed to flow into the sewer system.

Matter 9: Energy, waste and water conservation

Issue 9.1: Whether CL7 k. is justified by the evidence, consistent with national policy, and effective:

47. What are key reasons for criterion CL7 k. requiring a high level of performance in dealing with energy, waste and water?

As indicated in answer to Question xx, by their nature and exacerbated by their increasing scale, basement "extensions" are inherently unsustainable. Policy CL7 (k) is following Government policy (NPPF para 95, especially the second bullet) to actively support energy efficiency improvements to existing buildings by seeking to mitigate the **lifetime** high CO2 emissions from these developments, especially since these are heavily front-loaded as a direct result of the development itself.

The high energy requirements arise as a result of:

- the process of excavation;
- the disposal of excavation and construction waste;
- piling;
- the major concrete pouring;
- loss of planting areas, trees and green spaces and
- heating, cooling and ventilation requirements for the basement and its uses.

With regard to energy the NPPF says:

95. To support the move to a low carbon future, local planning authorities should:
- plan for new development in locations and ways which reduce greenhouse gas emissions;
 - actively support energy efficiency improvements to existing buildings; and
 - when setting any local requirement for a building's sustainability, do so in a way consistent with the Government's zero carbon buildings policy and adopt nationally described standards.

In Kensington and Chelsea, with one of highest proportions of buildings which are more than 100 years old, it is only through major developments like basements and comprehensive refurbishments are taking place that the opportunity arises to raise the level of performance of these buildings. This, albeit piecemeal, opportunity, is one of the few ways of contributing to attaining the Government's and the Council's targets for reducing CO2 emissions.

It should be noted that all new buildings are required to comply with high and rising standards for reducing energy consumption, minimising waste, maximising recycling (all developments in the Borough are on previously-developed land) and reducing water consumption. It is equally desirable to achieve these "savings" through major projects to extend physically and extend the life of existing buildings. Given the scale of most of these projects the requirement is both reasonable and proportionate.

Finally, the NPPF, in several places, advises on how to balance the adverse effects of a development, including their impact on sustainability, where the test is whether there are wider sustainability benefits to the community that outweigh the sustainability disbenefits. More generally, the test proposed for decision-taking is that "any adverse impacts of doing so [ie allowing the development] would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole" (NPPF para 14). The problem posed for decision makers when it comes to basement developments

is to weigh the lifetime adverse sustainability impacts and the short-term adverse impact of the development process on the community against the ascribed benefits of the basement development in providing additional space for underground leisure facilities, rather than additional bedrooms. The policy adopted strikes the right balance between these conflicting issues, allowing basement developments, but within certain clear limits.

48. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

The number and scale of basement building have both increased, directly increasing the consumption of energy, the scale of waste produced and the amount of water consumed.

49. Is the restriction too limiting? Please explain briefly (referring to previous evidence).

No – this requirement has been in force for the last 5 years in a time where the growth in the number of basement projects has shown a very rapid increase. There is no evidence that this requirement has deterred a significant number of projects. On the contrary, there has been a massive growth in spite of this and other requirements on environmental impact, which suggests that it is neither unreasonable nor disproportionate.

50. Is the Plan consistent with the Government’s zero carbon buildings policy as required by paragraph 95 of the Framework? In particular, should paragraph 34.3.68 refer to BREEAM targets given that most basement development will be to homes? Does the paragraph take account of the May 2014 BREEAM UK New Construction advice?

Yes – see answer to question 47 above. However, we do not consider that compliance with BREEAM Regulations is an adequate compensation for environmental harm caused by these developments.

51. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording.

No - Since the scale of energy consumption, waste production and water consumption are a function of the scale of the basement proposed and the nature of the use (eg swimming pools, saunas, etc), reducing the scale of the basements by limiting their depth and the extent to which they cover the site is the main way that these things can be reduced. Nevertheless, even basements limited to footprint of the building (although not for listed buildings) will still require the need to “off-set” the increase in these factors that result from building a basement.

For listed buildings the issue should not arise as Policy CL7 (e) and (f), existing policy CL2 (g)(i) and even Saved UDP Policy 32 (c) seek to protect listed buildings. See Matter 6 above.

The only way that the aims of the policy can be achieved is by reducing the size and depth of basements, as it is only a mitigation measure.

52. Should the criterion contain an exception clause to cater for differing circumstances?

No – all proposals for basements that pass the new policy tests should be subject to this criterion.

Matter 10: Structural stability

Issue 10.1: Whether CL7 n. is justified by the evidence, consistent with national policy, and effective

53. What are key reasons for criterion CL7 n. safeguarding the structural stability of the application building, nearby buildings and other infrastructure?

This has been a common thread from the 2002 UDP Policy CD32 (c), through Policy CL2 (g)(ii) in the 2010 Core Strategy to CL7 (n) in the current proposed alterations.

The Society believes that that the Council owes a duty to its residents and others generally, and has a specific duty with regard to conservation areas and especially listed buildings, to safeguard these buildings and to resist proposals which are likely to put them at risk. Initially the Council sought professional advice on the Construction Management Statements, but now accept that if it is produced by a qualified civil engineer who has professional indemnity insurance that this provides some reassurance. Likewise the requirement that a Considerate Contractor will be used provides reassurance that the project will not be undertaken by cowboys.

The validation criteria are to certain degree an exercise in due diligence in terms of the Council's duties and it is the assurance that all of the safeguards are in place that reassures decision makers that the projects will be undertaken correctly and that they have discharged their duties. However, there have been incidences where the adjoining property owner has hired an equally qualified structural engineer and has opposed the proposals or has noted areas of concern. In such incidences the Council should exercise its powers under the SPD to commission an independent view at the applicants expense.(6.1.4)

54. Is each of the reasons for the criterion justified by the evidence? Please be brief and refer to previously submitted evidence without repeating it in full.

Yes - These criteria are not onerous for a good developer who uses reputable contractors and professional services.

55. Is the criterion necessary given the existence of other legislation on the subject? Please explain briefly (referring to previous evidence).

Yes – definitely. The other legislation has proved inadequate, reactive and has not kept pace with growing basement industry and enforcement action has not proved the most effective tool for achieving the desired result. Party Wall matters merely shifts responsibility onto neighbours, is short-term, limited in whom it covers and may not be the best dispute resolution process.

56. Is this criterion primarily related to land stability as a material planning consideration as set out in the Framework paragraph 120 and the PPG (ID: 45-001) in order to minimise the risk and effects of land stability on property, infrastructure and the public? If so, should the criterion be reworded to reflect that?

The NPPF only deals with land, slope and ground stability rather than the stability of structures following excavation. It would appear to be the structural stability of the development (34.3.70). The Policy CL7 n specifically refers to the "structural stability of the

application building, nearby buildings and other infrastructure” – the wording seems appropriate.

57. Does the requirement to apply this criterion to the existing property comply with the national policy test in the PPG (ID 21a-004) that requirements should be relevant to the development to be permitted and not be used to remedy a pre-existing problem or an issue not created by the proposed development?

This requirement relates to the manner in which the development is undertaken and is therefore relevant to the proposed development rather than as a remedy to a pre-existing problem.

58. I note that the wording of this criterion is similar to that existing in adopted policy CL2 g. ii. What has changed that I should now, unlike my colleague at the Core Strategy examination, find it to be unsound?

Nothing. The existing safeguards do not work. The representor believes that if the project is undertaken by a competent contractor, there should be no need to codify this as a policy requirement. The Society disagrees.

59. Could the aims/reasons be achieved or satisfied in another way? If so, please suggest an alternative wording for the criterion.

Delete the first three words of CL2 (n) to identify what the policy should achieve. The Society strongly endorses this policy to maintain this level of protection as we have had for the last 12 years.

Matter 11: Other CL7 criteria and alternative policy wording

Issue 11.1: Whether the remaining criteria in CL7 are justified by the evidence, consistent with national policy, and effective:

60. In criterion i. of CL7, should the need to limit light pollution be mentioned to reflect advice in paragraph 125 of the Framework?

Yes – it is not sufficient for them to be sensitively designed and discreetly sited as it does not explain that impact is not just a matter of design. Para 34.3.66 echoes para 125 of the NPPF, but the issue of light pollution is not carried through into the policy. The Society would support the extension of criterion i. by adding “and minimise the impact of light pollution”. This would reflect both the NPPF and the reasoned justification for this element of the policy. See answer to Question 61 below.

61. In respect of criteria d., g., i., l., m., and o. in policy CL7: are they justified by the evidence, consistent with national policy, and effective?

Criterion d. protecting trees: Basement developments may often involve excavation in the root protection area of trees. Where such development would result in the loss, damage or long-term threat to trees of townscape or amenity value, the policy would constrain the extent of the basement. Applicants frequently try to secure their “entitlement” of a basement covering at least 85% of the site, even if it requires the felling of a mature tree of townscape or amenity value. The Society **strongly supports** this criterion, as often such trees cannot be replaced if the basement covers 85% of the site or, if replaced, may not replicate the amenity value of a mature tree for 20 years or more. This problem will be solved by limiting site coverage of basements to a maximum of 50% of each garden (except for listed buildings), which should enable trees to be retained or, if that is not possible, be replaced by a semi-mature specimen.

Criterion g. The Society’s strongly advocates a policy of **no basements in the garden of listed buildings**, because of the likely risk to the heritage asset of building very close to it, including garden walls and other structures within the curtilage of the building. Any basement in the garden would need to demonstrate that this would not risk harming the significance of the listed building. Most listed buildings, especially those with small gardens, should be protected from the likelihood of harm as a result of building close to or being attached to a listed building.

Criterion i. The NPPF (para 125) says:

“By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”

The Society considers that the sensitivity of design required to introduce new features such as lightwells and rooflights should explicitly recognise the need to minimise light pollution. Para 34.3.66 recognises the issue – the need to avoid disturbance to neighbours from light pollution through roof lights and other forms of lighting – but the policy is silent on this issue. We would prefer if this were mentioned on the face of the plan. At the very least there needs to be confirmation that proposals should comply with the NPPF, even if urban back gardens are not “intrinsically dark landscapes” it needs to be recognised that bright light sources are unwelcome.

Criterion i. The Society, apart from wanting to reorganise the text, is concerned that these adverse impacts from traffic and construction activity are explicitly addressed through making clear that a Construction Traffic Management Plan will be required. We have proposed that if this is a matter of policy, then the requirement should be on the face of the plan, not relegated to the relevant SPD – the forthcoming Transport and Streets SPD or even the forthcoming Subterranean Development SPD. We do not consider the vague reference in Policy CT1 (b) does the job.

Criterion m. moderating construction impacts – noise, vibration and dust – during works: Conditions are needed to ensure that hours of work, noise, vibration and dust are kept within reasonable limits. Where there are several basement schemes in close proximity the Council must coordinate the agreements (CTMP and environmental health) to avoid adverse impacts on local residents.

NPPF (para 109) says that the planning system should contribute to and enhance the local environment by preventing both new and existing development from contributing to or put at unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution.

NPPF para 123 says that planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;

Relying on the reactive use of enforcement powers under other legislation is not the most effective means of dealing with these issues.

At the moment The Society and others are pressing the Council for improvements to the controls on working hours, noise and parking suspensions. Without these improvements we do not consider that this aspect of the policy is sufficiently effective.

Specifically, The Society is seeking:

- a reduction in working hours – the Borough has the longest weekday working hours (08.00 to 18.30) of any London Borough (the rest operate 08.00 to 18.00) – **and** no Saturday morning working on basement projects in residential areas;
- a stricter regime on noise emitted, recognising that basement projects take place in residential areas with relatively low ambient noise levels. The noise levels agreed are presently usually 75dBA average over a ten-hour day, which is totally unbearable to immediate neighbours. The high densities in this Borough mean that neighbours are both closer to the site and more numerous; and
- a much stricter approach to CTMPs to keep skips, materials and plant off the highway and minimise the need for parking suspensions.

Unless these improvements are required these improvements are not going to be delivered.

However, whilst these management measures will improve day-to-day conditions, they do not change the fundamental issues that basements raise.

Criterion o. protection from sewer flooding: There are areas of the Borough where such protection is essential because of the risk of sewer flooding. This risk is likely to be present

for the next ten years until improvements to the Counters Creek Sewer have been completed.

However, there is also a risk to basements from surface water flooding that they themselves also contribute to. By covering gardens with impermeable surfaces storm water run-off is accelerated, which in turn contributes sewer flooding. As a result, Thames Water, whose main responsibility is tackling sewer flooding, wrote to the Council on 31 January 2013 highlighting the need to avoid covering over gardens with impermeable surfaces, indeed advocating limiting basements to the existing footprint of the building. Unlike the Council, this approach has been adopted by Hammersmith and Fulham in its Policy DMA8, which confines new basements to the footprint of the building and any approved extension. (See Question 17 above)

The Council was critical of Thames Water's proposal, because stormwater run-off is the responsibility of the Environment Agency, not Thames Water, yet they only deal with sites over 1 hectare. The Council is now the lead authority for surface water flooding issues, but so far has not taken a proactive approach beyond using one metre of soil over basements to attenuate rather than halt the flow of run-off to the sewer system and require minimal SUDS. The Council needs to take a much more proactive approach to ensuring that gardens, not just the front garden where PD rights have been removed, remain permeable and that the garden is not paved over. This will require legal agreement

The project to deal with sewer flooding in the Counters Creek catchment will not be implemented for at least ten years.

Meanwhile little is being done to secure permeability of back (and side) gardens. Limiting the coverage by basements is a good start to secure effective SUDS which, if they are of sufficient size can avoid the need for run-off to go to the sewers. In addition a condition is needed to prevent the 1 metre of soil over a basement being covered with impermeable paving that completely negates the attenuation effect of that layer of soil.

62. Could the aims/reasons for the criteria be achieved or satisfied in another way? If so, please suggest an alternative wording for the criteria.

No

Issue 11.2: Whether the Plan and its policy CL7 sets out an approach that is consistent with the presumption in favour of sustainable development:

63. Does the Plan and policy reflect the presumption in favour of sustainable development set out in the Framework? If not, why not?

Basement developments are inherently unsustainable in both environmental and social terms. Policy CL7 seeks to reduce some of the impacts and mitigate some of the risks. Para 14 of the NPPF explains that for plan-making, local planning authorities should positively seek to meet the development needs of their area and that local plans should meet objectively-assessed needs, with sufficient flexibility to adapt to rapid change, unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. For decision-making this means approving development proposals that accord with the development plan, but those that conflict with the plan should be refused, unless material considerations indicate otherwise.

The Society considers that in both environmental and social terms basements are not sustainable and these substantially outweigh the advantages, which are chiefly financial advantages enjoyed only by the applicant or, more likely, the developer. There are no public benefits, substantial or otherwise that outweigh the adverse impacts.

Policy CL7 attempts to define those projects that should be approved by making clear the criteria for assessing proposals. Those basement projects that accord with the criteria will be granted planning consent.

64. When applied, will the Policy allow reasonable development needs to be met in a way that is appropriate to the specific character of the Royal Borough?

Yes – the policy provides clear criteria that will allow basement projects that are appropriate to the specific character of the Royal Borough to proceed. The criteria, when applied, define which basement developments are appropriate to the special character of the Royal Borough.

65. A number of representors have suggested that the policy should instead be an impact assessment-led one (case by case) with an overall exception clause, and some have made suggestions. In the light of the Council's explanations to date, please would representors suggest their final wording for such a policy?

Whilst the Society would welcome an impact assessment framework, such as used by LB of Camden, this is merely a means of improving transparency by presenting the assessment within a tabular framework.

We do not favour the "every case on its merits" approach without any clearly-stated parameters for what constitutes an acceptable basement development. We **strongly endorse** the Council's criteria-based approach which defines both the "envelope" and conditions which