

**Consultation on Main Modifications and “Corrected SA/SEA”**

**Overview**

1. The Council is taken to have considered its submission draft policy to be sound at the time of submission.
2. As the Inspector has emphasised, his role is to assess whether that policy is, as a matter of fact and judgment, sound. Main modifications are proposed where they are considered necessary to make the draft policy sound.
3. The chronology relevant to the current main modifications is as follows
  - a. On day 5 of the hearing sessions the Inspector led consideration of RBKC/ED/10 which proposed a series of main modifications to address points which had arising earlier in the examination. Those of particular note include
    - i. The need to clarify the supporting text in para 34.3.57 re larger sites, which is intended to explain the exception to single storey basement development proposed in criterion b.
    - ii. The need to clarify via supporting text that the Council does not seek to resist basements underneath existing historic/original basements.
    - iii. The need to refer to intended SPD and what will be covered by it.
    - iv. The need to refer to an intention to monitor the effectiveness of the policy.
    - v. The removal from the policy of its introductory statement which provides a unifying theme, namely that basements should “be designed, constructed and completed to the highest standard and quality”. This modification is not designed to make the policy sound so much as to make its purpose honest, the Council having repeatedly confirmed that it is their intention (contrary to the original apparent objective of the policy against which Basement Force’s objections were framed) to “bear down on excavation” in the Borough.
    - vi. Consolidation and amendment of criteria e and g so as to require compliance with national policy on heritage assets.
    - vii. The splitting of criterion j into two, referring separately (i) to the need for SUDs and (ii) to the need to provide at least a metre of soil over basement development.
    - viii. A qualification of criterion l so as to refer only to “unacceptable” harm to the interests in question.
  - b. In the light of that discussion, the Council published ID23 on the 2<sup>nd</sup> October 2014 and it is this document which forms the principal subject of this consultation. Published with it is ID24 which sets out monitoring indicators which, it is assumed, should be read with and inform any response to consultation.
4. Basement Force’s detailed response to the “Main modifications” will be set out below.

**Consultation on Main Modifications and “Corrected SA/SEA”**

5. Other documents published by the Council at the same time are
  - a. The third “Correcting Addition” to the Sustainability Appraisal to which Basement Force’s response is set out below.
  - b. RBKC/ED/12 described online as “The Council’s Response to Basement Force’s Day 5 Slides”. This is a picture the significance of which is not understood. Basement Force was not notified of the existence of this or what interpretation the Council or Inspector might put on it. In those circumstances it should be given no weight and is not considered part of the consultation process.
  - c. RBKC/ED/10 described online as “Merton Council’s Adopted Basements Policy”. Similarly, the significance of this document is not understood and Basement Force was not notified that this document had been submitted. If Merton’s policy, why not any other policy? It is not considered part of the consultation process and should be given no weight in the Inspector’s decision without a full opportunity for comment on its significance or otherwise to the question of soundness.
6. The purpose of these representations is twofold insofar as the main modifications are concerned. First we respond to the Council’s consultation so as to contribute to the process of deciding what main Modifications they should request the Inspector to recommend, under section 20(7C) of the Planning and Compulsory Purchase Act 2004. Second, we briefly state why the main Modifications (considered necessary by the Inspector to make the Plan sound) would not achieve that objective.
7. The purpose of these representations insofar as the “corrected” SA is concerned is to set out in summary form why we consider that it does not save the SA/SEA process. On the contrary, the shortcomings of that process have been thrown into sharp relief both by the proposed main modifications and the statement of reasons now produced.
8. In summary on the main modifications and the “corrected” SA, Basement Force make the following points
  - a. The modification to the beginning of policy CL7 goes to the heart of the policy and deprives it of any obvious or coherent purpose by which to judge an individual proposal. It is therefore damaging for the prospects of delivering sustainable development and exacerbates the harmful effects of the arbitrary criteria within the policy (namely modified criteria a, b, c, and f).
  - b. Some of the other modifications do succeed in addressing objections made by Basement Force and others, and these are recognised in the paragraphs below.
  - c. The “corrected” SA fails to assess the significant environmental effects of a reasonable alternative and the reasons for failing to do so only reveal more clearly that this was an alternative which should have been considered and might have led to a more balanced approach in policy with a much more favourable outcome for the delivery of sustainable development in Kensington and Chelsea.

**Consultation on Main Modifications and “Corrected SA/SEA”**

**Main Modifications**

The beginning of policy CL7

9. The starting point is that the Inspector has found the policy unsound. It is thought that the reason for this finding is that the submission draft policy is not justified by the evidence base, which has shown that the true purpose of the policy is not that implied by the principal policy statement within the draft policy.
10. Basement Force has argued that CL7 will deter beneficial development, is over-prescriptive, and is therefore not sustainable. It is a politically driven effort with two objectives (a) to appease an articulate minority of the residential population that is motivated to protect their amenities; and (b) to manage the workload that a high number of basement applications imposes on the local planning authority (please see the summary on the flow chart attached).
11. The first of these is, naturally, a proper priority for residents, and a proper *consideration* for the Council, so far as it goes. However, whether it justifies such a damaging and arbitrary restriction on development; and whether it will achieve its object; both these things need to be objectively considered. Basement Force has not found the local planning authority impartial or objective despite engaging openly and constructively in the process of policy formulation from the start (eg Simon Haslam’s role in the Basement’s Working Party). We have argued both that the policy is harmful and that it will not succeed in protecting residential amenity, since the main deciding factors on this point are the quality of contractor, the size of the overall project, not just the size of the basement, ease of access to the site, the width of the road outside the site (a wide road allows storage on the highway with little harm), traffic volumes on the road outside the site, alternative routes being available for local traffic to bypass the site under the direction of traffic marshalls during deliveries or other site operations, the site’s layout within its curtilage and the construction /structure of the existing building .
12. The second principal objective is more troubling but is quite apparent from the repeated reference to the growing number of applications, and implicitly acknowledged by the Council in their evidence. Again, Basement Force have pointed out that applications are not necessarily the right measure of impact since they do not all translate to development, and the number of applications has probably been raised artificially by the prospect of the Council “bearing down on” (as they emphasise that they wish to do) the volume of excavation in the Borough.
13. While these points have been made and elaborated upon in previous statements, they are also a direct response to the modification proposed by the Council on the following basis

*“As drafted the impression is given that the criteria within Policy CF7 relate solely to basements being designed, constructed and completed to the highest standard and quality. Redrafting to make it clear that this is not the case.” [quote taken from the reason for the modification proposed by the Council at ID23 p11].*

**Consultation on Main Modifications and “Corrected SA/SEA”**

14. The modification goes to the heart of the policy. It is now well established that the meaning of planning policy is a question of law and that its meaning is established without reference to extraneous materials such as the evidence base from which it emerged [*Tesco v Dundee* [2012] SC (UKSC) 278].
15. To make this modification would be to remove any unifying purpose or objective to the policy to govern and apply the rigid limits on development set out in the criteria which follow.
16. It needs to be remembered that the NPPF (in many places, for example paragraph 47 and 156) and the London Plan promote the delivery of housing via sustainable development. The Council has ignored and / or downplayed what should be significant weight given in support of basement development as it supports delivery of London’s strategic housing objective. The London Plan directs that “the area” for housing market purposes is London, not limited to the Royal Borough of Kensington & Chelsea. Relevant extracts from the London Plan follow (and see our Written Statements on conformity to the London Plan)

London Plan para 3.15

*“... Though there are differences in the type, quality and cost of housing across London, the complex linkages between them mean that for planning purposes, London should be treated as a single housing market...”*

London Plan para 3.27

*The Mayor “... recognises the importance of housing supply to his economic, social and environmental priorities and takes account of London’s status as a single housing market...”*

London Plan para 3.19

*Figures in the London Plan to be minimum targets “... to be exceeded by optimising development on individual sites ...”*

17. Basement development is brownfield and should, all other things being equal, be supported.

London Plan policy 3.3 – LDF preparation

*“E Boroughs should identify and seek to enable development capacity to be brought forward to meet these targets having regard to the other policies of this Plan and in particular the potential to realise brownfield\* housing capacity through the spatial structure it provides including:*

*a intensification (see policies ... 3.4) ”*

Note: \*Development underneath buildings is brownfield under the definition in the London Plan. The land below a garden (provided the garden remains fully usable, which it can) should also be considered as brownfield land.

18. The modification would in fact exacerbate the damaging effects of the policy on the delivery of sustainable basement development. As already argued in representations and within the

**Consultation on Main Modifications and “Corrected SA/SEA”**

hearing sessions, the long list of individual restrictions and arbitrary limits on size will combine to deter beneficial development. The Council is unduly blithe to think that small scale basements requiring whole house refurbishment without lightwells will be constructed by those interested in maintaining the highest standards. Viability will increasingly become an issue. Squeeze the sector too much and you squeeze out the best and encourage the worst; those who cut corners and compete on price alone.

19. In short, if the policy was not sound with the original text because there was a mismatch between that and the true purpose of the policy as has been made clear by the evidence, then the modification is so substantial that the Policy should be withdrawn rather than modified and the modification makes the policy worse and even more unsound.

Criteria CL7e and CL7f

20. The Council propose that criteria e and g are combined and that e should require that development comply with the tests in national policy as they relate to the assessment of harm to the significance of heritage assets.
21. Basement Force support this modification. We consider our proposed wording better, but this modification would address the issues of drafting which we raised in our objection on heritage grounds.
22. However, the existence of this criterion and its proposed modification reinforces the redundancy of, and harm caused by, CL7f which would prevent excavation underneath a listed building (including its vaults). We have no comment on the modification removing “pavement” from criterion f. The policy remains unsound: not positively prepared, not justified by the evidence, not effective, and not consistent with National Policy. To elaborate on consistency with national policy: the criterion (CL7f) imposes an unnecessary restriction on development which might be the key to delivering a sustainable future for an important listed building either with no harm to significance, or with net benefit to the building (involving benefits which are judged to outweigh some limited harm to significance by for example retaining the building in beneficial use). The restriction is entirely unnecessary because the proper application of criterion e will ensure that excavation below a listed building will only take place where this is appropriate.

Criterion CL7h

23. The Council proposes, in response to a specific request by the Inspector, to modify the criterion so that lightwells and railings will only be unacceptable where they seriously harm the character and appearance of the locality.
24. Basement Force agree that the policy was previously unsound and therefore support this modification while maintaining all our arguments in Hearing Statement for Matter 7 and for Matter 11.

**Consultation on Main Modifications and “Corrected SA/SEA”**

25. The decision to introduce a criterion which requires the planning officer to make a judgment on the impact of a given proposal is relevant to our submissions on the SA/SEA issues since it suggests strongly that such criteria are indeed a reasonable alternative.

Criterion CL7i

26. The Council proposes, on removing references to light pollution from the supporting text, to introduce a reference to it in the policy.
27. Basement Force find this modification confusing and unhelpful and the reference to light pollution is not justified by the evidence. We draw attention to paragraphs 91-95 of our Representations [document reference Representative 195 reference document 0 – see BAS 06/01 Index].

Criterion CL7j

28. First, the Council proposes to add a requirement that SUDs be maintained in perpetuity.
29. Basement Force recognise the practical need for SUDs to be maintained but this modification does not arise from an objection and is not needed to make the policy sound. It is in fact confusing. For example it is not clear how the policy requirement will be applied at the application stage. It would be an unwarranted financial burden on developers to demonstrate perpetual maintenance at application stage.
30. Therefore the modification should not be made and the Council has no basis to request that the Inspector recommend it.
31. Second, the Council proposes that the requirement for a metre of soil above a basement be included within a new criterion.
32. Basement Force support this modification which meets the points made at paragraphs 3 and 7 of our Hearing Statement for Matter 8. It should be recognised that this criterion means that any kind of garden – formal, paved, or naturalistic and well treed (as the Council currently appear to prefer) can be provided above a basement of any size, whatever the % of the garden under which it lies.

Criterion CL7k

33. The Council invites the Inspector to recommend the removal of this criterion in the event that he is not persuaded by the carbon emissions evidence.
34. Basement Force agree that it should be removed. There is no basis for requiring any retrofitting of the host building. Indeed, this is likely to increase the scale and complexity,

**Consultation on Main Modifications and “Corrected SA/SEA”**

duration and impact, of the development project as a whole and therefore to run counter to the Council’s own (albeit recently asserted) principal objective for the policy<sup>1</sup>.

Criterion CL7l

35. The Council proposes to amend the criterion in order to introduce the word “unacceptably” at several points in order “to improve clarity”.
36. Basement Force support the changes which reinforce the need within this criterion for a judgment as to the acceptability of impact (and “interference” would be a much more appropriate word here than “inconvenience” which does not have the same clarity).
37. This proposed modification appears to recognise the force of our arguments on criterion CL7l, and reinforces our argument that the need for arbitrary limits on size of the basement are unnecessary and inappropriate methods for protecting the amenities of the area.

Criterion CL7n

38. The Council invites the Inspector to recommend a change of wording – effectively a minor modification – and an improvement.

Paragraph 34.3.47

39. The Council invites the Inspector to replace “rules” by “requirements”.
40. Basement Force has argued that the former was unduly rigid. Unfortunately requirements is no less rigid and is therefore unsound.

Paragraph 34.3.57

41. The Council proposes to add to the text on the application of the exception to the single storey criterion b “on large sites”.
42. While we maintain all our criticisms of criterion b, there is an obvious need for exceptions, and it is therefore important that the Council minimise the uncertainty as to when and how that exception will be applied. However, the proposed changes to the text only make matters worse. They are unduly rigid and restrictive in requiring “all” the plant, equipment and vehicles associated with the basement to be retained on site. This should be “most of”. Then the Council seeks to include in the text a constraint on the space permitted on the highway. This has two problems

---

<sup>1</sup> Namely, to bear down on (reduce) the volume of excavation in the Borough in the interests of residential amenity.

**Consultation on Main Modifications and “Corrected SA/SEA”**

- a. It should be in policy, not the supporting text (which is no more than an aid to the interpretation of the policy) if needed – or in guidance on the contents of a Construction Traffic Management Plan if the restriction is considered justified by the evidence. Matters of this sort should be dealt with under condition.
- b. It is arbitrary, and bears no reference to the ability of the highway to provide more space than this. In some circumstances it is likely to be better for amenities of neighbours to use the highway than the site for some of the plant, equipment and vehicles.

Paragraph 34.3.58

43. The Council proposes to clarify the application of criterion c.
44. Basement Force does not object to the intention of this modification which we agree is necessary and would operate as an exception to criterion c.

Paragraph 34.3.59

45. The Council proposes to remove a footnote referring to BS 5837 2012 concerning work to trees.
46. Basement Force do not object to this modification which we agree is appropriate. We note that the reason for it is stated as being “It would be more reasonable for the Council to consider such proposals on a case by case basis to establish any harm.” We agree with that approach. Once again this emphasises the need for judgment in the application of sensible planning criteria and the reasonableness of an alternative policy which consists of just such criteria (see further the paragraphs on SA/SEA below).

Paragraph 34.3.66

47. The Council proposes to remove the requirement that external visible elements are located near the building.
48. Basement Force does not object to the modification but notes that it does not address the objection to the policy on lightwells and other external manifestations of development.

Paragraph 34.3.68 and CL7K

49. The Council proposes that, if the Inspector is minded to remove the requirement in CL7k to retrofit the existing dwelling when a new basement is proposed, then the supporting text should also be removed and the issue of carbon emissions and sustainable design should be addressed by CE1 of the Core Strategy.

**Consultation on Main Modifications and “Corrected SA/SEA”**

50. Basement Force agrees that this is appropriate, although the retrofitting aspect of CE1c are not considered justified on the evidence at this examination and would be challenged in any future review of the Core Strategy.

Paragraph 34.3.70

51. The Council proposes to remove text that they consider is more suited to a Supplementary Planning Document. It identifies the need to investigate the ground and hydrological conditions of the site and to demonstrate that the development would safeguard structural stability.
52. Although this does not address any of our objections Basement Force agree that this is an appropriate subject for SPD and not the Core Strategy supporting text.

New paragraph 34.3.73

53. The Council proposes a new paragraph introducing a new SPD.
54. Although this does not address any of our objections, Basement Force have no objection to this approach.
55. As paragraph 153 of the NPPF states *“SPDs should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.”* The Council does not always respect this point in drafting SPD, using it as an additional layer of policy restriction (as exemplified by the current Basements SPD - BAS 93).
56. In that context we have concerns about the text proposed.
57. First, the second bullet purports to introduce a policy requirement to “minimise” disturbance and “minimise the effect on neighbours”. The objective should be to limit disturbance to manageable levels and for these to be assessed by the criteria of the policy not the supporting text. A Construction Management Statement will address issues of this sort and is routinely required by condition.
58. Second, and within the same bullet the “drilling of boreholes” is only one means of obtaining the necessary information and should be replaced by “geotechnical information to demonstrate that the basement can be built safely”.
59. Third, the first sentence of the paragraph should read “should be submitted” rather than “will need to be submitted”.
60. Fourth, the text on the Construction Traffic Management plan (third bullet) introduces into the Core Strategy text a requirement to submit a draft plan with the application. This is a Trojan horse for a requirement which Basement Force consider both impractical and unreasonable. Referring to it via a main modification to the policy’s supporting text is unfair and inappropriate. The proper way for the Council to consider whether such a requirement

**Consultation on Main Modifications and “Corrected SA/SEA”**

is appropriate at (planning) application stage is to propose it within a draft SPD, and consider with an open mind the responses to consultation.

61. The current SPD advises that a condition will be imposed in appropriate circumstances [para 7.1.5]. There is no basis for altering that approach by a modification to the text of the Core Strategy.
62. For the reasons explained in the hearing sessions, it is better for everyone if a reliable CTMP is submitted under condition - by those carrying out the (by then permitted) development and a comparatively short time before they do so. To require it earlier imposes an unnecessary additional financial obligation on the developer for no good reason (see NPPF para 153 referred to above). Further, it goes well beyond the reasons why the original text was considered unsound. The modification should be changed or should not be made. If the supporting text to the Plan is silent on the intentions for the SPD in terms of the CTMP, the issue could still be raised in the normal way when preparing the SPD since it would relate closely to criterion L.

Proposed new paragraph on monitoring

63. The Council proposes to monitor the policy so as to decide whether to subject it to a review.
64. Basement Force are neutral on this proposed change.

Consultation on Main Modifications and “Corrected SA/SEA”

Sustainability appraisal / Strategic Environmental Assessment

65. The changes to the SA/SEA within ID/25 are responded to below.
66. Basement Force maintain the arguments previously made within paragraphs 20-28 of our Representations and the Hearing Statement for Matter 1 [Representation 195].
67. It is not in dispute that the current review of the Core Strategy is required to be subject to Sustainability Appraisal (SA) including Strategic Environmental Assessment (SEA). This process is governed by the SEA Regulations 2004 [SI 2004/1633] which transpose the SEA Directive (strictly the EU Directive 2001/42/EU on the Assessment of the Effects of Certain Plans and Programmes on the Environment) into domestic law.
68. The Council may not adopt the plan until it has taken into account an environmental report (which meets the requirements of the Regulations and Directive) and responses to consultation thereon [Regulation 8].
69. By Regulation 12 (and Article 5 of the Directive)

*“(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.*

***(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—***

*(a) implementing the plan or programme; and*

***(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme<sup>2</sup>.***

*(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—*

*(a) current knowledge and methods of assessment;*

*(b) the contents and level of detail in the plan or programme;*

*(c) the stage of the plan or programme in the decision-making process; and*

*(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.*

*(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making...”*

70. By Schedule 2, the report needs to include “An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken ... [paragraph 8 of Schedule 2]”.

---

<sup>2</sup> All emphasis in bold within this quote is added.

**Consultation on Main Modifications and “Corrected SA/SEA”**

71. The added text at 4.2-4.10 within ID/25 provides, at the Inspector’s specific request some reasons for rejecting as “unreasonable” the option proposed by Basement Force and many others. To that extent it provides a kind of answer to the concern at paragraph 24 of our original Representations. However, the reasons themselves simply do not hold water and reinforce the sense of including as an option a policy of the kind proposed by Basement Force [Hearing Statement Matter 11].
72. It is submitted that the question which options are reasonable may involve a planning judgment but must also be objectively justifiable.
73. As Ouseley J put it at paragraph 66 of his judgment in *Heard*, without any reasons “it is less easy to see whether the choice of alternatives involves a major deficiency”. Paragraphs 64-66 are set out below to show the point in its context.

64 I accept that the Inspectors’ report contains much which is supportive of the JCS, including the statement that there was no reasonable alternative to a substantial urban extension in the NEGT, notwithstanding problems with the NDR. But although their report evidences a view about alternatives, it is not itself part of the SA. They may be required to consider alternatives by the Secretary of State in PPS12, but that is not in fulfilment of the directive obligation or of those in the regulations. It is possible of course, as well, that such a view is adffected by a lack of examination of an alternative; and it is also possible that the answer to why no non NEGT growth scenario was considered is so obvious to a planner that it needs no explanation; it could not have been considered a reasonable alternative. But I did not receive such an explanation either from the Councils, nor does the Inspectors’ conclusion suffice to answer it.

65 The final ES with the final JCS does not take matters further.

66 I conclude that, for all the effort put into the preparation of the JCS, consultation and its SA, the need for outline reasons for the selection of the alternatives dealt with at the various stages has not been addressed. No doubt there are some possible alternatives which could be regarded as obvious non-starters by anyone, which could not warrant even an outline reason for being disregarded. The same would be true of those which obviously could not provide what RS required, or which placed development in an area beyond the scope of the plan or the legal competence of the defendants. But that is not the case here on the evidence before me, in relation to a non NEGT growth scenario, with or without NDR, and especially with an uncertain NDR. Without the reasons for the earlier selection decisions, it is less easy to see whether the choice of alternatives involves a major deficiency.

74. As has been confirmed in the recent case of *Chalfont St Peter Parish Council v Chiltern District Council* [2014] EWCA Civ 1393 (28<sup>th</sup> October 2014) the Court of Appeal recognised that the threshold for “reasonable alternatives” is low – see the following extract from the Judgment of Beatson LJ

75 It is clear from the Directive and the Regulations that a sustainability appraisal must be carried out at each stage of the development of the Core Strategy and (see the District Council of St Albans and Hertfordshire County Council case at [21]) that “reasonable alternatives to the challenged policies be identified, described and evaluated before the choice [is] made”. Departmental Policy PPS12, which was in

**Consultation on Main Modifications and “Corrected SA/SEA”**

force at the time of the decisions, states of the requirement to evaluate reasonable alternatives, that “there is no point in inventing an alternative if it is not realistic”. That and the phrase “obvious non-starters” used by Ouseley J in Heard's case (at [66]) for proposals which do not warrant even an outline reason for being disregarded shows that the threshold is low.

75. The facts of that case are very different from those here but the transcript is provided in order that the paragraph above (paragraph 75) can be seen in context. In that case the Core Strategy allocated a site which included playing fields for housing. The Parish Council wished to secure the relocation of a school to that site in tandem with a housing development. The Court of Appeal did not accept the Parish Council's argument that their proposal was a reasonable alternative because the County Council had persuaded the District Council that it was not deliverable.
76. The reason for citing it here is to reinforce the submission that the question of reasonable alternatives is an objective one and the threshold is low.
77. It is submitted that the reasons now supplied by the Council reveal just such a “major deficiency” in this case, as the following demonstrate.
  - a. The very fact that several participants in the planning system have submitted expert evidence, including that of experienced planning consultants (eg Nicholas de Lotbiniere of Savills), that the usual criteria based policy approach is the better way to manage basement development in the public interest, suggests that it is a reasonable alternative and requires consideration through the SA/SEA process.
  - b. This point becomes stronger when the same and other experts express concern that the preferred option will be damaging to economic growth and the basement sector in particular of course.
  - c. It becomes stronger still given that the SA/SEA corroborates that point by identifying a conflict with the SA objectives in relation to such matters... but relies on unspecified “considerable benefits associated with the policy” to outweigh those conflicts in the Policy Formulation Report (a point made at paragraph 27 of our Representations). If the SA/SEA is undertaking some form of balancing process it surely needs to know whether the same benefits can be achieved with less harm... and for that it needs an alternative which is not overtly restrictive of basement development (as all the alternatives which have been assessed are).
  - d. The reasons given do not show why basement development should be treated differently from development above ground. In that context, the Council's stated concern that they would be unable to apply consistently the sort of criteria which planning officers are very used to applying to development proposals does not ring true (see “corrected SA/SEA” at paragraph 4.7).

**Consultation on Main Modifications and “Corrected SA/SEA”**

- e. This point is strengthened by several of the Council's proposed main modifications (ID/23 modifications to CL7h, CL7l and 34.3.59). The Council now proposes that Planning Officers should "consider such proposals on a case by case basis to establish any harm"(34.3.59), assess "where they would seriously harm" (CL7h), or "not cause unacceptable harm" (CL7l). In summary the Council proposes that Planning Officers should use judgement in assessing applications and at the same time has dismissed Basement Force's proposed policy as unreasonable because it requires Planning Officers to use judgment. The Council has clearly undermined its stated reason for not including the Basement Force proposed policy in the SA/SEA process.
- f. The policy proposed by Basement Force (or something similar) is a world away from the “do nothing” option since there is at present no policy within the Core Strategy. Having a detailed criteria based policy with the force of the statutory Development Plan would have altered the status quo and would give officers the ability to turn away on a clear and transparent basis all those basement proposals which
- i. Would adversely affect the ability of the back garden (or other open space enjoyed with the building) to accommodate an appropriate landscaping scheme [A]<sup>3</sup>;
  - ii. Would cause loss, damage or long term threat to trees of townscape or amenity value [B];
  - iii. Would cause unacceptable harm to heritage assets, as that is governed by national policy [C] which is similar in its effect to the modification requested by the Council;
  - iv. Would cause unacceptable harm to the character or appearance of the area [D] which is similar in its effect to the modification requested by the Council;
  - v. Would not propose SUDs [E] which is similar in its effect to the modification requested by the Council;
  - vi. Would not deliver a high level of performance in respect of energy, waste and water [F] – a flexible policy which would allow the Council to insist on comparatively high levels of performance, taking advantage of the improvements brought about by innovation in technology and advances in Building Regulation requirements;
  - vii. Would not provide comfort that construction impacts such as traffic and construction activity, noise, vibration and dust would be kept to acceptable levels and provide an appropriate policy context for the imposition of appropriate conditions [G];

---

<sup>3</sup> Please refer in each case to the proposed draft policy at page 3 of Hearing Statement for Matter 11 – we only summarise or paraphrase the proposed criteria in this paragraph.

**Consultation on Main Modifications and “Corrected SA/SEA”**

- viii. Would not be designed in a way which is consistent with the need to safeguard the structural stability of the application building and other structures/facilities [H];
  - ix. Would protect the proposals from flooding [I].
  - g. Thus there is nothing in the final sentence of paragraph 4.10 of the “corrected” SA/SEA.
  - h. If there has to be an arbitrary limit eg on the proportion of garden, the 85% limit has to have been a reasonable alternative to the preferred option (even if not the preferred option itself) given the Council’s own evidence that they were not aware of any adverse environmental effects from applying that policy in practice [confirmed by the Council during the hearing sessions].
  - i. Particularly where a policy is promulgated in response to community concern, it’s important that a Council is not blinded by popular pressure and unable to see the genuine options for preparing policy in the wider public interest. This has happened here and a reasonable option has been airbrushed out of the process without good reason.
78. In short, the reasons are ex post facto justification. The Council only assessed options which were either do nothing or more restrictive even than that proposed.
79. Further, one of the Council’s reasons is that the NPPF requires that the policy gives everyone concerned absolute clarity on the outcome of decisions. [ID25 SA Correction Addition, para 4.6] which states *“A ‘case-by case’ approach as proposed would fail to give clarity on decision-making to everyone concerned...”*
80. However this is not what the NPPF states. On decision making the NPPF requires that policy should give a clear indication of how a decision maker should react. This is markedly different to requiring policy to provide absolute clarity on how a decision maker should react.
- NPPF para 154  
*“... Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.*
81. Further to this on decision making in the context of sustainable development the NPPF states that clear policies should guide decision making.
- NPPF para 15  
*“... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.”*
82. What is clear is that in ID25 the Council has misused the two NPPF paragraphs (para 15 and 154) which do not state that policy should be absolutely clear as to the decision which will

**Consultation on Main Modifications and “Corrected SA/SEA”**

be taken on an application but that the policy is clear, and capable of guiding the presumption in favour of sustainable development.

83. Paragraph 4.5 of the Council’s reasons for rejecting “unreasonable” options states “Given that one of the prime objectives of the policy is to bear down on the volume of excavation in order to curtail the individual and cumulative effect of basements on living conditions. A “case by case” approach with no maximum limits would fail against these objectives.” That may be so but:-

- a. The phrase “bear down on” is not clear but is taken to mean reduce the volume of excavation but the Council’s own actions have led to a sharp rise in applications (those who fear that next year they will not be able to get permission are seeking to obtain consent now),
- b. That the volume of excavation is the cause of impact on amenity is not proven and is contested by Basement Force and others. What makes the difference is a well ordered site and good management of traffic. If the size of the project is the issue, this is often determined by the scale and complexity of above ground development rather than the basement element.
- c. The policy blights all parts of the Borough and all types of basement construction (including commercial sites) with the same restrictive requirements.
- d. There is no support in the NPPF or elsewhere in national policy or in the London Plan for the stated “prime objective” of the policy, around which and in pursuit of which all assessments (as to its ability to contribute to sustainable development for example) are subservient.

84. Reading the Council’s reasoning as a whole, it is clear that instead of driving up standards in the delivery of sustainable development they are seeking a swift and efficient way of turning away development proposals. This is the antithesis of sustainable development.

85. The fact that the approach of Basement Force and others was not considered in the SA/SEA process is a fundamental flaw in the Council’s approach to this matter, and undermines the legal basis for its proposed policy. This point is underlined by the disparity between the direction of the policy – and its claimed objective (not clear at the time the Council consulted the GLA on the draft policy and secured the certificate of conformity) – and the policies of the London Plan. It is quite possible that the change further undermines the validity of the certificate provided by the GLA (as to which please see our Hearing Statement for Matter 1).

**Conclusions**

86. For all these reasons,

- a. The approach to drafting a Core Strategy policy governing basement development which is proposed by Basement Force and others is plainly a “reasonable alternative” and should have been assessed in the SA/SEA process.

**Consultation on Main Modifications and “Corrected SA/SEA”**

- b. Had this been done in a transparent way, as required by the SEA Regulations, the examination would have been much better informed as to the relative merits of the preferred option and those proposed by others.
- c. As it was, the true purpose of the policy has been extracted from the Council late in the process (see the points made on the modification above).
- d. The primary purpose of the policy is restrictive and damaging to the development industry and the occupiers of commercial and residential buildings and sites who wish to deliver sustainable development.
- e. Some of the modifications proposed to criteria are improvements, and these only underline the good sense of the policy approach proposed by Basement Force and others.
- f. The policy remains unsound even as modified.

87. In those circumstances the Core Strategy Review should be withdrawn or found by the Inspector to be unsound.

Attachment:

Attachment 1 - flowchart

Enclosure:

Policy case - Chalfont St Peter Parish Council v Chiltern District Council

- END OF CONSULTATION RESPONSE -