

BASEMENT EXTENSIONS: ISSUES CONSULTATION

RESPONSE from the working group of the Vanguard Project (Terence Bendixson, Marina Murray, John Simpson and Nick Tarling)

Background

What is the driving force for basement extensions

Section 2.4 of the Issues Paper gives a misleading impression.

- We believe that basement extensions are largely driven by a desire to increase the square footage of a property (which has a major - often disproportionate - influence on market value).
- The additional space is often used for swimming pools, other leisure space or utility/storage, rarely for the needs of a growing family. (Between Jan. 2001 and June 2007 there were 235 basement applications. Of the 85 where the purpose was stated less than a quarter were for living space; see Ove Arup 2008 report para 4.3.3.). There is a distinction to be made between modest subterranean expansion, which provides decent, habitable, space with natural daylight and ventilation and is thus necessarily limited in size, and expansion which does not.
- The properties concerned are often second or third residences not occupied full time.

It would be more accurate to say that a prime driving force for basement extensions is to generate financial gain for the owner/developer and to cater for the peculiar ambitions of the wealthy. This is important since it has a bearing on the answers to many of the questions.

Question 1

Are there any other issues which should be addressed by the Council, be this through the emerging Core Strategy or Supplementary Planning Guidance?

Human Rights Act compliance.

There is no indication that the current Subterranean SPD has ever been tested for compliance with HRA 1998. Compliance was not raised at the time the SPD was put to the Council for Adoption.

Article 8 of the HRA, which gives the right to respect for private and family life and home and Article 1 of the First Protocol (A1P1) (“peaceful enjoyment”) are important principles. In practice, most residents’ objections to the current SPD fall squarely under Article 8 or A1P1 and are usually expressed in exactly those terms..

The current review of the SPD and its redrafting has to be carried out in accordance with HRA1998 and Art. 8 and A1P1 need to be fully taken into account.

The main issues to be taken into account

The review should concentrate in particular on those practical issues which have recently caused the most concern amongst residents:

- the risk of structural damage to neighbouring properties. There have been many cases and the review will lack credibility if it does not propose effective solutions for the future (see response to Question 9)
- the loss of amenity to local residents during basement development, which is aggravated by the extended duration of these works and the frequency of one site following another in the same street. The disruption and disturbance goes well beyond that involved with classic renovation works - initial boring and other tests, noise and vibration from excavation and piling, delivery and installation of concrete construction, all the associated traffic... (see response to Question 10)
- the environmental impact during the works (see Ove Arup 2008 report para 5.3). It may seem small consolation that the result after two years is a single residence retrofitted to high environmental standards (see response to Question 8)
- the controls to ensure that developments are executed in accordance with terms of permission and relevant regulations and the means of making those controls effective (not covered by the questionnaire)
- the need for a practical balance between the legitimate desire of an owner to improve his property and the equally legitimate desire of neighbouring residents to enjoy peaceful occupation of their homes. Ignorance of how the planning system works and a lack of clarity as to the relevant rules (and the way they are applied) can leave residents with the perception that the system is biased in favour of developers, that the encouragement of development activity is more important than safeguarding the right of residents to quiet enjoyment of their properties. The current review should seek to change that perception. (not covered by the questionnaire)
- the whole procedure for processing planning applications involving basement extensions. Notwithstanding the extensive information that is made available via the council's website, precise information is often difficult to obtain, and reports and other data posted may have been changed in discussions with the planning department. Notwithstanding the procedures for consultation with residents, their observations may appear to be ignored and comments produced on technical issues not taken into account. And the process for deciding whether or not to approve an application does not appear to be correctly followed (e.g. 36 Markham Square, 17 Markham St., and 33 Smith St.). (not covered by the questionnaire)

Other issues

Permitted development.

This issue needs to be addressed as part of the current exercise. At present, it seems that many basement schemes first sneak in under the radar as permitted development.

We would refer to the document produced for CLG by White Young Green Planning in November 2008, *Supplementary Report: Basement Extensions Householder Development Consents Review Implementation of Recommendations*. This “paves the way for the current anomalous position of the GPDO, which does not include a basements class, to be resolved for the benefit of local planning authorities and householders alike”.

The Report recommends the creation of a new basement extensions class based on length, breadth and depth plus “further safeguards” for sensitive areas. It explores many of the issues we are now considering.

We also note the lack of information concerning permitted development (para 2.2 of the Issues Paper). However we assume that it is possible for the Council to keep track of permitted development excavations through building controls, and would expect that this is necessary in order to monitor those developments and to ensure that they remain within the bounds of what is permitted.

Scope of planning process and other relevant legislation

Paras 2.5 – 2.9 of the Issues Paper highlight the confusion that exists as to how the planning process and related procedures work in practice. We welcome the proposal for a more joined-up approach. It is incumbent on the Council not only to ensure that the public is properly informed about the different elements but also to ensure that its Officers apply the Planning Acts and other legislation in a manner which is coherent, transparent and protective of the legitimate interests of residents. In the context of basement extensions, where the potential damage and distress to residents is much greater than for normal works on residential property, it is not adequate for the Council to take a passive approach; we submit that the Council should take a lead in finding ways under existing legislation to provide adequate protection and redress.

Proposals which include subterranean work must be considered as a whole. The current approach assumes that compliance with the letter of the SPD (sometimes in practice not even that) is the gateway to approval for schemes which might have been refused on other grounds, for example for legal reasons or under Core Strategy policies on development in conservation areas.

Conservation Areas

In Conservation Areas a number of considerations need to be addressed:

- the external appearance, in particular lightwells. This is already well covered.
- the risk to the historic fabric of the building concerned and neighbouring structures. A basement extension may cause significant changes to the internal layout and character of the a building (see also comments on demolition below and size of basement under Question 11). The risk to neighbouring structures is recognised in the SDP (CD32) but is inadequately addressed (see under Question 9 below).
- the effect on the character of a conservation area may be compounded where there is a series of basement extensions in a terrace or a group of neighbouring properties, especially where the extensions invade garden space.
- the environmental damage over a long period of time where there is a series of basement extensions can cause long term degradation to a conservation area.

Demolition

The nature of basement extension works entails (and sometimes masks) large amounts of destruction of the existing structure, some of it covert. This may be because of changes to internal structure and layout, changes of the external façade particularly at ground level, or temporary removal of structure in order to facilitate works. A clear policy is needed limiting the extent of demolition that is permitted (including internal structure). Applicants should be required to define in advance the demolition involved in the development and there should be effective means for subsequent monitoring. Unmonitored and uncontrolled demolition in any building, whether listed or in a conservation area or neither, can lead to unwelcome and dangerous consequences.

On environmental, sustainability *and* conservation grounds we believe the default position should indeed be to resist substantial demolition other than for very good reasons (not, for example “for construction purposes” or simply for the developer’s convenience). Environmental and sustainability considerations apply just as much outside conservation areas as within. For this reason, we think there should be a general Core Strategy policy on substantial demolition, not only in the Preserving the Legacy section.

Question 2

Do you consider that the existing policies concerning the visual impact of basement extensions are adequately covered within the Core Strategy and SPD?

We support existing policy and encourage ensuring that the visible impact of basement extensions is kept to an absolute minimum. We would not wish to see any relaxation of the current position on lightwells and other visible features.

We do not accept that the invisible aspects of subterranean development cannot affect the character of a building, group of buildings or an area. For example, a change of internal layout or internal demolition of existing fabric may significantly alter the character of a building, and a series of basement extensions in a terrace will almost inevitably alter the character of the terrace.

Question 3

Do you consider that the existing policies and guidance concerning basement extensions and their impact upon listed buildings provide sufficient control to mitigate any adverse impact?

We would like to see some of the controls in respect of listed buildings extended to apply to unlisted buildings in conservation areas.

Proper weight should be attached to the relevant policies in the Core Strategy, in recognition of the fact that the Core Strategy ranks above the Subterranean – or any other – SPD. We would like to see the principles originally set out in PPS5 applied.

Proper consideration should be given to the significance of listed buildings and those within conservation areas and their settings. At present, we believe that the Subterranean SPD is used frequently as a way of bypassing such consideration.

Question 4

Do you consider that existing policies and guidance concerning basement extensions and archaeology provide sufficient safeguards to mitigate any adverse impact?

We have no comments on this section.

Question 5

Do you consider that the existing policy concerning subterranean development beneath garden squares is appropriate?

We support existing policy but feel the way it is implemented needs to be strengthened. Subterranean development in houses forming part of a garden square will often have an adverse effect on the square and therefore should be resisted. The effect of a series of basement developments in a garden square over a period of years is likely to lead to a serious degradation of the character of the square. This should be specifically addressed.

Question 6

Do you consider that the existing policies concerning basement extensions and protection from river flooding and surface water flood events are adequately covered within the Core Strategy and SPD?

We have not examined this aspect specifically but we are concerned by a number of comments that have been made regarding the inadequacy of existing policy.

Question 7

Do you consider that the existing policies concerning basement extensions and trees, vegetation and sustainable drainage are sufficient to mitigate any adverse impact?

We understand that the “no more than 85% coverage of the garden” rule was devised solely in connection with flood risk and that there is no real justification for that figure rather than any other. At the time, we believe that those consulted suggested a figure much lower.

The figure of 85% seems wholly arbitrary. We see no reason why this figure should be so high, nor indeed why it should be expressed as a percentage. For the purpose of mitigating flood risk or drainage problems, this should surely depend on the volume of the concrete chamber to be created. (see response to Question 11)

In practice, allowing 85% of the garden to be occupied by a basement means that the whole garden is excavated and/or despoiled. It is very obvious that this does not help drainage or enhance the green and leafy appearance of the borough. A large garden should not be seen as a potential for massive basement development, but as a rare asset to be protected.

Question 8

Do you consider that the existing policies within the Core Strategy satisfactory mitigate the environmental impact of the construction and occupation of basement extensions?

Existing policy **does not** satisfactorily mitigate the environmental impact of the construction and occupation of basement extensions. Basement development works will necessarily have an adverse environmental impact (see Ove Arup 2008 report para 5.3). That impact has to be properly assessed and its impact justified. Retrofitting a house to high environmental standards should not give an owner an unqualified right to cause a high degree of environmental damage during a year or two of works.

The assessment of environmental impact should cover the whole scheme, including the effects of all demolition, excavation, construction and transportation and disposal of demolition and excavation waste. It should be noted that the works involved in the case of a basement extension will tend to be significantly greater and of longer duration than above ground works, and will have a correspondingly greater environmental impact.

Question 9

Notwithstanding the limitations that the planning system has with regard structural stability do you consider that the approach within the Core Strategy is satisfactory?

Para 2.7 of the Issues Paper reads like an abdication from responsibility. When the Council is aware that a proposed development may impose a risk to the structural stability of neighbouring buildings it has a duty to protect the interests of the owners of those properties. Requiring a Construction Methods Statement but at the same time adopting a policy which allows it to be ignored and replaced at the developer's discretion does little to address the problem.

The description at paragraph 3.18 of the Issues Paper does not accord with our understanding of the SPD and appears to be irreconcilable with anything we can find in the Council's stated planning policies.

Policy CL2(g)(i) provides that "the Council will require that it is demonstrated that [for subterranean development] the stability of the existing or neighbouring buildings is safeguarded."

The subterranean SPD "provides further guidance and builds upon" UDP policy CD32, which "resists subterranean development where, among other things, the amenity of adjoining properties would be adversely affected... or the structural stability of adjacent listed buildings or unlisted buildings within conservation areas might be put at risk". While policy CL2(g)(i) may ultimately have replaced saved policy CD32, the wording of policy CD32 remains set out and embedded in the SPD.

The SPD further provides 'the CMS must provide specific details of the excavation, temporary works and construction techniques, including details of the potential impact of the subterranean development on the existing and neighbouring structures, based on the specific site characteristics, including the type of geology and hydrology found in the area' and 'the CMS will need to address the following:

- ...
 - the impact of the subterranean development, and associated construction and temporary works, on the structural integrity and natural ability for movement of existing and surrounding structures;
 - ...
 - the engineering details of the scheme, including proposals for the excavation and construction;
 - the impact of the proposed subterranean development on the structural stability of the existing and adjoining buildings, especially listed buildings;
 - ...
 - the sequence for the temporary works, which mitigates the effects on neighbours;
- (paras 6.1.2 and 6.1.3)

Para 3.18 of the Issues Paper states 'the purpose of the CMS is not intended to spell out one particular engineering solution, but to demonstrate that the proposed development is capable of being carried out without having such a significant effect on structural stability that the quality of the street environment, listed buildings, conservation areas and neighbours' living conditions, all planning considerations, are permanently harmed.' On the contrary it seems from the SPD that the intention of the SPD is that the CMS should spell out one engineering solution.

Policies CD32 and CL2(g)(i) are very important policies and residents are entitled to rely on the Council (whether in the guise of the planning department, the building control department or any other agency) to stand by its promises. In each provision the bar is, quite rightly, set high. The purpose of the provisions is to safeguard and protect neighbouring properties from harm. We do not believe that the Council would have adopted, or the residents of the borough accepted, the SPD without the protection of policy CD32. Residents most certainly expect both policies to be

followed. This is why objectors to proposals regularly cite and quote from CD32 and CL2(g)(i).

The approach within the Core Strategy and the SDP to structural stability needs to be revised to take into account in particular

- the real risk of structural damage to neighbouring properties from basement extensions (which applies to the majority of residential buildings in the borough, whether listed, in a conservation area or neither)
- the expectation from residents that the Council is taking steps to protect them from this risk
- the incidence of structural damage during recent years
- the high proportion of basement extensions which are carried out by developers who will not reside in the property subsequently.

The Party Wall Act gives some (but not adequate) protection to neighbours. It is of no use to neighbours who are not “adjoining owners” under the Act. It is surprising that the Council should suggest that individuals otherwise seek redress through the courts for loss and damage sustained as a direct consequence of a Council policy. Projects of the scale now seen in the Borough are damaging homes far outside the reach of the Act.

Where the Act does apply neighbours are entitled to know not only what is to be built, but how it is to be built, before an application is decided. If the Council does not require relevant information on how all aspects of the work affecting the party walls are to be carried out (e.g. demolition within the building, underpinning, piling, temporary works, etc.) to be provided and examined pre validation, it is not possible for party wall surveyors properly to consider awards under the Party Wall Act.

Question 10

Do you consider that the existing policy approach within the Core Strategy and SPD satisfactory takes into account of the impact of the construction phase of basement extensions?

Although the Council accepts that construction impact can be a material planning factor the existing policy approach and the manner in which it is applied does not take account of the impact of the construction phase of basement extensions.

There has been much public debate and press comment on the extreme repercussions that basement developments can have on neighbours, in particular because of the nature of the works, their long duration and the often cavalier attitude of developers who are aware that the controls by the Council are inadequate and often uncoordinated.

Policy needs to be revised to take into account

- the level of disturbance and disruption involved in basement extensions, the recent experiences within the borough and the frequency with which neighbours find themselves constrained to move out during the works

- the need to assess construction impact in accordance with human rights principles and carry out the balancing exercise required under that the Human Rights Act, providing evidence of that assessment
- the extended duration of works often involved, especially where one site follows another, which means that the disruption cannot reasonably be described as temporary
- the need for a coordinated approach which is, and is seen to be, enforced.

The approach to construction traffic needs special attention. In appropriate cases the Construction Traffic Management Plan should be required pre validation and should be available for comment by local residents. The procedures for approving CMTPs need to be revised to ensure that there is a better understanding of the local impact and that the legitimate concerns of residents are taken into account.

Question 11

Do you have any other comments to make?

Dimensions of subterranean extensions

In addition to revising the 85% rule (see under Question 7 above) limits should be introduced as to the size of basement extensions including

- the total depth of the basement
- its volume
- the extent of encroachment beyond the imprint of the existing structure
- the context and setting.

In addressing the question of dimensions it is necessary to understand the current position. The planning department rarely if ever recommends refusing an application for subterranean extension, whatever the proposed depth, as long as the extension covers less than 85% of the area of the garden, whatever that may be, and the right documents are submitted with the application. They do not even require applicants to confirm the exact depth of the proposed basement or the excavation, even though these details may be needed to satisfy the requirements of the Party Wall Act. Indeed, we wonder if there is any limit to the number of subterranean floors that might be permitted.

We think the situation has arisen because the Subterranean SPD builds on the provisions of the GPDO Part 1, Class A, which deals with extensions, but does not mention basements, and contains no depth restrictions. The SPD assumes that subterranean development is expressly covered in the GPDO, whereas it is not. Even if it were, why does the SPD permit more than the GPDO, given the conditions that prevail in Kensington and Chelsea?

The result of the 85% rule is that almost the entire plot can be undermined and the size of the subterranean extension permitted is linked directly to the size of the plot. While this might work for a detached house with no close neighbours it simply does not work in areas of densely packed terraced housing. We do not believe that it is logical, sensible or reasonable. We do not think it can be justified and we think it must be changed.

A good starting point might now be the CLG Supplementary Report produced specifically to consider subterranean extension (generally and throughout England and Wales). This suggests many different ways of permitting, restricting and controlling the size of subterranean extension. It is clear from the Supplementary Report that controls can and should be applied to this form of development.

Evidence

When the initial work for the SPD was undertaken there was little evidence of the effects and impact of major subterranean works in densely developed residential environments such as Kensington and Chelsea. The Ove Arup Scoping Study however referred repeatedly to the difficulties and risks of such complex engineering works in this type of environment.

There is now ample evidence of failures, for example, the collapse in Chester Row, Belgravia, the collapse of a basement and death of a builder in Ellerby Street, Fulham, the serious and widespread damage caused by the development in Upper Phillimore Gardens, the very visible damage sustained to several houses in Smith Terrace and the collapse at 278-280 Fulham Road. And no doubt there are many more that have not hit the press.

In November 2011, the Health and Safety Executive saw fit to take enforcement action at more than a third of the basement construction sites they visited in four London Boroughs, including Kensington and Chelsea (where the failings were proportionately the worst: 41 sites visited, 18 improvement notices and 25 prohibition notices served).

The evidence of experience during the past few years should be made available and given appropriate weight when revising policy.