



Cabinet Member Report

City of Westminster

Decision Maker:	Cabinet Member for Built Environment
Date:	5 th July 2016
Classification:	General Release
Title:	Adoption of Basement Revision and Mixed Use Revision to Westminster's City Plan
Wards Affected:	All
City for All:	This decision enables progress towards the City for All commitments to produce a new basements policy and protect offices.
Key Decision:	Yes
Financial Summary:	The Basement Revision relies on a new fee-based service through the Council's forthcoming Code of Construction Practice. Beyond this, the resourcing of the submission of the two revisions to the Secretary of State and funding of the examinations will be met from existing budgets.
Report of:	Director, Policy, Performance and Communication.

1. Executive Summary

The full Westminster's City Plan will be the local plan for Westminster and in due course will replace all Unitary Development Plan (UDP) policies. The Basement Revision and Mixed Use Revision to Westminster's City Plan are two topic-based revisions which form part of this wider programme of local plan development. However, further revisions are still required to fully replace the UDP.

Following examination of these two revisions by an independent inspector appointed by the Secretary of State, including public hearings held in March 2016, the inspector has now issued his report. He finds both of the revisions 'sound' subject to some modifications. These modifications were all

recommended by the council. Following adoption, these revisions will be incorporated into Westminster's City Plan and become part of the statutory local plan for Westminster.

2. Recommendations

1. The Cabinet Member for the Built Environment note the contents of the Inspector's reports (Appendix 1 for Basements and 2 for Mixed Use)
2. That the Publication Draft Basement Revision (attached as Appendix 3) and Publication Draft Mixed Use Revision (Appendix 4) with the changes requested by the Inspector (Appendix 5 for Basements and 6 for Mixed Use) be agreed by the Cabinet Member for the Built Environment, and recommended to Full Council on 13th July 2016 for adoption.
3. That authority is given by the Cabinet Member for the Built Environment to the Director, Policy, Performance and Communications to undertake all necessary procedural steps in relation to the adoption of the Basement Revision and Mixed Use Revision to Westminster's City Plan, including the following:-
 - (a) to take the steps required by the Town and Country Planning (Local Development) (England) Regulations 2004, as amended (Regulation 26), including issuing an adoption statement and a notice giving notice of it by local advertisement,
 - (b) to send the adopted Westminster's City Plan (with the Basement and Mixed Use Revisions included) and the adoption statement to the Secretary of State as required by Regulation 36 of the Town and Country Planning (Local Development) (England) Regulations 2004, as amended.
4. To delegate to the Director, Policy, Performance and Communications, power to make such minor modifications to the Basements and Mixed Use revisions and accompanying documents as are necessary, where these do not affect the meaning of the said revisions, in consultation with the Cabinet Member.

3. Reasons for Decision

To enable the council to manage basement development by adopting its Basements Revision to the City Plan pursuant to Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

To enable the council to ensure the economic growth and success of Westminster's core commercial areas within the Central Activities Zone by adopting its Mixed Use Revision to the City Plan pursuant to Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

4. Background, including Policy Context

- 4.1 The Localism Act 2011 reformed the process for the preparation of local plans to replace Unitary Development Plans. Westminster has an adopted local plan, Westminster's City Plan, but this still requires a number of revisions to include the more detailed City Management policies, and to update the plan in relation to new circumstances. The Basement Revision and Mixed Use Revision were progressed to address specific urgent policy areas.
- 4.2 Basements have the potential to cause significant disruption to neighbours, and have other harmful impacts on the highway, drainage, biodiversity, character and heritage. The revision will ensure appropriate management of basement developments to avoid, minimise and mitigate these impacts.
- 4.3 The Mixed Use revision was necessary as Westminster has seen a change in the way markets operate, with the loss of significant amounts of office floorspace particularly from the Core CAZ. This loss was predominantly in favour of residential, reducing the availability of workspace, driving up rents, and changing the balance of these areas in favour of residential rather than commercial. If left unchecked, these losses would have been harmful to the UK's largest and most important business agglomeration over the longer term. The policy approach incentivises business development by reducing the obligation to require residential alongside commercial development. It also protects against office losses to residential, but with appropriate flexibility to enable these schemes to still go ahead when that is justified and appropriate.
- 4.4 The Mixed Use revision also introduces new targets:
- the new housing target in the revised London Plan adopted in 2014
 - a new commercial floorspace target
 - a new office floorspace target.

The adoption of the revised housing target means that, from adoption, Westminster's City Plan will be up to date in relation to strategic housing policy, which is crucial to meet the national government's requirements.

- 4.5 For both revisions, there have been a number of stages as follows:
- An informal consultation workshop on the basement policy on 13th July 2009.
 - Policy options consultation on the basement policy between 24th January and 18th March 2011.
 - Informal consultation on the basement policy between 18th November 2011 and 23rd March 2012.
 - Informal consultation was carried out from 10th October to 29th November 2013 for the Basement Revision and 15th December 2014 to 27th February 2015 for the Mixed Use Revision through the publication of a booklet
 - Initial notification of and consultation on the intention to revise Westminster's City Plan (Regulation 18) from 19th March to 1st May 2015
 - Formal pre-submission consultation (Regulation 19) from 16th July until the 9th September 2012, accompanied by a Consultation Statement,

- Supporting Information, and Integrated Impact Assessment (including the Sustainability Appraisal and Strategic Environmental Assessment).
- Submission of the revisions to the Secretary of State on the 30th November 2015 for independent examination.
 - The examination was held, including public hearings on the 8th and 9th March 2016. A number of main modifications to both revisions were recommended by the council both before and during the hearings to improve the revisions. These were consulted on between 20th April and 5th June 2016.
 - The inspector issued his reports on the 28th June 2016.
- 4.6 This report recommends adoption of the Basement Revision and Mixed Use Revision by Full Council on 13th July 2016 in accordance with the Council's constitution and Statutory Instrument 2000/2853 Local Authorities (Functions & Responsibilities) (England) Regulations 2000, which state that adoption of a development plan document can only be undertaken by the Full Council. A copy of the Publication Draft Revisions are attached at Appendices 3 and 4, the further changes requested by the Inspector are attached in Appendices 5 and 6. A copy of the new adopted Westminster City Plan incorporating these revisions is attached at Appendix 8.

Examination of the Basements and Mixed Use Revisions

- 4.7 The Submission Draft Core Strategy was submitted to the Secretary of State on 30th November 2015 for public examination. For technical reasons, the inspector used the previous Publication draft as the starting point for the examination as this was the document which the public had been consulted on. The Submission draft (the document submitted to the Secretary of State) included a number of proposed changes to this document, some of which were more than minor amendments and therefore needed a further stage of consultation.
- 4.8 The purpose of the examination is for the independent inspector to consider whether or not the proposed revisions are 'sound'. Paragraph 182 of the National Planning Policy Framework (NPPF) sets out the four tests for soundness of a policy as follows:

“Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”

- 4.9 The examination included hearings held on the 8th and 9th March 2016 to consider issues identified by the Inspector. Representations were heard from officers, Westminster Property Association for the Mixed Use Revision (at the request of the inspector) and South East Bayswater Residents’ Association for the Basement Revision. The council requested a number of further changes to improve the revisions. Following the hearings, the inspector provided an initial report to which the council responded. The council then carried out a consultation on the main modifications to the plan from 20th April to 5th June 2016. All responses were forwarded to the inspector who then issued his final reports on 28th June 2016 (attached at Appendix 1 and 2) with the following overall conclusion and recommendation:

I conclude that with the main modifications set out in the Appendix the Mixed Use/Basement Revision to the Westminster City Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for the soundness in the National Planning Policy Framework.

- 4.10 Neighbourhood Plans for Westminster form part of the statutory development plan for Westminster. The council should avoid duplication where neighbourhood plans are in preparation (NPPF, paragraph 185). There are no neighbourhood plans in preparation for neighbourhood areas in Westminster that are sufficiently developed that these revisions could be considered to be duplication.

Application of Revisions and next steps

- 4.11 It is noted that significant sections of the emerging basement revision did not have unresolved objections (or unresolved objections additional restrictions). In accordance with paragraph 216 of the NPPF, the council has applied weight to sections of the policy since 1st November 2015 in accordance with a [Cabinet Member Statement](#). However, since 7th June 2016 the policy has been applied except the section relating to the Code of Construction Practice, as emerging policy with considerable weight again in accordance with paragraph 216 of the NPPF.
- 4.12 It is also noted that when determining applications involving office losses to residential, the council has considered its adopted policies to be out of date and from 1st September 2015 has determined them on the basis of delivering sustainable development in accordance with the NPPF. An original [Cabinet Member Statement](#) was issued setting out this position. However, after the draft policy was developed further, it was found that this approach was more restrictive than the emerging policy, and it was therefore revised to ensure the interim position does not go further than the emerging policy. This is set out in a second [Cabinet Member Statement](#). However, in accordance with paragraph 216 of the NPPF, the policy has been applied in full as emerging policy with considerable weight since 7th June 2016.

- 4.13 Following adoption, these two revisions will form part of Westminster's City Plan with full development plan status, as follows:

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

The revisions replace a number of policies in the Unitary Development Plan which can no longer be applied as part of the statutory development plan for Westminster. A list of these policies can be found in Appendix 5 of the new Westminster's City Plan as attached at Appendix 8.

5. Financial Implications

- 5.1 The Basement Revision relies on the use of the Council's forthcoming Code of Construction Practice (CoCP) in order to implement it. All basement development will be required to subscribe to this code. The main financial implications relate to the collection of fees under the Code of Construction Practice (CoCP) in order to implement it. All basement development will be required to comply with the code, and the initial signing up to the code will be secured by a planning condition. By signing up to the CoCP, basement developers will have agreed to a service of monitoring and inspections during the construction phase to address potential issues arising with neighbours. This service will be paid for by the developer, recharging on an hourly rate basis to cover the costs of service provision. There are therefore implications related to fees and service provision for the Council.
- 5.2 The CoCP and the proposed level of fees payable are set out in Appendix 1 of the Code itself. These are set on a cost recovery basis and include an estimated 'range' of fees associated with the different 'Levels' of the Code. This varies according to the number of monitoring visits required, and fees have been broken down to show how these are charged. A similar schedule of fees associated just with basement development were contained in the supporting information provided with the Basements Publication Draft City Plan Revision, consulted on from July – September 2015. The Council will be recovering the cost of the service through the fee charging mechanism.
- 5.3 Beyond this, there are limited financial implications, with continued progression of the revision and the costs associated with the examination to be met from existing budgets.
- 5.4 The Mixed Use Revision has limited financial implications, with continued progression of the revision and the costs associated with the examination to be met from existing budgets.

6. Legal Implications

- 6.1 The procedures set out in the Town and Country Planning (Local Planning)(England) Regulations 2012 have been carried out and the inspector is satisfied that all legal requirements have been met.

- 6.2 Section 26 of the Planning and Compulsory Purchase Act 2004 requires that revisions to development plan documents (DPDs) go through the same statutory procedures as new DPDs. These requirements have been carried out. The inspector has concluded that, subject to the modifications, the Basements Revision to Westminster's City Plan and Mixed Use Revision to Westminster's City Plan appended to this report (1 and 2) meet the 'soundness' tests as set out in paragraph 182 of the National Planning Policy Framework.
- 6.3 As noted in 5.1 above, application of the basement policy is contingent on the Council's Code of Construction Practice, a fee-based monitoring service. The "general power of competence" under Section 1 of the Localism Act 2011 provides local authorities with the power to "do anything that individuals generally may do". This effectively allows authorities to act in their own financial interest and, inter alia, to raise money by charging for discretionary services.
- 6.4 The power to charge under the Localism Act is however subject to several constraints, which are set out in s3 of the Act. In particular a local authority may not charge for services which it is already legally obliged to provide, or for which it already has a discretionary power to charge under an alternative piece of existing legislation. Any charges made under the Localism Act are also limited to the amount required to recover the cost of providing the service in question.
- 6.5 There are existing statutory powers to charge fees in respect of a number of the services to be provided under the Code; accordingly these will not be covered by the charges made under s1 of the Localism Act 2011.
- 6.6 Subject to compliance with the statutory guidance set out in the legal implications paragraph of this report the Director of Law is satisfied that the introduction of a fee-based mechanism in order to manage the construction impacts of basement development is legal and appropriate.

7. Staffing Implications

- 7.1 In relation to the Basement Revision, as noted in 5.1 above, the provision of a fee-based Code of Construction Practice Service has implications for staffing, currently to be met within the City Management and Communities Directorate. Some of the staffing will be met by existing staff who will have reduced workloads through reactive complaints arising from basement development as a result of the new pro-active service. Additional resource will be provided through the fees.

8. Business Plan Implications

- 8.1 Delivery of the Basements Revision is one of 6 commitments in City for All under 'Heritage', and is also a key measure in the Policy Performance and Communications Business Plan 2015-2017 and the Code of Construction Practice is within the City Management and Communities Business Plan 2015-2017.
- 8.2 Delivery of the Mixed Use Revision is crucial to limit office to residential conversions. This is one of the ways we will deliver our City for All commitment under 'Heritage' to take pride in our role as custodian and protect our heritage by managing places and spaces that can be enjoyed now and in the future . It is also a key measure in the Policy Performance and Communications Business Plan 2015-2017.

9. Consultation

- 9.1 All required and appropriate consultation has been carried out to the inspector's satisfaction.

10. Crime and Disorder Act 1998

- 10.1 This is considered in the Integrated Impact Assessment for each revision, which forms part of the supporting documentation. No issues arising.

11. Health and Safety Issues

- 11.1 This is considered in the Integrated Impact Assessment for each revision, which forms part of the supporting documentation. No issues arising.

12. Human Rights Act 1998

- 12.1 No issues arising.

13. Conclusions and Reasons for the Proposed Decision

- 13.1 This report asks the Cabinet Member to recommend the Basement Revision to Full Council on the 13th July 2016 for adoption. This will give full statutory weight to the revision and enable the Council to appropriately manage basement developments.
- 13.2 This report also asks the Cabinet Member to recommend the Mixed Use Revision to Full Council on the 13th July 2016 for adoption. This will give

full statutory weight to the revision. Adoption of this revision will secure economic growth, incentivise commercial development, and help ensure that Westminster's core commercial areas can continue to thrive and remain globally competitive.

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

**Basement Revision: Nina Miles on 020 7641 1081,
nmiles@westminster.gov.uk.**

**Mixed Use Revision: Lisa Fairmaner on 020 7641 4240,
lfairmaner@westminster.gov.uk.**

Appendices

1. Report on the Examination of the City of the Basement Revision to Westminster's City Plan, 13th July 2016, Planning Inspectorate.
2. Report on the Examination of the City of the Mixed Use Revision to Westminster's City Plan, 13th July 2016, Planning Inspectorate.
3. Publication Draft Basement Revision to Westminster's City Plan, July 2015
4. Publication Draft Mixed Use Revision to Westminster's City Plan, July 2015
5. Main Modifications Basement Revision to Westminster's City Plan, April 2016
6. Main Modifications Mixed Use Revision to Westminster's City Plan, April 2016
7. Adoption Statement giving notice by Regulation 36 of the Town & Country Planning (Local Planning)(England) Regulations 2012
8. Westminster's City Plan, July 2016

Background Papers

1. Basement Revision Submission Draft (Regulation 22) (November 2015)
2. Basements Consultation Booklet (October 2012)
3. Mixed Use Revision Submission Draft (Regulation 22) (November 2015)
4. Mixed Use and Office to Residential Consultation Booklet (December 2014)
5. Formal notification of intention to make a number of revisions to Westminster's City Plan (Regulation 18) (March 2015)
6. Statement of Community Involvement, June 2014
7. National Planning Policy Statement March 2012
8. Localism Act 2011
9. Planning and Compulsory Purchase Act 2004 (as amended)
10. Town & Country Planning Act 1990 (as amended)
11. Town & Country Planning (Local Planning)(England) Regulations 2012

For completion by the **Cabinet Member for Built Environment**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____
NAME: **Councillor Robert Davis, MBE, DL**

State nature of interest if any
.....
.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Adoption of Basement Revision and Mixed Use Revision to Westminster’s City Plan and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Built Environment

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.