



The Planning Inspectorate

Report to City of Westminster Council

by David Smith BA(Hons) DMS MRTPI

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

Date 28 June 2016

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION OF THE BASEMENT REVISION TO THE WESTMINSTER CITY PLAN

Document submitted for examination on 30 November 2015

Examination hearing held on 8 March 2016

File Ref: PINS/X5990/429/6

Abbreviations Used in this Report

BR	Basement Revision to the Westminster City Plan
HRA	Habitat Regulations Assessment
LDS	Local Development Scheme
MM	Main Modification
RBKC	Royal Borough of Kensington & Chelsea
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SPD	Supplementary Planning Document

Non-Technical Summary

This report concludes that the Basement Revision to the Westminster City Plan provides a suitable basis for considering proposals for basement development within the City provided modifications are made to it. Westminster City Council has specifically requested me to recommend any main modifications necessary to enable the plan to be adopted. All of the main modifications were proposed by the Council and I have recommended their inclusion after considering the representations from other parties. They can be summarised as changes required to make the Basement Revision effective.

Introduction

1. This report contains my assessment of the Basement Revision to the Westminster City Plan (BR) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first the duty to co-operate and then whether the Plan is sound and compliant with the legal requirements. The National Planning Policy Framework (NPPF) (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The Council produced a Submission Draft in November 2015 but for reasons previously given¹ and as confirmed throughout the process, the basis for my examination is the Publication Draft of July 2015.
3. In accordance with Section 20(7C) of the 2004 Act the Council has requested that I recommend any main modifications needed to ensure that the BR satisfies the requirements of the Act and is sound. As well as dealing with the main matters relating to soundness this report also explains why the Main Modifications are necessary. They are 4 of them but some are quite wide ranging. Because of this they are identified in bold (**MM**) on the first occasion they are mentioned but there are not repeated references thereafter. The Appendix contains the Main Modifications in full and all relate to matters that were discussed at the examination hearing. Following this, the Council prepared a schedule of proposed main modifications and produced an addendum to its integrated impact assessment. The schedule was the subject of public consultation between 20 April and 5 June 2016.

Assessment of Duty to Co-operate

4. Basement development is likely to have some wider cross-boundary consequences including construction traffic. The effects of noise, vibration, dust and air pollution could also be directly experienced by those living in neighbouring Boroughs. However, these manifestations do not have a significant impact on any other planning area. As a result the duty to co-operate imposed by section 33A of the 2004 Act is not engaged. Nevertheless because of the increasing trend for basement development across London the Council has liaised with other Boroughs and agencies in a constructive way².

Assessment of Soundness

Background

5. The growing propensity for subterranean extensions in Westminster has become apparent in recent years and was first raised as an issue during workshops in 2009. The number of applications has multiplied with particular clusters in St John's Wood, Mayfair, Knightsbridge and Belgravia. There is an average of around 150 applications per annum across the City. In response the Council adopted a Supplementary Planning Document (SPD) in 2014 which has operated well in giving guidance. However, this falls short of providing

¹ EX/02 Preliminary Matter 22 December 2015

² Section 6 of B/SD/2C

clear policies on what will or will not be permitted which is one of the functions of a Local Plan according to the NPPF.

6. The aim of the BR is to create a balance between permitting development of this kind in an area where room to expand is limited and, at the same time, controlling any adverse impacts that may arise. These include the short-term disruption to quality of life during the construction phase and the longer-term effects on heritage assets, garden character, structural stability and flood risk. The need for a clear indication to decision makers as to how to react to a proposal is especially important because of the high density of population in Westminster which is almost double that of London as a whole.

Main Issue

7. Taking account of all the representations, written evidence and the discussion that took place at the examination hearing there is one main issue upon which the soundness of the BR depends.

Whether the Basement Revision is justified and consistent with national policy and whether it will be effective

8. Policy CM28.1 relates to existing residential buildings or those originally built for residential purposes. Despite the passage of time historic records should allow the latter to be identified but the inclusion of all such buildings could have unintended consequences. Given that the objective is to control developments that might affect a garden or the amenity of neighbours then a qualification to this effect is necessary for effectiveness (**MM1**). By the same token non-residential basement development or new build incorporating basements could give rise to similar impacts. Consequently, for clarity the policy provisions should only apply if they adjoin residential properties and where there is the potential for an impact on that property. The detailed restrictions on size should not be imposed within the key commercial areas. This is in order not to preclude basement accommodation for plant or cycle and car parking. Such provision is often valuable in larger schemes to avoid dead frontage and to reduce roof top protrusions.
9. The policy introduces a general 'rule' that basements should not extend beneath more than 50% of the site curtilage. Setting a limit of this kind provides certainty to all and will assist the development management process. Nevertheless the meaning of "site curtilage" is not clear and it is necessary to replace this with the term "garden land" which is the site area excluding the footprint of the original building. Fixing the calculation to the "original building" as defined by the NPPF in this way will provide a firm baseline figure.
10. The 50% figure would enable existing properties to expand whilst limiting the amount of excavation and retaining a reasonable proportion of undeveloped land within the site. In some instances the policy would allow for developments to exceed 50% 'coverage' of rear gardens although this would be subject to the other policy provisos. This approach also gives flexibility and allows for a straightforward calculation. The selection of 50% rather than a higher or lower percentage aligns with the similar basement policy adopted in the neighbouring Royal Borough of Kensington & Chelsea (RBKC). Whilst not determinative this gives a degree of consistency as the issues to address in

both Boroughs are similar. At the end of the day it is reasonable to exercise planning judgement as to the suitability of a numerical restriction such as this. It is also telling that no alternative percentage has been put forward in representations. Overall this part of the policy is justified.

11. In certain parts of Westminster small courtyard gardens prevail as borne out by the Council's analysis³. In the scenario where the longest distance between the existing building and any site boundary is less than 8m a basement projection of 4m beyond the building will be allowed in that direction. This is justified so that such properties have the opportunity to meet their accommodation needs. However, clarity is required to confirm that the overall 50% provision does not apply in these circumstances but rather that on other sides of the building the basement should not extend beyond more than half of the remaining land. The recommended main modification reflects this.
12. The policy expects that a margin of undeveloped garden land is left around the site boundaries. This is justified in principle to avoid the potential sterilisation of extensive garden blocks if basements were to be developed side-by-side and would allow perimeter planting to flourish. It also ensures that ground water storage would be retained where gravel forms the underlying geology.
13. The supporting text indicates that a minimum distance of 0.5m to 2m is envisaged for the margin and that this could be reduced on smaller sites if flood risk can be adequately dealt with. However, for effectiveness and to assist future decision-makers the meaning of the word "proportionate" in the policy should be further explained by referring to the size of the garden as well as the scale of development.
14. This criterion allows for basements to extend under the public highway without the need for a margin. Fifty four applications have been received since 2011 for pavement vault excavation that would fall into this category. This exception is therefore justified but some revisions are required for clarity and to ensure that the restrictions on dimensions are in line with existing Unitary Development Plan Policy TRANS19.
15. Criterion 3. of Policy CM28.1 precludes the excavation of more than one storey below the lowest original floor level except in exceptional circumstances. Given the link between the size of basement, the amount of excavation and consequent lorry movements this limitation is justified in principle. Nevertheless, it would not be reasonable to prevent a further basement under an existing one because, subject to other issues, the impact in terms of disturbance by building works would be similar. The reference to "large sites" with high levels of accessibility is justified as an exception but more explanation is required in the Policy Application as to what is meant by this to ensure that this provision can be applied effectively (**MM2**).
16. The policy requires the incorporation of sustainable urban drainage measures to deal with surface water flooding and also stipulates that flood risk should not be increased or exacerbated. However, Thames Water highlights the vulnerability of basements to sewer flooding due to surcharging or other operational issues. Furthermore, in many cases, the invert level of the sewer

³ Section 2.2 of B/EB/01

will be above that of the basement. Because it does not deal fully with this issue the policy is not sound but it can be addressed by requiring the provision of a pumped device for all basement development. A 'non return valve' would be ineffective in directing the flow of sewerage away from the building. Whilst not all parts of the City are at equal risk during periods of heavy rainfall the unpleasantness and potential seriousness of any incidents warrants a precautionary approach in line with the adopted policy for RBKC.

17. One of the requirements of the policy is that a construction management plan will be provided. However, this should be adjusted to refer to a signed proforma of a document called Appendix A in order to align it with the Council's revised Code of Construction Practice.
18. Some representations say that the policy should go further in certain respects in limiting basement development. The RBKC policy indicates that excavation should not take place underneath a listed building. However, whether a building is listed generally makes little difference to the overall engineering challenge⁴. Policy CM28.1 also establishes that heritage assets should be protected and makes specific reference to not unbalancing the original hierarchy of spaces where this contributes to significance. In addition to any impact on historic fabric this is expected to be the main issue affecting listed buildings in Westminster. Criteria to this effect are set out in the SPD which have been supported at appeal⁵ and by Historic England.
19. Furthermore, whilst Westminster has a considerable concentration of listed buildings they are less homogenous than in RBKC. Not all of them are Georgian or Victorian houses where the consideration of hierarchy is likely to apply. Therefore, because of the range of types and ages of the listed building stock, an outright policy 'ban' on all basements below them is not justified. A more proportionate policy approach to listed buildings is warranted in the circumstances. Because there are provisions to protect the value of heritage assets this aspect of the BR is sound.
20. There are particular structural issues in terms of stability for the creation of basements to buildings on London clay⁶. However, there is a requirement for all applications to be accompanied by a detailed structural methodology statement. This would allow such matters to be addressed and applications to be refused if necessary. As such, it is appropriate for proposals to be considered on an individual, site specific basis rather than simply resisting all basements to terraced houses as suggested.
21. Given the professional duty of care of suitably qualified engineers and civil law remedies a system of self-certification is justified. Wider highway impacts are covered by the Code of Construction Practice and there is no need for further safeguards in the policy which is linked to the Code. This would allow instances of cumulative impact to be taken on board. Working hours are also covered in the Code which deals with all site operations. It indicates that noisy works may be prevented in residential areas at weekends but that the general start time is 0800 hours. This coincides with the industry standard and is a conventional start time to the working day.

⁴ Para 5.1.6 of B/EB/02

⁵ EX/09 *Basements Appeal Decision 2014*

⁶ Section 5.4 of B/EB/02

22. The monitoring framework is insufficiently specific and further indicators relating to design and quality of life are required to show how the policy is operating 'on the ground' and whether any issues are arising from the determination of applications and appeals. Subject to those changes it should provide adequate information to assess the success of the policy (**MM4**).
23. Further changes are also required in the interests of effectiveness and clarity including one to Policy S29 to link it to the Code of Construction Practice (**MM3**). It is not necessary to go through them all one-by-one given that they are not controversial. However, the structure of the Policy CM28.1 is not logical and so the Council propose to adjust this to give a clearer, stepped format. This is also recommended to achieve soundness. The Council is introducing an Article 4 Direction to withdraw permitted development rights for basement excavation or extensions but this is a separate matter.
24. Subject to the Main Modifications referred to above the BR is justified and consistent with national policy and will be effective. By setting a reasonable balance between control and permissiveness it will positively promote sustainable development in accordance with the NPPF.

Assessment of Legal Compliance

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

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The BR is identified in the approved LDS of March 2015 ⁷ and has been prepared in accordance with it.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in June 2014 ⁸ and consultation has been compliant with its requirements, including that on the proposed main modifications.
Sustainability Appraisal (SA)	SA has been carried out as part of the Integrated Impact Assessments ⁹ and is adequate.
Habitats Regulations Assessment (HRA)	The Appropriate Assessment Screening Report ¹⁰ indicates that an Appropriate Assessment is not necessary. Natural England has raised no objection.
National Policy	The BR complies with national policy except where indicated and main modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	The BR complies with the Act and the Regulations.

Overall Conclusion and Recommendation

26. The Plan 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 2004 Act. However, the Council has

⁷ BMU/EB/02

⁸ BMU/SD/2D

⁹ B/SD/2E

¹⁰ BMU/SD/03

requested that I recommend main modifications to make the Plan sound and capable of adoption. I conclude that with the Main Modifications set out in the Appendix the Basement Revision to the Westminster City 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 Smith

INSPECTOR

This report is accompanied by the Appendix containing the Main Modifications