

NOTE ON SOUNDNESS

1. This note sets out the test for soundness and the legal requirement for the Local Plan to be in conformity with the London Plan.
2. The test for 'soundness' to be applied in this case is the test in paragraph 182 of the NPPF (2012):

182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" –namely that it is:

- **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
3. Many of the issues raised by Old Oak Park Limited are not directly relevant to the question of soundness.
 4. Section 20 of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**") provides that the purpose of an independent examination into a development plan document is to determine, inter alia, whether it is "sound" and whether it satisfies the requirements of section 19 of the PCPA 2004. Section 19(2) of the PCPA 2004 provides that *"In preparing a local development document the local planning authority must have regard to... (c) the spatial development strategy if the authority are a London Borough or if any party of the authority's area adjoins Greater London"*.

Additionally, s.24(1)(b) PCPA 2004 requires that the Local Plan "must be in general conformity with...the spatial development strategy".

5. Regulation 8(4) of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires a Local Plan to be consistent with the adopted development plan:

8.— Form and content of local plans and supplementary planning documents: general

(1) A local plan or a supplementary planning document must—

(a) contain the date on which the document is adopted; and

(b) indicate whether the document is a local plan or a supplementary planning document.

(2) A local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it.

(3) Any policies contained in a supplementary planning document must not conflict with the adopted development plan.

(4) Subject to paragraph (5), the policies contained in a local plan must be consistent with the adopted development plan.

(5) Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.

6. Consequently, the PCPA 2004 requires the Local Plan to be prepared having regard to, and to be in general conformity with, the London Plan. Additionally, Regulation 8(4) of the 2012 Regs requires the Local Plan to be consistent with the London Plan. Those are "legal requirements" which paragraph 182 of the NPPF (2012) requires the Local Plan to adhere to.
7. The London Plan identified the Park Royal and Old Oak Common area (including Car Giant's land) as an Opportunity Area. It set the strategic direction for regeneration of that Opportunity Area.
8. Annex 1 of the London Plan sets out the targets for the Old Oak Common and Park Royal Opportunity Areas, including an "indicative employment capacity" of 55,000 and a "minimum new homes" target of 24,000 for Old Oak Common. These targets were reiterated in the Old Oak and Park Royal Opportunity Area Planning Framework adopted in 2015. The draft New London Plan (2018) continues to reflect these

targets at Table 2.1 (albeit that the targets are amalgamated with the targets for Park Royal).

9. Policy 2.13 (paragraph B) of the London Plan provides that:

"Development proposals within opportunity areas and intensification areas should:

- a support the strategic policy directions for the opportunity areas and intensification areas set out in Annex 1, and where relevant, in adopted opportunity area planning frameworks
- b seek to optimise residential and non-residential output and densities, provide necessary social and other infrastructure to sustain growth, and, where appropriate, contain a mix of uses
- c contribute towards meeting (or where appropriate, exceeding) the minimum guidelines for housing and/or indicative estimates for employment capacity set out in Annex 1, tested as appropriate through opportunity area planning frameworks and/or local development frameworks
- d realise scope for intensification associated with existing or proposed improvements in public transport accessibility, such as Crossrail, making better use of existing infrastructure and promote inclusive access including cycling and walking
- e support wider regeneration (including in particular improvements to environmental quality) and integrate development proposals to the surrounding areas especially areas for regeneration." (emphasis added)

10. Policy SD1 (paragraph B) of the draft New London Plan states that boroughs, through Development Plans and decisions, should, inter alia, "meet or, where appropriate, exceed the indicative guidelines for housing and/or indicative estimates for employment capacity" set out in the Plan.

11. In line with well established legal principles, the London Plan should be read as a whole and this principle is reiterated in the introduction to the draft New London Plan. The interpretation of policy is a matter of law (*Tesco Stores Limited v Dundee City Council* [2012] PTSR 983). For the purposes of interpreting the meaning of planning policy it is necessary for the policy to be read in context (*Tesco Stores*, at paras 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be

comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.

12. Both the words and the context of Policy 2.13 support OPDC's interpretation. Although the London Plan requires the targets set out for opportunity areas to be tested through the Local Plan process, the use of the word "minimum" necessarily requires the tests to be subject to a minimum level, as that is clearly what the wording of the policy intends. If the "testing" included a requirement to test levels of development below the stated housing target for the opportunity area (as OOPL contend) the word "minimum" in Policy 2.13 would be rendered superfluous. At the very least were OOPL's interpretation of the requirement to undertake "testing" to be correct one would expect the "minimum" guideline to be made subject to a proviso stating that this minimum is subject to the outcome of the testing. No such proviso exists.
13. A Local Plan which retained the Strategic Industrial Location designation of Old Oak North, and thus failed to deliver the housing targets set out in the London Plan, would not be in conformity with the London Plan, would not be consistent with the London Plan and could not be found sound.
14. In addition to the requirements set out above, an open letter from the Secretary of State for Housing, Communities and Local Government to the Chief Executive of the Planning Inspectorate dated 18 June 2019 highlights the importance of pragmatism in approving plans that represent a sound plan for the local authority, reiterating a previous letter sent by the Secretary of State in 2015. Both letters (copies attached for reference) state that the Secretary of State expects Inspectors to work pragmatically with local planning authorities to achieve a sound plan, including by recommending constructive main modifications in line with national policy and giving local planning authorities full opportunity to address any issues.

15. Notwithstanding OPDC's position on the interpretation of the London Plan set out above, on any reasonable analysis it would not be pragmatic for the Inspector to require OPDC to undertake "testing" of housing development at Old Oak North that would be below the targets specified in the London Plan. This issue is just one of many where OOPL are seeking to examine an issue that goes beyond what is necessary in the assessment of soundness. OOPL's approach is plainly contrary to the stated Government position in respect of the examination of soundness.

Richard Moules

Landmark Chambers

4 July 2019



Ministry of Housing,
Communities &
Local Government

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Sarah Richards
Chief Executive
Planning Inspectorate

18 June 2019

Dear Sarah,

The Government wants to see every community covered by an up-to-date plan for sustainable development - meaning that communities are in control of development and are not exposed to speculative development. As made clear in the National Planning Policy Framework, the preparation and implementation of these plans is key to achieving sustainable development.

I recognise the important role that the Planning Inspectorate plays in examining local plans on my behalf and I am committed to ensuring the independence of the examination process. If local people and their representatives are to see the plan as an important platform for shaping their surroundings then they must have confidence that examination of the plan is fair and open and that decisions are made impartially. They are also right to expect that examination will be efficient, timely and easy to engage with.

I do not generally have a role in the examination of local plans. However, this letter – which I am publicising on gov.uk – reminds inspectors and local authorities that Parliament has given me a number of legal powers that, where justified, allow me to become involved in plan making. This includes powers to notify or direct the Inspectorate to take certain steps in relation to the examination of the plan¹ or to intervene to direct modification of the plan or that it is submitted to me for approval². I am frequently asked by those affected by the plan making process to consider use of these powers and must look at each of these requests on a case by case basis. This includes requests from Members of Parliament, who have a legitimate interest in the progress of local plans in their areas and are accountable to their electorates. I am pleased that the Planning Inspectorate's published Procedural Practice encourages MPs to participate in the examination hearing sessions even if they did not make a representation and I would encourage their involvement in this way.

I am grateful for the work that the Planning Inspectorate does in providing factual information to my officials on the progress of examinations that allows them to advise me

¹ S.20(6A) Planning and Compulsory Purchase Act 2004 (as amended)

² S 21 Planning and Compulsory Purchase Act 2004 (as amended)

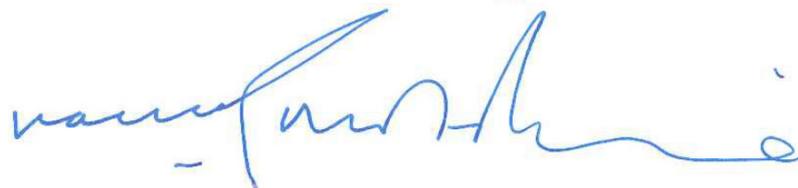
on whether use of my powers would be appropriate. However, I think more can be done to make the provision of this factual information more routine and transparent. For this reason, I am writing formally to set out two changes to our arrangements for sharing information that will be in place from immediate effect.

These changes are:

1. On a quarterly basis the Planning Inspectorate will publish a report that sets out the plans that are expected to be submitted for examination in the following 6-month period. I ask that this report be published on the Planning Inspectorate website. Clearly this can only be as good as the information received from local authorities, and I am arranging for this to be drawn to the attention of local authorities to remind them of the importance of giving clear timetables;
2. The Planning Inspectorate will share all post-hearing advice letters, letters containing interim findings, and any other letters which raise soundness or significant legal compliance issues, as well as fact check³ reports, with my department on a for information basis, at least 48 hours in advance of them being sent to the Local Planning Authority.

These arrangements are in addition to asking you to continue to respond positively to routine requests for information that arise on a case by case basis. I ask that you update the Planning Inspectorate procedural guidance to be clear that these arrangements are in place. I will ask the Chief Planner to write to Local Planning Authorities to draw their attention to this matter.

Finally, on the substance of plan examinations, I wanted to stress to inspectors – who are doing a challenging job – the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority and consistent in how they deal with different authorities. We support and expect Inspectors to work with LPAs to achieve a sound plan, including by recommending constructive main modifications in line with national policy. In this regard, I would reiterate the views set out by the Rt Hon Greg Clark MP in his 2015 letter, which I attach, on the need to work pragmatically with councils towards achieving a sound plan.

Yours sincerely,


RT HON JAMES BROKESHIRE MP

³ The fact check report is the version of the report the Planning Inspectorate sends to the LPA to check for factual errors or inconsistencies. The final report is issued after this process has been completed.



Department for
Communities and
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Simon Ridley
Chief Executive
The Planning Inspectorate
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Dear Simon,

Local Plans

Each local planning authority should produce a Local Plan for its area, and in doing so should proactively engage a wide section of the community so that Local Plans, as far as possible, reflect a collective vision for areas. The Government accords great importance to authorities getting up-to-date Local Plans in place and to supporting them in doing so as a priority.

We have recently seen significant positive plan-making progress: 82% of authorities have now published Local Plans and 64% adopted Plans compared with 32% and 17% in May 2010 respectively. It is imperative that this positive progress is maintained, and the Government is open to taking further measures to achieve this if needed.

As inevitably a plan cannot exactly account for future circumstances there is a real value in getting a Local Plan in place at the soonest opportunity, even if it has some shortcomings which are not critical to the whole plan. We have acknowledged this in planning guidance by setting out that Local Plans may be found sound conditional upon a review in whole or in part within five years of adoption.

The Planning Inspectorate plays an important role in examining plans impartially and publicly to ensure that they are legally compliant and sound, and many inspectors have already demonstrated commendable pragmatism and flexibility at examination to enable councils to get plans in place. I have, however, seen recent examples where councils are being advised to withdraw plans without being given the option to undertake further work to address shortcomings identified at examination.

In order to maintain plan-making progress and to recognise the cost and time to a council prior to submitting a plan, it is critical that inspectors approach examination from the perspective of working pragmatically with councils towards achieving a sound Local Plan. We will shortly make a Ministerial Statement on this issue, including the importance of inspectors

highlighting significant issues to councils very early on, and of giving councils full opportunity to address issues.

I will also clarify how early review may be used as a way of ensuring that a Local Plan is not unnecessarily delayed by seeking to resolve matters which are not critical to the plan's soundness or legal compliance as a whole. In this context I would highlight a recent note published by the Planning Advisory Service which highlights where a commitment to early review has featured in recently adopted Local Plans (http://www.pas.gov.uk/web/pas1/local-planning/-/journal_content/56/332612/7399006/ARTICLE.)

Please can you ensure that inspectors are aware of the Government's position, and that you update your procedural guidance and support to inspectors so that all Local Plan examinations take full account of this letter.

THE RT HON GREG CLARK MP