

CRANBROOK BASEMENTS LIMITED

EXAMINATION OF THE PARTIAL REVIEW
OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
CORE STRATEGY DRAFT POLICY CL7

ID23: MAIN MODIFICATIONS TO BASEMENTS SUBMISSION PLANNING POLICY

RBKC/ED/10: SCHEDULE OF SUGGESTED MAIN MODIFICATIONS TO BASEMENT SUBMISSION
PLANNING POLICY (BAS 01)

RESPONSE OF CRANBROOK BASEMENTS TO MAIN MODIFICATIONS

MM 34.3.57

1. The submission 34.3.57 reasoned justification (RJ) provides
 - that basements of more than one storey and greater than half the garden may be permitted on 'larger sites' in 'certain circumstances';
 - the circumstances were 'generally,' not exclusively, new development in a commercial setting or of the size of an entire block; and
 - be large enough to accommodate all the plant, and equipment and vehicles within the site.

It then states that 'Larger sites can offer more opportunity to mitigate construction impacts and carbon emissions on site.' This statement is seemingly intended to provide a justification for the policy by explaining its rationale.

2. The proposed main modification (MM) removes the qualification 'generally' and replaces it with the imperative 'should' be large enough etc. Contrary to its

purported 'Reason,' therefore, the MM proposes a less 'flexible approach' limiting multiple basement development on 'larger sites' to only those where plant, equipment and vehicles etc can be accommodated on site.

3. A further qualification is introduced requiring that the larger site 'should' offer more 'opportunity to mitigate' etc. What was a comment on the rationale for the 'generally' policy is now made a requirement making the policy less 'flexible' contrary to the 'Reason' given for the MM.
4. The MM is not supported by any evidence that less flexibility in respect of larger sites is required; or that the flexible site by site assessment approach necessitated by the word 'generally' should be abandoned. For example, there may be a larger site where all the plant and equipment can be accommodated on site but not the vehicles removing excavated material or delivering the requisite building materials. With the removal of the word 'generally,' the MM would mandate a refusal of planning permission for a sustainable multiple basement development in such circumstances without any clear cut policy or evidential justification. All basement development requires the coming and going of related vehicular traffic.
5. In addition, the mandatory requirement now introduced in the MM that multiple basement development 'should' now 'offer more opportunity to mitigate construction impacts' etc is unexplained and, similarly, unsupported by any evidence. 'Offer more' is a comparative phrase. The comparator, however, is not identified. Is it 'more' than multiple basement development on sites not meeting the description of 'large sites'; or 'more' than single storey basement development on sites not in the 'large sites' category?
6. For these reasons the 34.3.57 MM is unsound. It introduces inflexibility regarding multiple basement development on larger sites which is not supported by the 'Reason' for the change or a proportionate evidence base contrary to NPPF158, 182 ('Justified'). The MM is similarly not demonstrated to 'meet objectively assessed development and infrastructure requirements' contrary to NPPF 182 ('Positively prepared'). Further, it imposes a criterion of acceptability relating to the mitigation of construction impacts and carbon emissions which is not capable of objective

assessment in the absence of the identification of the relevant comparator contrary to NPPF 154 ('Only policies...') and, consequentially, NPPF 182 ('Consistent with national policy').

7. NPPF 154 is concerned to ensure that 'local plan policies provide a clear indication of how a decision maker should react to a development proposal...' The NPPF provides no authority for the proposition (at times canvassed in the Examination) that vague or incomplete local plan policies can be accepted on the basis that their deficiencies may be overcome by an applicant praying in aid 'other material considerations' why a policy should not be followed under section 38(6) PCPA 2004.

MM34.3.58

8. Read literally, MM 34.3.58 admits of four possibilities:
 - a basement constructed pursuant to a grant of planning permission;
 - a basement constructed pursuant to permitted development rights;
 - a basement which forms part of the 'original property';¹
 - a basement added to an original property prior to 1st July 1948
9. A basement constructed pursuant to a grant of planning permission and a basement forming part of an 'original property' granted planning permission are both basements granted planning permission. Yet the MM proposes that where the basement has been granted planning permission as part of a larger project involving the construction of a building the developer should not be prohibited from making a subsequent application for additional basement works. This 'ensures' neither 'consistency nor fairness.' The owner / developer of an original building including a basement granted planning permission in 2014 would not be precluded by the MM from being granted planning permission on an application being made for an additional basement in 2015; whereas an owner who built a building without a basement in 2014 would be limited to one basement only under the policy.

¹ It is to be noted that the 'Reason' for the MM distinguishes between 'existing original' and 'historic basements.' An 'existing original' basement therefore includes a basement forming part of a building granted planning permission post 1948.

10. The MM 34.3.58 is, accordingly, unsound; contrary to NPPF 154 there is no proportionate evidence base for this arbitrary distinction allowing a greater volume of basement development dependent upon whether a basement was included in an 'original building' granted planning.
11. Further and in addition, the MM introduces the concept of 'fairness' as a planning consideration without any reference to any authority underpinning its relevance. What is implied by the MM is that it would be unfair to allow additional basement development by a grant of planning permission where a basement development had been already constructed pursuant to permitted development rights.
12. 'Fairness' is not a word found in the NPPF or in the Planning Acts. Planning decisions are not taken with regard to what may or may not appear to be fair but by reference to objective planning criteria; whether the development in question is an acceptable use of land having regard to the development plan and other material considerations (s.70 / s.38(6)). The MM would permit further basement development on the grounds of 'fairness' where it followed the implementation of a planning permission for a building which incorporated a basement but refusal of an otherwise sustainable basement development simply on the basis that it followed the implementation of an earlier basement alone development. Planning applications are to be determined on their individual planning merits and not by reference to whether or not the proposed development may be perceived as fair.
13. The MM 34.3.58 is, accordingly, unsound being based on notions of fairness which have no planning policy provenance and which, used as a foundation for policy CL7, would detract from planning decisions on basement development in RBKC being determined on their planning merits; and in conflict with NPPF 15: 'development which is sustainable can be approved without delay' and NPPF 151: 'Local Plans must be prepared with the objective of contributing to the achievement of sustainable development.'

MM 34.3.70

14. The new wording read with the previous sentence does not make sense. The first sentence is a statement to the effect that basement development can affect the

structure of listed buildings. The words 'Aspects of this' in the second sentence are unintelligible. The 'this' referred to is unexplained. If 'this' is intended to refer to 'Basement development can affect the structure of existing buildings' it is absurd to plan for 'this' to be 'secured' in an SPD. The MM is, for these reasons, unsound.

MM 34.3.73

15. The phrase 'the consideration of related cumulative impacts' is unexplained and obscure. NPPF 154 requires the policy to 'provide a clear indication of how a decision maker should react to a development proposal...' What impacts other than those likely to be generated by the basement development itself, are to be considered are not identified; nor how it is to be decided whether they are 'related.'
16. Cumulative impact is a material consideration normally of materiality only in respect of development that is subject to Environmental Impact Assessment (EIA Regulations 2011); and there the relevant criteria taken into account and the associated impacts of the EIA development must be spelled out in the assessment. The inclusion of the concept of 'cumulative impact' in CL 7 involving non EIA development is, accordingly, exceptional and requires clear planning justification. If it is to be an operative policy consideration its precise scope must be defined in the policy or RJ to meet the requirement of NPPF 154. In the absence of such a definition there is a danger that sustainable basement, which the policy purports to encourage, would be refused planning permission by reference to unrelated impacts including the impacts of other basement development and or development in the locality generally contrary to NPPF 15.

MM Policy CL7 (beginning)

17. The justification for draft Policy CL7 has been changed from an express quality objective to an express embargo on basement development exceeding a maximum of 50% of each garden and or more than one storey (CL7 (a) & (b)). The change is not sought to be justified by any words in the MM policy as now drafted.
18. Nor is there any justification for this change in the RJ. At 34.3.51 the RJ says 'The policy therefore restricts the extent of basement development to no more than

under half the garden or open part of the site and limits the depth of excavation to a single storey in most cases.’ The word ‘therefore’ relates back to what is said in RJ 34.3.46 -50. Those paragraphs purport to relate to ‘all new basement development’ (RJ 34.3.46). They provide no justification for the MM CL7 (beginning) statement that:

‘The Council will require all basement development to:

- a. not exceed a maximum of 50% of each garden or open part of the site....*
- b. not comprise more than one storey...’*

19. MM Policy CL7 (beginning) is, accordingly, unsound. The redrafting now contains an express embargo on basement development exceeding more than one storey without providing any explanatory justification for identifying this class of basement development as unsustainable in principle whilst giving express encouragement to basement development generally on the generic ground that ‘Basements are a useful way to add extra accommodation to homes and commercial buildings’ (RJ 34.3.47).
20. The MM provides no reasoned or evidential justification in the RJ or elsewhere for discriminating on in-principle policy grounds against sustainable basement development of more than one storey contrary to NPPF 14, 15 and 182. In particular, there is produced no ‘proportionate evidence’ base demonstrating that an in-principle policy embargo on basement development of more than one storey is either ‘justified’ or ‘consistent with national policy.’ The MM, accordingly, militates against ‘the delivery of sustainable development’ contrary to NPPF 182 and is unsound.

Timothy Comyn

13th November 2014