

## **Annex Z Matters raised by a London resident in relation to the London Plan**

1. A London resident has written to the Mayor and jointly to the Mayor and Secretary of State Robert Jenrick MP on various dates since March 2020<sup>1</sup> requesting modification to or withdrawal of the London Plan, setting out concerns and referring to grounds for possible challenge. They raise several areas of complaint in relation to the London Plan including:
  - A. Not meeting the requirements of the Conservation of Habitats and Species Regulations 2017 (“the CHSR 2017”) despite concluding that London Plan policies will not have an adverse effect on European sites under Chapter 8 (105) (12).
  - B. Accusing the Mayor of not taking into account in the Strategic Environmental Assessment of the London Plan the effect of planned development on the environment in Kingston
  - C. The downgrading of Policy GG2 F, “those involved in planning and development must...protect and enhance London’s open spaces, designated conservation sites and local spaces” to an objective is a major change and weakening of the requirement for “good growth” in relation to the protection of the environment in the London Plan and should have been subject to consultation.
2. An appendix containing evidence regarding the impact of the London Plan on the protected woodland habitats of Epping Forest SAC, Richmond Park SAC and Wimbledon Common SAC, the grassland habitats of Wimbledon Common SAC, and on all sites the protected stag beetle, and, for Epping Forest, also the knothole-yoke moss was also submitted and subsequently updated<sup>2</sup>. This underpins the resident’s concerns that the Mayor should not be publishing the London Plan.
3. The detailed concerns relating to the CHSR 2017 and HRA (see A in paragraph 1 above) are summarised as follows, numbered for reference:
  - i. The decision whether the London Plan will adversely affect a European site remains with the Mayor rather than AECOM or the Inspectors.
  - ii. Acceptance of the conclusions in the HRA by the Mayor, Natural England and the Panel of Inspectors at the Examination in Public was flawed, not evidence-based and fails to meet the requirement of Regulation 105(12) of the CHSR 2017 .
  - iii. AECOM failed to meet the CHSR 2017 by incorrectly screening out Policies SD1 and E1. Therefore, the HRA fails to assess any effect on any European site of the manner in which the London Plan is proposed to be carried out<sup>3</sup> because these Policy SD1 and E1 relate to significant development on large

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<sup>1</sup> Correspondence to the Mayor dated 25 March, 6 April, 4 May, 6 May, 11 May, 18 August, 20 August, 9 September, 8 November 2020 and correspondence to the Mayor and Secretary of State for Housing, Communities and Local Government 21 July and 6 August 2020

<sup>2</sup> The Appendix was submitted on the 6 August 2020 and updates sent to the Mayor on the 7, 25, 26 and 28 August 2020

<sup>3</sup> Conservation of Habitats and Species Regulations 2017 Regulation 63(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

sites in Opportunity Areas in close proximity to European sites<sup>4</sup>. This development will make the sites vulnerable to human activity, recreational pressure and pollution.

- iv. AECOM did not properly assess the affect of the London Plan in relation to its Appropriate Assessment of Wimbledon Common SAC in the HRA as it relates to proposed development in Kingston. The “in combination” assessment for Wimbledon Common SAC does not take development in Kingston into account, in breach of the Habitats Directive<sup>5</sup>. It also does not take Crossrail 2 into account which paragraph 4.1.12 of the London Plan suggests an accelerating growth in Kingston beyond 2041.
- v. The 2010 HRA for the Royal Borough of Kingston upon Thames (RBK) Core Strategy, to which AECOM refers in drawing the conclusion that development in Kingston borough would have no significant impact on Wimbledon Common SAC, relates to a housing target for the borough of 375 units p.a rather than the 964 units p.a in the London Plan. The HRA notes the increase in the housing target but does not demonstrate an assessment of the likely effects of this increase.
- vi. The relationship between Kingston’s 10 year housing target<sup>6</sup> and the separate Opportunity Area (OA) target<sup>7</sup> is unclear. As the 10 year housing target is a minimum and the OA target is a starting point to be tested through an assessment process, therefore these could be exceeded.
- vii. Small site development will have a significant impact on stag beetles.
- viii. The Mayor is required to produce evidence that “leaves no scientific doubt” that his Plan will not harm European sites and their species. The Mayor has relied on the report by AECOM to reach his decision which does not present scientific evidence to justify conclusions regarding planned development around Richmond Park SAC, Wimbledon Common SAC and other European sites in relation to London Plan Policies SD1 Opportunity Areas, H1 Increasing housing supply, H2 Small sites and E1 Offices.
- ix. Therefore, the Mayor’s decision in relation to the ItP version (and potential future version) does not have the required logic to be a rational and lawful decision.
- x. If the Mayor amends the London Plan to address the SoS direction and increases the number of homes delivered this will exacerbate matters in relation to the HRA already set out. This could include changes to Policy D3(A) or D3(B) particularly in relation to pollution and recreational pressure on Richmond Park SAC, South West London Waterbodies SPA, Wimbledon Common SAC, Epping Forest SAC, and Lee Valley SPA.

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<sup>4</sup> Richmond Park SAC, Wimbledon Common SAC, Epping Forest SAC, Lee Valley SPA and South West London Waterbodies SPA

<sup>5</sup> Conservation of Habitats and Species Regulations 2017 Regulation 63(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

<sup>6</sup> Table 4.2 of the new London Plan Kingston’s housing target is 9,640 housing units over 10 years

<sup>7</sup> From Policy SD1 of the London Plan Kingston’s OA indicative homes target is 9,000 housing units and 5,000 jobs to be delivered over 15+ years as shown on Figure 2.2 and Figure 2.5 which describe Kingston as a nascent OA. Refer also paragraphs 2.1.24 – 2.1.26 which refers to Crossrail 2.

4. The Inspectors concluded that both the HRA and SEA met the requirements of the CHSR 2017, and the relevant national policy and guidance, including those relating to sustainability appraisal and strategic environmental assessment.
5. As noted by the resident, consideration by Natural England or the Inspectors that European sites will not be significantly adversely affected by implementation of the London Plan (including any mitigations) are insufficient to justify publication of the London Plan: it is for the Mayor to be satisfied that all relevant tests have been met before publishing his Plan. However, having reviewed the material provided by the resident there is nothing that would suggest that the situation has materially changed since the EiP or publication of the Mayor's Intend to Publish version or that a different conclusion should be reached.
6. Policies SD1, E1 and H2 are assessed in the HRA (iii, iv and vii) as set out in Appendix B of the HRA reports<sup>8</sup>. Section 6 of the HRA report sets out the Appropriate Assessment of Wimbledon Common<sup>9</sup> (iv) which specifically addresses both housing targets for specific boroughs including Kingston as well as identifying stag beetles as one of the reasons for its designation as a SAC.
7. As Kingston's OA is nascent, there is no requirement for the OA target to be met wholly within the 10 year housing target period referred to in Table 4.2 of the London Plans. However, some of the OA target will be achieved over the 10 year period and this should be taken into account for monitoring purposes. The matters referred to in vi above are not grounds for not publishing the London Plan.
8. The Intend to Publish version of the London Plan reduces the cumulative housing targets for London and therefore x. above does not apply.
9. The detailed concerns relating to the SEA<sup>10</sup> (see B in paragraph 1 above) are summarised as follows, numbered for reference:
  - i. There is a lack of baseline data in relation to environments, habitats and species in and around Kingston and an absence of any recent borough-wide environmental assessment or sustainability appraisal (SA) or HRA on how the growth planned for Kingston is likely to affect the natural environment.
  - ii. There is no SEA for the Kingston Direction of Travel as required for Supplementary Planning Documents<sup>11</sup>, which was used as the basis for development targets for the new London Plan and there is no SEA of growth in Kingston at a local level.

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<sup>8</sup> HRA Appendix B – Draft London Plan HRA November 2017 (Annex W); Draft London Plan HRA Update July 2018 (Annex U); Habitats Regulations Assessment Modifications Update December 2019 (Annex R).

<sup>9</sup> HRA – Draft London Plan HRA November 2017 (Annex W), pages 26- 30; Draft London Plan HRA Update July 2018 pages 28 – 32 (Annex U); Habitats Regulations Assessment Modifications Update December 2019 pages 27- 31 (Annex R).

<sup>10</sup> The Strategic Environmental Assessment (SEA) is included in the Integrated Impact Assessment for the London Plan, which comprises the SEA, the Equalities Impact Assessment and the Health Impact Assessment

<sup>11</sup> It is noted that this document is not an SPD under Part 5 of the Town & Country Planning Act (Local Planning)(England) Regulations 2012

- iii. Kingston's Local Implementation Plan 3 which the Mayor relies on for his Transport Strategy and which in turn informs the London Plan has not been legally completed because Kingston Council have not published their SEA for the LIP3<sup>12</sup>.
  - iv. The last SA for Kingston is out of date (2011) and it does not consider the impact of development on European sites.
  - v. The last HRA for Kingston is out of date, assessing a lower level of growth for residential and employment.
  - vi. The 2017 SHLAA methodology removed all environmental constraints when calculating acceptable densities on sites across London and Natural England was not consulted on the methodology<sup>13</sup>. As a result no mitigations for air quality or noise were considered.
  - vii. The 2017 SHLAA used notional housing capacity calculations for allocated sites which then informed borough housing targets, but this contradicts the conclusion in the HRA that the effect of London Plan targets cannot be assessed because the London Plan is high level and does not allocate sites.
  - viii. Failure to consult with Natural England on the second draft of the HRA or as part of the SHLAA consultation process and failure to take the advice of Natural England.
10. In relation to i above as set out in para x above, the Inspectors concluded that the SEA met the requirements of the relevant national policy and guidance, including those relating sustainability appraisal and strategic environmental assessment. Para 29
11. The SEA relating to the content of the Kingston Direction of Travel would be carried out in relation to Kingston's local plan<sup>14</sup> and the London Plan via the IIA. The failure of the Royal Borough of Kingston to undertake an SEA on either the Kingston Direction of Travel or the LIP3 documentation referred to in ii and iii above cannot be fatal to publication of the London Plan as the London Plan is subject to its own legislative requirements and procedures including the requirement for SEA. Likewise the publication of the London Plan does not rely on Kingston's most recent sustainability appraisal or HRA for a local plan as referred to in iv and v above.
12. In relation to vi above, the 2017 SHLAA did not remove all environmental constraints when calculating acceptable densities on sites, as the environmental constraints are accounted for in the deliverability probability and thus the potential site capacity for the SHLAA. This is referenced in the Final SHLAA Methodology.

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<sup>12</sup> Breaches refer to Environmental Assessment of Plans and Programmes Regulations 2004 (the "EAPPR") Part 2 (5) and Part 3 (4)

<sup>13</sup> The correspondence details that environmental constraints relating to air pollution (NO<sub>2</sub> and PM<sub>10</sub>), noise pollution from roads and environmental settings that were in the 2013 SHLAA methodology when identifying site capacity were removed in the 2017 SHLAA methodology with only aircraft noise taken into account.

<sup>14</sup> Paragraph 26 of the Kingston Growth Committee Report (13 Oct 2016)  
<https://moderngov.kingston.gov.uk/documents/g8162/Public%20reports%20pack%20Thursday%2013-Oct-2016%2019.30%20Growth%20Committee.pdf?T=10>

13. The London SHLAA does not allocate sites nor endeavour to provide a comprehensive list of all the housing sites which may come forward over the term of the London Plan. Rather it uses a probability-based estimate to provide an aggregate estimate of the potential borough capacity these types of sites might provide. It is for the boroughs to decide through their local plan and site allocations where those individual sites should be. Therefore, in relation to vii above, whilst those specific sites were not assessed in the HRA, the overall scale of growth were.
14. In relation to viii above, the SHLAA methodology was consulted on between December 2017 and March 2018 and a technical seminar held on 6 November 2018 to inform later discussions at the EiP on 8, 11 and 13 February 2019. Natural England were involved at the appropriate times in the process and gave advice and evidence to the examination – namely officer discussions prior to the draft HRA being formally consulted on in December 2017, as a formal consultation response between December 2017 – March 2018, officer discussions prior as a result of the inspectors preliminary questions, and submission of written statements prior to the EiP. They considered that the HRA adequately addresses whether the London Plan would adversely affect the integrity of European conservation sites, alone or in combination. Changes were made as a result of Natural England representation in relation to Policy H1 Housing Supply, Policy G6 Biodiversity and Access to Nature, Policy T4 Assessing and Mitigating Impacts from Transport and T8 Aviation.
15. The detailed concerns relating to the change from Good Growth Policies to Good Growth Objectives in the London Plan following the Panel's Report Recommendation PR3 (see C in paragraph 1 above) are summarised as follows, numbered for reference:
- i. This change should have been discussed at the EiP sessions on open space, designated conservation sites and local spaces.
  - ii. The Mayor's response to the Inspectors' recommendations suggests this change will result in these requirement being lost<sup>15</sup>.
  - iii. The IIA second addendum accompanying the ItP London Plan does not substantiate the assessment that this will not result in material change to the assessment of GG1 – GG6 against the IIA objectives.
16. The change of Good Growth policies to objectives was discussed at the EiP on 16 Jan 2019. This was a result of the panel's recommendation in their report. There is no requirement for the Mayor to consult on changes recommended by the panel, however the Mayor is required to send to the SoS a statement of reasons for any recommendations he does not accept. In this case, the Mayor accepted the recommendation.

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<sup>15</sup> Mayor of London – Response to Inspector's recommendations (Dec 2019) "A consequential change has been made to ensure that the policy requirement for establishing ambitious housing build-out rates at the London Planning stage of development, which currently sits in GG4, is not lost through the change of the GG policies to objectives. This has been incorporated into Policy H1."

17. As objectives in the London Plan, GG1 – GG6 may still apply as material considerations, however the change was intended to “remove any ambiguities, repetition or potential inconsistencies that could arise from having to apply both GG policies and subsequent topic based policies to decision making”<sup>16</sup>. However as noted in paragraph 66 of the Panel’s Report “These are intended to inform the policies that are then set out in subsequent chapters of the London Plan.” The reference in ii above related to one aspect that was not considered to be sufficiently covered in the detailed policies elsewhere in the London Plan. With this consequential change made, the IIA assessment resulted in the same outcomes as reported in the second addendum referred to in iii above. This is the professional assessment of the GLA officer who carried out that assessment and it is noted that no further substantiation is required beyond that already set out in the addendum itself.
18. This resident also wrote to the Mayor and the Mayor and Secretary of State Robert Jenrick MP on various occasions<sup>17</sup> requesting Policy HC1 Heritage conservation and growth and Policy D9 Tall buildings are amended to make them consistent with national policy as set out in the 2012 NPPF. The letter notes that an opinion had been sought from Queen’s Counsel regarding the merits of a legal challenge to the London Plan on the following grounds, numbered for reference:
- i. More protection is afforded to World Heritage Sites than to other assets of the highest significance contrary to 2012 NPPF paragraph 132.
  - ii. Policy HC1 B focuses on “the effective integration of London’s heritage in regenerative change” rather than unambiguous and more exacting protection with no limitations as per 2021 NPPF paragraph 132.
  - iii. That Policy HC1 B weakens protection of heritage assets by making it subsidiary to the London Planning and design process, architectural responses and economic viability, accessibility and environmental quality and social well-being.
  - iv. Policy HC1 C omits reference to the great weight that should be given to the asset’s conservation contrary to 2012 NPPF paragraph 132.
  - v. Policy HC1 C fails to differentiate between harm and substantial harm to designated heritage assets thereby weakening the application of 2012 NPPF paragraph 132.
  - vi. Policy D9 fails to reference substantial harm to heritage assets of the highest significance being wholly exceptional in contrast to 2012 NPPF paragraph 132.
19. It noted that, although the tests of soundness set out in the NPPF were applied to consideration of the London Plan by the Inspectors to the EiP, the relevant test between the London Plan and national policy is set out in Section 41 of the GLA Act in that in preparing or revising any strategy the Mayor shall have regard to the need to ensure that the strategy is consistent with “national policies, with the EU obligations of the United Kingdom and with such other international

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<sup>16</sup> Paragraph 67 of the Panel’s Report

<sup>17</sup> Correspondence to the Mayor on 11 May, 2 July, 3 July 2020 and to the Mayor and Secretary of State on 1<sup>st</sup> July 2020. Responses 3 July,

obligations of the United Kingdom as the Secretary of State may notify to the Mayor for the purposes of this paragraph.”

20. Matters relating to heritage were considered at the Examination in Public (EiP) on the 18<sup>th</sup> March 2019 and the resident took the opportunity to set out concerns at that session. Having considered all the evidence before the Panel, the Panel's view was that the policies appropriately addressed the need to identify and value heritage assets and set out a common approach to avoid harm. Together with the glossary definitions of heritage assets and historic environment, the London Plan provided an effective framework for development management, within which the heritage balances for designated and non-designated heritage assets set out in national policy could be undertaken. Its approach to archaeology, accords with national policy, along with its approach to heritage assets at risk from neglect, decay or other threats. Upon concluding its examination, the Panel were satisfied that "subject to our recommendations, the London Plan represents a spatial development strategy that accords with relevant legislation and national policy"<sup>18</sup>.
21. It is noted that the Panel's Report did not make any recommendations for changes to Policies HC1 or Policy D8 Tall Buildings of the London Plan version considered at the EiP (Policy D9 in the Intend to Publish version). It is noted that the SoS has now directed the Mayor to amend Policy D9 Tall Buildings, although these changes do directly not relate to the matters set out in paragraph 18 i-vi above.
22. In response to the matters raised above, the important of heritage assets is clearly set out in paragraph 7.1.1 of the draft London Plan. "London's heritage assets and historic environment are irreplaceable and an essential part of what makes London a vibrant and successful city, and their effective management is a fundamental component of achieving good growth".
23. In terms of protection of heritage assets (i above), paragraph 132 of the 2012 NPPF does not give equal protection to World Heritage Sites and grade I and II\* listed buildings, grade I and II\* registered parks and gardens. These heritage assets are grouped together as all being of the highest significance with regard to how they should be treated if substantial harm or loss is being proposed by a development. However, paragraph 132, states 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be.' World Heritage Sites are of international importance and thus can be regarded as having the highest significance. The 2019 NPPF clarifies this position, paragraph 184 states: 'Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value'.
24. Policy HC1 Part A and B (ii and iii above) in relation to regenerative change are consistent with paragraphs 126 and 132 of the 2012 NPPF. The policy approach was

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<sup>18</sup> Paragraph 61 of the Panel's report

supported by the Panel, who state in their report "In requiring boroughs to develop a clear understanding of the historic environment, it would assist in heritage value informing the preparation of development plans and strategies. In setting out the nature of evidence that boroughs should develop and a range of potential sources, it provided a clear link to policy formulation, with the overall aim to embed the role of heritage in place making and regenerative change. That includes a recognition of the economic benefits of the approach promoted, in accordance with national policy."

25. In relation to conservation and significance (iv and v above), Policy HC1 Part C is consistent with paragraph 132 of 2012 NPPF with regards to giving great weight to assets' conservation. The 2012 NPPF glossary definition of conservation is defined as "the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance." Furthermore, Policy HC1 C also states that the cumulative impacts should be actively managed, development proposals should avoid harm and identify enhancement opportunities. Again, this is consistent with conserving a heritage asset i.e. managing change with regards to sustaining and enhancing its significance.
26. With regards to the term significance, it is the term used to describe the attributes of the asset which gives it its value. A definition of heritage significance is set out in 2012 NPPF glossary. The definition is expanded on in the London Plan glossary which is also consistent with the 2019 NPPF glossary definition.
27. Paragraph 328 of the Panel's report clearly states that the policy appropriately addresses the need to identify and value heritage assets and sets out a common approach to avoid harm, in the first instance, in accordance with national policy (vi above).
28. The resident also wrote to the Mayor and Secretary of State Robert Jenrick MP<sup>19</sup> to raise concerns regarding inconsistencies between the ItP London Plan and the 2012 NPPF seeking amendments to the London Plan in relation to Section 41 of the GLA Act as follows, numbered for reference:
  - i. The definition of open space in the London Plan would encompass space that is not of public value because it has limited or restricted public access or it does not have potential to provide visual amenity. This is contrary to the 2012 NPPF Glossary definition where open space is defined as "All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity". The London Plan definition of open space includes all land that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. It does not require that open space has the possibility of providing visual amenity.
  - ii. The London Plan definition of open space is restricted to land.

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<sup>19</sup> 31 July and 6 August 2020



- iii. Public value is limited to the separate definition of green space in the London Plan Glossary. Within this, visual amenity is restricted to the possibility of providing an important visual amenity in an urban landscape.
- iv. London Plan Policy G4 does not require an up to date assessment of detailed matters relating to the need for open space as specified in paragraph 73 of the 2012 NPPF and there is no reference to the benefits of high quality open space.
- v. Table 8.1 does not restrict existing public open space to parks and allows undefined types of space to be included in open space assessments.
- vi. London Plan Policy G4 A 3) refers to the creation of new areas of publicly accessible open space, particularly green space, to ensure future open space needs are planned for without linking this specifically to open space assessments.
- vii. The national requirement is weakened by Policy G4 B 2) which includes a proviso of where possible and there and in paragraph 8.4.3 refer to areas of deficiency in open space.
- viii. Concerns are raised that with the scale of development anticipated in the London Plan, the new open spaces referred to in Policy G4 will not get created, will have no public value and that large-scale development such as Kingston will destroy areas of public value or sensitive, vulnerable and often rare natural habitats.
- ix. Policy G4 1 offers less protection to existing open space than the 2012 NPPF due to the reference to protected open space only encompassing open spaces with a European or national designation. Paragraph 74 of the 2012 NPPF protects all open space.
- x. The London Plan defines public realm which includes open space and other spaces between and around buildings. Public realm is not limited to external open spaces as set out in paragraph 3.8.3 of the London Plan and therefore doesn't meet the 2012 NPPF requirement for open space of public value.

29. These matters were considered at the EiP on 26 and 27 March 2019 and both written statements and oral evidence was given by the residents' body that included this resident. The Panel concluded that "There are definitions of open space, green space, green infrastructure and green cover. These clearly overlap but we are satisfied that they are properly aligned with one another and are sufficiently clear" (paragraph 446 of the Inspectors' Panel Report); and that "The focus of policy G4 is on assessing the need for open space, protecting it as necessary and creating new space - particularly in areas of deficiency provides a comprehensive framework to ensure sufficient protection for all open space in terms of both amount and quality" (paragraph 448). Public realm was considered at an EiP session on 6 March 2019 and again the umbrella residents' organisation gave written and oral evidence on this matter. The Inspectors concluded "When read alongside the other design policies that will ensure locally distinctive and inclusive design, policy D7 would effectively assist in delivering high quality public spaces that meet the needs of all Londoners" (paragraph 300).

30. The SoS has not exercised his powers to issue a direction in relation to this matter and therefore has not concluded that there is an inconsistency with national policy that must be addressed through modifications to the London Plan.

31. The detailed matters set out by the resident were discussed at the EiP. The Mayor is required to have regard to the need to ensure consistency with national policy. Thus, there is no absolute requirement for all parts of the draft Plan to be entirely consistent with national policy, as long as there is clear, evidence-based justification for any divergence which is proportionate to the degree of divergence and the significance of the policy in question. Whilst the definitions differ, they do not give rise to an inconsistency with national policy that requires modifications or affects the publication of the London Plan.