



The Planning Inspectorate

Report to the Council of the Royal Borough of Kensington and Chelsea

by David Vickery Dip T&CP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 2nd December 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE PARTIAL REVIEW OF THE CORE
STRATEGY FOR THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA WITH A
FOCUS ON NORTH KENSINGTON (ADOPTED 2010):**

BASEMENTS PLANNING POLICY

Document submitted for examination on 28 April 2014

Examination hearings held between 16 September and 18 September, and on 23 and 24 September 2014

File Ref: PINS/K5600/429/6

Abbreviations Used in this Report

AA	Appropriate Assessment
LDS	Local Development Scheme
MM	Main Modification
NPPF	National Planning Policy Framework
PPG	Planning Policy Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
SuDS	Sustainable Drainage System

Non-Technical Summary

This report concludes that the Partial Review of the Core Strategy provides an appropriate basis for considering proposals relating to the development of basements, providing a number of modifications are made. The Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted.

Most of the modifications to address this were proposed by the Council but where necessary I have amended detailed wording and added consequential modifications where necessary. I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised as follows:

- Change the description of the Policy from being 'rules' to being 'requirements' so it is consistent with national policy;
- Clarify in the Policy's preamble that its criteria are requirements;
- Clarify the meaning of 'large sites' in paragraph 34.3.57;
- Make the monitoring indicators targeted and review the Policy within five years of adoption;
- Clarify the definition of an original basement in CL7 c.;
- Delete 'pavement' from vaults in CL7 f.;
- Apply national policy to the assessment of harm to the significance of heritage assets in CL7 e. and g., which are merged;
- Clarify in CL7 h. that light wells and roof lights will be permitted where they do not seriously harm character and appearance;
- Require SuDS to be maintained, and to not require top soil above basements to be permeable in CL7 j.;
- Delete CL7 k. for energy and other upgrades to existing buildings;
- Delete the prohibition against tunnelling under tree roots in 36.3.59;
- Clarify that highway harm in CL7 l. is unacceptable adverse harm;
- Clarify that the building on the site in question is the existing building so far as structural stability is concerned in CL7 n.; and
- Set out clearly in the Policy what will be dealt with in the future Supplementary Planning Document on basements.

Introduction

1. This report contains my assessment of the Partial Review of the Core Strategy as it concerns a Basements Planning Policy (hereafter called "the Policy") in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers whether the Policy is compliant with the legal requirements (including the duty to co-operate) and whether it is sound. Paragraph 182 of the National Planning Policy Framework (NPPF) makes clear that to be sound, a local plan¹ should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the Council has submitted what it considers to be a sound plan. The basis for my examination is the Partial Review of the Core Strategy Basements Submission Planning Policy that was submitted in April 2014, which is essentially the same as the document published for consultation in February 2014.
3. My report deals with the main modifications that are needed to make the policy sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council requested that I should make any modifications needed to rectify matters that make the Plan unsound or not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The main modifications that are necessary for soundness and legal compliance all relate to matters that were discussed at the Examination hearings. Following these discussions, the Council prepared a schedule of proposed main modifications and added to, and corrected, the Sustainability Appraisal (SA). This schedule and SA have both been subject to public consultation. I have taken account of the consultation responses in coming to my conclusions in this report and so I have made some amendments to the detailed wording of the main modifications and added consequential modifications where these are necessary for consistency or clarity. None of these amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. Where necessary I have highlighted these amendments in the report.
5. It is invariably the case that different people have different views about how best to express and justify planning policies, and there is always the potential to improve a document such as this. Many of the residents' associations and other representors are clearly well informed, have strong views, and have engaged with the Policy throughout its gestation to ensure that it properly reflects their interests and is clear and unambiguous for all users. However, it is the Council that has primary responsibility, in partnership with the local community and all interested parties, to prepare the local plan for its area. It is not my role to seek to "improve" the Council's document or to address all of

¹ "Local plan" is the term used in the NPPF to apply to development plan documents (which this is) as defined in The Town and Country Planning (Local Planning) (England) Regulations 2012 (Regulations 5 and 6). However, for the sake of clarity, I have used the term "the Policy" throughout this report.

the representations made about it, but rather to ensure that the Policy is legally compliant and meets the tests of soundness.

Assessment of Legal Compliance

Duty to Co-operate

6. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with the duty to co-operate imposed on it by section 33A of the 2004 Act in relation to the Plan's preparation. The duty is confined to development plan documents insofar as they relate to "strategic matters". The Policy does not relate to a strategic matter as defined in the Act and consequently the duty to co-operate does not apply to it. This was not questioned in representations or at the Hearings.

General conformity with the London Plan

7. It was said that the Policy "*is so fundamentally anti-growth and that its likely effect on the Borough's role in meeting development needs is so considerable that it takes the Core Strategy out of general conformity*"² with the London Plan (REP/195/012). The Greater London Authority on behalf of the Mayor of London responded on 7 April 2014 to the February 2014 consultation stating that "*the proposed document and its Publication Policy CL7 on basements are in general conformity with the London Plan*" under section 24(1)(b) of the 2004 Act. Since I take that response to be one made under Regulation 21 of the 2012 Local Planning Regulations I give it considerable weight and I would have to have cogent and compelling reasons to depart from it.
8. Whilst the London Plan is in favour of growth and sustainable development, this is subject to the need to respect legitimate planning and environmental constraints. In this it reflects Government policy in the NPPF and the Planning Practice Guidance (PPG) which says, for instance, that "*sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life*" (NPPF paragraph 9).
9. The Council does not seek to entirely restrict or ban basement development, but instead it sets what it believes are reasonable limits for their extent which reflect the needs and priorities of the local community. It sets those limits by having regard to any adverse impacts which it believes significantly and demonstrably outweigh the resulting benefits of sustainable development and growth. Therefore, as a matter of general principle my judgement is that the Policy is in general conformity with the London Plan, provided that it is sound. And, on that last point, as my report later concludes that the Policy is sound, subject to modifications, then I consider that overall the Policy is in general conformity with the London Plan. Thus there are no cogent or compelling reasons for me to depart from the Greater London Authority's response on behalf of the Mayor of London.

² REP/195/012

Sustainability Appraisal

10. The final Sustainability Appraisal (SA) at BAS21 says: "*Alternative policy options were specifically considered in the December 2012 SA/SEA. As these were dismissed at that time, it is not considered appropriate to address them again in this document.*" However, legally the final SA must clearly set out the reasons for the selection of the Policy's proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. These choices may not have been made within the SA process, but the final SA should set them out with reasons. It should also state whether all these reasons are still valid at submission.
11. Prior to the hearings the Council published a 'Correcting Addition' to the SA (BAS 21/01) which set out the alternatives considered in the previous SAs and confirmed that the reasons for not choosing them were still valid. This was further revised during the hearings (Revision A) to more clearly set out the Council's reasons for not carrying out SA on two options which were not considered to be "reasonable alternatives".³ One of these options was a policy where each development is assessed on a case by case approach, on its own merits with no maximum limits. Some representors said that this option was, in fact, a reasonable alternative and that the Council's explanation of why it was not had been stated too late in the local plan preparation process.
12. The Council said that this was not a reasonable alternative because: existing policies already include defined limits to such development and the evidence was that these were not preventing unacceptable impacts; it would fail to give clarity as to what was permissible; it would give rise to inconsistencies; it would not be transparent as to how decisions had been reached; and it would fail to deal with the objectives of the policy, particularly in dealing with adverse construction impacts.
13. The NPPF requires Local Plans to set out "*clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan*" (paragraph 154). I agree with the Council that a policy based on a case by case on its own merits, with no maximum limits, would not give a clear indication of what would be permitted or how a decision maker should react to a proposal.
14. Alternatives must be realistic and deliverable (PPG ID 11-018). As I say later, I agree with the Council about the unacceptable impacts of basement development under present policy criteria. I also agree that it would be unrealistic to expect a more relaxed policy to reduce those impacts, and that such a policy would not deliver the SA objectives sought by the Council in preparing a revised policy.
15. I therefore conclude that this type of criteria policy is not a reasonable alternative, and so the Council was not obliged under Article 5 of Directive 2001/42/EC and Regulation 12(2)(b) of the 2004 Environmental Assessment Regulations to subject it to a sustainability appraisal in its environmental report. To my mind this conclusion is clear and is considerably above the low

³ Environmental Assessment of Plan and Programme Regulations 2004, Reg 12(2)(b) and PPG ID 11-018.

threshold required before an alternative can be disregarded⁴.

16. The other option in this category was of only permitting basements which lie entirely beneath the footprint of a property, and I agree with the Council that this also is not a reasonable alternative for the reasons it gave.
17. Both of these options were only clearly explained by the Council at a relatively late stage in the Policy's preparation, just prior to the submission of the Policy for examination. SA is an iterative process – it is not a single document – which has to take place before a plan's adoption. Deficiencies, as here, can be identified during that process, even as late as the examination stage, and corrected using the proper procedures. I mentioned at the hearings the Cogent court case⁵ concerning a SA correction, initiated by one of my colleagues during an examination, which upheld this principle.
18. One of the tests in the Cogent court case was whether a correction to a SA was an exercise to justify a pre-determined strategy. I do not believe that to be the situation here. As I have said, I accept that both options are not reasonable alternatives, and so they should not be included in the SA and thus they do not affect the Policy's SA outcome. The Council were late in saying this, but it has now been stated. This is not a "bolt-on" to justify an already chosen preference. The SA has been corrected; it has been the subject of appropriate public consultation; and I have considered the responses - none of which have caused me to alter my views. Overall, I conclude that SA, with the Correcting Addition, has been properly and correctly carried out.

Economic impact

19. It was said that the economic impact of the Policy's proposals had not been properly considered. The role of SA is to promote sustainable development by assessing the extent to which the emerging plan will help to achieve relevant environmental, economic and social objectives (PPG ID 11-001). A SA should consider the plan's wider economic and social effects in addition to its potential environmental impacts (PPG ID 11-007), focussing on those which are likely to be significant (PPG ID 11-009). It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the Local Plan (PPG ID 11-009).
20. Objective 3 of the SA is "*to support a diverse and vibrant local economy to foster sustainable economic growth*", and this was assessed in Table 5 of BAS21. The SA noted that the Policy could potentially have a negative impact on this objective, but that this was likely to be small because extensions under the Policy would add significantly to the value of properties, thereby offsetting any slight negative impact on the economy during the construction stage (paragraph 4.7). It also noted that unsuitable extensions could harm the attractive built form of the Borough and so in turn could have a negative impact on the economy (paragraph 4.16). The SA considered that the benefits associated with restricting basement development or influencing how they are built outweighed any negative impact (paragraph 5.2).

⁴ Chalfont St Peter Parish Council and Chiltern District Council and Holy Cross Sisters Trustees Inc [2014] EWCA Civ 1393

⁵ Cogent Land LLP v Rochford District Council & Anor [2012] EWHC 2542 (Admin)

21. The economic assessment was appropriate for this development management policy which affects only one particular type of development, and it focussed on the significant factors. It was proportionate, adequate and relevant (NPPF 158). To have attempted to quantify the economic effects in more detail using monetary amounts (perhaps as a cost/benefit analysis) would not have been appropriate or proportionate, and would have taken more resources than would be justified to assess a policy of this type. It would not necessarily have brought any more clarity to the SA process as its figures would have been open to interpretation and vigorous dispute.

Public consultation

22. I am satisfied that public consultation requirements have been properly and adequately carried out as legally required. I have been very impressed with the Council's commitment to public consultation and the lengths that councillors and officers have gone to in order to ensure that all parties have been kept informed of the evolving Policy through a variety of means, including public meetings with specific interest groups. The many and varied responses from members of the public, interest groups, developers and other parties have been well researched and articulate. In my experience, the responses are exceptional in their number and quality given that the Policy deals only with basement development.

Overall conclusions

23. My examination of the compliance of the Policy with the legal requirements is summarised in the table below. I conclude that the Policy meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Policy is identified within the LDS of April 2014 which sets out an expected adoption date of November 2014. Although the Policy's subject matter is compliant with the LDS, some minor delays in the timetable for its examination and adoption have occurred. However, I am satisfied that there is no significant conflict with the LDS or that any third party interests have been prejudiced.
Statement of Community Involvement (SCI) and relevant regulations	The SCI, "Involving People in Planning", was adopted in December 2013. This replaced an earlier version of the SCI adopted in December 2007. Consultation on the Policy, which started in 2012, has been compliant with both the current and earlier version of the SCI and the regulations.
Sustainability Appraisal	SA has been carried out and has been made satisfactory by a correcting addition which has been the subject of public consultation.
Appropriate Assessment (AA)	A Habitats Regulations AA Screening Report submitted with the Policy sets out why AA is not necessary (BAS22), and I agree.
National Policy	The Policy complies with national policy except where indicated, and modifications are

	recommended.
The London Plan	The Greater London Authority on behalf of the Mayor of London has confirmed that the Review is in general conformity with the London Plan, and I am satisfied that is the case.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS "The Future of Our Community".
Public Sector Equality Duty (PSED)	The Policy complies with the Duty.
2004 Act (as amended) and 2012 LP Regulations.	The Policy complies with the Act and the Local Planning Regulations.

Assessment of Soundness

Preamble

24. The LDS sets out a number of Partial Reviews to the Core Strategy which was adopted in 2010. This particular Policy is a review of the policies in the Core Strategy concerning basement developments, particularly those in Chapter 34, to which it adds a new policy (CL7) and reasoned justification, drawing on an existing Supplementary Planning Document (SPD) on the subject.
25. The NPPF is clear that development plans can be partially reviewed (paragraph 153), and the consolidation and updating exercise that this, and the other partial reviews, represent is an entirely appropriate, proportionate and pragmatic approach to take. Bringing all the policies together relating to basement developments in one place will assist everyone - local residents, interest groups, developers and decision makers. It is a user-friendly approach which creates a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency (NPPF paragraph 17, first bullet).
26. The Policy is expressed in a mixture of negative and positive terms. The negative statements are largely aimed at safeguarding residents' living conditions and the high quality places, buildings and environments of the Borough, and they do not affect the overall positive nature of the Policy. I have commented already on the exemplary public consultation undertaken by the Council, notwithstanding that some interest groups wished for more (mainly to try to convince the Council of their particular point of view). Overall, I am satisfied that the Policy has been positively prepared as required by the NPPF (paragraph 182).
27. Some concern was expressed that the Policy did not take sufficient account of sustainable development and the Borough's objectively assessed development needs. I have dealt with the economic assessment aspect already, and I deal in the main issues with development need.
28. On sustainable development, the Plan has to be read as a whole, and I note that the Miscellaneous Matters partial review (which has been found sound) adds paragraph 1.1.6 to the Core Strategy which makes it clear that the

policies follow the presumption in favour of development, and that planning applications that accord with the development plan will be approved without delay, unless material considerations indicate otherwise. I am, therefore, satisfied in general that the Policy will contribute positively to attaining sustainable development (NPPF paragraph 153) and the Borough's assessed development needs, subject to the detailed consideration of its restrictive requirements in the main issues below.

29. It was said that the term 'basement' was not adequately defined in the Policy at 34.3.46. However, I think that it is a common sense and short definition; that it is clear to everyone what is meant; and that it is capable of consistent interpretation. The Council told me that it has not had a problem with that definition over the last 10 years (although its current SPD's title is 'subterranean' development). Any disputes will be rare and are unlikely to be resolved by a longer and more complicated definition (which itself could create problems of interpretation). Therefore, I consider that the definition is sound.
30. The term "rules" in 34.4.47 to describe policy CL7's various clauses implies the application of inflexible or immutable laws, when policy CL7 is there to "guide" the determination of applications (Regulation 5 of the 2102 Local Planning Regulations). The NPPF uses the term "requirements" throughout, and so in order to be legally compliant, effective and consistent with national policy the **MM1** modification makes that change from "rules" to "requirements".

Main Issues

31. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified ten main issues upon which the soundness of the Plan depends.

Issue 1 – The need or necessity (justification) for the Policy

32. There is no requirement for there to be a proven 'need' for a particular policy in a local plan. Under the 2012 Local Planning Regulations the Council is able to prepare development management policies which are intended to guide the determination of applications for planning permission [Reg 5(1)(a)(iv)]. Securing high quality design and a good standard of amenity for existing and future occupants is a core planning principle (NPPF 17), as are supporting a low carbon future and conserving and enhancing the natural environment.
33. The Council has identified increasing numbers of basement planning applications – 46 in 2001, 182 in 2010 and 450 in 2013⁶, with 320 applications received by mid-September 2014 at the time of the hearings – which it says indicates the need for a more restrictive Policy, particularly as there is a high concentration of such development within residential areas. The Council believes that basement development in the Borough has a continual impact which is equivalent to a permanent, noisy, traffic generating industry in a residential street. It is also concerned that the Borough has the highest residential property values in the country; a very high household density, the highest in England and Wales (6,478 households per square kilometre compared with an average figure in England and Wales of 155); a tightly built

⁶ BAS27

environment; and that around 70% to 75% of the Borough is within designated conservation areas which exacerbate those impacts. I was told by the Council that basement developments have "*been the single greatest cause of concern our residents have expressed in living memory.*"⁷

34. I accept that the above factors mean that basement developments in the Borough can be afforded more easily and can have a greater adverse impact than elsewhere in most parts of England and Wales. I am satisfied that the Council has identified deep concerns amongst its local residents about alleged adverse impacts on living conditions from noise, vibration, dirt, and dust from construction and from associated traffic, in addition to concerns about impacts on drainage, on appearance and landscape, on structural stability, and on historic buildings.
35. Therefore, I consider that there is justification for the Council to set out a new, comprehensive Policy for basement developments, even though its Core Strategy was adopted as recently as 2010 and it has an adopted SPD on the subject.
36. Some said that basement development could be dealt with either through existing policies or other legislation, and so the Policy was unnecessary. I do not agree that other existing planning policies adequately deal with the subject for the reasons above. On other legislation, most of the tools available to the Council or to others are reactive or retrospective in their application. For instance, environmental health and highway remedies only apply once a problem has been identified and require evidence and legal action. Their resolution can be time consuming and costly, as can disagreements and disputes under the Party Wall etc Act 1986.
37. I conclude that there are good and compelling justifications for a positive, planned approach for basement developments in the Borough which do not rely upon out-of-date existing planning policies or retrospective legal resolution. Government policy in the NPPF requires the Council to decide upon its approach to sustainable development by providing clear guidance to applicants and developers about what is likely to be permitted. An up-to-date comprehensive policy will enable necessary sustainable basement developments to be constructed in an appropriate manner from the outset.

Issue 2 – Whether the restrictions on the extent and scale of basement developments is justified by the evidence, effective and consistent with national policy

38. The 2004 Act at s38(6) says that "*regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts*". Permitted development basements are a general planning permission granted not by the Council but by Parliament. Because they have already been "*determined*" by Parliament this Policy does not legally apply to them. So the statement at paragraph 34.3.46 that the Policy "*applies to all new basement development*" is clear, effective, and sound.
39. The Policy (CL7) restricts basement developments to not exceeding a

⁷ RBKC/ED/7

maximum of 50% of each garden or open part of the site (criterion a.); to not having more than one storey (criterion b.); and not to add further floors where there is an extant or implemented permission or one built through permitted development rights (criterion c.).

40. None of these restrictions are to achieve basements of "*the highest standard and quality*" as it states in the preamble to CL7. They are, in fact, requirements to mitigate perceived adverse impacts of such development. Therefore, in order to be clear and thus effective I agree with the Council's modification (**MM2**) to delete the CL7 preamble and to simply state that what follows in the various criteria are the Policy's requirements.

50% maximum of each garden/open area - CL7 a.

41. The Council's present SPD sets a basement coverage limit of no more than 85% of the garden space. The Policy in its initial consultation stages considered a maximum of 75% coverage before settling on 50% coverage. The Council said that this was a political decision in the light of the circumstances I have previously described in Issue 1. It also said that its evidence showed that the SPD's 85% limit was failing to prevent unacceptable harm to living conditions and the environment.
42. The Council mentioned a similar 50% criterion in policy DM D2 of the London Borough of Merton's Sites and Policies Plan adopted in July 2014⁸. The Inspector's report did not specifically examine that part of the policy and so does not assist me here. In any event, I have to examine whether the Policy for this Borough is both relevant and appropriate. What is found sound in Merton, or in this Borough, may not be a sound policy for other local planning authority areas (PPG ID 12-015).
43. The main reasons for the 50% limit were said to be to protect "*the character and function of gardens, allow flexibility in planting and natural surface water drainage*" with "*biodiversity benefits*"⁹. At the hearings the Council pointed to the two other reasons cited in the Policy's reasoned justification. Firstly, the lessening of adverse living condition impacts (e.g. from noise, vibration and dust), both from the development itself and from construction traffic (lessening the latter by reducing excavation volume and spoil removal). And secondly, to achieve a reduction in carbon dioxide emissions. The Council said that whilst carbon footprint reduction was a reason for the Policy's size restrictions, it was not the key or only justification.
44. On carbon dioxide emissions, the Council said that its evidence (primarily in BAS 38) had been produced by qualified experts on the subject in accordance with a standardised methodology aligned with the best practice recommended by international standards such as British Standard ISO 21931-1, section 5. It said that the basement schemes used for its calculations were a representative sample of such projects submitted to the Council. And that the results were in line with comparisons with benchmark studies from peer-reviewed journals. This was strongly contested by a number of representors who produced detailed studies from other equally qualified experts. It was clear at the

⁸ RBKC/ED/13

⁹ Paragraph 6.12 of BAS18.

hearings that these sets of experts could not agree either on the figures for individual representative basement schemes or on the carbon footprint conclusions for basement developments in general. In other words, there was no technical consensus between the experts on carbon footprint (dioxide emission) impacts or on the conclusions to be reached from the various studies and calculations.

45. From all the evidence, both written and verbal, I conclude that basement developments produce more embodied and construction carbon dioxide emissions during a 60-year lifecycle than similar above-ground extensions. However, this is greatly mitigated over time by better insulation, mainly because basement extensions are below ground and have a large thermal mass. I was told that in general over the long-term basement extension carbon dioxide emissions are better than those of similar above-ground buildings, but this was vigorously disputed by the Council.
46. Thus, the evidence is not conclusive that basement extensions should be restricted in size in order to help secure a lower impact on climate change due to their carbon footprint or emissions when this is considered over the life of the building. However, the Council's results were in line with benchmark studies from peer-reviewed journals and so I consider its conclusions to be the more likely, but this is by no means certain or proven and so I cannot rely upon it. Because of the conflicting expert evidence, I do not give this factor great weight in assessing this issue. It is not a robust justification on its own for the proposed size limitations in the Policy.
47. Living condition impacts from construction occur from working below, close to and on the party wall with underpinning works, piling, and lowering of foundations; mechanical or manual excavation often using an electrically-powered conveyer to remove spoil to a skip or lorry; taking away the spoil in haulage or skip lorries; concrete deliveries, pouring and vibratory compaction; steelwork erection; and de-watering pumps during concreting. Front gardens are often used for storage (surrounded by hoardings), and spoil is taken over them into skips or lorries parked on the road, usually taking up on-street car parking spaces.
48. The Council's study on construction traffic for basements¹⁰ showed that in general larger basements have a greater rate of excavation than smaller ones, that there is a good correlation between the volume of excavation and the total number of lorry movements, and that larger basements take longer to build. However, there is no clear correlation between the time taken to excavate the basement and the overall size or volume of the basement. In general, the Council said that the type of traffic required for basement construction tends to use larger vehicles, with heavier loads and in greater numbers than that required for above-ground construction¹¹. There are more concrete, reinforcement and formwork vehicle movements for basements than for above-ground extensions. I accept that within the immediate local area to a basement development these traffic movements have a high adverse impact on residents' living conditions.

¹⁰ BAS28

¹¹ BAS05/12

49. There was a great deal of other evidence about the impact on living conditions, some of which I have already referred to, such as the rising number of applications for basement developments, their location mainly in residential areas, and the high population density in the Borough.
50. In addition, the Council had carried out a number of surveys of basement extension owners, neighbouring properties to those extensions, and residents' associations¹². It is always possible to criticise such surveys, and causes for concern often cited (as here) are low rates of response and misleading or leading questions. In these cases I thought that the response rates were reasonable, and the questions relevant and clear. At the very least, these particular surveys gave a clear indication that basement developments have had a negative impact on the living conditions of many people.
51. This negative impact is also clear from the number of complaints to the Council on environmental health issues (noise and vibration from the works and from construction traffic) to its Noise and Nuisance Team between 2010 and 2013¹³. Some of the complaints were shown not to be related to basement extensions, or at least could not be distinguished from the impacts of above-ground works being constructed at the same time, or showed that most people did not suffer from a particular questioned impact. Nevertheless, it is clear that there have been many complaints received by the Council in recent years about adverse noise and vibration arising from basement works and associated construction traffic.
52. The large number of representations made on the submission Policy, and the significant number of residents associations and individuals who asked to speak to me at the hearings, further indicates widespread public concern arising from past adverse impacts. I saw on my site visits around the Borough (which included two examples of basement extensions under construction) that basement development works are not an uncommon sight in residential areas, often with two or more in the same street. I was told that basements take considerable time to construct – over many months in most cases and sometimes for up to two years. I am convinced by the evidence that there is presently an unacceptable impact on surrounding residents' living conditions.
53. The Council said that the green character and appearance of the Borough was adversely affected by the hard surfacing of areas over and around basement developments and the consequent loss of trees, shrubs and grass. Its main evidence was a series of 'before and after' aerial photographs of different sites or areas of the Borough from 1999, 2004, 2008, 2012 and 2013¹⁴, and some selected photographs of individual developments¹⁵. The former do not show every basement constructed over that period, but the Council said that a "*wide selection*" was included, and I agree that to be the case. The aerial photographs were criticised on various counts, not least that a significant proportion of the photographs showed basements under construction (over a quarter of them), that the 2013 photographs were taken in winter, and that planning policies were different over the selected time period.

¹² BAS62, BAS63, BAS64

¹³ BAS29

¹⁴ BAS33

¹⁵ BAS34

54. For all their acknowledged limitations, the large number of aerial photographs produced by the Council do show some general trends for gardens with basements underneath them which I consider to be valid. They are: that gardens with basements underneath generally appear artificial and sterile compared to the informal leafy character that was present before – they have more hard landscaping; and that gardens with basements below generally seem to have reduced planting compared to surrounding gardens. I do not dispute that some basement gardens are exemplars of landscape design that appear green and lush, and that it is technically possible to plant large trees and shrubs on top of and around basements. The problem is that this does not appear to be generally or widely done, and so the green character of the gardens in the Borough is being adversely altered over the long term.
55. The Council's photographs show that the visual impact of the 85% limit in the adopted SPD still mostly results in the appearance that the whole garden has been excavated. This is because the remaining 15% area is often a narrow strip along the side(s) or bottom of the garden.
56. I agree with the Council that "*urban green spaces, such as domestic gardens, are becoming increasingly important refuges for native biodiversity, and play an important part in maintaining biodiversity in urban areas*"¹⁶. I accept that some of the reduction found in the biodiversity of gardens in the London area is due to a shift in garden design choices and management (i.e. fashion). Even so, as I have said, the Council's aerial photographs show a tendency for basement landscaping to contain more hard areas than previously existed, despite the Council's best efforts. I agree with the Council that a precautionary approach would be wise – that is, caution should be exercised about removing options that could offer significant biodiversity benefits in terms of resilience and adaptability, especially if it degrades the continuity of grouped areas of gardens. But as the biodiversity impact of this 'tendency' has not been quantified I do not give it great weight in considering this issue. It is not a robust justification on its own for the proposed size limitations in the Policy.
57. The Council's evidence on surface water¹⁷ was based on it being able to drain away either naturally or with a sustainable drainage system (known as a SuDS) when a basement is constructed. I agree with the Council that every effort should be made not to alter the groundwater regime. Therefore, I have some concerns about using soakaways (which are small and concentrated) to deal with surface water as they may not enable the ground to receive, absorb and distribute water in a way that does not alter the overall balance of surrounding groundwater. In general, soakaways are not suitable where infiltrating water may adversely affect existing drainage patterns.
58. Even so, I found the Council's evidence on this point, and the consequential "rule of thumb" percentages of garden areas that should remain open, to be simplistic and unconvincing given the varying geological and gradient conditions in the area within which gravels and sands lie and the generally impervious nature of clay (dependant on fissuring). Each case, as several parties said, needs to be considered on its merits so far as surface and ground

¹⁶ BAS36, paragraph 2.2

¹⁷ BAS30

water is concerned. I do not, therefore, place great weight on the Council's evidence. It is not a robust justification on its own for the proposed size limitations in the Policy.

59. Bringing all these factors together, I consider that there is adequate evidence that shows that the adopted SPD policy of requiring 85% of the garden area to remain open does not sufficiently reduce the harm to residents' living conditions or the harm to the character and appearance of the area. The concerns about carbon emissions, biodiversity and, to a lesser extent, surface water drainage add a little weight to those two key adverse impacts.
60. I agree with the Council that a reduction to requiring 75% of the garden area to remain open would be unlikely to rectify this ever-growing, cumulative impact as application numbers rise. It then becomes a matter of planning judgement and balance as to what percentage a size restriction should be set at to mitigate these impacts. There was no evidence to show that the Policy's 50% restriction would not acceptably mitigate the harm. Nor was there evidence to show conclusively that it was too restrictive and would prevent sustainable development that should properly be permitted. My judgement is that the Council has probably got the right balance in the Policy in setting the percentage size for basement developments, but that it must be adequately monitored and reviewed in order to have the flexibility to adapt to rapid change, because change has been a feature of basement developments in the Borough over recent years (NPPF paragraph 14).
61. The Policy's Monitoring Indicators in BAS10 therefore need to be more precise and clear, particularly in the setting out of targets for appeal decisions and applications that are to be used to monitor the indicators. In addition, given that the balance can quickly change over time and so the percentage restriction could become ineffective and/or unjustified by future evidence, the Council should undertake a full review of the whole Policy within five years of its adoption, which is consistent with national policy in PPG ID 12-008. Main modifications **MM3** and **MM4** to achieve these necessary features will thus make the Policy sound. Given the PPG ID 12-008 advice, I have altered MM3 from that consulted upon so as to repeat the five years review period in the Policy itself, and not just in its monitoring section.
62. There is an exception in CL7 a. for large sites. The Council explained to me that it was not intended in its reasoned justification at paragraph 34.3.57 to limit the exception to just commercial sites or the entire or substantial part of an urban block. The Council said that these were just examples and that the remainder of the paragraph explained how large site exceptions would be assessed. Unfortunately, this is not how the paragraph reads and I agree with many representors who said it was unclear, too restrictive and thus not effective. I therefore recommend the Council's suggested modification **MM5** to alter the paragraph so that it says what was actually intended.
63. I conclude that CL7 a. is justified, effective and consistent with national policy, provided that the main modifications set out above are made.

Not more than one storey – CL7 b.

64. There were 6 planning applications in 2008 for basement developments of

more than one storey, and the numbers have risen (especially over the last two years) to 38 planning applications in 2013¹⁸.

65. My assessment of the justifying evidence for basement developments not having more than one storey is similar to that for CL7 a. above, but only the impact on living conditions and carbon emissions are relevant to justify this part of the Policy.
66. As I have said, the Council's study on construction traffic¹⁹ showed that in general larger basements have a greater rate of excavation than smaller ones, that there is a good correlation between the volume of excavation and the total number of lorry movements, and that larger basements take longer to build. This means that adverse impacts on local residents' living conditions are greater and more intense with basements of more than one storey, both from the extra amounts of construction work and traffic and/or from the length of time that residents have to endure such impacts. These impacts are sufficiently serious on their own to justify this aspect of the Policy.
67. Despite the disagreements between the parties over the conflicting expert evidence that I received on carbon emissions, my conclusion is that basements of more than one storey contain more embodied and construction carbon than one storey basements, and this means that they have a bigger carbon emission impact than a similar above-ground extension. This is, therefore, a factor slightly weighing against basements of more than one storey, although, as before, it is not a key factor or one which on its own would justify this policy restriction.
68. It is a matter of planning judgement as to whether this restriction should be imposed, balancing the identified living conditions harm against the legitimate demand for investment in the housing stock of the Borough and for homes and businesses to be extended. It is the expressed depth of residents' concern about the impact of more than one storey basement construction, together with the Council's compelling evidence about its past impacts, which has convinced me that the Policy presently sets the right balance.
69. There should be specific, targeted monitoring and a review 5 years after adoption in order to comply with paragraph 14 of the NPPF, and I have previously recommended this modification. Given this, I conclude that CL7 b. is justified, effective and consistent with national policy.

No other additional floors – CL7 c.

70. Given my findings above on CL7 a. and b., it logically follows that additional basement floors which might follow on after an extant or implemented permission or after the implementation of permitted development rights should be prevented. Otherwise CL7 b. would not be effective or reasonable or fair. For the same reasons, this criterion should also be subject to the recommended monitoring and review modifications in order to be sound.
71. The Council said that this would not apply where a property already had an

¹⁸ BAS27

¹⁹ BAS28

existing basement before the need for planning permission came into effect with the 1947 Planning Act. The Council said this would be "fair", which I take also to mean "reasonable" and "proportionate", and that it would be consistent with national planning legislation in Development Orders when restrictions on development rights are introduced. I agree. Unfortunately, the Policy at paragraph 34.3.58 does not say this and so it is not sound. Modification **MM6** rectifies this unsoundness. I have slightly altered the Council's wording to make clear that both originally constructed and later added basements must have taken place before 1 July 1948.

72. I conclude that with the above modification, CL7 c. is justified, effective and consistent with national policy.

Issue 3 – Whether the restriction on excavation under a listed building in CL7 f. is justified by the evidence, effective and consistent with national policy

73. The adopted Core Strategy already contains this restriction in policy CL2 g. i. There was no compelling evidence that this existing policy had had any adverse effects, particularly in preventing sustainable development which should have been allowed. There are some 4,000 listed buildings in the Borough, and many of them are 19th century terraced properties which are very similar in plan form and in their hierarchy of floor levels.
74. The Policy seeks to continue the adopted policy because of the potential harm to a listed building's special character and architectural integrity, to its structural stability, to its internal and external fabric, and to its setting and character. The NPPF in paragraph 126 says that local planning authorities should set out positive strategies in local plans for listed buildings. So the matter should not just be left to existing legislation. The NPPF also advises that great weight should be given to an asset's conservation (paragraph 132).
75. I accept that basement developments are usually major construction works which are invasive in terms of dust and vibration. Such works are not conducive to the preservation of delicate internal and external features. And I accept the Council's points about the relatively homogenous nature of much of its listed building stock, the large numbers of them, and the serious danger of harm to their significance over time from this type of development.
76. The Council said that there were some vaults under listed buildings which were not "pavement" vaults, and that the Policy should apply to these as well as they are equally important historically and architecturally. I agree. Therefore, modification **MM7** deletes the word "pavement" from this part of the Policy.
77. Again, it is a matter of planning judgement and balance. Given that this policy has been in existence for some years with no harmful effects and my conclusions above, I conclude that the Council has the right planning balance. This aspect of the policy is sound with the above modification as it is justified, effective and consistent with national policy.

Issue 4 – Whether the criteria to assess harm to heritage assets in CL7 e. and CL7 g. are consistent with national policy and effective

78. The Council told me it intended to apply national policy when assessing harm to the significance of heritage assets arising from basement proposals. No other more stringent or different means of assessment was intended in the Policy. However, this is not clear as the shortened summary of national policy could be interpreted as being stricter than that set out in the NPPF. Therefore, the policy is not effective or consistent with national policy.
79. CL7 e. and CL7 g. essentially deal with the same thing – the assessment of harm to the significance of heritage assets. Moreover, the adopted Core Strategy already contains a policy dealing with heritage assets (CL3) which the Council is bringing up-to-date in another review. Thus there is unnecessary duplication of heritage asset policies. Therefore, all that is needed in this Policy to make it sound is one simple criterion which clearly states that the Council will apply national policies when assessing harm to the significance of heritage assets, and I recommend dual modification **MM8** accordingly.

Issue 5 – Whether the criteria for light wells and railings in CL7 h. and i. are justified by the evidence and effective

80. I saw on my site visits a number of light wells or railings that had been successfully and harmoniously introduced into the front or sides of properties where they were not an established and positive feature as required in this part of the Policy. Some light wells were hidden behind vegetation or were inconspicuously set into the ground and covered with translucent glass. Some railings fitted well into the street scene despite no other examples being present.
81. So the evidence I saw does not convince me that this policy requirement is justified and thus it is not sound. The Policy criterion and its reasoned justification at 34.3.66 are recommended to be modified (**MM9**) so that such features can be permitted where they do not seriously harm the character and appearance of the locality. With this dual modification I conclude that the CL7 h. criterion would be sound.
82. Concern was expressed about light pollution (a factor mentioned in the NPPF at paragraph 125) from light wells and roof lights and the adverse impact this could have on surrounding gardens. The Council said that the Policy's reasoned justification mentioned this factor at paragraph 34.3.66, but accepted that it was not actually stated in CL7 i. In order to ensure this Policy criterion is effective and so sound, modification **MM10** alters CL7 i. to include light pollution as a factor in assessing a proposal's impact on character and appearance.

Issue 6 – Whether the criteria for SuDS and one metre of permeable soil in CL7 j. are justified and effective

83. I have commented previously on the advantages of dealing with surface water by a SuDS rather than a soakaway (paragraph 57) and so I agree that this part of CL7 j. is sound, subject to a modification (**MM11**) ensuring that any SuDS should be retained thereafter in order to ensure its effectiveness. The

Council suggested that the Policy should be modified to say "*maintained in perpetuity*" but I am not convinced that wording is sufficiently precise to be enforceable or that it is justified by evidence. If the Council can overcome these problems in the future, then the Policy would not prevent it imposing an appropriate maintenance condition.

84. Any surface water above a basement will drain off it and the area may, in any event, be hard surfaced. Therefore any soil above a basement does not have to be permeable. However, the best evidence I have been shown is that a one metre depth of top soil above a basement allows for the opportunity for significant and substantial landscaping to take place, and that it has been implemented by the Council with no problems since the adoption of its SPD. It is a necessary partial mitigation of the harmful character and appearance impact I have mentioned. Modification **MM12** deals with these necessary changes to make this part of CL7 j. justified and effective and thus sound.

Issue 7 – Whether the requirement for new and existing buildings with basements to have a high level performance in energy, waste and water conservation in CL7 k. is justified by the evidence

85. I have already concluded on the carbon footprint / emission issue (paragraph 44 onwards) that the expert evidence given to me was conflicting and not certain. I considered the Council's evidence to be more likely to be correct, but I could not rely upon it. I cannot, therefore, place any weight on the Council's evidence to justify the requirement in CL7 k.
86. The Policy criterion requirement is similar to one which already exists in the adopted Core Strategy (policy CE1 c.). However, I am examining the present policy in the light of current evidence to justify it and so I cannot rely on what has been done in the past. That current evidence needs to be conclusive because CL7 k. places a significant, difficult to implement, and costly restriction by requiring existing buildings to be upgraded in order to mitigate the alleged carbon dioxide emissions from the construction of a proposed basement extension. Other detailed criticisms were made of this criterion, but I do not need to go into them given the lack of justification underlying this part of the Policy, which is fundamental to its soundness.
87. I conclude that CL7 k. to mitigate carbon dioxide emissions in respect of existing buildings is not justified by the evidence and so it is not sound. The existing adopted Core Strategy CE1 policy and Building Regulations already deal with appropriate climate change standards in a new building where a basement extension is also proposed. Given this, the Policy and its reasoned justification should be modified to delete this entire criterion in order to make it sound, and this is recommended in **MM13**. Given my conclusion here and earlier on this subject, paragraph 34.3.54 in the Plan is also not justified and so is also recommended for deletion in the same modification. This was not consulted upon, but it flows naturally from, and as a consequence of, the consulted deletion of CL7 k. and paragraph 34.3.68.
88. It logically follows that I agree that the Policy should supersede adopted Core Strategy policy CE1 c. because it also is no longer justified by the evidence, and so this part of the Plan [required by Reg 8(5)] is sound and should remain.

Issue 8 – Whether the remaining criteria in CL7 are justified, effective and consistent with national policy

89. The reasoned justification at paragraph 34.3.59 deals with the protection and retention of trees (CL7 d.) and its footnote adds that tunnelling underneath the root protection area should not be undertaken. This is not what BS 5837 2012 says, and the Council were unable to provide me with any evidence to justify the prohibition. The Policy is therefore not sound as the footnote's prohibition is not justified, so modification **MM14** removes the relevant words to make this part of the Policy and CL7 d. sound.
90. Highway matters are dealt with in CL7 l., but it would prevent any basement development where any harm, no matter how small, was identified. This would make this aspect of the policy ineffective by being too restrictive. It is also not justified by any evidence and not consistent with national policy. The Council told me that the criterion was meant to apply where there was unacceptable adverse harm, and it suggested a modification to achieve that to make the Policy criterion sound (**MM15**), which I recommend for that reason.
91. Structural stability in CL7 n. refers to the "application" building, but that may be taken to mean the basement proposal itself. I was told that what was meant was the "existing" building on the site. Given this, the Policy criterion is unclear without modification **MM16** which makes it sound by stating clearly what is actually intended.
92. I conclude that the other criteria in CL7 (m. and o.) are justified by the evidence, effective and consistent with national policy.

Issue 9 – Is the Policy legally compliant and effective by delegating detail to a future Supplementary Planning Document (SPD)?

93. Although the Policy does not say so, the Council told me that the detail of method statements for construction and traffic management will be included in a new SPD (which is mentioned in footnote 22) and not in the Policy itself. These method statements flow from the Policy's requirements to limit harm to the living conditions of local residents and to highway safety. They are commonly used nationally as a means of achieving the mitigation of this harm. In the context of this Policy and the evidence presented to me, I consider their inclusion in this Policy to be sound.
94. Many representors were concerned that the broad outlines of the detail which will go into the SPD should be specified in the Policy. I agree, because the 2012 Local Planning Regulations strictly define in Regulation 5 what can and cannot be included in a SPD, and because the Policy must be clear in order to be effective.
95. As I have explained, the evidence shows that basement construction in residential areas is slower and generally more extensive in scope than above-ground extensions. Therefore, there is good justification for method statements for construction operations and for traffic management to mitigate their effects on the living conditions of the general public and neighbouring residents, as the Council suggested. If the future SPD deals with matters which do not provide advice or guidance on the Policy (PPG ID 12-028) and/or

which do not legally comply with the 2012 Regulations then that could be legally challenged. This is not a matter for my examination of this Policy, and nor is how the Council would operate any future SPD in its development management function.

96. Modifications **MM17** and **MM18** to the reasoned justification therefore set out the key matters for these method statements that the SPD will deal with in implementing the Policy's requirements. I have altered the Council's wording in MM17 to be consistent with the guidance function of the SPD mentioned in MM18. These modifications provide a reasonable amount of certainty, whilst allowing flexibility in terms of providing detailed guidance and allowing future updating as appropriate. These modifications make the Policy legally compliant and effective, and provide the necessary "policy hooks" for the SPD.
97. I conclude on this issue that dealing with the detail of method statements in a new SPD is legally compliant and effective, provided that the main modifications set out above are made.

Issue 10 – Other considerations and alternative policy wordings

98. Many representors mentioned possible alternative wordings to relax or to tighten the Policy's various requirements in its criteria and reasoned justification. Some suggested different forms of criteria-based alternative wordings of the Policy. My conclusions in Issue 1 that there are compelling justifications for a positive, planned approach for basement developments in the Borough mean that some of the suggested general, vague and imprecise alternative criteria wordings for a policy would not be sound.
99. But the key point here is that my task is to examine the soundness and legal compliance of the Policy as submitted. I have concluded that it is sound with the recommended main modifications, and that it is legally compliant. So I do not need to explore or examine these alternative wordings.
100. Some representors mentioned specific circumstances or exceptions that they wished to be written into the Policy such as small garden areas, already paved gardens, business circumstances, specific listed building types, demolition, or basements under communal buildings such as flats etc. But I agree with the Council that these are relatively unique situations which will have to be judged on their own merits. There will always be situations not covered by the Policy, or there will be specific circumstances where there may be justification for departing from it. The Policy cannot, and should not, cover each and every possible development eventuality or circumstance as otherwise it will become too complex and too complicated to understand, too inflexible in its application, and so not effective and thus not sound. It is always open to the decision-maker (whether it is the Council or the Secretary of State) to grant planning permission for a development not in accordance with the Policy, or even not mentioned in it, where there are material considerations which indicate that that is the right course of action.
101. Some of the criteria require judgements to be exercised by decision-makers, and this was criticised as being too vague. But this does not, however, mean that decisions will be arbitrary or inconsistent, provided that there is a clear framework for decisions, as there is in this Policy.

Overall Conclusion and Recommendation

- 102. The Policy has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.**
- 103. The Council has requested that I recommend main modifications to make the Policy sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Partial Review of the Core Strategy: Basements Planning Policy local plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.**

David Vickery

Inspector

This report is accompanied by the Appendix containing the Main Modifications