



# Responses to the Inspector

Matter 9a: Renewing the Legacy

Core Strategy with a focus on North Kensington

Examination in Public

July 2010

# Public Examination of Royal Borough of Kensington and Chelsea's Core Strategy with a Focus on North Kensington DPD

## Royal Borough of Kensington and Chelsea's Statement

### Matter 9a – Renewing the Legacy

#### Question 1

*The Government policies on the conservation of the historic environment have recently been updated, replacing PPG15 with PPS5. This does not change the legislation but promotes an integrated approach so that the policies apply to all heritage assets. **Is it necessary to review the current terminology of the Chapter, and specifically Policy CL3, to reflect the new advice?***

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- 1.0 *Yes, it would be prudent to use the new terminology, so that it is consistent with recent Government policy and advice. Whilst PPS5 does not alter primary legislation, it does introduce new terms to describe aspects of the historic environment. The main implication for the Core Strategy is the use of the phrase 'heritage asset' as a generic term to cover all historic designations, including listed buildings, conservation areas and scheduled ancient monuments. Both Policy CL3 and CL4 are relevant. Rather than attempt a complete re-write, some amendments to the titles of these sections and policies should suffice. The attached amended text shows the changes.*

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### Matter 9a – Renewing the Legacy

#### Question 2

*Para 34.3.7 refers to the London density matrix but Policy CL1 ( c ) requires that the density of development should be optimised relative to the context of the development . The London Plan Policy 3A.3 makes allowances to ensure new development is compatible within the local context. **Is it appropriate for the Policy to make specific reference to the London density matrix ?***

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2.0 *No: The central tenet of Policy CL1 is that it is the context of the development that should determine the appropriate density of the development that is being proposed. The London Plan density matrix is referred to in the reasoned justification of Policy CL1 (in paragraph 34.3.7). However, for purposes of clarity, it is considered appropriate to delete the wording 'whilst taking into account the appropriate density range from Policy CL1 ( c ) in order that the correct emphasis is placed on context being the key determinant for the 'appropriate density' of a proposed development*

2.1 Policy 3A.3 of the London Plan (2008) states (inter alia) that:

*The Mayor will, and boroughs should, ensure that development proposals achieve the maximum intensity of use compatible with local context, the design principles in Policy 4B.1 and with public transport capacity*

2.2 Within the consultation draft replacement plan of the London Plan Policy 3.4 states that 'boroughs in their LDFs should optimise housing output whilst 'taking account local context' . In the Royal Borough it is considered that local context should be the determining factor because of its extremely high quality.

2.3 The importance of the Borough's historic environment is summarised well in the opening paragraph of the Core Strategy in paragraph 34.1.1 where it states:

*We have inherited a remarkable historic townscape and a large number of historic buildings. The exceptional quality of our built environment underpins our success as a highly desirable place in which to live, work and invest. Over 4,000 buildings are 'listed' and there are over 100 garden squares. Conservation Areas cover more than 70% of the Borough. The Royal Borough is known for its legacy of Georgian, Victorian and Edwardian architecture but there are also a number of twentieth century buildings which continue the legacy of high quality design. Our listed*

*buildings and conservation areas contribute immensely to local distinctiveness both within the Borough and to London as a whole.*

- 2.4 The architectural quality of the Borough is expressed more eloquently in the Survey of London, Vol. XXVII which states in its General Introduction:

*"...but Kensington could, and indeed still can, nevertheless claim a pre-eminent position in the hierarchy of the Victorian metropolis. This claim is founded not merely on the Queen's own personal association, even though that was reiterated at the close of her reign in her intention to confer the title 'Royal' upon the newly formed borough of Kensington, at the request of its Council. It rests, rather, upon the more durable foundations of the bricks, mortar, stone and stucco of the houses, churches, and other public buildings which arose here during her reign, and most of which still survive. Some of these Kensington buildings may be numbered among the foremost architectural monuments of all time: all of them exhibit for posterity, with a vividness unequalled anywhere else in the capital, both the social structure, habits and assumptions of their Victorian creators, and also the underlying grandeur of their formidable energy and strength. Kensington is indeed the very citadel of Victorian London."*

- 2.5 Within this overall quality there is considerable variation in the height and bulk of properties, and it is this in part which contributes to the character of the Borough. For example there may be 7/8 storey mansion flats around Sloane Square, but within a few metres are 3 storey typical Victorian Chelsea townhouses. There is architectural and historic character in both these building types. Where redevelopment is permitted, it is important that the immediate context is taken into account rather than a blanket standard. At an even smaller level, there is the contrast between the large Kensington town house such as those on Queens Gate which may go up to six storeys plus a basement, and the mews properties at the rear which are two to three storeys in height. This contrast in scale between the grand town house and its modest workaday mews contributes enormously to character of the Royal Borough. A single density standard cannot possibly deal with this difference in height and bulk within such a small area.

- 2.6 The London Plan density matrix (Table 3A.2) is clearly referenced in paragraph 34.3.7 which forms part of the reasoned justification to Policy CL1 and the London Plan itself forms part of the Development Plan for the Borough. However, it is preceded by the text '*the Council consider that densities should not be used as the sole determinant of design*' as the emphasis should be placed on the context surrounding any proposed development being the determinant factor.

- 2.7 Policy CL1 ( c) states that : (the Council will) '*require the density of development to be optimised relative to context, whilst taking into account the appropriate density range*'. As the central thrust of the Borough's planning policy in this regard is that context should be the determining factor as opposed to density (as stated in paragraph 34.3.7, it is considered appropriate that the wording '***whilst taking into account the appropriate density range***' should be deleted from Policy CL1 ( c) .

2.8 In conclusion, given the unique townscape of the Royal Borough, it is considered that densities should not be used as the sole determinant for design and that the emphasis should be firmly placed on context being the key determinant for proposed development. With the proposed amendments to Policy CL1 suggested in Paragraph 2.7 above, it is considered that the emphasis to be placed on context will be clearly expressed within the relevant policy.

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##### Question 3

*The London Plan (Policy 4B.16) indicates that boroughs should designate and manage local views in their DPDs. The Core Strategy refers to vistas and views (para 34.3.5 and 10) and CL1 (e) is concerned with protecting local vistas, views and gaps but relies on the saved UDP policies to identify specific local views and vistas. **Should the Core strategy identify local views and vistas for further study with a commitment to producing an SPD in due course?***

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- 3.0 *No, the commitment to prepare an SPD already exists in Section 3 of the Council's Local Development Scheme. In the intervening period, it is considered that there is sufficient protection afforded by the saved UDP Policies and the guidance contained in the Council's Conservation Area Proposals Statements until a comprehensive study is undertaken.*
- 3.1 This issue was identified in the Council's Local Development Scheme (March 2010). It is proposed to take a two stage approach. Before embarking on a Views SPD, it is important that a thorough and robust methodology is in place. Consequently, the LDS identifies in Section 3, the production of a Views Methodology SPD as a Priority 3 project. The Views SPD itself comes under Priority 4.
- 3.2 Core Strategy Policy CL1(e) resists development that interrupts or detracts from strategic and local vistas, views and gaps. It is acknowledged that the accompanying text, paragraph 34.3.5, is pithy, offering little detail. In preparing the document, Officers were mindful not to duplicate adopted policy.
- 3.3 The Strategic View of King Henry VIII's mount (Richmond) to St Paul's Cathedral is protected in the London Plan. The protection of most other well-established views is already included in the saved UDP Policies, in particular those along the riverside (CD1), around the Royal hospital (CD9), in the vicinity of the South Kensington Museums (CD11) and around Kensington Palace (CD14). There are also local views identified in many of the Council's Conservation Area Proposals Statements.
- 3.4 However, views and vistas have never been the subject of a comprehensive Borough-wide survey and analysis. This will have to be rigorously carried out to enable the production of a robust SPD. It would be therefore be inappropriate to identify specific views and vistas in the Core Strategy, as this is unlikely to be a comprehensive list and would be based on incomplete evidence at this stage.

## Public Examination of Royal Borough of Kensington and Chelsea's Core Strategy with a focus on North Kensington DPD

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#### Matter 9a - Renewing the Legacy

#### Question 4

*Policy CL2 (criteria h – m) provides the Council's general approach to high buildings reflecting the '... relatively modest and consistent height of buildings'. Is the Policy unduly restrictive and does it take account of the approach to tall buildings in the London Plan?*

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4.0 (i) *Is the Policy unduly restrictive? No – the Royal Borough is predominantly a residential borough, strongly characterised by an extensive historic environment and high density, medium-rise development in a traditional urban form that has produced a highly attractive and distinctive townscape character. This character is locally distinctive and is an important contribution to London as a world city. It is therefore proper that the Core Strategy and its high buildings policy in particular, with its supporting SPD, should seek to promote or reinforce this local distinctiveness, in line with government guidance.*

(ii) *Does it take account of the London Plan's approach? Yes – the Royal Borough has adopted the London Plan approach of not imposing an unsubstantiated borough-wide height restriction and operating a locally sensitive policy: it defines locally based thresholds and requires attractive landmarks that respond to their surroundings and enhance London's character. It has defined sensitive areas within its SPD on building heights. It has achieved a letter of 'general conformity' from the GLA that includes matters on tall buildings.*

#### **Is the Policy unduly restrictive?**

4.1 Policy CL1 aims to ensure that new development promotes or reinforces local distinctiveness in the Royal Borough, requiring that "all development respects its local context, character and appearance". This is consistent with national guidance PPS1 (para 36). The matter is progressed with specific reference to the height of new development in Policy CL2(h-m), height being a particularly sensitive issue within the Royal Borough.

4.2 In operating Policy CL2 the Council does not seek to impose an unsubstantiated Borough-wide height restriction. It is being sensitive to the remarkable consistency of building heights and the resultant townscapes in the Royal Borough and the disproportionate effects of new tall buildings and structures on its skyline. High buildings are occasional features in the Borough's skyline. The Council is therefore acting appropriately when carefully controlling the design and townscape qualities of proposals that would otherwise erode this important character.

- 4.3 Policy CL2 allows for a marginal increase in the height of a building, where this does not exceed the general context and respects the local context. Importantly, it also allows for an increase in height above the local context, but rightly where certain criteria are fulfilled; ensuring that development not only preserves the distinctive appearance of the Borough, but that it also takes the opportunity to improve the character and quality of an area in accordance with national guidance (para 13(vi), PPS1).
- 4.4 The criteria may seem to be ‘testing’, but this is in direct response and proportionate to the scale of impact a high building has as it rises above such a distinctly homogeneous context.
- 4.5 The criteria ensure that high buildings avoid negative visual consequences, appearing out of context or disrupting views of local or strategic importance. Those views are set out in the adopted ‘saved’ policies of the Unitary Development Plan, policies Strat10, CD1-2, CD8-11, CD13-15, CD17 and CD63; views identified in the Council’s adopted Conservation Area Proposal Statements; and the London Plan (table 4B.1); and reflected in the Council’s new SPD on Building Heights in the Royal Borough.
- 4.6 Avoiding harm, however, is considered an insufficient argument to justify any development in the Royal Borough, let alone one where the impacts are as significant as a high building. Therefore, in line with national guidance (see above), the design of a new high building proposal is expected to improve the character and quality of an area, as set out in the positive criteria in the policy. The level of positive benefit is proportionate to the scale and visibility of the new building, hence the distinction between local and district landmarks. The architectural, sustainable and urban design qualities of a local landmark should be of very high quality, whereas the design contribution of a district landmark building should be exceptional, given the wider scale of their visual impact. In terms of aesthetics and visual impact, slender high buildings are more likely to be successful, whereas bulky high buildings are more problematic.
- 4.7 Buildings that rise above their context are inevitably seen from all angles. As a direct consequence proposals for new high building will be assessed in the round and likewise expected to contribute to the skyline in the round; hence the requirement for a wholly positive visual outcome to a Zone of Visual Influence test.
- 4.8 As the new building is drawing attention to itself by being higher than its surrounding context, the Council expects there to be a ‘functional’ aspect to this landmarking, giving meaning to the local or borough townscape. This is not unreasonable, being a matter of rational town planning and good urban design practice, as set out in *By Design* (page 28) and referenced in national guidance PPS1 (para.37). Again, the functionality test increases with building scale; with local landmarks being a matter of local landscape articulation, whilst district landmarks are expected to highlight an activity of London-wide, significant public use.

- 4.9 Policy CL2 is restrictive when it comes to assessing proposals for very tall buildings in the Royal Borough. Referred to as metropolitan scale buildings, they are considered excessively taller than their surroundings, and regardless of profile, too disruptive to the Borough's traditional urban form and townscape. This is based on the experience of existing metropolitan scale buildings within the Borough (e.g., Trellick Tower to the North and the Forum Hotel to the South) and in adjacent boroughs (e.g., Empress State). Very tall buildings are therefore regarded as inappropriate to the Borough's distinctive residential character, away from the economic centre of the Capital.

**Does it take account of the London Plan's approach?**

- 4.10 Policy 4B.9 of the London Plan on Tall Buildings states that Boroughs "should not impose unsubstantiated borough-wide height restrictions". It is clear from the above that the Royal Borough has met this requirement. Moreover, it is operating a locally sensitive approach to tall buildings, in line with the spirit of the London Plan's approach. The latter does not offer a blanket approach to promoting tall buildings, but qualifies its support by reference to, among others, matters of creating attractive landmarks; being acceptable in terms of their design and impact on surroundings; boroughs identifying areas that may be sensitive to tall buildings within their DPDs; and Borough's setting locally based thresholds. It also makes reference to intensive development not necessarily implying high-rise buildings (para 4.120).
- 4.11 Taking these matters in reverse, the Royal Borough is testament to the fact that intensive development can be achieved through development forms other than high buildings; being characterised by its high density low to medium-rise built form. This characteristic built form has created a highly attractive and cherished townscape that contributes to London's character. High-rise buildings remain occasional features within this consistent and modest scale townscape.
- 4.12 Because of their height, high buildings form landmarks within the Borough. In accordance with the London Plan (para 4.119), the Council has established a bespoke threshold for high buildings, making the distinction between local, district and metropolitan landmark buildings. The distinction is drawn from the extent to which a high building rises above its context, and is based on a proportional scale and not on absolute figures.
- 4.13 The Council has sought to define areas of specific character that are sensitive to the location of new tall buildings in or near to the Royal Borough. This work is contained within the Supplementary Planning Document on Building Heights in the Royal Borough. The SPD forms part of the Royal Borough's Local Development Framework. The areas are identified at a strategic level and include conservation areas, metropolitan open land and important views, which are likely to be sensitive to the impact of tall buildings.
- 4.14 The Council's position is that there may be occasions where new tall building(s) could be accommodated without disrupting their surroundings. In those circumstances, however, it requires the proposals to fulfil positive tests of design

quality, legibility and function. These tests ensure that they are attractive landmark buildings that enhance the Borough's and in turn London's character.

- 4.15 The GLA has issued a letter of general conformity, dated 10 June 2010. It is satisfied with the Royal Borough's approach to tall buildings, but has asked that reference be made to the strategic view from King Henry VIII's Mound (Richmond) to St. Paul's Cathedral and to the detailed design analysis for Earl's Court and Kensal. The matters have been addressed in reaching the statement of common ground between the Council and the GLA.
- 4.16 That the policy is being mistakenly interpreted as unduly restrictive or not in accordance with the London Plan may be an issue of the clarity of the detailed wording of policy CL2(h-m) and its supporting text, paragraphs 34.3.22-29. The Council wishes to offer the below amendments to the policy and text to both improve its reading and take account of the Statement of Common Ground with the GLA. This is offered to the Inspector for consideration.
- 4.17 Please note that newly inserted wording is shown double underlined. The remainder of the wording is taken from the policy and supporting text as presented in the Submission Core Strategy (19 March 2010) with its proposed changes presumed acceptable (shown single underlined in the Submission Core Strategy). However, the wording has been edited to improve its clarity and flow, and to remove repetition. Unfortunately, the editing for the supporting text cannot be illustrated or 'tracked' without becoming unreadable. The Inspector is therefore kindly requested to consider the below amended supporting text alongside the version contained in the Submission Core Strategy. The amended policy, however, is annotated to reflect the amendments.

***High Buildings (Revised for Examination in Public)***

34.3.22 *The relatively modest and consistent height of buildings within Kensington and Chelsea reflects the primarily residential character of the Borough. High residential densities are delivered within this townscape without recourse to tall buildings. This pattern of development with its low to medium-rise, high-density residential areas has produced a very attractive townscape and is central to the Borough's charm. The Borough has comparatively few tall buildings; the tallest being Trellick Tower at 98m. Tall buildings are very much the exception. Building height is thus a critical issue and a very sensitive feature of the townscape. It is important that the Council carefully manages the height of new development that may otherwise erode the Borough's distinctive townscape character.*

34.3.23 *High buildings have a greater impact on their environment than other building types, posing problems of microclimate, overshadowing and overlooking. This is especially harmful to residential environments and amenity spaces, and needs to be avoided through careful siting and design (see Policy CL5).*

34.3.24 *High buildings in the wrong location can be visually disruptive. For example, they can harm the character and appearance of a conservation area, the*

setting of a listed building or the visual amenity of important open space; or they can interrupt important views, such as the strategic view from King Henry VIII's Mound (Richmond) to St. Paul's Cathedral, or those identified within the Council's Conservation Areas Proposal Statements or other adopted documents (see Policies CL1, CL3-4 and CR5). One approach to determining the appropriate location of high buildings would be to identify where they are inappropriate. However, such an approach risks inferring that they are therefore appropriate everywhere else, which is mistaken.

34.3.25 It is not enough to ensure that their location avoids causing harm. They should also make a positive intervention in the existing townscape. This is not just a matter of design quality, but also of contributing to townscape legibility. Buildings that rise above the prevailing building height are successful where, depending on their impact, they give meaning to the local or Borough townscape, highlighting locations or activities of public importance.

34.3.26 Local landmarks are occasional features in the Borough which define points of townscape interest or public functions that are relevant to those living or working within the immediate areas. Local landmarks do not necessarily rise above the prevailing building height – for example, the Michelin Building at Brompton Cross – but where they do, they will tend not to be more than 1½ times in height above their context, and remain compatible with their context. Regardless of their location, they should always be of very high design quality and occasional features if they are to retain their meaning.

34.3.27 District landmarks, on the other hand, are visible over wider areas, and tend to highlight major public functions. They can rise to up to 4 times their context in height. They are not characteristic of the Borough, being very occasional features in a borough of predominantly low to medium rise development. Because district landmarks are visible over a much wider area, their location and use must be of significance to the Borough as a whole; and inevitably, they will remain very occasional features. Their location and relationship to the local townscape are of the utmost importance.

34.3.28 Care is needed to ensure that their visibility is assessed contextually to ensure that they have a wholly positive visual impact and do not appear incongruous within their surroundings. A computer generated zone of visual influence, that includes an accurate model of the relevant context, is an essential tool in assessing the visual impact of district landmarks.

34.3.29 On sites where there may be scope for a district landmark, a design-led approach is essential. In such cases the Council will promote close working with the stakeholders and, where appropriate, with strategic and neighbouring authorities in the production of an urban design framework that will guide the siting and appropriate height of the building(s), particularly in relation to existing views and to ensuring a wholly positive benefit to the townscape.

34.3.29a Height is not the only factor which is important when assessing high buildings. District landmarks should be of an exceptional quality of architecture, sustainability and urban design. Successful tall buildings possess an architecture that is convincing and highly attractive, especially when viewed in the round, and that makes for a distinguished landmark on the skyline. This requires the skilful handling of scale, height, massing, silhouette, crown and facing materials and the careful incorporation of building services and telecommunications equipment. The profile and proportion of the building, especially the part which sits above the prevailing building height, is a sensitive feature. Bulky tall buildings are not attractive to look at and disfigure the skyline; slender ones are more successful.

34.3.29b Design quality applies equally to the top, where the impact is on the skyline, as to the base. At lower levels it is not only the impact on the streetscape and local views, but also how the building functionally relates to the street. Successful high buildings are those that create a meaningful public realm, interacting positively with the surrounding buildings and spaces. It includes contributions to permeability and connectivity, defining edges that reinforce existing building lines and give a coherent form to open space, and providing active ground floor frontages and a stimulating and inclusive public realm (see Policies CR1-2).

34.3.29c Very tall buildings – more than 4 times their context – characterise central metropolitan areas, and are thus inappropriate to this Borough.

#### **Policy CL2(h-m) High Buildings**

~~h.~~ resist ~~a~~ proposals that exceeds the prevailing building height within the context, except where the proposal is for a local or district landmark.

- ~~i.~~ of a slender profile and proportion; and [applies to district only, see below]
- ~~ii.~~ not within any identified linear views; and [deleted altogether, see CL1e]
- ~~iii.~~ of exceptional design quality [applies to district only, see below]

~~i.~~ require ~~a~~ proposed local landmarks to:

- ~~i.~~ be of very high design quality
- ~~ii.~~ be compatible with the scale, rhythm, mass, bulk and character of the context
- ~~iii.~~ articulate positively a point of townscape legibility of local significance.

~~j.~~ require ~~a~~ proposed district landmarks to:

- ~~i.~~ be of exceptional design quality
- ~~ii.~~ be of a slender profile and proportion
- ~~iii.~~ articulate positively a point of townscape legibility of significance for the wider Borough and neighbouring boroughs, such as deliberately framed views and specific vistas
- ~~iv.~~ provide a strategic London-wide public use

v. require an assessment of the zone of visual influence of a proposed district landmark within or visible from the Borough, to demonstrate that the building has a wholly positive visual impact on the quality and character of the Borough's or neighbouring boroughs' townscape when viewed from the Royal Borough. [text moved from bullet point k.]

k. [text moved above, bullet point no-longer required]

l. resist ~~a~~ proposalss that ~~is~~ are of ~~a~~ metropolitan scale.

m. require ~~a~~ full planning application(s) for ~~a proposed district landmark~~ all proposed high buildings that exceed the prevailing height within the context.

## Public Examination of Royal Borough of Kensington and Chelsea's Core Strategy with a Focus on North Kensington DPD

### Royal Borough of Kensington and Chelsea's Statement

#### Matter 9a – Renewing the Legacy

##### Question 5

*Criterion (g) of Policy CL2 allows for subterranean development only where listed criteria can be met. The justification refers to particular concern with listed buildings and also to the impact on the drainage system. Is there sufficient justification for the Policy and is the risk from surface water and sewer flooding such that there should be a moratorium until Thames Water improvements have been implemented?*

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- 5.0 *Yes, there is sufficient justification for this policy .The reasons for this policy approach with regard to listed buildings are clearly set out in the Council's Subterranean SPD. The policy gives clarity to the Council's approach to this issue. Flooding issues are dealt with in the Council's Statement in relation to Matter 9b Question 2 (Policy CE2).*
- 5.1 Policy CL2 (g) sets out criteria for the consideration of subterranean extensions. It is considered to be an appropriate policy for the Core Strategy because it has been a form of development which has led to increasing numbers of planning applications in recent years. There was a policy on such development in the UDP (CD32). That policy contained six criteria, three of which have been included in Core Strategy Policy CL2 (g). These relate to: the structural stability of buildings affected; the loss of trees; and the provision of adequate soil depth. However, Policy CL2 (g) introduces a new criterion which indicates that subterranean development under listed buildings is unacceptable. This has been questioned by objectors as appearing to be a blanket ban on subterranean extensions under listed buildings. This is dealt with in more detail below.
- 5.2 The issue of subterranean extensions to residential properties has been a matter of some concern to the Royal Borough for a number of years. It was considered important enough in terms of its impact on the area for an SPD to be prepared. The Subterranean Development SPD was published in May 2009, and sets out guidance to assist in dealing with applications for such development.
- 5.3 The SPD was prepared within the framework of the Unitary Development Plan (UDP) in which Policy CD32 sets out broad criteria for subterranean development, similar to Policy CL2(g) in the Submission Core Strategy. In the UDP policy, there was no reference specifically to listed buildings other than in terms of ensuring the structural stability of neighbouring buildings. At the time that the policy was drafted, applications for subterranean development were in the main for extensions under gardens rather than under the building itself.

- 5.4 The SPD carefully analyses the issues relating subterranean development and provides detailed guidance in relation to these issues. Section 2.2 deals with listed buildings and the opening paragraphs set out the reasons for the Borough's approach.

*2.2.1 Apart from the structural considerations, there is a particular concern regarding the impact of subterranean development on the special architectural or historic interest of listed buildings. The special interest is not the same as appearance. Special interest includes the location and hierarchy of rooms and floor levels, foundations, the original purpose of the building, the size and location of any original basement, cellar or vault, and the integrity of the historic structure, among other things. Whilst roof additions and rear and side extensions have become commonly accepted means of enlarging listed buildings, development beneath the building raises other issues about the relationship of the building to its site, its structure and the degree of intervention involved.*

*2.2.2 An addition of a new floor level underneath the original lowest floor of a listed building (normally the lower ground floor level) would have a significant impact on the hierarchy of the historic floor levels. For this reason, excavation under the main body of statutory listed buildings is normally resisted in this Borough due to its detrimental impact on the hierarchy of the historic floor levels and the historic integrity, scale and layout of the original building. In addition, the excavation and construction of new foundations may have consequential effects on historic foundations which may impact upon the future stability of the parent building and any adjoining listed buildings.*

- 5.5 As part of the evidence for the harm which might be caused by such development, the SPD refers to appeals which were dismissed on two properties in the Borough, 3 Halsey Street and 15 Mallord Street. In the case of 3 Halsey Street, the Inspector commented as follows: 'the existing basement level is evocative of the historic origins of the building and is an important element of its special interest. The creation of an additional subterranean storey would be detrimental to that special interest as it would detract from the original plan form which is an important element of the building's character'.

- 5.6 What is clear is that this is more than an ‘on its merits’ issue. There are fundamental matters of principle regarding the hierarchy of rooms and levels which are common to the majority of London houses. Consequently, it is appropriate that there is a policy on the subject. There may be cases where a deviation from the policy is possible; but from experience these will be rare, when other extenuating material considerations come into play.
- 5.7 Further justification for the policy is contained in PPS5. There was no policy or guidance in PPG15 because such development was not envisaged when the PPG was published in 1994. However, the Planning Practice Guide which accompanies PPS5 states the following in relation to listed buildings: ‘proposals to remove or modify internal arrangements, including the insertion of new openings or extension underground, will be subject to the same considerations of impact on significance (particularly architectural interest) as for externally visible alterations’ (paragraph 182). The significance of plan form and hierarchy is explained in the paragraphs from the SPD which are quoted above.
- 5.8 In conclusion, with regard to subterranean development beneath listed buildings, the Council has carefully considered the issue and appropriate guidance has been included in an SPD. The Council has analysed relevant appeal decisions and taken account of PPS5. It has concluded that in the main, this development is not acceptable. It is therefore appropriate to have a policy in the Core Strategy to give clarity in its approach for developers, planning officers and the public alike.
- 5.9 With regard to the flooding issue, the Council has provided a comprehensive response under Matter 9b Question 2. This would apply to both listed and unlisted buildings. In particular, paragraph 2.33 deals with the evidence base available, and paragraph 2.34 explains the relationship between Counters Creek and the risk of flooding, concluding that there should not be a moratorium on subterranean development at the present time.

## Public Examination of Royal Borough of Kensington and Chelsea's Core Strategy with a focus on North Kensington DPD

### Royal Borough of Kensington and Chelsea's Statement

#### Matter 9a Renewing the Legacy

##### Question 6

*Policy CL5 seeks to achieve high standards of amenity in all new developments. It requires good daylight and sunlight and whilst there is reference to the BRE guidelines in the supporting text at para 34.3.43, it does not set standards within the Policy itself. **Should the Policy apply only to residential development – excluding commercial buildings – and should it be more specific in its requirements?***

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6.0 *Policy CL5 should not only apply to residential development but it should not be more specific in its requirements in so far as including set standards in the policy itself. The standards for assessing sunlight and daylight are complex and the mechanism for assessment has been identified in the Submission Core Strategy. It would not be appropriate to set the standards within the Policy itself beyond the need for good sunlight and daylight conditions. The BRE guidelines are the mechanism for assessment, not a policy. Our approach is sound and has been followed since the adoption of the District Plan in June 1982. It has held the Borough in good stead and has been accepted by Inspectors for the past 30 years. There is no substantive reason why commercial buildings should be excluded from amenity standards. Indeed the BRE guidelines make specific reference to non-domestic buildings with regard to sunlight and daylight assessment and there is no reason not to apply a similar approach to other amenity criteria. The weight to be assigned to commercial buildings is a separate matter which will be considered below. Some aspects of residential amenity, such as privacy and sense of enclosure will be the matter of on-site judgement. However, it is acknowledged that Policy CL5 could be more specific in its requirements and to that end further guidance is given as to what might be considered as an appropriate benchmark or standard. This should make the policy more effective - with this in mind the different aspects of amenity referred to in Policy CL5 will be considered in turn.*

2.1 Policy CL5 deals with sunlight and daylight; visual privacy; increase in sense of enclosure and impact with regard to increases in traffic, parking, noise, odours and vibration. It is considered that to make the policy more effective it could be more specific in its requirements by making reference to a specific benchmark or standards where these can be applied. However, the assessment of amenity will always be a judgement and whilst standards can assist in reaching this judgement it would be wrong to include them in the policy itself. In the case of the BRE guidelines it would also be impractical as different standards are set depending on the development scenario – whether it involves new development; gardens and open spaces; existing buildings or adjoining development land.

- 2.2 With regard to sunlight and daylight amenity for buildings and amenity spaces Policy CF5a requires that the conditions of existing adjoining buildings and amenity spaces are not significantly reduced or, where they are already substandard, that there will be no worsening of conditions. Reasoned justification for Policy CL5 paragraph 34.3.43 states that in assessing new development the Council will have regard to the guidelines in 'Site Layout for Sunlight and Daylight; a Guide to Good Practice' published by the Building Research Establishment (BRE). The BRE tests were approved by the former Department of the Environment and are widely used by local authorities when deciding on development applications. The current adopted Plan for the Borough, the Unitary Development Plan uses the BRE tests to assess sunlight and daylight and the guide itself covers new development; gardens and open spaces; existing buildings and adjoining development land. The guidelines for assessing existing buildings are clearly laid out in section 2.2 and these are currently used on a daily basis to assess the impact of new development on existing buildings. The benchmark for assessing sunlight and daylight in the Borough is therefore clear.
- 2.3 The standards for assessing sunlight and daylight have been identified in the Submission Core Strategy. It would not be appropriate to include all the BRE standards in the Policy as they are guidelines and provide the mechanism for assessment; they are not a policy in themselves. A judgement is required as to whether good sunlight and daylight conditions will result and it is not simply a case of complying with the relevant standard, instead the guidelines must be interpreted and applied on a flexible basis. The one minor amendment that is recommended to ensure that the policy is applied in the most effective manner is the introduction of the word 'material' with regard to the worsening of conditions where they are already substandard. This is put forward in the Schedule of post submission changes so that the relevant part of Policy CL5a would read, *'require good daylight and sunlight amenity for buildings and amenity spaces, and that conditions of existing adjoining buildings and amenity spaces are not significantly reduced or, where they are already substandard, that there should be no **material** worsening of the conditions.'* This is to reflect the recommendation in section 2.2 that if the Vertical Sky Component is below 27% (the total amount of skylight) then any reduction should be kept to a minimum and the fact that the guidelines need to be applied sensibly and flexibly.
- 2.4 With regard to visual privacy it is acknowledged in reasoned justification for Policy CL5 paragraph 34.3.43 that the historic pattern of development has resulted in buildings that are in close proximity to one another which means that amenities such as privacy take on added significance. Current expectations are for better standards of privacy than in the past and the historic pattern of development has permitted. However, it is acknowledged that there is no benchmark for assessing privacy in the reasoned justification. This is partly a reaction to the fact that given the variety of development in the Borough and its inner London location the Council does not currently seek that development proposals meet any particular minimum or maximum standards – such rules must be applied flexibly depending on the prevailing general standards of privacy in that local environment. If proposals result in a significant increase in overlooking which is unreasonable taking into account the

prevailing standards in the immediate locality then this would be contrary to the policy. However, it is acknowledged a benchmark would be useful and would make the policy more effective.

- 2.5 The adopted Unitary Development Plan quotes a standard of about 18m between opposite habitable rooms to reduce inter-visibility to a degree acceptable to most people. This distance may be reduced if windows are at an angle to one another and a lesser distance is normally acceptable where windows face the public highway. These standards have served the Borough well over the years and have provided a benchmark, although they can never replace on site judgement. On this basis it is recommended in the table of post submission changes that these standards are included in the reasoned justification to Policy CL5 together with a reference to the prevailing standards in the immediate locality. In addition the reference to **reasonable** visual privacy is recommended to be reinstated as simply requiring visual privacy does not adequately reflect the differing standards in the Borough and the need to be flexible.
- 2.6 With regard to Policy CL5(c ) and harmful sense of enclosure this will always be a case of on- site judgement. However, it is acknowledged that this limb of the policy would be more effective if some guidance was given to how this might be assessed. On this basis it is recommended in the post submission table that reasoned justification to the Policy is added along the following lines, *“A certain degree of ‘sense of enclosure’ will often be experienced by occupants of a property. This can relate to both the public and private domain. There may be a point where a proposal for development would result in a sense of enclosure which becomes an unacceptable burden on the occupiers of an adjacent property. This could occur where the amount of adjoining habitable accommodation is limited, or is situated on lower floors with openings on to light wells. Mathematical calculation to assess daylighting and sunlighting may be an inappropriate measure in these situations; on site judgement will be the best starting point for assessment.”*
- 2.7 In relation to Policy CL5 (d) and the fact that there should be no significant impact on the use of buildings and spaces due to increases in traffic, parking, noise, odours or vibration this again will be a matter of judgement. However, the relevant standards to how noise and vibration will be assessed are contained with the Noise SPD which was adopted on the 21 May 2009. The Noise SPD deals with the policy context; general requirements; planning and noise sensitive development; noise generating development; vibration; Clubs, pubs, bars and places of entertainment; sound insulation for residential dwellings and statutory powers and codes of practice. It therefore largely covers the issues raised in this policy criterion. The exception is the impact of odours, but there are no specific standards to measure these and it will be a matter of onsite judgement.

#### **Should commercial buildings be included?**

- 2.8 Policy CL5 deals with sunlight and daylight; visual privacy; increase in sense of enclosure and impact with regard to increases in traffic, parking, noise, odours and vibration. There is no material reason why the impact of these aspects cannot be

assessed with regard to commercial buildings as well as residential although it is acknowledged that they may attract less weight in the majority of circumstances.

- 2.9 The working environment and people's quality of life are important aspects which need to be considered. With the average working day increasing more time is now spent at place of work and it is important that a pleasant working environment is created as this has a material impact on physical health and mental well-being and it can also have a material effect on productivity. Whilst the thrust of the Plan is to improve the residential quality of life for everyone the working environment in the Borough cannot be ignored.
- 2.10 With regard to site layout planning for daylight and sunlight the Building Research Establishment (BRE) guidelines there is no mention that the guidelines only apply to residential buildings. The first paragraph of section 2.1 states, "The following guidelines may be used for houses and any non-domestic buildings where daylight is required." The opening paragraph of section 2.2 which refers to existing buildings states, "...The guidelines given here are intended for use with adjoining dwellings and any existing non-domestic buildings where the occupants have a reasonable expectation of daylight; this would normally include schools, hospitals, hotels and hostels, small workshops and most offices. Gardens and open spaces are dealt with in Section 3.3." It is therefore clear that the approach with regard to sunlight and daylight set out in Policy CL5 can reasonably be applied to commercial uses.
- 2.11 With regard to privacy the impact will be assessed partly on the use of the building. It is acknowledged that direct overlooking into a bedroom or the principal room of a residential property might be assigned greater weight than if, for example, it was to an office building. However, that does mean that direct overlooking into a commercial building, such as a small office would not be assigned some weight. In a similar manner the number of occupants that might be affected may be a material consideration. If a building is to be effective in terms of its use then these safeguards need to be taken into account. In a Borough characterised by high density, small sites and buildings in close proximity to one another it is even more important. The same argument can equally be applied to an adverse sense of enclosure and the impact of traffic, parking, noise and vibration although it is acknowledged that commercial uses are more likely to vary in terms of individual impact and the weight that should be assigned to them. An existing noisy environment could not necessarily be given the same weight as for example, an office block. However, there is no substantive reason why Policy CL5 should not apply to all development.

**Appendix 1: Reworded section of Renewing the Legacy**  
*separate .pdf scanned document*

- k. require an assessment of the zone of visual influence of a proposed district landmark within or visible from the Borough, to demonstrate that the building has a wholly positive visual impact on the quality and character of the Borough's or neighbouring boroughs' townscape when viewed from the Royal Borough;
- l. resist a proposal that is of a metropolitan scale;
- m. require a full planning application for a proposed district landmark all proposed high buildings;

**Shopfronts**

- n. require alterations to existing shopfronts to preserve those elements that contribute to their traditional character, such as corbels, part-glazed doors, fascia, glazing bars, pilaster and stallrisers;
- o. require new, and alterations to existing shopfronts, to:
  - i. respect the building's original framework;
  - ii. have a positive visual impact on the appearance of the building or streetscene;
  - iii. respect the character of the building in relation to siting and design of awnings and blinds;
  - iv. be accessible to all;
  - v. provide independent access to upper floor accommodation.

NOTE: Refer to Policy CE1 in relation to sustainability, refer to Policy CE6 in relation to noise and vibration and refer to Policy CR4 in relation to signage.



Holland Park Mews

**Historic Environment Heritage Assets - Conservation Areas and Historic Spaces**

**34.3.31** The historic environment is central to the character of the Borough and the Council has a duty under the Listed Buildings and Conservation Areas Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. The special character and appearance of the historic environment is the the most important factor of our high quality townscape.

**34.3.32** The Royal Borough has a reputation for championing the conservation of its high quality historic environment. Preserving and enhancing our conservation areas continues to be a high priority for the Council. The Council considers that in order fulfil its statutory duty and adequately assess planning applications within conservations areas, there is a need for proposals to provide full detail rather than outline applications.

**34.3.33** The character and appearance of a conservation area is not only provided by the high quality and appearance of individual buildings within the area and the inter relationship between them but it is also gained from views into and out of the area. Therefore development that impacts on setting, including the effect on views, gaps and vistas identified within Conservation Area Proposal Statements, needs to be taken into account assessed to ensure that their character and appearance of the area is conserved.

**34.3.34** The Council takes its statutory responsibility to improve or enhance the built environment with in conservation areas seriously. In situations where quality of the built environment

has been eroded, a pro-active approach is needed to ensure the environment is continuously improved.

**34.3.35** The partial or full demolition of an **heritage asset structure**, whether it be a listed building or unlisted structure which has architectural merit, can cause irreversible damage to the character and appearance of our high quality townscape.

**34.3.36** As the vast majority of the Borough is covered by conservation areas, there are limited opportunities for new development. Allowing a site to fall into disrepair, resulting in subsequent partial or full demolition may be an incentive for developers on sites where a different building design is sought. The Council therefore considers **that** proposals for the partial or full demolition of structures requires careful consideration, particularly the assessment of the appropriateness of the replacement structure.

~~**34.3.37** There is a history of occasional building collapse in the Borough within conservation areas. Conservation areas are designated to protect the existing buildings character and appearance and their surroundings. Therefore the collapse a building within a conservation area should not be an incentive to provide a departure from the current architecture. There have been instances of occasional building collapse in the Borough within conservation areas where Conservation Area Consent is required for substantial demolition. Such areas are designated to ensure that proposals preserve or enhance the character or appearance of the area. The collapse of a building should not therefore be viewed as an incentive to depart from the original design of the building.~~

### Policy CL 3

#### **Historic Environment Heritage Assets - Conservation Areas and Historic Spaces**

The Council will require development to preserve and to take opportunities to enhance the character or appearance of conservation areas, historic places, spaces and townscapes, and their settings.

To deliver this the Council will:

- a. require full planning applications in conservation areas;

- b. ~~require that is is demonstrated that, wheresist~~ substantial demolition of ~~buildings~~ in conservation areas ~~unless it can be demonstrated is proposed~~ that:
  - i. the building or part of the building or structure makes no positive contribution to the character or appearance of the area;
  - ii. a scheme for redevelopment has been approved;
- c. require, in the event of a collapse or unauthorised demolition of a structure in a conservation area, a replacement replica of the structure where the original made a positive contribution to the character and appearance of that conservation area.

#### **Historic Heritage Assets - Listed Buildings, Scheduled Ancient Monuments and Archaeology**

**34.3.38** The Borough's historic assets play a significant role in the overall quality of the historic environment, not only in this Borough, but within the whole of London. The Council has a duty to pay special regard to the desirability of preserving listed buildings or scheduled ancient monuments and their settings or any features of special architectural or historic interest which they possess. The Council also considers that local historic features such as memorials (particularly war memorials, including those on private land or within buildings), plaques, coal plates, horse and cattle troughs and **historic** bollards are historic assets worthy of protection, whether listed or not.

**34.3.39** Listed buildings and scheduled ancient monuments can be negatively affected not only by inappropriate additions, ~~and internal and external~~ alterations, ~~including and~~ demolition, but also by inappropriate use and unsympathetic neighbouring development. ~~Such changes which~~ can diminish their architectural and historic value and detract from their setting. ~~Therefore all aspects of development affecting listed building and scheduled ancient monuments are taken seriously by the Council.~~

~~34.3.40 If architectural details of a listed building, either internal and external, are unsympathetically modified or permanently removed, their absence will erode the special architectural and historic interest of the listed building and, cumulatively, impact on the surrounding townscape. Unsympathetic additions have a similar impact.~~

**34.3.41** The Borough contains two Scheduled Ancient Monuments, the Brick Kiln in Walmer Road and Kensington Palace. Archaeological remains constitute the principal surviving evidence of the Borough's past, but are a finite and fragile resource. The destruction of such remains, by development, should be avoided to ensure the Borough's past is not lost forever.

**Policy CL 4**

**Historic Heritage Assets - Listed Buildings, Scheduled Ancient Monuments and Archaeology**

The Council will require development to preserve or enhance the special architectural or historic interest of listed buildings and scheduled ancient monuments and their settings, and the conservation and protection of sites of archaeological interest.

To deliver this the Council will:

- a. resist the demolition of listed buildings in whole or in part, or the removal or modification of features of architectural importance (both internal and external);
- b. require the preservation of the special architectural and historic interest of listed buildings, scheduled monuments or other buildings or places of interest. In particular the integrity, plan form and structure of the building including the ground and first floor principal rooms, original staircases and such other areas of the building as may be identified as being of special interest should be preserved;
- c. require the preservation of the original architectural features, and later features of interest, both internal and external;

- d. require internal or external architectural features of listed buildings or scheduled ancient monuments, commensurate with the scale of the development, to be:
  - i. reinstated where the missing features are considered important to their special interest;
  - ii. removed where the additions to or modifications are considered inappropriate or detract from their special character;
- e. resist the change of use of a listed building which would materially harm its character;
- f. strongly encourage any works to a listed building to be carried out in a correct, scholarly manner by appropriate specialists;
- g. require development to protect the setting of listed buildings, scheduled ancient monuments or sites of archaeological interest;
- h. resist development which would threaten the conservation, protection or setting of archaeological remains;
- i. require desk based assessments and where necessary archaeological field evaluation before development proposals are determined, where development is proposed on sites of archaeological significance or potential.

**Amenity**

**34.3.42** The densely developed nature of the Royal Borough is such that the protection of the levels of amenity enjoyed by users of its existing buildings and spaces, and the design of new development to provide for equally high levels of amenity, are critical factors to ensuring a good quality of life for all.

**34.3.43** The Borough's ~~closely grained~~ dense historic pattern of development has resulted in buildings that are ~~situated very close together~~ in close proximity to one another. ~~This has helped to give the Borough's special, close-knit urban~~