



Department for  
Communities and  
Local Government

# Basement Developments and the Planning System Call for Evidence

Summary of Responses



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# Summary of Responses

## Introduction

The Call for Evidence<sup>1</sup> for the Basements Planning Review was published on 4 November, and ran for 6 weeks until 16 December 2016. It sought evidence on where basement developments have taken place, how they are currently dealt with through the planning system; and whether the planning process could further mitigate any adverse impacts of such developments.

There were 88 responses to the Call for Evidence: 56 from local residents or amenity organisations; 9 from local authorities; and 23 from representational bodies, planning consultants, other members of the public and others.

Key messages which emerged from the Call for Evidence were that basement developments can raise major concerns for residents in the areas where they take place due, for example, to the disruption and potential damage from the heavy engineering works required and the length of time the works can take. In response, some local planning authorities were using existing tools at their disposal to influence local development. For example, by introducing local plan policies to restrict the size of basement developments, where appropriate, and measures to mitigate the impacts of basement developments once building work was underway.

## Experience of Basement Developments

The majority of respondents said that they had either opposed or been affected by a basement development; had developed local planning policies or guidance on basement development; had advised on a basement application; or undertaken a basement development. These developments had largely taken place in central London. While some of the proposals had been considered to be permitted development under national permitted development rights, the majority of cases had involved a full planning application to the local planning authority. Not all of the developments had been discussed with neighbours before the works began. Where they had, various measures were taken as a result including drawing up of a Party Wall Agreement, or taking neighbours' concerns into account as part of the planning application process.

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<sup>1</sup> <https://www.gov.uk/government/consultations/basement-developments-and-the-planning-system>

## Planning Applications

In considering planning applications for basement developments, local planning authorities reported that they looked at a wide range of issues. These included: visual and structural impacts on the property and neighbouring properties; impacts on ground stability, flooding and drainage, trees, biodiversity and the loss of large volume of soil; amenity impacts such as noise, vibration, dust, vehicle movements and the storage of materials; impacts on highways including of additional construction traffic, road access, parking and servicing; the protection of heritage assets and impacts on listed buildings; and loss of green infrastructure and reduction in potential for mature planting.

In order to control the impacts of basement developments, local authorities had introduced, or were introducing, specific local plan policies. For example, at the time of the call for evidence Westminster City Council and the Royal Borough of Kensington and Chelsea had introduced policies which restricted the size of basement developments and protected heritage assets such as listed buildings. In addition, borough wide Article 4 directions had been introduced which ensured that no basement developments could be undertaken under permitted development rights. Other local planning authorities, such as Camden Council, were in the process of introducing their own local plan policies along similar lines, and Camden's was adopted in June 2017.

Where basement development is an issue there was also use of Supplementary Planning Documents (SPDs) which provided guidance on local plan policies related to basement developments, and/or requirements for a range of related mitigation measures such as Construction Traffic Management Plans, Construction Method Statements and Basement Impact Assessments. Requiring developers to sign up to a Code of Construction Practice for construction sites to minimise nuisance to neighbours was also common practice.

Use of locally prepared Good Practice Guidance by various local authorities was also reported, which set out the issues and design considerations which should be taken into account when building or extending basements, and/or referred to the need for Construction Management Statements and Flood Risk Assessments for basement applications.

With regard to the effectiveness of local planning policies in controlling potential impacts of basement developments, most of the professional organisations, developers and local authorities that responded believed that, in general, those policies that existed were working well in mitigating impacts and also in minimising the number of such developments. However, many amenity organisations and individuals did not believe they had been effective, citing in particular the fact that basement developments were still able to proceed.

As to whether the impacts of basement development were managed well through the planning process, again most professional organisations, developers and local authorities

believed that, in general, impacts were managed well where local plan policies and guidance were in place. Ensuring compliance with Codes of Construction Practice, Construction Traffic Management Plans and Construction Management Plans were seen as effective in minimising the scope for problems to arise. This often involved joint working within local authorities between transport, highways and environmental health departments, as well as planning, which helped ensure that impacts could be managed well.

Responses which did not think that impacts had been well managed were generally from amenity organisations and individuals. However, this was not so much the case where local plan policies for basement developments had been introduced. In these areas some amenity organisations agreed that the impacts of basement developments were now being managed well.

### **Permitted Development**

There was evidence provided of basement developments having been undertaken under permitted development rights. However, respondents believed there to be a degree of legal uncertainty as to what level of works were covered by the rights.

Developers considered the advantages of using permitted development rights to be the ability to manage a simple residential project without too much red tape and a quicker, easier and cheaper process than making an application for planning permission. Other developers saw the permitted development route as only appropriate for very small or simple developments, as the extent of development permitted was too restrictive.

Concerns were raised around the use of permitted development rights for basement developments. In particular, that such proposals cannot be assessed by the local planning authority, and so mitigation measures cannot be secured to protect neighbours, their properties and local amenity. There were also concerns raised that neighbours were often not informed about proposals before works started, which would not happen if a planning application was submitted. While some developers saw benefit in using permitted development rights for basement developments, most respondents believed that basements should not be allowed under current permitted development rights, and that it was appropriate that local authorities were removing the ability for basements to be constructed under the rights through the introduction of Article 4 directions.

### **Suggested Improvements**

A range of suggestions were put forward as to how the planning framework could be improved to deal with potential impacts of basement development. These included restrictions on what could be granted planning approval or stronger protections for neighbours. A significant minority wanted to see a ban on all such developments, at least in built-up residential areas.

The greatest number of responses suggested removing the ability to undertake basement developments under permitted development rights so that a planning application is always required in such cases, which would enable consideration of all potential impacts of the proposal and allow planning consent to include appropriate mitigation measures.

Many responses concentrated on specific areas where consideration was most needed. These included: a need for a Basement Impact Assessment with all applications; for Construction Method Statements; assessments of flood risk, subsidence, and the effects of development on neighbouring properties, including the cumulative impact of basement developments in a specific area; and the need for construction impacts to be a material consideration when local planning authorities considered planning applications.

Other suggestions were to review other related regimes such as, for example, the Party Wall etc. Act 1996, the Building Regulations and Codes of Construction Practice, to ensure they functioned effectively. Others also highlighted the need for Party Wall Act agreements to be entered into, which was not always the case, especially where works were started under permitted development rights. A requirement for only specialist contractors to be able to carry out development in all boroughs was also suggested.

In light of the uncertainty as to the extent of basement development allowed under permitted development rights there were calls, in particular from local authorities and professional organisations, for the Government to clarify what was allowed under the rights.

## **Other Issues Raised**

A wide range of additional comments were made, with a large proportion being from residents and others who re-iterated that the impacts of basement developments on neighbours and their properties were considered to be unacceptable, both when works were underway and afterwards when damage to properties could become apparent. Better monitoring of works was suggested, while it was also suggested that a higher application fee for such developments was needed to help fund increased monitoring.

Many responses referred to the Party Wall Act as key to ensuring immediate neighbours could be compensated for any damage to their property arising from any works. Some suggested the Act needed to be reviewed and strengthened in respect of basement developments. In particular, as residents were often not aware of their rights, it was suggested that Party Wall Act agreements be made compulsory when planning applications were submitted for basement development.

The noise created during works was also raised as a particular issue, and it was suggested that the relevant standards for building works, being the Construction Sites Noise and Vibration (BS5228) and the related Code of Practice for Noise and Vibration

Control on Construction and Open Sites, needed to be further updated to take account of improved technology and mitigation, particularly in built up areas.

Concerns were raised that basement developments could sometimes take place without neighbours being informed about proposals beforehand, in particular when developments were undertaken under permitted development rights. There was also uncertainty as to what level of basement works could be undertaken under permitted development rights. This was also being addressed by local authorities introducing Article 4 directions in their areas to remove permitted development rights for basement developments to protect the local amenity or wellbeing of the area.

Finally, the responses received to the Call for Evidence have shown that in areas where basement developments are considered to be a particular issue, local authorities are using the planning system to mitigate their impacts. For example, some local authorities have considered what development would be appropriate in their areas, and have adopted appropriate local plan policies on basement developments setting out the parameters within which any proposals would be considered. Such policies were supported by SPDs advising on the policies and requirements for a range of related mitigation measures, such as the requirement for developers to sign up to a Code of Construction Practice for construction sites.

## **Government Response**

We are grateful to those who have contributed to the Basements Planning Review by responding to the Call for Evidence.

The Call for Evidence has highlighted a number of concerns about the impact of basement developments in certain areas. It has also provided examples of existing and emerging good practice by local authorities in using the existing tools available to them in the planning system to mitigate these local impacts, both before development has started and once it is underway. This includes the introduction of local plan policies and Article 4 directions to control basement development.

Local planning authorities whose areas are affected by basement developments may wish to consider similar approaches.