

Planning Policy Team

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# Residential Basement Development

**Technical Advice Note (TAN) 6**

January 2021

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## **1. Introduction**

- 1.1 With property prices in Oxford being very high, home owners might be keen to create more living space at their current home. A clear trend that has emerged in parts of London is for new basements to be created beneath homes to increase living accommodation. Oxford has not yet seen development on such the same scale as in London, although there are early signs of interest in this type of development.
- 1.2 This Technical Advice Note has been produced to provide guidance on the main planning considerations in relation to residential basement development.
- 1.3 It does not contain new policies; rather it brings together those existing planning policies that are most likely to be relevant for new residential basement development.

## **2. Do residential basement developments require planning permission?**

- 2.1 The planning regime covering the creation of living space in basements is evolving and under review. Converting an existing residential cellar or basement into a living space is likely to require planning permission if a separate unit of accommodation is created, the usage is significantly changed or a light well is added that alters the external appearance of the property.
- 2.2 Excavating to create a new basement which involves major works, a new separate unit of accommodation and/or alters the external appearance of the house is likely to require planning permission.
- 2.3 If the property is a listed building consent is likely to be required for internal or external work. In all circumstances you are advised to contact the City Council before starting any work. Contact details are at the end of this document.

## **3. How are planning applications for residential basement development judged?**

- 3.1 There is no single policy which specifically deals with basement developments. Instead there are a variety of policies which sufficiently cover the issues that might arise from new residential basement development.
- 3.2 The City Council considers every planning application against the Development Plan. The Development Plan should be read as a whole. Proposals will be judged against all relevant policies. The most relevant documents of the Development Plan for basement developments are set out below and links to these are given at the end of this document:
  - Adopted Oxford Local Plan 2036
  - Policies Map
  - National Planning Policy Framework

- 3.3 The following sections summarise the main issues that the Council will consider when assessing planning applications for residential basement development and the relevant existing policies within the Development Plan. Each proposal is different and so other issues and policies may be relevant beyond those set out below.

### **Impact upon the historic environment, street scene and respecting local character and context**

- 3.4 New development will be expected to respect the unique townscape characteristics of each area of Oxford. Every new development, of whatever scale, has a potentially significant effect on the appearance and character of the area. New basements, for example, may introduce front access or railings that are out of character with the surrounding area. Proposals for new developments should be designed with these features and possible improvements in mind.
- 3.5 The City Council encourages applicants to use its Character Appraisal Toolkit to help applicants make their own assessments of the character of the landscape, townscape and built environment. It provides questions to help applicants consider how different features of the landscape/townscape contribute to its character. The toolkit enables applicants to undertake either a detailed or a rapid character assessment. For a proposed basement development beneath a dwelling, a rapid character appraisal is probably most appropriate. A link to the Toolkit is at the end of this document.
- 3.6 New residential basement development should respect its neighbouring properties, relate to its local context and enhance its character. The most relevant policies are:

**Policy DH1: High quality design and placemaking**

Planning permission will only be granted for development of high quality design that creates or enhances local distinctiveness.

All developments other than changes of use without external alterations and householder applications will be expected to be supported by a constraints and opportunities plan and supporting text and/or visuals to explain their design rationale in a design statement proportionate to the proposal (which could be part of a Design and Access Statement or a Planning Statement), which should cover the relevant checklist points set out in Appendix 6.1.

Planning permission will only be granted where proposals are designed to meet the key design objectives and principles for delivering high quality development as set out in Appendix 6.1.

**Policy DH3: Designated heritage assets**

Planning permission or listed building consent will be granted for development that respects and draws inspiration from Oxford's unique historic environment (above and below ground), responding positively to the significance character and distinctiveness of the heritage asset and locality.

For all planning decisions for planning permission or listed building consent affecting the significance of designated heritage assets, great weight will be given to the conservation of that asset and to the setting of the asset where it contributes to that significance or appreciation of that significance).

An application for planning permission for development which would or may affect the significance of any designated heritage asset, either directly or by being within its setting, should be accompanied by a heritage assessment that includes a description of the asset and its significance and an assessment of the impact of the development proposed on the asset's significance. As part of this process full regard should be given to the detailed character assessments and other relevant information set out any relevant conservation area appraisal and management plan.

The submitted heritage assessment must include information sufficient to demonstrate:

- a) an understanding of the significance of the heritage asset, including recognition of its contribution to the quality of life of current and future generations and the wider social, cultural, economic and environmental benefits they may bring; and
- b) that the development of the proposal and its design process have been informed by an understanding of the significance of the heritage asset and that harm to its significance has been avoided or minimised; and
- c) that, in cases where development would result in harm to the significance of a heritage asset, including its setting, the extent of harm has been properly and accurately assessed and understood, that it is justified, and that measures are incorporated into the proposal, where appropriate, that mitigate, reduce or compensate for the harm;

Where the setting of an asset is affected by a proposed development, the heritage assessment should include a description of the extent to which the setting contributes to the significance of the asset, as well as an assessment of the impact of the proposed development on the setting and its contribution to significance.

Substantial harm to or loss of Grade II listed buildings, or Grade II registered parks or gardens, should be exceptional. Substantial harm to or loss of assets of the highest significance, notably scheduled monuments, Grade I and II\* listed buildings, Grade I and II\* registered parks and gardens, should be wholly exceptional. Where a proposed development will lead to substantial harm to or loss of the significance of a designated heritage asset, planning permission or listed building consent will only be granted if:

- i. the harm is necessary to achieve substantial public benefits that outweigh the harm or loss; or all of the following apply:
- ii. the nature of the asset prevents all reasonable uses of the sites; and
- iii. no viable use of the asset itself can be found in the medium term (through appropriate marketing) that will enable its conservation; and
- iv. conservation by grant funding or similar is not possible; and
- v. the harm or loss is outweighed by the benefit of bringing the site back into use;
- vi. a plan for recording and advancing understanding of the significance of any heritage assets to be lost, including making this evidence publicly available, is agreed with the City Council.

Where a development proposal will lead to less than substantial harm to a designated heritage asset, this harm must be weighed against the public benefits of the proposal. Clear and extensive justification for this harm should be set out in full in the heritage assessment.

Conservation areas are listed in Appendix 6.2 and defined on the Policies Map.

**Policy DH5: Local Heritage Assets**

Planning permission will only be granted for development affecting a local heritage asset or its setting if it is demonstrated that due regard has been given to the impact on the asset's significance and its setting and that it is demonstrated that the significance of the asset and its conservation has informed the design of the proposed development. In determining whether planning permission should be granted for a development proposal, which affects a local heritage asset, consideration will be given to the significance of the asset, the extent of impact on its significance, as well as the scale of any harm or loss to the asset as balanced against the public benefits that may result from the development proposals.

Publicly accessible recording should be made to advance understanding of the significance of any assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact.

## Impact upon archaeological deposits

- 3.7** Archaeological remains provide valuable evidence that contributes to the understanding of important elements in the development of Oxford. Such remains are a finite and non-renewable resource that requires appropriate management to ensure they survive in good condition. Developers should consider the existence of archaeological remains on a site at an early stage, to allow sympathetic designs to be made.
- 3.8** Basement developments have the potential to impact upon archaeological deposits. The City Council will require an archaeological assessment, which may include field evaluation, as part of any planning application that involves significant breaking of the ground in the City Centre Archaeological Area (see the Policies Map). In addition, there are known concentrations of past human activity elsewhere in Oxford and the City Council is also likely to require an archaeological assessment in these areas.
- 3.9** Applicants may wish to search on the national Heritage Gateway website (link at the end of this document) in order see if heritage assets are recorded in their locality and/or seek early advice from the City Council Archaeologist on the likely archaeological implications of a basement construction.
- 3.10** In the 21<sup>st</sup> century there has been a clear pattern of domestic basement construction in North Oxford. Applicants in this area should be mindful of the extensive pattern of prehistoric monuments and multi- period burial sites located across the gravel terrace between the Thames and Cherwell rivers and may wish to establish the sensitivity of their site before submitting an application. The most relevant policy is:

**Policy DH4: Archaeological remains**

Within the City Centre Archaeological Area, on allocated sites where identified, or elsewhere where archaeological deposits and features are suspected to be present (including upstanding remains), applications should include sufficient information to define the character, significance and extent of such deposits so far as reasonably practical. This information should include:

- a) a Heritage Assessment that includes a description of the impacted archaeological deposit or feature (including where relevant its setting), an assessment of its significance and the impact of the proposed development on its significance, in all cases using a proportionate level of detail that is sufficient to understand the potential impact of the proposal. The Statement should reference appropriate records (including the information held on the Oxford Historic Environment Record); and
- b) if appropriate, a full archaeological desk-based assessment and the results of evaluation by fieldwork (produced by an appropriately qualified contractor. Pre- application discussion is encouraged to establish requirements). In the City Centre Archaeological Area where significant archaeological asset types can be shown to be subject to cumulative impact from development, the desk-based assessment should contain appropriate contextual assessment of this impact.

Development proposals that affect archaeological features and deposits will be supported where they are designed to enhance or to better reveal the significance of the asset and will help secure a sustainable future for it.

Proposals which would or may affect archaeological remains or features which are designated as heritage assets will be considered against the policy approach as set out in policy DH3 above.

Archaeological remains or features which are equivalent in terms of their significance to a scheduled monument are given the same policy protection as designated heritage assets. Proposals which affect the significance of such assets will be considered against the policy test for designated heritage assets set out in policy DH3 above.

Subject to the above, proposals that will lead to harm to the significance of non-designed archaeological remains or features will be resisted unless a clear and convincing justification through public benefit can be demonstrated to outweigh that harm, having regard to the significance of the remains or feature and the extent of harm.

Where harm to an archaeological asset has been convincingly justified and is unavoidable, mitigation should be agreed with Oxford City Council and should be proportionate to the significance of the asset and impact. The aim of mitigation should be where possible to preserve archaeological remains in situ, to promote public enjoyment of heritage and to record and advance knowledge. Appropriate provision should be made for investigation, recording, analysis, publication, archive deposition and community

## Impact upon indoor and outdoor amenity space

- 3.11 New residential basement development should ensure that suitable outdoor amenity space is provided or retained. Indoor space should ensure good quality living accommodation for the occupants, including adequate light and ventilation. The most relevant policies are:

### **Policy H15: Internal space standards**

Planning permission will only be granted for new dwellings that provide good quality living accommodation for the intended use. All proposals for new build market and affordable homes (across all tenures) must comply with the MHCLG's Technical Housing Standards.

### **Policy H16: Outdoor amenity space standards**

Planning permission will only be granted for dwellings that have direct and convenient access to an area of private open space (in addition to bin or bike storage space), to meet the following specifications:

- a) 1 or 2 bedroom flats and maisonettes should provide either a private balcony or terrace of usable level space, or direct access to a private or shared garden;
- b) flats and maisonettes of 3 or more bedrooms must provide either a private balcony or terrace of useable level space with a minimum dimension of 1.5 metres depth by 3 metres length, or, in the case of ground floor flats, direct access to a private garden or shared garden with some private space. These private outdoor areas should allow space for outside dining and/or clothes drying, with reasonable circulation, which will require a minimum dimension of 1.5 metres depth by 3metres length;
- c) houses of 1 or more bedrooms should provide a private garden, of adequate size and proportions for the size of house proposed, which will be considered to be at least equivalent in size to the original building footprint. Where a directly accessible private outside area is provided, the remaining requirement for outdoor amenity space could be met by provision of shared private amenity space. The private outdoor areas should allow space for outside dining and/or clothes drying, with reasonable circulation, which will require a minimum dimension of 1.5 metres deep by 3 metres long.
- d) the following factors will be material in assessing whether adequate space has been provided:
  - i. the location and context of the development, in relation to the layout of existing residential plots, and proximity to public open space; and
  - ii. the orientation of the outdoor area in relation to the path of the sun;
  - iii. the degree to which enclosure and overlooking impact on the proposed new dwellings and any neighbouring dwellings; and
  - iv. the overall shape, access to and usability of the whole space to be provided; and
  - v. clear delineation between public and private space; and
  - vi. for communal spaces that there is a variety of space, including provision of space to sit and to play, and that space is adaptable to the changing needs of residents, being easy to maintain with resilient materials, but with opportunities for communal gardening or food growing.



## Impact upon trees, biodiversity and enhancing landscaping

- 3.12** New residential basement development should seek to safeguard important landscape and ecological features.
- 3.13** Landscaping treatment is expected to enhance the quality of the environment and biodiversity. The most relevant policies are:
- 3.14** Basements may affect trees, for example by damaging the roots. Trees that are protected or contribute to public amenity or have ecological value should be safeguarded. British Standard 5837 (2012) '*Trees in relation to design, demolition and construction – Recommendations*' gives good practice to assist in achieving a successful relationship between trees and structures, including basements, that can be sustained in the long term. The City Council's Tree Officers are able to offer tree and landscaping advice and the Biodiversity Officer is able to offer advice on biodiversity matters. This advice is offered through our Pre-Application service. Contact details are at the end of this document.

## Impact upon surface water run-off and groundwater flow

- 3.15** Basement developments have the potential to affect the flow of water above and below ground. The most relevant policies are:

### **Policy RE4: Sustainable and foul drainage, surface and groundwater flow**

All development proposals will be required to manage surface water through Sustainable Drainage Systems (SuDS) or techniques to limit run-off and reduce the existing rate of run-off on previously developed sites<sup>18</sup>. Surface water runoff should be managed as close to its source as possible, in line with the following drainage hierarchy:

- a) store rainwater for later use; then:
- b) discharge into the ground (infiltration); then:
- c) discharge to a surface water body; then:
- d) discharge to a surface water sewer, highway drain or other drainage system; and finally:
- e) discharge to a combined sewer.

### **Details of the SuDS shall be submitted as part of a drainage strategy or FRA where required.**

Applicants must demonstrate that they have had regard to the SuDS Design and Evaluation Guide SPD/TAN for minor development and Oxfordshire County Council guidance for major development.

### **Surface and groundwater flow and groundwater recharge:**

Planning permission will not be granted or development that would have an adverse impact on groundwater flow. The City Council will, where necessary, require effective preventative measures to be taken to ensure that the flow of groundwater will not be obstructed.

Within the surface and groundwater catchment area for the Lye Valley SSSI development will only be permitted if it includes SuDS and where an assessment can demonstrate that there will be no adverse impact on the surface and groundwater flow to the Lye Valley SSSI.

## Noise from the construction of development

- 3.16** A certain amount of noise is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction sites can be very disturbing. The main law used to control construction site noise is the Control of Pollution Act 1974.
- 3.17** The Council can serve a notice imposing requirements as to how construction works should be carried out so as to minimise noise and disturbance. Failure to comply with the requirements of a notice can lead to a fine of up to £20,000.
- 3.18** Generally, the acceptable hours for noisy work within the District are:
- Monday to Friday - 07:30-17:30
  - Saturdays - 07:30-13:00
- 3.19** Developers must also demonstrate that they use best practicable means to keep noise to a minimum. No noisy work will normally be permitted on Sundays and bank holidays. Operations outside of these hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.
- 3.20** The City Council may consider imposing a condition controlling construction operations on a planning permission for new residential basement development but strictly only where all elements of the condition meet the six tests as set out in Paragraph 55 of the National Planning Policy Framework as revised.

## Impact upon neighbouring properties and dispute resolution

- 3.21** A new residential basement development is likely to be covered by the Party Wall Act 1996 if the development involves:
- a new building on or at the boundary of two properties;
  - work to an existing party wall or party structure; or
  - excavation near to and below the foundation level of neighbouring buildings.
- 3.22** The Act provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations near neighbouring buildings. A building owner proposing to start work covered by the Act must give adjoining owners notice of their intentions in the way set down in the Act. Adjoining owners can agree or disagree with what is proposed. Where they disagree, the Act provides a mechanism for resolving disputes.
- 3.23** The Act is separate from obtaining planning permission or building regulations approval and as a result Oxford City Council cannot advise applicants or affected neighbours on the Act. Any matter relating to the Act should be dealt with by a solicitor.
- 3.24** Further guidance is available on the Government website, details of which are at the end of this document.

## 4. Building Regulations

- 4.1 The structural integrity of a basement development is not a matter that is considered through the planning application process. This is dealt with through Building Regulations. The City Council's Building Control team can provide this service for applicants. Contact details are at the end of this document.

## 5. Where to get further advice

<p>If you are seeking advice on whether you require planning permission for a residential basement development please contact the <b>planning duty officer</b>:</p>	<p>There are three ways in which you can get in touch with the <b>planning duty officer</b>:</p> <p><b>Drop in:</b> St Aldate's Customer Service Centre, 109-113 St. Aldate's, Oxford OX1 1DS. Monday to Friday from 10am to 1pm.</p> <p><b>Call:</b> 01865 252175. Monday to Friday from 10am to 1pm.</p> <p><b>Email:</b> <a href="mailto:planning@oxford.gov.uk">planning@oxford.gov.uk</a> (subject: General Planning Enquiry)</p> <p>Further details on the <b>planning duty officer</b> service: <a href="http://www.oxford.gov.uk/PageRender/decP/PlanningAdviceDutyService.htm">http://www.oxford.gov.uk/PageRender/decP/PlanningAdviceDutyService.htm</a></p>
<p>If you know that you need planning permission and would like advice as to whether or not your proposal is likely to be granted planning permission, or on matters relating to trees or biodiversity please use our <b>pre- application advice service</b>:</p>	<p>Further details on the <b>pre-application advice service</b>: <a href="http://www.oxford.gov.uk/PageRender/decP/Pre-ApplicationAdviceoccw.htm">http://www.oxford.gov.uk/PageRender/decP/Pre-ApplicationAdviceoccw.htm</a></p>
<p>For advice on archaeology please contact the <b>City Council Archaeologist</b>:</p>	<p><b>Phone:</b> 01865 252605</p> <p><b>Email:</b> <a href="mailto:heritage@oxford.gov.uk">heritage@oxford.gov.uk</a></p> <p><b>Write:</b> Design, Heritage and Specialist Services Team, Planning and Regulatory, Oxford City Council, 109-113 St. Aldate's, Oxford, OX1 1DS</p>

<p>If you would like to know more about Building Regulations that you may be required to comply with please contact the <b>Building Control team</b>:</p>	<p><b>Phone:</b> 01865 252807  <b>Email:</b> <a href="mailto:buildingcontrol@oxford.gov.uk">buildingcontrol@oxford.gov.uk</a>  <b>Write:</b> Building Control Team, Planning and Regulatory, Oxford City Council, 109-113 St. Aldate's Oxford, OX1 1DS</p>
<p>If you have a concern over noise from a construction site please contact the <b>Noise Pollution Team</b>:</p>	<p>01865 249811  <a href="mailto:noise@oxford.gov.uk">noise@oxford.gov.uk</a></p>

## Useful web resources

### [Oxford City Council Planning Policy documents](#)

The development plan documents including Adopted Oxford Local Plan 2036, Policies Map and others.

### [Oxford City Council's Character Appraisal Toolkit](#)

Whether you are planning a new development, or a community group who want to be involved in planning the future of your area the toolkit can be used to record the features that give your part of Oxford its sense of place, as well as the issues to be addressed in future.

### [National Planning Policy Framework](#)

This sets out the government's planning policies for England and how these are expected to be applied. The latest update to the text was made on 19 February 2019.

### [Planning Practice Guidance: Use of conditions](#)

Government guidance notes explaining how conditions attached to a planning permission should be used and discharged effectively.

### [Heritage Gateway](#)

This is an online portal which allows access to an annually updated version of the Oxford Historic Environment Record.

### [Party Wall etc Act 1996 guidance](#)

Information on carrying out building work under the **Party Wall etc Act 1996**, or what to do if your neighbour tells you they're about to carry out work.

