



**Cabinet**  
19 June 2017

**Report from the Strategic Director  
of 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

**Basement Supplementary Planning Document**

**1.0 Summary**

1.1 Cabinet approved the draft Brent Basement Supplementary Planning Document (SPD) for consultation on 19<sup>th</sup> February 2017. This report sets out the results of the consultation feedback, officer responses and where necessary recommended changes to the document. It seeks the agreement of Cabinet to adopt the amended Basement Supplementary Planning Document.

**2.0 Recommendations**

2.1 Cabinet consider the consultation representations received on the draft Basement Supplementary Planning Document, officer responses and recommended amendments to the document as set out in Appendix 1 of this report

2.2 Cabinet approve the adoption of the Basement Supplementary Planning Document as set out in Appendix 2 of this report.

2.3 Cabinet revoke the Interim Guidance on Basements issued in 2013.

**3.0 Detail**

**Background**

3.1 Basement development, particularly of existing residential properties has been increasing across London in the last decade, especially in some of the 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 Basement extensions in conservation areas do need planning permission from the council due to the Article 4 directions that remove permitted development rights within conservation areas. To clarify the Council's position on planning applications, Brent introduced interim guidance on basement development in 2013.
- 3.4 In response to residents' concerns about adverse impacts of basement developments, Cabinet on 19<sup>th</sup> February 2017 approved the draft Basement Supplementary Planning Document for consultation. The report for that item provides detailed background on why it was considered necessary to take forward a new Supplementary Planning Document.
- 3.5 This report sets out the consultation responses received, officers' recommendations on those responses and where necessary proposed changes to the Supplementary Planning Document for Cabinet to consider. The report recommends Cabinet adopt the amended Basements Supplementary Planning Document 2017, to replace the interim guidance on basement development 2013 which needs to be formally revoked.

### **Consultation on the draft Basement Supplementary Planning Document**

- 3.6 The document was consulted upon for a 6 week period ending 30<sup>th</sup> March 2017. The consultation comprised:
- website
  - paper copies in libraries
  - a public notice in the South Kilburn Times
  - individuals, statutory consultees, local councillors, residents' groups and interested parties
  - a meeting with Mapesbury Residents' Association and Queen's Park Residents' Association
- 3.7 Thirteen responses were received ranging from statutory consultees, locally active organisations and individual residents in or around the area. The majority of the responses were overall positive about the contents of the draft document, although they might have had specific areas of concern.
- 3.8 A schedule of the responses received, officer consideration and recommended changes to the draft SPD are set out in Appendix 1. This also identifies some minor changes, such as references to other documents, or organisations to contact.

## **4.0 Responses – brief overview**

4.1 The following matters were raised, the:

- a) Sustainability of basement development
- b) Amenity impacts related to noise, visual impact, overlooking and entrances
- c) Design and heritage related to archaeology, scale and variations necessary related to conservation area characteristics.
- d) Trees and gardens – loss of mature trees and accuracy of information submitted with applications
- e) Flood risk – concerns about cumulative impact and underground rivers not accounted for
- f) Construction impacts: requirement for a structural statement, a bond to pay for repairs/damage to neighbours and suitably qualified person to monitor construction works and addressing the general potential for disturbance caused by the construction activities.

### **Sustainability of basement development**

4.2 This was questioned, including the energy used in excavation, additional materials required to meet structural requirements, including retaining walls and the fact that often these areas have poorer levels of light.

4.3 In response, the construction of a basement, as with creation of any additional room will create further energy demands. This cannot be a reason for their refusal, but the SPD does promote the use of energy efficient products.

### **Amenity impacts related to noise, visual impact, overlooking and entrances**

4.4 Concerns were raised about the SPD not addressing plant associated with basements and the need for an associated noise assessment; a necessity to not create separate entrances to basements; and the impacts of light wells, both in terms of increasing potential for light pollution and overlooking.

4.5 It is proposed to amend the SPD to take account of potential noise by seeking a noise assessment where necessary. The SPD seeks to reduce the visual impact of light wells by seeking provision of screening, whilst overlooking, given the length of extensions permitted, is not considered likely to be a significant issue. In terms of not allowing a separate access to the basement, the SPD states basements are only acceptable as living accommodation as part of a single dwelling. Basements should therefore be accessed from the main property. This has been further emphasised in the SPD.

### **Design and heritage**

4.6 Heritage England provided additional information in relation to on-going work on archaeological evidence which could be incorporated into the SPD; the SPD needed greater recognition of the differences in characteristics of areas which would impact on the acceptability of basement proposals; and the length restriction of 3 metres on basements was welcomed.

- 4.7 In response the SPD has been amended to take account of advice provided by Heritage England and give more prominence to advice provided within conservation area design guides where there is one.

### **Trees and gardens**

- 4.8 There was concern that basements can lead to loss of mature trees, and that applicants sometimes conceal the fact there are trees on site. Photographs should be required of the existing site was suggested.
- 4.9 The SPD sets out that trees, including those on site, on adjoining sites and within the street or other areas of public space, are to be protected. A site survey is required alongside each application, and this is verified by site visit. Where there are potential impacts to trees the SPD requires applications to be accompanied by a Tree/ Arboriculture Report to be assessed by the Council's Tree Officer. The SPD has been amended to state site survey should include photographs of existing site.

### **Flood Risk & Drainage**

- 4.10 Concerns that basements increase flood risk. Details should be provided of how flood risk and surface water flooding have been addressed in the design, and should demonstrate how cumulative effects have been considered. In areas where greater risks are identified a geo-hydrology report should be produced to set out the impact on water flow.
- 4.11 The SPD requires applications in flood zones 2 and 3, and in areas with a history of localised flooding, to be accompanied by a Flood Risk Assessment and Drainage Strategy, informed by a site specific assessment of geological and hydrological conditions. It is recommended that this is further emphasised in text and also a requirement added that reports are prepared by a suitably qualified specialist. Critical Drainage Areas are recommended to be added to the Flood zone map.

### **Construction Impacts**

- 4.12 A significant concern raised was that basement development impacts on the structural integrity of neighbouring properties. It was suggested that: a Structural Statement should be required alongside the application, prepared and signed off by a Chartered Civil Engineer or Structural Engineer; a bond should be secured through the planning system to pay for the repair of any damage to neighbouring properties; and a suitably qualified person should be retained during construction works to monitor works. It was suggested this could be undertaken by the Council's Building Control Team. There was also concern around the disruption caused during the construction process and solutions proposed, such as a requirement for a construction management plan and applicants signing up to the Considerate Constructors' Scheme.
- 4.13 Planning Practice Guidance states that generally courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be material considerations. The Council has sought a further legal opinion, and advice has been received that it is not a material consideration to enter into a consideration of whether a

development will cause damage to an adjoining owner. That is not the function of a Local Planning Authority. Requiring a Structural Method Statement as part of the planning application, will falsely give the impression that the planning system can guarantee the structural stability of a neighbouring property. The Party Wall Act controls matters such as structural stability, method of construction and impacts on neighbouring properties.

- 4.14 In relation to the suggestion of a bond, The Party Wall Act allows adjoining owners to request the building owner to provide a bond or insurances to provide security in the event of a dispute. The money remains the building owner's throughout but can be drawn upon to pay for rebuilding or repair, in the event the surveyors identify there is damage as a result of the works which needs to be put right. There are no such financial mechanisms to secure a bond through the planning system.
- 4.15 The need for a suitably qualified person is again an issue that is addressed through the Party Wall Act provisions which allow for the appointment of such a person to represent the interests of affected parties. As Building Control is open to competition the Council cannot require the use of their Building Control service due to competition laws.
- 4.16 In relation to the potential general disturbance caused by construction activities, the council cannot refuse planning permission because construction works may cause noise and disturbance; informatives and conditions are applied to reduce their impact where possible within planning law. In order to reduce potential disruption to residents and neighbours caused by major construction schemes the Council requires developers to sign up to the Considerate Constructors Scheme. This is secured via a Section 106 agreement. It is recommended that this is highlighted in the SPD. In relation to hours of work, these are restricted under Environmental Health legislation and an informative is placed on planning permissions.
- 4.17 The SPD also outlines how matters related to the construction of basements are dealt with by Environmental Health and Highways using powers under the Highway Act, Environmental Protection Act and Control of Pollution Act. An Enforcement Team is being created within Environmental Services which will tackle issues associated with construction impacts. In addition, consideration is being given to taking forward a Code of Construction Practice, similar to that produced by Westminster Council, which will outline detailed requirements in relation to construction works. This would be produced by Environmental Services and cover all construction, not just basements. It is therefore a separate piece of work to the Basement SPD. These points have been shared with colleagues in Environmental Services.

## **Conclusions**

- 4.18 The 13 consultation responses indicate that there is concern around basement development. The Council is seeking to take forward a Basement Supplementary Planning Document to provide further guidance on the issues that it will consider in the determination of planning applications. The 6 week consultation on the draft document generated a number of responses. The SPD contents are proposed for amendment (as summarised in this report and set out in Appendix 1) as a result of the consultation and other minor amendments that will improve the document.

- 4.19 Nevertheless, it is evident that many of the matters raised are those that cannot be addressed through the planning system. It is recognised that this may be frustrating for some of those that have responded to the consultation. Nevertheless, officers have sought to ensure that the SPD is as helpful as it can be in sign-posting those impacted by basement development on the measures otherwise available to them and the Council to address matters of concern through other legislation and practises.
- 4.20 On the basis of the consultation representations received, officer responses and recommended changes, the proposed revised Basement Supplementary Planning Document 2017 is set out in Appendix 2 and recommended to Cabinet for adoption. It is also recommended that the now superseded, existing Interim Guidance on Basements issued 2013 is revoked by Cabinet.

## **5.0 Financial Implications**

- 5.1 The cost of adopting the SPD – staff time and a small amount of printing costs - will be met from existing planning policy budgets.
- 5.2 The environmental monitoring work proposed by the Operational Director Environment will be subject to separate processes with an associated business case and consultation for any Code of Construction Practice.

## **6.0 Legal Implications**

- 6.1 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.

## **7.0 Diversity Implications**

- 7.1 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.
- 7.2 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 or negative impacts in relation to those with protected characteristics as a result of the document.

## **8.0 Staffing/Accommodation Implications (if appropriate)**

8.1 None arising specifically from the draft Supplementary Planning Document.

### **Background Papers**

Brent Basements Interim Guidance 2013

Cabinet 19<sup>th</sup> February 2017 Draft Basement Supplementary Planning Document

### **Contact Officers**

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