

**Review of
RBKC Basement
Publication Planning Policy
July 2013
The Party Wall Act Implications**



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i - EXECUTIVE SUMMARY

This document reviews the planning policy change proposed by The Royal Borough of Kensington and Chelsea (RBKC) entitled 'RBKC Basement Publication Planning Policy – July 2013' in relation to the Party Wall etc Act 1996. The key conclusions are stated below.

- The proposed policy changes suggested by RBKC are intended to address a number of perceived issues. These are primarily concerned with potential damage to an adjoining owner's property, nuisance caused during the construction, safety risks involved in the construction of basements. There is already legislation in place that deals with these issues, Party Wall etc Act 1996.
- One of the recommendations put forward under paragraph 34.3.73 (RBKC Basement Publication Planning Policy) is that party wall negotiations should start in advance of submission of Planning Applications. This is wholly impractical and also would impose a significant, financial burden on both the building owner and the adjoining owner.
- The appointment of Party Wall Surveyors is a statutory one and they have a duty under statute to ensure that the Act is applied correctly and that the adjoining owners and building owners are equally safeguarded. Both surveyors have an equal statutory obligation of a duty of care to both parties, irrespective of which one has actually appointed them. The nature of the appointment also means that they cannot be unduly influenced by decisions that may be unfavourably arrived at through their professional expertise and they are, therefore, able to completely, independently arrive at the correct constructional solution to a given situation without influence from either owner. Party Wall etc Act 1996 more than adequately deals with any perceived risks or problems with basement construction.
- Therefore through RBKC's lack of understanding of The Party Wall Act I find the reasoned justification and Policy CL7 of 'RBKC Basement Publication Planning Policy – July 2013' to be unsound.

ii - FOREWORD

I am Mark Richard Williams, BSc FRICS, a fellow of the Royal Institution of Chartered Surveyors and member of The Pyramus & Thisbe Club. I qualified as a Chartered Building Surveyor in 1978 and have been in private practice from then until now. For the last 28 years I have run my own practice of architects and building surveyors, TWD Partnership.

My main role within private practice is to act on behalf of both building and adjoining owners in respect of matters arising out of the Party Wall etc. Act 1996. Over the last seven to eight years I have been involved in numerous projects which involve the construction of a basement or sub-basement in the Royal Borough of Kensington and Chelsea (RBKC) and other London boroughs and I would estimate that over this period of time, I have been involved with at least 30 basement projects. I have also acted for numerous, other projects involving side extensions, back additions and loft extensions.

I would estimate that over the same time scale that we have been involved with basement construction, I have probably been involved with 70-80 loft, side and rear extensions or minor works involving the removal of chimneystacks.

1 - INTRODUCTION - RBKC POLICY REVIEW

This reviews the statements made within reasoned justification and Policy CL7 within 'RBKC Basement Publication Planning Policy – July 2013':

34.3.48: Basement development in recent years has been the subject of concern from residents. Basements have given rise to issues about noise and disturbance during construction, the management of traffic, plant and equipment, and concerns about the structural stability of nearby buildings.

34.3.4:9 In the Royal Borough, the construction impact of basements is a significant material consideration in planning.

34.3.50: There are also concerns over the structural stability of adjacent property, character of rear gardens, sustainable drainage and the impact on carbon emissions.

34.3.52: Large basement construction in residential neighbourhoods can affect the health and well-being of residents with issues such as dust, noise and vibration experienced for a prolonged period. A limit on the size of basements will reduce this impact.

34.3.56: As well as causing greater construction impacts and carbon emissions, deeper basements have greater structural risks and complexities.

34.3.59: Building additional basements underneath existing ones will result in deep excavations which have greater structural risks.

34.3.70: Basement construction can cause nuisance and disturbance for neighbours and others in the vicinity, through construction traffic, parking suspensions and the noise, dust and vibration of construction itself.

34.3.71 Basement development can affect the structure of existing buildings.

34.3.73: Applicants wishing to undertake basements are strongly advised to discuss their proposals with neighbours and others, who will be affected, commence party wall negotiations and discuss their schemes with the Council before the planning application is submitted.

Policy CL7

L: Ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;

M: Be designed to minimise damage to and safeguard the structural stability of the application building, nearby buildings and other infrastructure including London Underground tunnels and the highway;

2 - ASSESSMENT OF RBKC POLICY THROUGH THE PARTY WALL ACT

There are clearly understandable concerns over basement construction and the effect on the structure of adjoining buildings, the potential for disturbance, noise, dust and inconvenience to adjoining owner's and inconvenience to adjoining and other neighbours in the street as a result of vehicular movements and restricted parking.

Out of the total number of projects that I have acted as either 'building owner' or 'adjoining owner's surveyor for', the only ones where there have been significant complaints from adjoining owner's in respect of noise, inconvenience and dirt are in respect of other projects, i.e. Not basement construction. Indeed the only projects where there has been damage caused to adjoining owner's properties is works involving extensions and lofts.

The reason that I attribute the significantly improved record in terms of disturbance and damage for basement construction compared to above ground works is the massive input required from architects, engineers, party wall surveyors, contractors and geo-technical specialists, drainage experts and other related professionals compared with the design team and scrutiny that perhaps more minor works are afforded. Also the quality of contractor that is and has to be selected for the construction of basements is much higher than that used for other, minor domestic extensions and alterations.

All of the basement projects that I have dealt with have site hoardings and security arrangements more commonly seen on much larger, commercial schemes than relatively small, domestic projects. All aspects of the design and construction are very carefully monitored.

Looking at the construction of a basement from the point of view of a party wall surveyor, the Party Wall etc. Act 1996, in fact, provides a very clear and unambiguous piece of legislation imposing duties and obligations on both building owners and adjoining owners. For clarities sake, I set out below a typical scenario for a basement construction.

1. A scheme showing the existing and proposed building indicating the nature of construction, the extent and size of the excavation in relation to adjoining buildings is sent to all, adjoining owner's, i.e.: Those who have actual party walls or party fence walls with the subject property or are within 3m of the proposed excavation

and have foundations at a lesser height than the proposed excavation. The letters accompanying these notices and the notices themselves set out clearly what the nature of the construction is. This is a requirement of the Party Wall etc. Act 1996. The notices also make clear to the adjoining owner their options in terms of consenting to the work, appointing their own surveyor or appointing an agreed surveyor.

2. Most adjoining owners at this stage will appoint their own surveyor. Once appointed, the surveyor for the adjoining owner and the building owner's surveyor will start the analysis of the scheme and this will typically require the full detailed, engineering information to be presented to the surveyors. In 99% of cases, the adjoining owner's surveyor will employ the services of a checking engineer who will also analyse the scheme. At this stage the appropriateness of the form of construction proposed is scrutinised against geo-technical information, soil analysis and water table tests. The surveyors and engineers will also be looking at the existing structures, routes of drainage and existence of flues and other services.
3. Once the engineering solution most appropriate to the construction of the basement has been agreed, the method of implementation is then scrutinised in detail with site-specific, method statements produced to cover all aspects of construction but particularly and most importantly temporary propping, protection, establishment of site facilities and compounds for storage of material and disposal of waste. At this stage there may well be drain tests carried and also CCTV surveys of flues as appropriate to the particular project. During the course of this analysis there will be two engineers, two surveyors, the architect and designer, contractor providing input to the scheme.
4. It is now the case that in all basement constructions, the adjoining owner or their surveyor will ask for security for expenses to be paid into an escrow account under Section 12 of the Party Wall etc. Act 1996. This security sum is normally a substantial amount of money and is held in an escrow account against the possibility of the building owner's failing to complete the excavation and construction and/or causing damage to the adjoining owner's property. Typically such sums are between £50-

100,000 and sometimes significantly more. These funds are only released on the authority of two of the three surveyors appointed and this authority is only given once the surveyors and engineers have certified that the work has been completed satisfactorily and that there has been no damage caused to the adjoining owner's property.

5. During the course of the work, the building owner's surveyor and the adjoining owner's surveyor will carry out at least two site inspections. This is only for ensuring that the work relating to the Party Wall etc. Act is being carried out correctly. In the meantime, there will be engineers, architects and Building Control inspecting the works.
6. Once the work has been completed, the two surveyors will make a final inspection to ensure that the adjoining owner's properties have not been damaged. If there has been any damage, or more usually not, an award can be made to either compensate the adjoining owner for such damage or arrange for the work to be carried out by the building owner's contractor.

I have looked at RBKC's Planning Policy Proposals and note the concerns that have been raised in the residents and neighbours surveys conducted in 2012. In my opinion, from the point of view of the control and management of the actual construction and its implication on the neighbours is already provided for within existing legislation and I believe that the Council have not accurately or properly accorded the weight and influence of the Party Wall etc. Act 1996.

I note that in the Residential Basement Study Report produced by Alan Baxter, some of the views expressed are, perhaps, misleading and incorrect. It is important to understand the fundamental premise of the Act the purpose of which is to facilitate construction operations in the vicinity of boundaries. The Alan Baxter report suggests that the purpose of the Act is to maintain the status quo of a party wall and suggests that alterations to a Party Wall should be restricted and avoided, but the Act is there to allow development to take place subject to the protection of both parties and their respective properties.

The Alan Baxter report also indicates that Party Wall Surveyors have the ability to agree to special “reinforced concrete”. They do not; it is only with the specific written consent of the adjoining owners that special foundations can be installed. One of the fundamental principles of the act is that under Section 7 (1), “A building owner shall not exercise any right conferred on him by this Act in such a manner or at such time as to cause unnecessary inconvenience to any adjoining owner or to any adjoining occupier.”

This section in the Act also provides for compensation to be payable to an adjoining owner should they suffer any loss or damage by reason of the work executed. Under Section 10 (10), Alan Baxter states that when an adjoining owner receives a Notice of Work under the Party Wall Act concerns are immediately raised and the whole process can be stressful and involve a great deal of emotional energy. This is, in fact, quite contrary to my experience where adjoining owners actually welcome the fact that the building owner is following the correct procedure and then is then able to appoint a surveyor to protect and safeguard their interests.

3 - CONCLUSION

The proposed policy changes suggested by RBKC are intended to address a number of perceived issues. These are primarily concerned with potential damage to an adjoining owner's property, nuisance caused during the construction, safety risks involved in the construction of basements. One of the recommendations put forward under paragraph 34.3.73 is that party wall negotiations should start in advance of submission of Planning Applications. This is wholly impractical and also would impose a significant, financial burden on both the building owner and the adjoining owner. Whilst it is normal for the adjoining owner's, surveyor's fees to be paid for by the building owner, the immediate responsibility of the adjoining owner's surveyors fees lies with that owner. It may well be that the adjoining owner would become responsible for his surveyors fees in the event of the work not proceeding. This could result in fees of many thousands of pounds for abortive work. Furthermore, the validity of a Party Wall Notice and also the Award has a 12 month life span. Quite often negotiations in respect of Party Wall work and the necessary in-depth analysis by engineer, architect and surveyor in the scheme and the relevant, other professional bodies employed to check the scheme is such that this 12 month validity period will be eroded.

The introduction to the residential, basement study at 1.7 suggests that the existing, Party Wall legislation is aimed at maintaining the party walls between the adjoining owners and controlling how development on each side of party wall is arranged as to preserve the status integrity of the party wall. This is not the case. It is developed with the intention of allowing controlled development to proceed in a structured manner which safeguards both adjoining owners. To suggest that Party Wall surveyors are limited in what they are able to require of adjoining owners who wish to build basements is completely at odds with the Party Wall legislation. There are significant controls open to them.

Furthermore, it should be noted that the appointment of surveyors is a statutory one and they have a duty under statute to ensure that the Act is applied correctly and that the adjoining owners and building owners are equally safeguarded. It should be additionally noted that both surveyors have an equal statutory obligation of a duty of care to both parties, irrespective of which one has actually appointed them. The nature of the

appointment also means that they cannot be unduly influenced by decisions that may be unfavourably arrived at through their professional expertise and they are, therefore, able to completely, independently arrive at the correct constructional solution to a given situation without influence from either owner.

I maintain that the Party Wall etc. Act 1996 more than adequately deals with any perceived risks or problems with basement construction.

Therefore through RBKC's lack of understanding of The Party Wall etc Act 1996 I find the reasoned justification and Policy CL7 of 'RBKC Basement Publication Planning Policy – July 2013' to be unsound.