



In Focus

Planning (Subterranean Development) Bill [HL] HL Bill 19 of 2015–16

Key Provisions

The [Planning \(Subterranean Development\) Bill \[HL\]](#) is a private member's bill introduced by Lord Dubs (Labour). The Bill received its first reading in the House of Lords on 2 June 2015 and is scheduled to receive its second reading on 20 November 2015.

The Bill seeks to make provision for a presumption against granting planning permission in respect of subterranean development where certain conditions apply. The provisions would extend to England only. For the purpose of the Bill, 'subterranean development' means development which comprises excavation or building below ground level other than for the purposes of repairing, strengthening or supporting an existing building or structure. If enacted, the Bill would require a local planning authority to refuse planning permission, unless it was reasonably necessary, if the following conditions applied:

- Following an application to HM Land Registry, a flood indicator showed that the property fell within a river or a sea floodplain.
- The property comprised a building which was within a terrace.
- The local planning authority had reasonable grounds to believe that there was significant local opposition. The conditions would be met if the local planning authority received a petition from a substantial number of residents from the area for which it was responsible. The Secretary of State responsible would also have the power to introduce, by statutory instrument, further provision about the circumstances in which a local authority deemed that there was significant local opposition.
- The local planning authority had reasonable grounds to believe that subterranean development was likely to cause unreasonable interference to the use or enjoyment of the land by others.

Lord Dubs has stated that there has been an “epidemic of these basement excavations”, and argued that people were “highly alarmed at the prospect of such excavations”.¹ The Government has responded that it considers the powers currently available to local authorities “sufficient to control the planning and construction processes of basement development”, explaining that the authorities affected could “adopt appropriate local plan policies”.

Background

Basement developments often require planning permission. However, there are certain circumstances where it may be considered ‘permitted development’ (ie where one does not need to submit a planning application).² For instance, if the excavation work was under the footprint of an unlisted building and involved no external alterations, it may be considered permitted development. Conversely, excavation to create a new basement would often require planning permission if it involved significant building work, a new separate unit of accommodation, or would alter the external appearance of the property.³

Furthermore, consent would be needed for internal or external work on a listed building. Building regulations which cover areas such as fire escape routes, ventilation, ceiling height, damp proofing, electrical wiring and water supplies would also apply. If other properties adjoined the building where the excavation work was taking place, and the walls were shared, there would have to be regard for the provisions of the Party Wall Act 1996.⁴ Environmental health legislation, such as the Environmental Protection Act 1990 and Control of Pollution Act 1974, would also have to be considered.⁵

Previous Proposals

During the passage of the Localism Bill 2010–12, amendments were tabled in the House of Lords which raised the issue of regulating subterranean development. In response, the Government stated that local planning authorities already had the power “to ensure that all proposals for subterranean development [were] brought under their control”, and it suggested that the “appropriate safeguards” were “available to address many of the issues” that the amendments raised.⁶ The amendments were not made.

A number of private member’s bills on this subject have also been introduced in Parliament. For instance, on 8 December 2011, Lord Selsdon introduced the [Subterranean Development Bill \[HL\]](#), which would have made provision for the regulation of subterranean development and would have established a code of practice for subterranean development work. Speaking in the Bill’s second reading debate, Lord Selsdon questioned whether it would be “helpful” to “ignore the problems of these vast subterranean developments that need proper control”.⁷ Responding for the Government, the then Parliamentary Under-Secretary of State at the Department for Communities and Local Government (DCLG), Baroness Hanham, suggested that “rather than creating new powers”, the existing ones could be “strengthened or made better known”.⁸ The Bill did not progress further.

In the House of Commons, Karen Buck (Labour MP for Westminster North) introduced the [Permitted Development \(Basements\) Bill](#) on 12 November 2013. The Bill sought to make provision for the regulation of the construction of new basements and extensions to basements. Commenting on the increase in the number of basement excavations, Ms Buck argued that Members “should be in no doubt about the extent to which this trend will ripple outwards, particularly into more affluent communities”.⁹ Ms Buck stated that the existing planning policy did not provide “case officers with robust grounds for refusal”, and argued that councils had found “themselves unable to resist the rising tide of basement development”.¹⁰ The Bill did not receive a second reading. On 16 September 2015, Ms Buck introduced an iteration of the Bill. If enacted, the [Basement Excavation \(Restriction of Permitted Development\) Bill](#) would restrict the application of permitted development rights, and would grant local planning authorities powers to restrict the size and depth of basement excavations underneath or adjacent to residential properties. The Bill is scheduled to receive its second reading on 29 January 2016.

¹ HL *Hansard*, 12 March 2015, [col 753](#).

² Planning Portal, ‘[Basements](#)’, accessed 6 November 2015; and London Borough of Richmond upon Thames, [Planning Advice Note: Good Practice Guide on Basement Developments](#), May 2015, p 7.

³ Planning Portal, ‘[Basements](#)’, accessed 6 November 2015.

⁴ *ibid*; and DCLG, ‘[Preventing and Resolving Disputes in Relation to Party Walls](#)’, 9 January 2015.

⁵ London Borough of Richmond upon Thames, [Planning Advice Note: Good Practice Guide on Basement Developments](#), May 2015, p 7.

⁶ DCLG, [Government Response to Withdrawn Amendments at Lords Committee](#), August 2011, p 4.

⁷ HL *Hansard*, 12 February 2012, [col 498](#).

⁸ *ibid*, [col 519](#).

⁹ HC *Hansard*, 12 November 2013, [col 820](#).

¹⁰ *ibid*, [col 822](#).

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