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Basements Summary of Consultation

Partial Review of the Core Strategy



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

July 2013

Regulation 19, Town and Country Planning (Local Planning) (England) Regulations 2012

Contents

1.	Introduction.....	3
2.	Basement Issues Consultation – April - May 2012	3
3.	Basement Surveys (Aug/ Sep 2012)	5
4.	Options considered and rejected before consulting on the draft policy.....	7
5.	Basement Draft Policy Consultation – Dec 2012/ Jan 2013 (Regulation 18 Consultation)	8
6.	Basement Second Draft Policy Consultation (Regulation 18 Consultation) .	10
7.	Consultation Events (Regulation 18)	13
8.	Basements Working Group.....	14
9.	Publicity of Draft Policy Documents.....	14

1. Introduction

- 1.1 The Council started preparing a planning policy on basements in early 2012. During this process of policy preparation the Council has undertaken a range of consultation in accordance with the Council's Statement of Community Involvement and the Town and Country Planning (Local Planning) (England) Regulations 2012 (the Regulations).
- 1.2 This summary of consultation will be adapted in due course to meet the requirements of Regulation 22 (c) of the Town and Country Planning (Local Planning) (England) Regulations 2012 by setting out:
- Which bodies and persons the local planning authority invited to make representations under regulation 18;
 - How those bodies and persons were invited to make representations under regulation 18;
 - A summary of the main issues raised by representations pursuant to regulation 18;
 - How many representations pursuant to regulation 18 have been taken into account
 - The number of representations made under regulation 20 and a summary of the representations. This information will be added once the consultation on the publication policy has been undertaken in accordance with Regulation 19.
- 1.3 Further consultation that exceeds the requirements of the Regulations has also been undertaken. This report includes a summary of these additional consultations to have a comprehensive record of all consultation undertaken for ease of reference. The information on consultation is provided in a chronological order.

2. Basement Issues Consultation – April - May 2012

Who was invited?

- 2.1 The Local Planning Authority invited 1,041 (614 by email and 427 by letter) bodies and persons to make representations which were all the bodies included in the Local Plan database which has been compiled since 2005. This includes both general consultation bodies and specific consultation bodies. The specific consultation bodies consulted included the Environment Agency; English Nature, English Heritage and the Mayor of London (GLA).
- 2.2 All the bodies were invited to make representations on-line, by email or post.

The number of representations made

- 2.3 A total of 55 representations were received.

Summary of the main issues raised

- 2.4 The issues consultation paper set out the Council's existing policies and raised questions whether these were considered to be effective. The consultation was seeking to get information on other issues that should be covered by a revised policy and how.
- 2.5 A separate report on all the responses received and how they were taken into account titled 'Basement Issues: Comments and Responses' has been prepared.
- 2.6 In summary on the question of 'other issues that should be addressed by the Council, responses indicated a range of issues. These include impact on flooding, character, construction impacts including traffic and noise, structural issues, procedures of the planning department and other Council departments. A small number of responses indicated that the existing policies were adequate.
- 2.7 There was general consensus that basements have little visual impact but comments on how to control their external manifestations such as light wells were made. It was also mentioned that while they may not have obvious visual impact basements can affect the character of conservation areas. The need to control the associated temporary structure during the construction phase was also mentioned. There were varying responses on the adequacy of the existing policy on light wells with some respondents finding them adequate, others saying that the policies needed to be more onerous whilst some others said that existing policies were too prescriptive. Light pollution was mentioned as a harmful impact which needed to be controlled.
- 2.8 On the question of listed buildings there were two clear sets of views. Many of the responding residents and amenity societies considered that the existing restriction on excavations beneath a listed building should be extended to their gardens. They also mentioned that the policy should take a similar view on basements in conservation areas as it does for listed buildings. Other professionals such as architects found the restrictions under listed buildings too onerous and preferred a case by case approach.
- 2.9 No strong views were expressed on the existing policies and guidance concerning basement extensions and archaeology.
- 2.10 There was strong support for the existing policy precluding basement development underneath garden squares.
- 2.11 Many respondents indicated that planning proposals should consider flooding issues in greater detail. The cumulative impact of a number of basements on ground water was mentioned. The vulnerability of basements to sewer flooding and their impact of increasing flows into the sewerage network was also identified as an issue.
- 2.12 On the question of the adequacy of the existing policy to mitigate any adverse impact on trees, vegetation and sustainable drainage a

number of respondents indicated that allowing basements to extend underneath 85% of the garden was excessive. Such an approach was seen to impact on natural planting and drainage. It was mentioned that the existing approach may impact on biodiversity. Some respondents indicated that the existing policy was adequate in this respect.

- 2.13 Issues were raised about the adequacy of the requirements for the entire building to which the basement relates to be upgraded to the EcoHomes 'very good' standard. Some respondents were not convinced that applicants did any more than a paper exercise, others did not consider the requirements to be onerous enough. Some comments were made on the environmental impact of swimming pools; their operation, water, odour and noise. A few respondents stated that the requirement to upgrade the entire dwelling as a result of a basement was too onerous.
- 2.14 Many residents and residents associations indicated that the Council could do more to protect the structural integrity of neighbouring buildings by including more onerous planning requirements. Others indicated that structural issues are dealt with by Building Control.
- 2.15 A range of issues were raised about the construction phase of the development. Comments were made that construction impacts such as skips should be kept on site, changes to planning procedures such as requiring Construction and Traffic Management Plans (CTMPs) upfront were suggested. Some comments were made about the length of construction and whether the Council can control the duration. A few comments were made that construction impacts should not be controlled through Planning and should be left to other relevant departments.
- 2.16 A public event was also held in Kensington Town Hall during the course of this consultation. It was attended by 30 people with representatives of residents associations, elected members of the Council and professionals such as architects and property consultants. The issues raised at the event reflected those that were raised in the written responses summarised above.

How many representations pursuant to regulation 18 have been taken into account

- 2.17 All representations were taken into account at this stage. The Council's report, Basement Issues: Comments and Responses' shows how each comment was taken into account and whether it would influence the formulation of the policy. Based on the consultation responses the Council recognised that a bespoke policy adequately addressing each of the issues consulted on was required.

3. Basement Surveys (Aug/ Sep 2012)

- 3.1 Following the Basements Issues Consultation and the range of comments received on this consultation the Council undertook specific

surveys on basement issues. The surveys took place in September 2012. The full results are available on the Council's website. Questionnaires were sent to:

- Owners of properties where a basement has been granted planning permission in the last four years;
- The neighbours of properties with basement permissions; and
- To residents' associations.

3.2 There were too few responses to the Owners' Survey to be able to draw any conclusions.

3.3 About 8,000 neighbours questionnaires were sent out. There was a 17% response rate (1,254 responses). The questionnaire was a simple "tick box" questionnaire to allow for statistical analysis.

- About a quarter of respondents held the view that the basement had had a negative impact on the property or its garden.
- About half noticed an impact upon their property.
- Between 50-60% felt that the impacts of noise, traffic, dust and vibration had not been kept within reasonable limits.
- Around 10-15% experienced a worsening in drainage, flooding, damp or vermin either during or after construction.
- About a third of respondents had party wall agreements, with one in five reporting that the agreement had not been adhered to.

3.4 There were 127 responses to the Residents' Association Survey. This was sent to all associations, and also made available on the web. This asked the same questions as the residents' survey, but also provided space for qualitative responses. A summary of key findings is as follows:

- About a third of basements were reported to be more than one storey deep.
- Around a quarter reported that the basement had had a negative impact on the property, rising to over a third in relation to the garden.
- Half of the respondents had entered into party wall agreements, with over half being unhappy with the outcome.
- Between 50-70% reported problems with issues during construction such as noise, dust, traffic and vibration.
- About 10-20% noticed changes in relation to damp, drainage, flooding and vermin, during and after construction.

3.5 The findings broadly corroborate one another. They demonstrate that it is possible for basements to be constructed without causing distress to neighbours, but that at present this is not the experience of most respondents.

4. Options considered and rejected before consulting on the draft policy

4.1 Following the Issues consultation and the surveys a range of options were considered by the Council before progressing to the next stage of consultation on the 'preferred' draft policy. These options were presented in Appendix B of the Basements: Draft Policy for Public Consultation and Other Matters (Dec 2012) document and are reproduced below:

Option 1: Not to amend the existing policies

4.2 The Core Strategy was adopted in December 2010. Whilst the intervening period has seen the whole scale re-writing of Government guidance through the National Planning Policy Framework (NPPF) this does not render the existing policies out of date.

4.3 However, two further years of basement construction across the Borough have highlighted that the policies (and associated procedures) have not always have been as effective as intended. In addition research commissioned by the Council illustrates that some provisions of the existing policy should be updated. It is, therefore, now timely to review the policies used and the procedures associated with their effective implementation.

Option 2: Resist the creation of basements within the curtilage of a listed building

4.4 The Council will resist the creation of a basement beneath a listed building as such proposals, in all but in the most exceptional cases, harm the historic integrity, scale and layout of the original building. The same cannot necessarily be said for the excavation within the garden of a listed building. If sensitively designed, it is possible that the integrity and character of the listed building will not be harmed.

Option 3: Resist all basement development within a conservation area

4.5 The Council is of the view that basement development will not necessarily have a detrimental impact on the character and/or appearance of the conservation area in which it lies. Proposals must therefore be assessed on their merits, and a "blanket ban" would not be appropriate.

Option 4: Resist demolition which is carried out to assist in the implementation of a basement development

4.6 The Courts have made it clear that it is only "substantial demolition" in a conservation area requires consent. As such it is beyond a Local Planning Authority's remit to resist all demolition within a conservation area. The

Council has the appropriate policies in place to assess applications for demolition when consent is required. Policy CL3 of the adopted Core Strategy remains relevant, stating that the Council will resist substantial demolition unless it can be demonstrated that the part of the building which is the subject of demolition makes no positive contribution to the character or appearance of the area, or if a scheme of redevelopment has been approved.

- 4.7 Planning permission is not required for any demolition outside of a conservation area, unless relating to a building that is listed.

Option 5: Set a limit of, for example 50%, as to the extent of development beneath a garden which will be permitted, because of visual impact/ the lost opportunity for tree planting in the future

- 4.8 The limit of excavation beneath a garden proposed within the draft policy relates largely to the need for effective sustainable urban drainage. It also takes into account the provision of undeveloped space that may be suitable for mature trees in the future. As such this limit is not concerned primarily with the direct visual impact of the external parts of a basement such as light wells but, the Council choosing to control the undesirable “urbanising” effect of such features by requiring sensitive design and a location near the rear of the building. Ultimately a qualitative assessment will be made by the Council as to what the impact of roof lights and the like will have upon the property, its garden and upon the wider area.

- 4.9 An alternative approach would be to introduce a figure with the inference that the visual impact any basement (be this direct or indirect) is likely to be acceptable as long as, for example, 50% of the garden remains undeveloped. This approach has the benefit of offering a degree of clarity for both those who want a basement and those living in the vicinity. There is, however, a concern that light wells and other such features may be permitted where the “rule” is met, but where the impact is harmful.

5. Basement Draft Policy Consultation – Dec 2012/ Jan 2013 (Regulation 18 Consultation)

- 5.1 Based on the above consultations and consideration of the range of options presented above a draft policy was formulated in conjunction with a Sustainability Appraisal of the draft policy. The Council consulted on the Basements Draft Policy document for an eight week period starting on 6th December 2012 until 31st January 2013.

Who was invited?

- 5.2 The Local Planning Authority invited 1,352 bodies and persons to make representations (762 by email and 590 by letter) which were all the bodies included in the Local Plan database which has been compiled since 2005. This includes both general consultation bodies and specific consultation bodies. The specific consultation bodies consulted included the Environment Agency; English Nature, English Heritage and the Mayor of London (GLA).

- 5.3 All the bodies were invited to make representations on-line, by email or post.

The number of representations made

- 5.4 A total of 86 representations were received of which 82 were received by letter or email and 4 were on-line.

Summary of the main issues raised

Size

- 5.5 Residents associations generally supported greater restrictions on the size of basements but the general consensus was to further restrict the size of basements. A figure of 50% instead of the maximum of 75% maximum proposed was often quoted. The restriction to a single storey was also generally supported but there were comments to further define the single storey in terms of actual depth. The draft policy allowed more than a single storey on larger sites. Comments were received requesting clarity on what would be considered a large site.
- 5.6 Many contractors/developers on the other hand considered the proposed limits on size to be unreasonable and not justified in planning terms.

Construction Impact

- 5.7 Whilst residents support the requirements for the various technical documents to be submitted along with the planning application many had the impression that these would not be consulted upon as they had been 'approved' prior to submission.
- 5.8 The cumulative impact of several basements being constructed at the same time is an issue that some residents clearly feel very strongly about.
- 5.9 Many residents would like the planning department to have stricter controls on issues relating to protecting the structural integrity of neighbouring properties. Several suggestions have been made regarding this being included and having conditions relating to third party insurance and the Council employing its own engineers to check these reports.
- 5.10 Contractors/ developers expressed the view that these issues are dealt with by other legislations and the requirements are too onerous on applicants.

Mitigation

- 5.11 Issues regarding the impact of basements on ground water conditions were raised. Some comments were made about the adequacy of the 1m of top soil required and if only 25% of the garden is enough to mitigate the impact if 75% of the area underneath the garden can be

developed. It was also mentioned that the carbon impact of basements needs to be taken more fully into account.

Impact on Character

- 5.12 Comments stated that having a basement covering the maximum limit of 75% of the garden would have an impact on the character of the garden. Although there is a requirement to provide 1m of top soil, it may still result in the garden appearing artificially flat. It may also not be flexible enough to allow for mature tree planting.
- 5.13 Some developers suggested that the gardens with 1m of top soil can have an informal design and not appear artificially flat and can accommodate mature planting. Some comments have also been received that if the garden is already hard paved and if that is the character of the area, requiring 1m of topsoil would detract from this character.
- 5.14 The residents generally support the proposals to minimise the visual impact of the external, visible elements of basements such as light wells.

How many representations pursuant to regulation 18 have been taken into account

- 5.15 All representations were taken into account at this stage. The Council's report titled 'Basements Review: Consultation Responses to Draft Basements Policy (March 2013)' shows how each comment was taken into account and whether it would influence the formulation of the policy. Based on the consultation responses and further research by the Council into the visual impact of basements on the character of gardens and planting it was recognised that allowing basements in up to 75% of the gardens may be excessive. As a result it was proposed to change the draft policy to restrict basement to a maximum of 50% of the garden. Further clarity was provided on the definition of a single storey. Draft policy was also changed to preclude basements from the gardens of listed buildings with the exceptions of large gardens where basements could be built without causing extensive changes to the foundation of the listed buildings. As a result of the consultation it was also recognised that the policy clause in relation to heritage assets should be seeking to prevent 'harm' not 'substantial harm' to heritage assets.
- 5.16 The consultation further highlighted that a specific reference to protect basements from sewer flooding should be added as all basements are vulnerable to this type of flooding. A number of other changes to improve the clarity of the text were made throughout the reasoned justification of the draft policy as a result of the consultation.

6. Basement Second Draft Policy Consultation (Regulation 18 Consultation)

- 6.1 The Council considered the range of views expressed during the first draft policy consultation, reconsidered the recommendations in the technical report by Alan Baxters and Associates (ABA) and the policy direction in the London Plan, July 2011.
- 6.2 Consultation indicated that some parts of the draft policy needed better clarity such as the definition of an existing basement and a single additional storey. These changes for clarity were made.
- 6.3 The Council considered the comments relating to the extent of basements underneath gardens. There were differing views suggesting greater or lesser restrictions on extent. The desirability to maintain 'green and leafy' gardens, flexibility to plant major trees together with the recommendations in the ABA report regarding drainage indicate substantial proportion of the garden should remain free of any development.
- 6.4 Risks associated with basement development were also reconsidered particularly in relation to listed buildings.
- 6.5 This led to significant revisions to the policy and therefore a second round of consultation was undertaken by the Council to allow further consideration of views.

Who was invited?

- 6.6 The Local Planning Authority invited 1,406 bodies and persons to make representations (824 by email and 582 by letter) which were all the bodies included in the Local Plan database which has been compiled since 2005. This includes both general consultation bodies and specific consultation bodies. The specific consultation bodies consulted included the Environment Agency; English Nature, English Heritage and the Mayor of London (GLA).
- 6.7 All the bodies were invited to make representations on-line, by email or by post.

The number of representations made

- 6.8 A total of 105 representations were received of which 90 were received by letter or email and 15 were on-line.

Summary of the main issues raised

- 6.9 There was a clear division in the views expressed to the second draft consultation. These are summarised below:

Opposed to policy

- 6.10 A large number of responses were received from individuals and those involved in constructing basement projects. They were opposed to the limits being introduced. These responses broadly highlight that introducing the limits proposed would have an economic impact by curtailing jobs in the construction industry and that this is not in-line with

the current Government policy. They also questioned the remit of planning to limit development on the basis of construction impact and whether construction impacts can be legitimately considered at the planning application stage. Similarly the remit of the planning system is questioned in restricting development on a precautionary basis with regard to structural risks. This group was generally opposed to all parts of the policy including the limits on introducing light wells if they are not already an established and acceptable feature of the streetscape. A number of comments have been made objecting to the restrictions regarding listed buildings and their gardens.

- 6.11 Whilst strong objections have been made, given the dense residential environment in the Royal Borough it is considered appropriate to limit construction impacts. This is exacerbated by the increase in applications. Issues such as residential amenity, health and well-being and the living conditions of residents are material planning considerations which need to be addressed. There are a number of other reasons for the limits including a need to retain natural gardens and limiting greater carbon emissions. As the policy is not banning basements but curtailing the extent, there will only be a limited impact on the construction industry and related economy. The policy needs to find the right balance between economic, social and environmental issues as the NPPF outlines at paragraph 7. The planning system therefore has to perform a number of roles. The SA/SEA of the policy demonstrates that the policy is compatible with the SA objectives. The policy changes were considered reasonable and no further changes to the substance of the policy were proposed. However, changes were made to improve the clarity of definitions (also raised in the comments) such as; 'an existing basement' and 'large comprehensively planned sites'.

Support the general direction of policy

- 6.12 There were supportive responses from residents and residents associations, some commending the progress made in developing the policy. However, some of these were of the view that the policy is not restrictive enough and basements should be limited to the footprint of existing properties. Comments were made that the restrictions in relation to listed buildings should apply to all buildings within conservation areas. Some comments highlighted that not enough emphasis had been placed on the degree of construction impacts experienced by residents. Some respondents commented on the structural damage to their properties as a result of basement construction. They asked for limits being put to the number of sites that can be constructed in a street at the same time, a mechanism for compensation to the neighbours and a range of other measures.
- 6.13 It would be unreasonable to impose any further restrictions. The criteria introduced in the draft policy would mitigate any harmful impacts of basements and imposing further restrictions would not be in-line with national policy supporting sustainable development. The

representations maintain concerns raised previously that basements can cumulatively increase ground water levels which can then enter the sewer system. Thames Water stated that this should be monitored. Thames Water welcomed the requirement for basements to be fitted with positively pumped devices and acknowledged that the policy may reduce the existing volume and flow of surface water run-off. As a result no further changes to the substance of the policy were proposed. However, changes to improve the clarity of definitions (also raised in the comments) were made.

How many representations pursuant to regulation 18 have been taken into account

- 6.14 All representations were taken into account but did not result in substantial changes to the policy. This was because given the evidence the Council concluded that the right balance had been struck to ensure sustainable development. However, it was considered that the policy should be amended to ensure private gardens were safeguarded in terms of their character and function. This was undertaken by expressing the policy in terms of retaining at least 50% of each garden rather than setting limits on the extent of basements in the gardens. Changes to clarify definitions and application of the policy were made throughout the text.
- 6.15 The Council's report titled 'Basements Review: Consultation Responses to Second Draft Basements Policy (July 2013)' shows how each comment was taken into account and whether it would influence the formulation of the policy.

7. Consultation Events (Regulation 18)

Basements Draft Policy

- 7.1 As part of the consultation on the draft policy the Council organised a briefing session for residents on the evening of 12th December 2012. This was followed by the first public consultation event on the draft policy itself on the evening of 9th January 2013. This event was attended by about 60 people. Due to popular demand a second public consultation event was organised on the evening of 21st January 2013. This event was also attended by over 50 people. These events were attended by residents, councillors, representatives from residents associations, developers, contractors and other professionals involved in basement development.
- 7.2 Discussions, were structured around the issues of size, construction impact, mitigation, impact on character and the introduction of an Article 4 direction. A summary of the consultation events was made available on the Council's website shortly after the events.

Basements Second Draft Policy

- 7.3 As part of the consultation a public meeting was held on the 8th April 2013 in the Small Hall at Kensington Town Hall. The meeting was

structured as a question and answer session. It was attended by about 40 people with representatives from residents associations, residents, representatives from the basement construction industry, planning consultants and other professionals such as architects and members. The minutes of this meeting were made available on the Council's website shortly after the event.

7.4 Questions were raised on all aspects of the policy. A summary of the main issues raised is presented below:

- Definition of what comprises an existing basement and whether this had been clearly expressed in the reasoned justification.
- In what circumstances would the exceptions clause related to 'larger comprehensively planned sites' apply.
- Does the Council have sufficient justification to limit basements to the extent being proposed.
- Disruption caused to residents as a result of construction impacts is not a valid reason to put a limit on basements.
- The basis for the Council to limit basements in the gardens of listed buildings.
- How cumulative impacts of several basements being built together would be taken into account.
- The policy should be extended to limit 'damage' not just ensure structural stability.
- Comments were made on the adequacy of consultation undertaken and that this had not ensured that every resident in the Borough was informed about the proposed changes.

8. Basements Working Group

8.1 A basement working group was also set up. The group includes elected members, industry representatives, specialists in EcoHomes/BREEAM assessments and Party Wall Act and representatives of residents associations. The group was chaired by the Head of Policy and Design and also attended by a Senior Planning Policy Officer throughout. This group's terms of reference include commenting on the emerging policy and assist in gathering evidence. The group met four times in February 2013 before the second draft policy was published and once again in May 2013.

9. Publicity of Draft Policy Documents

9.1 In addition to the targeted mailing to the organisations and individuals on the Council's LDF database the Council sends weekly planning bulletins which publicises forthcoming consultations and public events

to about 1,170 subscribers. The planning bulletin subscribers include those on the LDF and TRA database, elected members, residents, and internal staff. It is continually updated with people wishing to subscribe. The documents have been available on the Council's website and in hard copy in all the libraries in the Borough and at Council Offices. The policy review has also received publicity in the press and radio.