



City of Westminster

City Plan Sub-Committee Report

Date:	15th April 2015
Classification:	General Release
Title:	City Plan Revisions for Basements, Special Policy Areas, Vacant Building Credit and Mixed Use
Report of:	Director of Policy, Performance and Communications
Cabinet Member Portfolio:	Built Environment
Wards Affected:	All
City for All	The revisions for basements, Special Policy Areas and mixed use are key City for All priorities
Key Decision:	No
Financial Summary:	Met by existing budgets
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1. Executive Summary

- 1.1 The Council has decided to undertake seven separate revisions to the City Plan: Strategic Policies. This report outlines the key policy considerations for moving forward with four of these revisions, for basements, the Special Policy Areas and Policies Map, mixed use, and the vacant building credit revisions to the City Plan. Views are sought from the Sub-Committee on the policy directions proposed in a number of key areas.

2. Recommendation

- 2.1 That members review the summary below with a view to giving early feedback on policy direction, taking into account the very tight timescales that apply.

3. Summary of policy changes and questions for sub-committee: Basements Revision

- 3.1 Central to the basements revision is the insertion of a new policy which applies to residential buildings (or those originally built for residential purposes). It is intended to apply principally to residential basement extensions; to new buildings incorporating a basement, especially where these are on a constrained site; and to non-residential development which adjoins residential properties. The draft policy sets out:

- criteria to limit the size and depth of basement extensions (to the extent that these are not already permitted development);
- to impose certain requirements intended to mitigate some of the impacts associated with basements;
- a formalised approach to protecting elements of existing character, or heritage value; and
- requirements regarding technical details to accompany the application.

The emerging revised Code of Construction Practice (which, once formally approved, will replace the Code published on in April 2008), is being extended to cover a larger number of sites. This presents an opportunity for the Council to enable mitigation of impacts associated with basements – typically longer construction periods, which in turn result in more noise and vibration; lorry movements; and waste. There are pros and cons of the proposed linkage to the Code; these are discussed below.

- 3.2 The proposed draft policy sets the following limits on basement development:

- *A limit on extent of the garden area which can be excavated to form a basement – a limit of 50% of the garden, or 4 metres (whichever is the greater). The 50% figure has been adopted by the Royal Borough of Kensington and Chelsea (RBKC) and this received significant support at consultation stage. The 4 metre*

figure arises from permitted development rights, which in some circumstances allows development under 4m or more of the garden. Owing to the very variable sizes of properties and gardens in Westminster, this could potentially allow for a fairly significant area of basement development, in areas with large gardens such as St John's Wood, but it does allow for a significant portion of the garden to remain undeveloped.

- *A limit of a single storey (2.7m) being excavated, unless exceptional circumstances apply. The intention is that exceptional circumstances would include larger development sites with a high level of accessibility – e.g. where plant, equipment and vehicles can access and be contained on the site, and where no heritage asset with sensitive historic fabric is affected. This differs from the RBKC policy, which defines exceptional circumstances simply as large sites, but it is considered easier to justify on the basis of impact of vehicular traffic on the surrounding area. It is also envisaged that an additional allowance could be made for proposals including a swimming pool which may require rather deeper excavation.*
- *New or extended basement areas under the adjacent highway must retain a minimum vertical depth below the footway or carriageway of 900mm, and may not encroach more than 1.8 metres under any part of the adjacent highway. This is to ensure adequate space for provision and maintenance of items of cables, pipes, sewers, etc. and highway infrastructure such as street furniture.*

The point of limiting extent and depth of basements is to minimise the risks associated with basement development as well as negative environmental impacts, through less excavation and associated soil being removed.

Within this section, views are particularly sought on the following:

- Are the additional criteria for “exceptional circumstances” in relation to the limit on the single storey appropriate?
- Should an additional allowance be made for swimming pools?

Requirements to mitigate impacts

3.3 Additionally the policy imposes certain requirements intended to mitigate other impacts relating to surface water flooding, the amenity and ecological value of loss of soft landscaping, and environmental impacts of construction as follows:

- *The policy requires soft landscaping, permeable surfacing and at least 1m of soil depth plus a 200mm drainage layer, and a sufficient volume of soil on top of any basement construction. While this requirement is likely to result in a slightly deeper excavation than would otherwise be the case, it will ensure an appropriate depth of soil is maintained to support the re-landscaping of the garden, and in particular*

will enable established mature planting to continue to grow, as well as maintaining adequate surface water drainage capacity within the site boundary. RBKC's evidence base included an aerial survey of gardens before and after basement construction which was given significant weight at their examination. The policy also requires no loss of trees considered to be of townscape, ecological or amenity value.

- *The policy requires incorporation of SUDS* or other measures recommended as appropriate in the structural statement or flood risk assessment.
- It further *requires natural ventilation wherever possible*, and especially where habitable accommodation is provided. This provides for better designed accommodation; where natural ventilation is not possible, systems should include heat recovery to ensure pre-warmed incoming air supply, for maximum energy efficiency.

Design and Heritage

- 3.4 In terms of design impacts the policy requires sensitive design and siting to protect the character and appearance of the existing building, garden setting and surrounding area, as well as protection of heritage assets, especially archaeological deposits.

Technical requirements

- 3.5 The policy also deals with more technical aspects of design by requiring applicants to demonstrate that their design is appropriate for the specific site ground conditions, drainage and water-environment, requiring additionally that applicants submit a detailed structural methodology statement and appropriate certification by a suitably qualified engineer to:

- ensure structural stability of the existing building, nearby buildings and other infrastructure;
- confirm the proposal will not increase flood risk on site or beyond – a separate site-specific flood risk requirement may be required; and
- demonstrate that the proposal will be implemented to minimise the impact on the amenity of others including highway users.

The structural methodology statement must be prepared and signed off by a Chartered Civil Engineer (MICE) or Structural Engineer (MI Struct. E), and where appropriate, by a geo-hydrologist. It would not be appropriate for the Council itself to approve this report, particularly given the questions of assumed responsibility that this might imply should there be any issue. Rather it is required to demonstrate that the basement can be implemented without undue risk. The structural integrity of the development (and that of adjoining properties) during the construction is not controlled by the planning system, but through Building Regulations and the Party Wall Act. A recent report in The

Guardian¹ highlighted the structural safety of basement development in central London.

Code of Construction Practice

- 3.6 It is envisaged that an expanded Code of Construction Practice (CoCP) will be key to minimising and mitigating impacts of basement applications. The timely revision of the CoCP provides the opportunity to insert specific requirements relating to basement developments and a cross reference in policy to ensure a 'hook' and a mechanism to require an appropriate s106 obligation. Basement construction currently results in very high numbers of complaints from residents about the construction impacts in particular, and in addition to measures proposed in this policy imposing limits on depth and extent of basements, the CoCP provides an opportunity to secure controls over the construction impacts phase, by requiring applicants to provide a construction management plan which demonstrates adherence to the relevant parts of the council's Code of Construction Practice. The pros and cons of linking this directly with the basements policy are discussed below.
- 3.7 The advantages of this approach are that the expanded CoCP is envisaged as a single 'service' which has the potential to be self-funding, by moving to a 'polluter-pays' principle with the costs involved met through s106 contributions. It is intended these will meet the costs of regular inspections against the Construction Management Plan, monitoring associated with different elements such as noise; vibration; vehicle and highways impacts; licenses etc. This approach is expected to result in cost savings for the Council, significantly reducing our current revenue spend responding to noise and other complaints. It is envisaged that basement development will be a particular category of development that is required to adhere to the CoCP. This represents an extension of the current approach which is applied selectively to some of the largest schemes that operate. It also enables the cumulative impact to be considered and addressed, so far as possible requiring sites to work together to coordinate deliveries, noisy working period etc., and thereby minimising impacts on neighbours.
- 3.8 The disadvantages of this approach are that use of s106 fees in this way in relation to smaller developments – such as basements – could mean it takes longer to agree the s106 element, risking determinations going over the 8 week limit in some cases. There is also likely to be a resourcing implication for DPDU, that will require a growth bid, equivalent to three additional staff members.

At present the proposal is for the CoCP to apply to all *residential* basements outside of the Core CAZ, and to basements that are proximate to *neighbouring residential* uses within the Core CAZ. Complaints have recently arisen from media businesses however about impacts of basement excavation.

¹ <http://gu.com/p/475v2/sbl>

Within this section, views are particularly sought on the following:

- Should there be a mechanism for the independent verification of the construction methodology statement commissioned by the Council, at the applicant's expense, in cases where the Council considers this is necessary?
- Do Members have views on what 'proximate' should mean with regard to residential properties in the Core CAZ? With significant mixed use sites within the Core CAZ, and increasing residential, there are challenges in determining whether an application site is 'proximate' to residential accommodation. Should the Code of Construction Practice therefore apply to all residential basements including those in Core CAZ?
- The Council has been made aware of significant impacts on media/sound recording studios in Soho, that their businesses are suffering as a result of noise and vibrations associated with basement excavation. Would a stricter approach to basements in that vicinity be justified, and do Members have views on how far should it go given the international importance of this sector to Soho?

4. Special Policy Area Revision

- 4.1 The Mayfair and St James's consultation booklet published in December 2013² contained draft policy proposals for three Special Policy Areas (SPAs). Two of these - Savile Row (bespoke tailoring) and St James's (private members clubs, art galleries, niche retail) - are already adopted in Westminster's City Plan. The new proposed SPA is for a wider part of Mayfair, seeking to protect art galleries and antique dealing (Map attached as Appendix A).
- 4.2 The other three adopted SPAs are proposed to be carried through from the Unitary Development Plan and also included in Westminster's City Plan: East Marylebone (Wholesale Showrooms), Harley Street (Medical Facilities) and Portland Place (Institutional Facilities).
- 4.3 The impact of recent changes permitted development rights and the potential threat to specialist clusters makes the importance of the SPAs in Westminster more relevant than ever.

Within this section, views are particularly sought on the following:

- Should there be an overarching scene-setting section at the start of each SPA policy essentially setting out the character, function and key purpose of the SPA? This would be similar to the "strategic" part of the London Plan policies, which are then followed by the detailed policies. It would enable a focus on the overall

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http://transact.westminster.gov.uk/docstores/publications_store/Mayfair%20&%20StJames%20FINAL%20for%20publication.pdf

objectives for the area when reaching a decision on planning applications, rather than detailed policies that may not adequately cover all scenarios.

- There have been significant changes to the General Permitted Development Order (GDPO) which will come into force on the 15th April. Should consideration be given to pursuing an Article 4 Direction to remove permitted development (PD) rights in any/all of the Special Policy Areas? There are costs involved in this as it requires a planning application to be made for what would have been PD which does not have a fee.
- Vacancy periods have been included within these policies to ensure that they are not viable in the preferred use before their loss will be allowed. However, such policies may result in deliberate vacancy for a period, which is damaging to an area. Do Members have a view on whether a requirement for vacancy should form part of the marketing requirements?
- What role does residential use have within these SPAs? Should any be exempt from the mixed use policy that requires residential from commercial development? Occupiers in both Mayfair art galleries and Savile Row tailors have expressed a preference for office accommodation rather than residential which they consider has a 'deadening' effect. Similar concerns have been expressed over the flexibility for conversion to residential use in the Harley Street SPA given that residential values outperform those for medical uses. Are any of the SPAs inappropriate for further residential development?

4.4 New Policy - Mayfair SPA

The vast majority of responses to the December 2013 consultation were from art galleries and members of the public, in support of the policies and general approach of the Council. The passion that people have for the area in terms of its history, character and function, international standing and attraction is reflected in some of the quotes, while also stressing the economic and social value of art galleries and other specialist clusters. Land owners broadly objected to the detail of the proposals and question the effectiveness of SPAs in general, and in terms of the new Mayfair SPA proposed a smaller SPA around Cork Street only as an alternative to the Council's proposals.

- Do Members support the introduction of the proposed Mayfair SPA, centred around Cork Street and protecting the internationally important cluster of art galleries in the area? Are there any views on the boundary of the SPA?

4.5 St James's SPA

The proposed policy for St James's SPA is to protect and enhance private members' clubs, art galleries and niche retail. It remains substantially unchanged from that consulted on in the December 2013 booklet, apart from the potential inclusion of an overarching vision as discussed in the section above dealing with the Mayfair SPA.

4.6 Savile Row SPA

The proposed policy aims to protect and enhance bespoke tailoring in Savile Row. Main revisions in the proposed policy since the December 2013 version include:

- Policy on Savile Row has had a section dealing with public realm removed. This is because of restrictions on the use of s106 agreements across a number of developments to help fund infrastructure under the CIL Regulations which have recently come into force.
- Requirements for residential floorspace as part of proposals increasing the amount of commercial floorspace by 200sqm will be removed to reflect the changes in the Mixed Use Policy.
- Overall, the policy will remain unchanged to direct bespoke developments at basement and ground levels. Land Use swaps will only be acceptable if they meet a certain criteria. Development will need to demonstrate a positive impact on the character and function.

4.7 East Marylebone SPA

The East Marylebone SPA is situated north of Oxford Street and has protected Wholesale Showrooms for a number of years. The UDP boundary of the SPA was reduced after a survey in 2007/2008 showed a decline in showrooms operating within the area. This resulted in the current adopted SPA in the current Westminster's City Plan.

Within the recent consultation responses, concerns have been raised regarding the continued relevance of the policy in the area. The council will need to decide if the East Marylebone SPA is viable to protect wholesale showrooms in the future. Or should the length of vacancy period be reduced to ensure the economic stability of the area?

- Do Members have views on the protection of wholesale showrooms in East Marylebone?
- What contribution do wholesale showrooms bring to this part of the city? Could other uses be acceptable as an alternative? e.g. affordable business space, specific creative industries or similar floorspace.

4.8 Harley Street and Portland Place SPA's

The objectives for the policies for these SPA's remain fairly unchanged from those in adopted policy. However concerns have been expressed about the flexibility for conversion to residential use in the Harley Street SPA (as residential values outperform those for medical uses) and that consideration should be given to giving greater emphasis to the importance of strengthening the area as a centre of medical excellence.

- Is the current approach the right one for these SPAs? What is the role of residential in these areas and is the right balance achieved?

5. Mixed Use Revision

5.1 This revision responds to the significant loss of office floorspace seen over the past 4 years and in the development pipeline³, largely due to the difference in values between residential and office uses. This is an issue for the whole Central Activities Zone, which has been recognised by the Mayor in recent alterations to the London Plan. Whilst an interim position will come into play in Westminster on the 1st September, a new policy is needed urgently to underpin this. The policy approach is based on the same principles as the interim position, namely that the balance of commercial to residential floorspace has tipped too far in favour of residential across Westminster's Central Activities Zone (CAZ). This is causing several damaging impacts which, if nothing is done to assuage the current trend, have the potential to worsen:

- damage to the global competitiveness of the most significant business centre in the UK and indeed the world. The current trend of losses is undermining the strategic function of the CAZ in favour of housing, which could be delivered in more appropriate locations across London and the UK;
- under-supply of office floorspace in the West End, contributing to further increases in office rents, thereby harming business activity and the economy; and
- increasing 'residentialisation' of commercial areas, eroding their character by reducing employment densities and increasing expectations of residential amenity, impacting on legitimate business activities.

The City Council must meet the need for housing and commercial floorspace, and these must be balanced against each other. Currently the City Council is delivering housing but losing offices. Westminster is the engine room of the national economy and we should do everything in our power to ensure that remains firmly open for business.

5.2 This revision is a more fundamental change to the local plan as it involves amendment to the adopted strategic approach including housing as the priority land use, the premise that housing is acceptable in all parts of London, and the relative importance of housing *vis-a-vis* commercial and other central London activities in the Central Activities Zone (CAZ). The key proposed changes to text other than policy are:

- redescribing the national and international importance of the business agglomeration

³ 167, 000sqm of office space have been lost, representing an annual average loss of 41,756sqm. A further 158,000sqm of office space loss will be felt from schemes currently under construction. The current pipeline represents 254,000sqm of office losses not yet started, with only 71,000sqm forecast gains to offset this.

- making specific reference to some of the key sectors accommodated within CAZ such as creative industries (including the film and television production houses); food, theatre and cinema; hotels etc.
- updating figures around the economy including GVA and jobs, and the figures relating to the loss of office floorspace
- Amending the approach to state that whilst housing is acceptable in all areas of Westminster, it will not necessarily be appropriate on all sites. It places emphasis on achieving an appropriate balance between uses and ensuring that new housing in the CAZ is not detrimental to the strategic functions of the CAZ.

Within this section, views are particularly sought on the following:

- Should the focus be on CAZ in its entirety or just Core CAZ?
- Are Members satisfied that removing the blanket priority for housing across Westminster and establishing commercial and other non-residential activity in Core CAZ is the appropriate policy response? This would ensure that the strategic functions of this area take priority but would necessarily result in fewer homes being delivered (see also section 5.5 below).
- What are the key clusters and sectors accommodated in this area (in addition to those set out above) that should be drawn out to capture the national and international role of this area?

5.3 In redefining the importance of the business agglomeration in Core CAZ, it is also important to review the language around the West End Stress Area and the evening and night-time economy (ENTE) within the area. This brings significant economic and reputational benefits to London, and is one of the largest agglomerations in the country. This is therefore part of the commercial activity and as such should be acknowledged. However, this work also needs to compliment the review of the Council's Statement of Licensing Policy and work of the West End Partnership. It is difficult to make partial changes to the relationship between the ENTE and residential communities as the balance, including expectations, needs to be carefully articulated and managed.

Within this section, views are particularly sought on the following:

- Do Members have views on the extent to which the ENTE should be included at this stage as part of the overall strength of Core CAZ and the West End in particular?

5.4 The Mixed Use and Office to Residential Conversion booklet (published in December 2014)⁴ included a number of policy approaches which could be taken forward, either together or in part. These are:

- amending the current mixed use policy to only require residential from commercial floorspace where the development uplift exceeds 30%. Between 30% and 50% uplift, developers can choose how they want to provide the required residential floorspace including on-site, off-site, via a credit or land-use swap or by a payment in lieu.
- Requiring proposals that result in the replacement of office floorspace with residential floorspace (either through a change of use or redevelopment) to also include an equivalent amount of commercial or social/community floorspace. Again, developers can choose how they want to provide the required residential floorspace including on-site provision; off-site; via a credit or land-use swap; or by a payment in lieu.
- Accepting the replacement of office floorspace with residential floorspace (either through a change of use or redevelopment) only where the building is being retained and was originally built as residential, or where there are exceptional circumstances such that the benefits of the proposal including the mix of type, size and tenure of housing outweigh the contribution made by the office floorspace, particularly to meeting business and employment needs.

Within this section, views are particularly sought on the following:

- Are there views on any of these three approaches and which (some or all) should be carried through into the policy approach?

5.5 It is noted that a significant amount of housing in recent years has been delivered from office losses⁵. The recently published London Plan alterations sets a challenging target of 1,078 homes p.a. for Westminster. However, the National Planning Policy Framework also requires us to meet the objectively assessed need for business floorspace; for offices this is estimated at about 68,000sqm of new office floorspace p.a. or six times the housing target at an average of 100sqm per home. This is in the context of current office losses rather than gains. Arguably therefore, whilst this may affect our ability to meet our housing target, if we do not stem office losses there will be a significantly greater impact on meeting needs for business floorspace.

Within this section, views are particularly sought on the following:

- What is the appropriate balance between meeting needs for housing and commercial floorspace?

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http://transact.westminster.gov.uk/docstores/publications_store/Mixed%20Use%20and%20Office%20to%20Residential%20Conversion.pdf

⁵ The completed schemes (below left) over the past 4 years has delivered 1,278 homes. Schemes currently under construction will create a further 2,220 homes. Permitted schemes that have not been started permit 1,624 homes.

6. Vacant Building Credit Revision

- 6.1 In November 2014, ministers changed national planning policy guidance regarding the use of s106 agreements and, in particular, their use to secure affordable housing. The new guidance requires that when planning authorities work out how much affordable housing a development should provide, they should allow a “discount” for the floorspace of any vacant building which is to be demolished or brought back into use. This could have very significant impacts on delivery of affordable housing in an already densely-developed area like Westminster.
- 6.2 In common with other London boroughs, the City Council is developing an interim approach to application of the credit to the particular circumstances in the City. For the longer term, a formal development plan policy will be required to enable the council to respond to these changes (or future changes of the same kind) so that it can continue to deliver its policies on affordable housing provision through the planning system while supporting viable development in the unique circumstances that apply in Westminster.

7. Financial Implications

- 7.1 There are no specific financial implications as a direct result of the recommendations in this report. Work on developing policies is met from existing budgets and public consultation will be undertaken electronically, thereby, minimising printing costs, etc. Any other costs associated with public consultation will be met from existing budgets.
- 7.2 However, financial implications do arise from some of the policy approaches proposed. The use of Article 4 Directions (paragraph 4.3) would require the Council to undertake the processing of planning applications without the ability to secure a fee. Likewise, whilst there is an ambition to introduce the Code of Construction Practice on a cost-neutral basis there are likely to be elements of the Development Planning Service which may not be able to be charged for such as the negotiation of the legal agreement. Finally, the proposed approach to the vacant building credit is intended to mitigate potential effects on the Council’s affordable housing fund.

8. Legal Implications

The revisions are part of the plan development process as set out in the Town and Country Planning Act 1990 (as amended), The Planning and Compulsory Purchase Act (2004) and the Town and Country Planning (Local Planning)(England) Regulations 2012.

9. Consultation

The next stage for these revisions is the formal (Regulation 19) consultation on the proposed draft that the City Council intends submit to the Secretary of State.

Consultations will be sent to everyone on the database, statutory consultees and all Ward Members.

If you have any questions about this report, or wish to inspect one of the background papers, please contact:

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APPENDIX A

