



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for Built Environment
Date:	21 st October 2015
Classification:	General Release
Title:	Basement Revision and Mixed Use Revision to Westminster's City Plan: Submission Versions for submission to the Secretary of State and examination by an independent Inspector
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

This report asks the Cabinet Member to recommend the Basements and Mixed Use revisions to Westminster's City Plan to Full Council on the 11th November 2015 for agreement prior to submission to the Secretary of State pursuant to Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

2. Recommendations

That the Cabinet Member resolves:

- i. to consider the public responses to the Regulation 19 consultation on the Basements Revision (listed at Appendix 5 and in full at Appendix 9 to the Consultation Statement which forms Appendix 2 to this report) and endorse the officers' comments thereon and the minor modifications contained in Annex B to the Consultation Statement,
- ii. to consider the public responses to the Regulation 19 consultation on the Mixed Use Revision (contained in Appendix 8 to the Consultation Statement which forms Appendix 5 to this report) and endorse the officers' comments thereon and the Schedule of minor modifications contained in Annex A to the Consultation Statement,
- iii. to recommend the Basements Revision Submission Draft, Mixed Use Revision Submission Draft and the supporting documents for both revisions (appended to this report, which are to be submitted to the Secretary of State) to Full Council on the 11th November to approve prior to submission to the Secretary of State,
- iv. to delegate to the Executive 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.

3. Reasons for Decision

To enable the council to manage basement development by progressing its Basements Revision to the City Plan pursuant to Regulation 22 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 progressing its Mixed Use Revision to the City Plan pursuant to Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

4. Background, including Policy Context

- 4.1 For both revisions, the initial notification of and consultation on the intention to revise the Core Strategy (Regulation 18) was carried out from 19th March to 1st May 2015. A draft consultation document was formally consulted on (in accordance with Regulation 19) from 16th July until the 9th September 2012. In both cases, this was accompanied by a Consultation Statement, Supporting Information, and Integrated Impact Assessment (including the Sustainability Appraisal and Strategic Environmental Assessment).

4.2 Paragraph 182 of the National Planning Policy Framework 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.”

Consultation responses received in response to both revisions have been considered in terms of the extent to which they raise issues of soundness.

4.3 **Regulation 19 consultation responses to Basements Revision**

The Council formally consulted on its proposed Basements Revision to the City Plan from Thursday 16th July – Wednesday 9th September 2015. Nineteen consultees submitted responses on the policy (sixteen of which were substantive comments) with, an additional response on the related Habitats Regulations Assessment screening, and one additional response relating solely to the Article 4 Direction. Unresolved objections were received from 8 respondees. Four of the respondees were individual residents, there were 2 residents’ groups and two property-led groups.

A further 8 respondees supported the policy, 2 of whom also objected. Comments were received from 12 respondees, 6 of whom also objected and 5 of whom also supported.

The consultation responses are set out in detail in the Consultation Statement, together with the Council’s discussion and response to the matters raised. Of the 7 unresolved objections, as set out in paragraph 3.1, none are considered to give rise to concerns about the ‘soundness’ of the revision. Of the comments, as set out in paragraph 3.3, 20 have been resolved through minor modifications to the revision. The minor modifications are shown as bold red in the revision itself and are set out in a schedule in Annex B to the Consultation Statement.

4.4 **Regulation 19 consultation responses to Mixed Use Revision**

There were 22 responses to the formal pre-submission consultation¹, of which 15 raised substantive issues (objections, comments or support). Objections are outstanding from 4 objectors, Soho Society, Westminster Property Association, British Land and Clivedean Ventures Limited. Eleven respondents support the revision, either in whole or part. These include all of those who have outstanding objections except Clivedean Ventures Limited. There are a number of comments outstanding from 12 respondents, with a total of 38 separate issues of which 18 are considered to be addressed, including by proposed minor modifications as set out in the Schedule of Minor Modifications in Annex A to this statement. Only 2 of those that made comments did not also support the revision in whole or in part. There are an additional 3 comments that fall outside the scope of the revision.

The responses are set out in detail in the Consultation Statement. Of the 8 unresolved objections, as set out in paragraph 3.1, none are considered to give rise to concerns about the 'soundness' of the revision. Of the comments, as set out in paragraph 3.3, 8 have been resolved through minor modifications to the revision. The minor modifications are shown as bold red in the revision itself and are set out in a schedule in Annex B to the Consultation Statement.

4.5 **Regulation 22 Submission to the Secretary of State of the Basements Revision**

The Council does not consider that any of the unresolved objections or comments suggest the Basement Revision Publication Draft or the Mixed Use Revision Publication Draft are not 'sound' for the reasons set out in the respective Consultation Statements.

A number of minor modifications to the revisions, consisting of post-Regulation 19 minor modifications, are included in Annex B of the Basement Revision Consultation and Annex A of the Mixed Use Consultation Statement. These pre-submission modifications do not change the meaning or approach of the revisions and the policies they contain and are appropriate to be considered as part of the examination process. They are not considered to be sufficiently major to require a further stage of consultation and nor does their inclusion affect the 'soundness' or otherwise of the revisions i.e. the minor modifications are not necessary to make the revisions sound, albeit that they improve the revisions.

Therefore, it is proposed to submit the two revisions and their supporting documents to the Secretary of State for consideration by an independent Inspector under Regulation 22 of the Town and Country (Local Planning)(England) Regulations 2012.

¹ Regulation 19

4.6 **Current application of emerging policies**

Significant sections of the draft basement policy do not have un resolved objections, or only have unresolved objections requesting that the policy go further in restricting basement development. In accordance with paragraph 216 of the National Planning Policy Framework (NPPF), the Council is now applying weight to these sections of the policy. The details of this are set out in a [Cabinet Member Statement](#).

There are outstanding objections to all parts of the policies set out in the draft Mixed Use Revision. Therefore it is not appropriate to apply this emerging policy. However, the adopted policy is based on the, now incorrect, assumption that developers would prefer to bring forward offices rather than residential in Westminster's Central Activities Zone. For this reason, when determining applications involving office losses to residential, the Council considers its adopted policies to be out of date and will be determining 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, 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](#).

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. 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. There are therefore implications related to fees and service provision for the Council. However, there will be a minor resource requirement for planning officers to ensure that developers subscribe to the CoCP in the first instance, which will need to be met from the fees for planning applications. Any subsequent breach of the CoCP itself would however not be a planning matter, but a matter for respective departments involved in administering the CoCP.
- 5.2 The CoCP and the fees payable are currently being finalised with the relevant service heads. However, indicative fees payable and the indicative scope of the service to be provided were included in the previous consultation. Work will continue to finalise the CoCP, fees and service provision, and this will be completed prior to any formal hearings for the examination of the basement revision. They will also be the subject of separate consultation.

- 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 council 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 consultation requirements have been carried out. It is considered that the Basements Revision to Westminster's City Plan: Submission Draft and Mixed Use Revision to Westminster's City Plan: Submission Draft, appended to this report meets 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.

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 Basements Revision to Full Council on the 11th November 2015 for agreement prior to submission to the Secretary of State. This will 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 11th November 2015 for agreement prior to submission to the Secretary of State. This 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, fax 020 7641 3050, email nmiles@westminster.gov.uk.

Mixed Use Revision: Lisa Fairmaner on 020 7641 4240, fax 020 7641 3050, email lfairmaner@westminster.gov.uk.

Appendices

1. Basement Revision to Westminster's City Plan: Submission Draft
2. Consultation Statement for Basement Revision
3. Integrated Impact Assessment for Basement Revision
4. Mixed Use Revision to Westminster's City Plan: Submission Draft
5. Consultation Statement for Mixed Use Revision
6. Integrated Impact Assessment for Mixed Use Revision

Background Papers

1. Basement Revision Publication Draft (Regulation 19) (July 2015)
2. Basements Consultation Booklet (October 2012)
3. Mixed Use Revision Publication Draft (Regulation 19) (July 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. National Planning Policy Statement March 2012
7. Localism Act 2011
8. Planning and Compulsory Purchase Act 2004 (as amended)
9. Town & Country Planning Act 1990 (as amended)
10. Town & Country Planning (Local Planning)(England) Regulations 2012