



**Cabinet**  
13 February 2017

**Report from the Strategic Director  
Regeneration and Environment**

For Information

Wards affected:  
All except parts of those wards in  
Tokyngton, Stonebridge, Harlesden,  
Kensal Green that fall within the Old  
Oak and Park Royal Development  
Corporation boundary

**Draft Basement Supplementary Planning Document**

**1.0 Summary**

1.1 This report sets out the rationale for consultation on a draft Brent Basement Supplementary Planning Document (SPD). It provides a high level summary of the content of the document. It provides clarity on what are planning matters and which matters are the remit of other legislation/statutory functions. It identifies how the Council will address the non-planning matters such as environmental monitoring in a more robust manner in the future. It seeks approval by Cabinet of the draft Basement SPD for consultation.

**2.0 Recommendations**

2.1 Cabinet consider the draft Basement Supplementary Planning Document as set out in Appendix 1 of this report and approve its issue for public consultation.

**3.0 Detail**

**Background**

3.1 Basement development, particularly of existing residential properties has been an increasing phenomenon across London in the last decade, especially in central boroughs. At its extremes it has resulted in some streets having had the majority of homes subject to such development, or individual homes being subject to applications for 'mega-basements'; structures of multiple levels with new floorspace well in excess of the existing dwelling.

3.2 Basement development activity in Brent has been more limited both in the number of applications received (15 residential basements in existing properties in 14/15 and 18 in 15/16) and the volume of the spaces proposed. The majority of activity has been in the south of the Borough; here generally house prices are higher, plus the constraints on extending outwards and upwards reduce the opportunity to otherwise increase dwelling size.

- 3.3 Residential basement developments can be permitted development. These rights allow relatively sizeable basements if no new dwellings are being created. This could be for example by developing a single storey underneath the whole of a house incorporating an extension to the side or rear within the limits set by householder extension permitted development rights.
- 3.4 This is important in the context it creates for policy and practice. It indicates that Government nationally through current legislation and regulations regards what could potentially be quite large basement extensions as an acceptable form of development. Such permitted developments are not required to be subject to extensive planning controls or conditions. Clearly the assumption can be made that what otherwise might be identified as potential adverse impacts on the locality as a result of implementation: noise; dust; general disturbance, structural integrity and use of the highway will be dealt with by non-planning related legislation.
- 3.5 Although basement proposals in Brent have generally been small in number and scale, those in conservation areas do need planning permission from the council due to the Article 4 directions that remove permitted development rights within conservation areas. In recognition of the increased basement development activity and to clarify the Council's position on the matter when determining planning applications, Brent introduced interim guidance on basement development in 2013.
- 3.6 In response to residents' concerns about adverse impacts of basement developments councillors have requested more up to date guidance on how the Council will deal with these applications. Once the SPD is adopted it will replace the interim guidance.
- 3.7 Officers across a wide range of disciplines have on numerous occasions in the last year met with Councillors of the wards most affected by residential basement activity. The most recent was on 15<sup>th</sup> November chaired by the Lead Member Regeneration, Growth, Employment and Skills at that time. This included a positive and wide ranging discussion and presentation of a draft version of the SPD. There was recognition of the complexity of the differing regimes and that many aspects are covered by mechanisms outside the remit of planning legislation. As such in terms of the draft SPD it was identified that the document would benefit from better sign-posting of related matters and the times at which they might become relevant, e.g. the Party Wall Act which gives significant protection to the interests of adjacent property owners. The Operational Director Environment Services also provided greater clarity on how environmental monitoring will be taken forward in the future. These aspects and other comments received have been incorporated into the draft SPD. In addition the draft SPD has been presented to the Planning Committee on the 14<sup>th</sup> December 2016 how made no comment in terms of suggested amendment.

## The draft Supplementary Planning Document contents

3.8 The basic structure of the document is:

- a) Introduction and purpose of the document.
- b) The planning matters
- c) Checklist and list of validation requirements
- d) Other regimes and controls.

3.9 The SPD provides guidance on planning matters. It supplements London Plan and Local Plan policy and, on adoption, where planning permission is needed will be a material consideration in determining planning applications. The guidance focusses on these key planning policy requirements:

- a) Sustainability – Sustainable design standards are to be integral to the proposal, including its construction and operation. Basement development should optimise natural ventilation, cooling and lighting, and utilise energy efficient products and sustainable materials.
- b) Amenity – Housing developments should be of the highest quality internally and externally. Basements are only acceptable as living accommodation as part of a single dwelling.
- c) Design & Heritage – Basement development should be subordinate in scale to the above ground portion of building (generally they should not be more than 1 storey, or extend further than 3 metres from the rear of the property), not unduly intensify the use of a site, or cause significant environmental harm. Structures forming part of a basement are to respond positively to the building and landscape character and not create visual clutter. Basement development impacting on heritage assets should conserve and enhance their significance.
- d) Trees & Gardens – Development is to contribute to local character and urban greening by preserving existing gardens, reinforcing soft landscaping and protecting trees, including those on site, on adjoining sites and within the street or other areas of public space.
- e) Flood Risk & Drainage – Basement developments are to be located to avoid areas of floodrisk, minimise the risk of flooding and not contribute to flooding elsewhere.
- f) Contamination – Basements which are extensions to existing housing are unlikely to be at risk from contamination, but where the potential for pollution is identified further investigation will be required which might include removal of the contamination to remove or reduce the identified risk.

3.10 The full version of the draft document is attached in Appendix 1 to this report.

- 3.11 Basement development is often an emotive issue for those who perceive they are likely to be adversely affected by it. The Council however, also has to be clear that the planning process can only deal with planning matters and associated conditions have to meet the 6 tests set out in regulations. The courts have also been clear that planning must not stray into matters that are the remit of other legislation. To do so would put the Council at risk of legal challenge. As such the draft SPD sets out the relevant planning matters that will be considered and need to be satisfied to enable permission to be granted. The appendix of the SPD sets out other matters which might need separate permissions or agreements under other legislation.
- 3.12 In recognition that much of the impacts of development are addressed through legislation outside of the planning system, Westminster has introduced a co-ordinated approach from its regulatory services to monitoring the construction phase. Applicants who receive planning permission for basement extensions and major developments in Westminster are required to adhere to the Code of Construction Practice by a pre-commencement condition attached to planning permission. Westminster's Environmental Inspectorate team undertake the following role under the code:
- a) Advise applicants on the suitability of their construction management plan, including noise and dust mitigation measures
  - b) Advise on site planning in relation to highways and traffic issues
  - c) Review and agree the final construction management plan
  - d) Act as a community liaison, following up nuisance complaints
- 3.13 An hourly rate of £68 is charged. Westminster estimates that most charges will range from £7,208 to £9,248, averaging out at £8,228. Whilst Westminster obviously regards this approach to be robust, officers consider that legal advice is required if Brent is to do similar. Government proposes to remove use of precommencement conditions in all but exceptional circumstances and where they are used the applicant has to specifically agree them. The condition also covers matters addressed by other legislation and the fact that indirectly it requires the applicant to pay fees to the Council to address matters which in any case might not arise raises a number of issues about reasonableness, necessity and planning conditions addressing financial payments which is something that is prohibited.
- 3.14 Brent's Operational Director of Environment Services has indicated that a more pro-active approach to dealing with monitoring of construction is something that will be pursued. This will not solely be related to basements but other significant developments where environmental impacts such as damage to highways infrastructure are recognised as significant problems not currently being satisfactorily addressed. It is likely that this work will proceed in parallel with the consultation/adoption process associated with the Basement SPD. Notwithstanding this the scope of Westminster's Code is extensive (144 pages); to produce similar guidance and to plan for and allocate resource to roll out a co-ordinated approach will be challenging. As such, its timing in relation to the adoption of the SPD is currently uncertain. The wording within the adopted SPD will reflect its status at that time and advice from legal on the wording of conditions associated with planning permissions that make reference reference to adhering to the contents of any Brent Code of Construction Practice.

## **Consultation**

- 3.15 The Town and Country Planning (Local Planning) (England) Regulations 2012 set out what the Council needs to do when seeking to adopt a Supplementary Planning Documents. It has to publicise the consultation, notify those that might be interested and make the document and a consultation statement available on the website, in its principal office and in other appropriate locations. It is proposed that the consultation period for the document is 6 weeks which is consistent with the regulations..
- 3.16 Following the consultation period representations received will be reported to a future Cabinet, along with officer comments and any associated proposed modifications prior to its recommendation for Cabinet adoption.

## **4.0 Financial Implications**

- 4.1 The cost of drafting, consulting on and adopting the SPD are small and will be met from existing planning policy budgets. The main cost incurred is from staff time; consultation costs will be negligible, with a small amount of printing costs covered from existing budgets.
- 4.2 The environmental monitoring work proposed by the Operational Director Environment Services will be subject to separate processes with an associated business case and consultation processes for any Code of Construction Practice.

## **5.0 Legal Implications**

- 5.1 Regulations provide for Local Planning Authorities to adopt Supplementary Planning Documents. These documents are to provide more detailed guidance on how a development plan policy will be interpreted in the determination of planning applications. Supplementary Planning Documents cannot introduce new policy or allocate sites for development.

## **6.0 Diversity Implications**

- 6.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have "due regard" to the need to:
1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
  3. Foster good relations between people who share a protected characteristic and those who do not.
- 6.2 Statutory public consultation will be carried out in the process of preparing and adopting the Supplementary Planning Document. An Equalities Impact Assessment screening opinion has been undertaken which identified no

positive of negative impacts in relation to those with protected characteristics as a result of the document.

**7.0 Staffing/Accommodation Implications (if appropriate)**

7.1 None arising specifically from the draft Supplementary Planning Document.

**Background Papers**

Brent Basements Interim Guidance 2013

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