SA/SEA Screening for Basements Supplementary Planning Document

December 2014
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1. Introduction

1.1 The Royal Borough of Kensington and Chelsea has prepared a draft planning policy CL7 on basements as part of the Partial Review of its Core Strategy adopted in 2010. The draft planning policy CL7 carries substantial weight as it has been found sound (subject to modifications) by a planning Inspector following examination. It is intended to adopt this policy at a Full Council meeting in January 2015.

1.2 The Inspector’s report can be found on the Council’s website by following this link http://www.rbkc.gov.uk/planningandbuildingcontrol/planningpolicy/developmentplan/corestrategypartialreview/inspectorsreport-partialrev.aspx. Policy CL7 (including the Inspector’s recommended modifications) can be found in Appendix 1 for ease of reference.

1.3 The Council is now starting to prepare a new Basements Supplementary Planning Document (SPD) to provide further guidance on the planning policy to be adopted imminently.

1.4 This Screening Report has been produced to establish whether the Basements SPD will require a Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) to be undertaken.

2. Relevant Guidance

2.1 The following documents have been used to assist with the screening –

- The national Planning Practice Guidance (PPG ID: 11) in relation to SEA/SA (DCLG, 2014).
3. Screening

Purpose of the Basements SPD

3.1 The proposed Basements SPD will provide more detailed guidance and advice on the emerging policy CL7: Basements when it is adopted. The purpose of the SPD will be to help applicants make successful planning applications.

3.2 The scope of the SPD was set out in the policy document itself. This was done through a ‘main modification’ as part of the examination. It is reproduced below –

“A Basements SPD will be adopted which will provide guidance for the information that will need to be submitted with basement applications, including the following:

- Accompanying (but not part of) a planning application, a construction method statement (CMS) will need to be submitted by an appropriately qualified civil or structural engineer, which will contain a report into the ground and hydrological conditions of the site including groundwater flow and explain how these matters will be dealt with during the construction of the site. The CMS will also demonstrate how the excavation, demolition and construction work (including temporary propping and other temporary works) can be carried out whilst safeguarding structural stability. The structural stability of the development itself is not controlled through the planning system but through Building Regulations. The Party Wall Act is more suited to dealing with damage related issues.

- Ways to minimise disturbance will also be included in the CMS. Detailed matters will include the drilling of boreholes; impact on trees; the sequence of temporary works to minimise the effect on neighbours; water flow; the consideration of related cumulative impacts; the link between a basement and the host property and the need for professional verification of certain works. Guidance relating to safeguarding amenity, that is noise, vibration and dust from construction works will also be included.

- A draft construction traffic management plan (CTMP) will be required to be submitted with the application and where planning permission is granted the Council will attach a condition requiring a full CTMP. The CTMP will address issues relating to highway safety, the free flow of traffic, noise associated with from construction vehicles and the availability of parking. Detailed matters will include vehicle stationing, manœuvring and routeing, parking suspensions and issues in relation to residential and workplace disturbance, arising from vehicle stationing, loading and unloading and movement. The CTMP should take into account and allow for other active or permitted construction works nearby (including those of utility companies)."
SA/SEA of Policy CL7

3.3 The Council carried out a full and formal SEA/SA to inform the entire original Core Strategy (including the original policies relating to Basements) which was adopted in December 2010. This included the production of an initial Scoping Report (2005) for Issues and Options, an Interim SA Report (2007) alongside Preferred Options, an SA Update report (2009) and the Final Sustainability Appraisal Report (2009).

3.4 SA/SEA of the emerging policy CL7 was undertaken throughout policy formulation. Following the initial scoping undertaken in April 2012, each stage of policy preparation (Regulation 18 (undertaken twice) and 19 (undertaken twice) was accompanied by an SA/SEA. A further Correcting Addition to SA/SEA of the submitted policy (RBKC, February 2014) was produced during the course of the examination. This was undertaken 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”. English Heritage, Natural England and the Environment Agency were consulted on every stage including on the Correcting Addition. Consultation was also undertaken with everyone on the Local Plan database (includes in excess of 1,500 consultees both specific and general).

3.5 The Planning Inspector’s report into the examination of the policy made detailed comments on the SA/SEA including the Correcting Addition produced during the examination in public. The Inspector stated “Overall, I conclude that SA, with the Correcting addition, has been properly and correctly carried out”.

Guidance in the national Planning Practice Guidance (PPG) (DCLG, 2014)

3.6 PPG ID 11-008 states (relevant text has been emphasised) “Supplementary planning documents do not require a sustainability appraisal but may in exceptional circumstances require a strategic environmental assessment if they are likely to have significant environmental effects that have not already been assessed during the preparation of the Local Plan. A strategic environmental assessment is unlikely to be required where a supplementary planning document deals only with a small area at a local level (see regulation 5(6) of the Environmental Assessment of Plans and Programmes Regulations 2004), unless it is considered that there are likely to be significant environmental effects. Before deciding whether significant environment effects are likely, the local planning authority should take into account the criteria specified in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 and consult the consultation bodies.”

3.7 It is clear from the PPG that a SA of the SPD is not required. In terms of the SEA, the Council has recently prepared a new policy which has been through a recent examination and found sound. An SA/SEA was an integral part of the preparation of
the basements policy and the Inspector’s conclusion on the SA/SEA is stated above in para 3.4.

3.8 Schedule 1 of the Environmental Assessment of Plans and Programmes Regulations 2004 is included in Appendix 2. In relation to Schedule 1 it is considered (in accordance with the PPG) the Basements SPD will be unlikely to result in significant environmental effects.

3.9 This is because the environmental effects of Policy CL7 were considered as part of the SA/SEA process. In the final SA/SEA of the policy (produced in February 2014) the various strands of the policy were found to generally have a positive correlation with SA objectives related to environment. These included but are not limited to biodiversity, climate change, flooding, air quality, traffic reduction and conservation of cultural heritage. It concluded at para 4.60 “In terms of the SEA/SA the policies are considered to be appropriate. These policies are considered to have a positive effect on the majority of the Council’s Sustainability Appraisal Objectives. Any conflicts with the SA objectives are only slight and are outweighed by the considerable benefits associated with the policy.” The SA/SEA of the policy did not indicate significant environmental effects.

3.10 Given the purpose of the SPD stated above (para 3.1) it is not considered that there are any “exceptional circumstances” which are likely to result in “significant environmental effects that have not already have been assessed during the preparation of the Local Plan”. Therefore the Council does not consider that a SEA of the proposed Basements SPD is likely to be required.

National Planning Policy Framework (NPPF) (DCLG, 2012)

3.11 Paragraph 165 of the NPPF states “A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors”. Paragraph 166 goes on to state “Assessments should be proportionate, and should not repeat policy assessment that has already been undertaken”.

3.12 It is clear that the SA/SEA process has been followed for Policy CL7 and there is no need to repeat this assessment for the SPD because it has already been undertaken.


3.13 In addition the Council has considered the guidance on Screening in A Practical Guide to the Strategic Environmental Assessment Directive (ODPM, 2005). Figure 2 of this document presented below provides a guide to the criteria for application of the Directive to plans and programmes.
Figure 2 – Application of the SEA Directive to plans and programmes

This diagram is intended as a guide to the criteria for application of the Directive to plans and programmes (PPs). It has no legal status.

1. Is the PP subject to preparation and/or adoption by a national, regional or local authority OR prepared by an authority for adoption through a legislative procedure by Parliament or Government? (Art. 2(a))
   - No to both criteria
   - Yes to either criterion

2. Is the PP required by legislative, regulatory or administrative provisions? (Art. 2(a))
   - No
   - Yes

3. Is the PP prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive? (Art. 3.2(a))
   - No to either criterion
   - Yes to both criteria

4. Will the PP, in view of its likely effect on sites, require an assessment under Article 6 or 7 of the Habitats Directive? (Art. 3.2(b))
   - No
   - Yes

5. Does the PP determine the use of small areas at local level, OR is it a minor modification of a PP subject to Art. 3.2? (Art. 3.3)
   - Yes to both criteria
   - No to either criterion

6. Does the PP set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive)? (Art. 3.4)
   - No
   - Yes

7. Is the PP’s sole purpose to serve national defence or civil emergency, OR is it a financial or budget PP, OR is it co-financed by structural funds or EAGGF programmes 2000 to 2006/?? (Art. 3.8; 3.9)
   - No to all criteria
   - Yes

8. Is it likely to have a significant effect on the environment? (Art. 3.5)*
   - No
   - Yes to any criterion

DIRECTIVE REQUIRES SEA

DIRECTIVE DOES NOT REQUIRE SEA

*The Directive requires Member States to determine whether plans or programmes in this category are likely to have significant environmental effects. These determinations may be made on a case by case basis and/or by specifying types of plan or programme.

Source: A Practical Guide to the Strategic Environmental Assessment Directive (ODPM, 2005)
3.14 Table 1 sets out the Council’s assessment of the questions outlined in Figure 2 of A Practical Guide to the Strategic Environmental Assessment Directive (ODPM, 2005). It also concludes that an SEA of the SPD is not required.

Table 1: Screening Questions

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
<th>Reasons</th>
<th>Next Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is the SPD subject to preparation and/or adoption by a national, regional or local authority OR prepared by an authority for adoption through a legislative procedure by Parliament or Government (Article 2(a))</td>
<td>Yes</td>
<td>The SPD will be prepared and adopted by the local planning authority.</td>
<td>Proceed to Q2.</td>
</tr>
<tr>
<td>2. Is the SPD required by legislative, regulatory or administrative provisions? (Article 2(a))</td>
<td>No</td>
<td>There is no legal requirement to produce a SPD.</td>
<td>Directive does not require SEA</td>
</tr>
<tr>
<td>3. Is the SPD prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive? (Art. 3.2(a))</td>
<td>Yes and No</td>
<td>The SPD is prepared for Town and Country Planning. Future development consent of projects in Annexes I and II to the EIA Directive? (Art. 3.2(a)) – include projects of a much bigger scale such as nuclear power plants, industrial and infrastructure projects amongst others.</td>
<td>Proceed to Q4 (as yes to one criterion)</td>
</tr>
<tr>
<td>4. Will the SPD, in view of its likely effect on sites, require an assessment under Article 6 or 7 of the Habitats Directive? (Article 3.2(b))</td>
<td>No</td>
<td>A Habitats Regulation Screening Assessment was undertaken for Policy CL7. It concluded that the policy is not likely to have any effect on a European site.</td>
<td>Proceed to Q6.</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
<td>Reasons</td>
<td>Next Step</td>
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<tr>
<td>5. Does the SPD determine the use of small areas at local level, OR is it a minor modification of a plan subject to Article 3.2? (Article 3.3)</td>
<td>No</td>
<td>The SPD will provide guidance for all basement development across the Borough. It is not part of the development plan.</td>
<td></td>
</tr>
<tr>
<td>6. Does the SPD set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive)? (Article 3.4)</td>
<td>Yes</td>
<td>The SPD will be a material consideration in determining planning applications.</td>
<td>Proceed to Q8.</td>
</tr>
<tr>
<td>7. Is the SPD's sole purpose to serve the national defence or civil emergency, OR is it a financial or budget plan, OR is it co-financed by structural finds or EAGGF programmes 2000-2006/7? (Article 3.8, 3.9)</td>
<td>No</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>8. Is it likely to have a significant effect on the environment? (Article 3.5)</td>
<td>No</td>
<td>It will have no additional positive environmental effects over and above policy CL7 which it is intended to provide guidance on.</td>
<td>Directive does not require SEA</td>
</tr>
</tbody>
</table>

4. Conclusion & Consultation

4.1 Having considered the guidance in PPG, NPPF and in A Practical Guide to the Strategic Environmental Assessment Directive (ODPM, 2005) it is concluded that **the proposed Basements SPD is unlikely to require a SA or SEA**. The Council has very recently prepared policy CL7 which has been accompanied by a thorough SA/SEA throughout its preparation. The reasons for the conclusion are set out in section 3 above.
4.2 The Council is consulting English Heritage, Natural England and the Environment Agency\(^1\) on this Screening Opinion, seeking their views/comments from 10 **December 2014 to 21 January 2015**, following which, a final Screening Opinion will be published alongside the draft SPD. Responses to this SA/SEA Screening report consultation should be sent by email or post using the details provided below.

4.3 The Council has a ‘Duty to Cooperate’ to “engage constructively, actively and on an ongoing basis”\(^2\). The Planning Inspector’s report on the examination considered this ‘duty’ in relation to emerging policy CL7 and concluded that “The Policy does not relate to a strategic matter as defined in the Act and consequently the duty to cooperate does not apply to it” (paragraph 6). The preparation of the SPD therefore does not require further actions or consultation relating to the Duty to Cooperate.

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Consultees are requested to provide responses to the email address above or to planningpolicy@rbkc.gov.uk within 6 weeks by 21 January 2015 at the latest.

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\(^1\) R4(1), The Environmental Assessment of Plans and Programmes Regulations 2004; paragraph 014, NPPG SEA & SA

\(^2\) S33A(2)(a) and paragraph 001 NPPG Duty to Cooperate; see also paragraph 181, NPPF; paragraph 012, NPPG Duty to Cooperate
Appendix 1: Policy CL7 Basements

The policy has been reproduced below for ease of reference. The full document along with the reasoned justification can be found on the Council’s website using the following link http://www.rbkc.gov.uk/planningandbuildingcontrol/planningpolicy/developmentplan/corestrategypdfs.aspx under Chapter 34.

Policy CL7

Basements

The Council will require all basement development to:

a. not exceed a maximum of 50% of each garden or open part of the site. The unaffected garden must be in a single area and where relevant should form a continuous area with other neighbouring gardens. Exceptions may be made on large sites;

b. not comprise more than one storey. Exceptions may be made on large sites;

c. not add further basement floors where there is an extant or implemented planning permission for a basement or one built through the exercise of permitted development rights;

d. not cause loss, damage or long term threat to trees of townscape or amenity value;

e. comply with the tests in national policy as they relate to the assessment of harm to the significance of heritage assets;

f. not involve excavation underneath a listed building (including vaults);

g. not introduce light wells and railings to the front or side of the property where they would seriously harm the character and appearance of the locality, particularly where they are not an established and positive feature of the local streetscape;

h. maintain and take opportunities to improve the character or appearance of the building, garden or wider area, with external elements such as light wells, roof lights, plant and means of escape being sensitively designed and discreetly sited; in the case of light wells and roof lights, also limit the impact of light pollution;

i. include a sustainable drainage system (SuDS), to be retained thereafter;
j. include a minimum of one metre of soil above any part of the basement beneath a garden;

k. ensure that traffic and construction activity do not cause unacceptable harm to pedestrian, cycle, vehicular and road safety; adversely affect bus or other transport operations (e.g. cycle hire), significantly increase traffic congestion, nor place unreasonable inconvenience on the day to day life of those living, working and visiting nearby;

l. ensure that construction impacts such as noise, vibration and dust are kept to acceptable levels for the duration of the works;

m. be designed to safeguard the structural stability of the existing building, nearby buildings and other infrastructure including London Underground tunnels and the highway;

n. be protected from sewer flooding through the installation of a suitable pumped device.

A specific policy requirement for basements is also contained in Policy CE2, Flooding.
Appendix 2: Schedule 1 - The Environmental Assessment of Plans and Programmes Regulations 2004

SCHEDULE 1

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1. The characteristics of plans and programmes, having regard, in particular, to—

(a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;

(b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;

(c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;

(d) environmental problems relevant to the plan or programme; and

(e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—

(a) the probability, duration, frequency and reversibility of the effects;

(b) the cumulative nature of the effects;

(c) the transboundary nature of the effects;

(d) the risks to human health or the environment (for example, due to accidents);

(e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);

(f) the value and vulnerability of the area likely to be affected due to—

(i) special natural characteristics or cultural heritage;

(ii) exceeded environmental quality standards or limit values; or

(iii) intensive land-use; and
(g) the effects on areas or landscapes which have a recognised national, Community or international protection status.