



OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION LOCAL PLAN

Old Oak Park Limited Response to OPDC Response to Hearing Actions (Matter 3 – viability of development)

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1 OOPL commentary on OPDC Response

1. Introduction

Following the first hearing session in relation to Matter 3 on 3rd April 2019, the Inspector asked the OPDC for the following information (as set out in the inspector's note of matters arising from the hearing sessions (ID26)):

- (a) *"OPDC to provide greater detail of proposals contained in "phase 1a" development and to consider consequent modifications."*
- (b) *"OPDC to prepare a paper on long-term trends in industrial land values in OPDC area, and implications for plan-wide viability assessment, as part of a valuation feasibility study of Cargiant site delivering 25% of homes and 15% of employment floorspace proposed within the plan period."*

In response, the OPDC has provided a document headed "OPDC Response to Hearing Actions (Matter 3 – viability of development)" which is asserted to "respond to questions raised by the Inspector at the hearing on 3rd April in relation to the representations from Old Oak Park Limited ("OOPL")/Car Giant regarding the extent of Phase 1A and the overall viability of the Plan's proposals for the Car Giant land at Old Oak North".

This note accompanies a critique of the OPDC response, which has been prepared by Jack Savin Taylor of DS2. We also provide below some further commentary on the OPDC's response.

2. Phase 1A

The question of whether the OPDC are able to deliver what is called "Phase 1A", cited in the letter to the Inspector from the OPDC's interim chief executive dated 18th March 2019 (OPDC-DA-001), is critical to the question of whether the OPDC's wider aspirations for Old Oak North are deliverable. The letter asserts that the OPDC has secured, in principle, HIF funding of £250m towards Phase 1A. OPDC continue to use the HIF funding in their submissions to the Examination as evidence of their ability to secure external funding to underpin the delivery of the area's regeneration. However, MHCLG and the OPDC have consistently refused to provide any of the information that supported the OPDC's bid for funding, or to disclose the conditions of the funding. OPDC should not in fairness be permitted to make assertions or rely on the availability of the HIF funding without disclosing the basis upon which it was sought and granted and the conditions to which it is subject since, without these, the assertions it makes cannot be tested or even verified. It is profoundly unsatisfactory that a key element in OPDC's case for the ability to deliver Phase 1A of the plan, given this is controversial in any event, that it should be permitted to withhold such important relevant information.

Prior to the hearing all we knew about Phase 1A was as set out in that letter dated 18 March 2019:

"Phase 1a is a residential-led mixed use scheme which includes a major new road (referred to as 'Park Road') running from the south west to the north east of Old Oak North together with adjacent development plots. It is intended to be a catalyst that will facilitate future development."

Given that OPDC's local plan aspirations for Old Oak North will not be able to be achieved if Phase 1A is not achieved, we asked through you for details of what the OPDC means by "Phase 1A".

We are disappointed that in response to the question you asked the OPDC to answer, all you have been provided with is an “indicative” plan at Appendix 3 of the OPDC Response, further caveated on the plan itself. The plan is of the “Phase 1A Study Area”. It shows the “potential” Phase 1A. *“There is still work to be done internally by OPDC and through engagement with landowners and other third parties before the detailed boundary of Phase 1A can be definitively settled”*.

Given that Phase 1A is apparently a “residential-led mixed use scheme”, “intended to be a catalyst that will facilitate future development and given the importance of early delivery of housing numbers”, it is surprising that the ‘greater detail’ requested by the Inspector is not provided in the OPDC’s response as to what the Phase 1A proposals actually comprise. For example, it is pertinent to the viability discussion as to how Phase 1A relates to the 4,000 units the Local Plan anticipates being delivered in years 0-5, and the 7,000 to be delivered in years 6-10, and whether any of these are required to be delivered on Car Giant land (Site allocations 2 or 3). Paragraph 5.1 just says this:

“The current emerging proposals for Phase 1A include the delivery of Park Road, as well as other energy, utilities and transport infrastructure necessary to support the development of Old Oak North. In addition to these key pieces of infrastructure, the scheme also envisages strategic development plots fronting onto Park Road to support and make use of the delivery of the infrastructure...”

Paragraph 5.2 goes on to refer to the delivery of 2,800 homes and 1,900 jobs “within the first 10 years of the plan period”. Are these homes and jobs part of Phase 1A or another phase, and on which sites?

BNPP’s report at Section 2 of the Response (at paragraph 1.12) does state that *“There are four parcels of land within the Car Giant site allocation which are proposed to be included within Phase 1A. These parcels are known as Apex Estate, Gateway Estate, Remaining Finishing Area and Premium Car Storage Area”*. However, we note that the indicative Phase 1A boundary also includes Site 3, the Triangle Business Park, which is owned by Car Giant (on a long leasehold basis) and used as part of its operations. Even if this turns out to be the final version of the CPO boundary (and there is no certainty of this), together these ‘parcels’ comprise 25% of Car Giant’s land. BNPP refers to Site 2 coming forward in years 6-20 of the Plan, whereas the Plan actually allocates the site as coming forward in years 0-21+. Phase 1A is being delivered in years 0-5, so we are entirely unclear as to how Phase 1A and the Local Plan relate, and would welcome clarity.

As to timing, it is said that it is *“understood that OPDC will be required to demonstrate that the funding is committed to be fully utilised by 31st March 2024”* and that *“OPDC is confident that it will be able to conclude its negotiations with landowners, finalise detailed scheme design and secure the necessary powers and consents to enable the works to be completed in line with the HIF funding deadlines”* (paragraph 3.4). This timing is inconsistent with MHCLG’s stated requirements for HIF, that all funding must be committed (i.e. spent) by 2021 (stated in the Government’s Introduction to the Housing Infrastructure Fund) or that the Fund is *“available up to 31 March 2021”* (the Government’s document entitled “Housing Infrastructure Fund: Supporting Document for Forward Funding”).

We now understand, through comments made by the OPDC to the London Assembly’s Budget & Performance Committee on 11th June, that the conditions of the HIF funding have been set

and include the successful adoption of the Local Plan. The OPDC confirmed that the HIF funding relates to Phase 1A, with “Phase 1B” being the remainder of the Car Giant land. The OPDC’s Chair, Liz Peace, admitted that the OPDC did not have the money to CPO Car Giant¹, and suggested that Phase 1A would allow Car Giant to remain in operation until the funds for CPO could be found. However, on the basis of the information OPDC has currently provided, we are firmly of the view that Phase 1A will require the extinguishment of Car Giant. On that basis, OPDC cannot afford the compensation and cannot deliver key elements of the plan.

Old Oak Park Limited’s position remains that, on the basis of what it understands as to Phase 1A:

- (a) Phase 1A is plainly regarded by the OPDC as a critical first step in delivery of its aspirations for Old Oak North;
- (b) Without the Phase 1A works being able to be completed by 31 March 2024 (assuming the OPDC’s extended timescale is correct), HIF monies will not be available;
- (c) There is no information in the public domain that can give you any confidence as to (1) what Phase 1A will actually deliver in terms of homes, jobs and/or infrastructure (2) whether there is a reasonable prospect of it being achieved within the stated timescale and (3) whether it can be achieved without requiring the relocation or extinguishment of the entirety of Car Giant’s operations (the OPDC accepting that as things stand (compulsory acquisition of the entirety of the Car Giant site is not feasible).

3. “General conformity”

Section 2 of the Response appears unrelated to the question asked by the Inspector as to viability. The assertion is again made that, given that it is a “*legal requirement for the Local Plan to be in conformity with the London Plan*” (as well as in the interests of soundness and regeneration), “*the Local Plan is obliged to contain the policies that it does for Old Oak North*”. David Elvin QC’s opinions (REP-42-006 and “Old Oak Park Ltd Further Legal Opinion relating to the SEA”) have clearly set out the legal position: the London Plan’s figures for Old Oak (as a strategic policy document the London Plan does not of course descend to a site specific level by referring to Old Oak North) are to be “tested” by way of this local plan process. OPDC’s assertion is merely an empty repetition of its legal error already identified.

4. What is the appropriate test for assessing viability?

The “Cargiant Site Allocation Viability Appraisal” at section 2 of the Response assumes that the objective of the “valuation feasibility study” of the Car Giant site was to “*test the OPDC’s emerging requirements on the Cargiant site allocation including affordable housing, SuDs and water attenuation, wheelchair accessible units, carbon reduction requirements and OPDC’s proposed CIL charges to assess whether the site is developable*” (paragraph 1.11). That paragraph discloses a fundamental misunderstanding. Relying on one paragraph in the 2012 NPPF (paragraph 173), BNPP assumes that:

¹ Q “We know there isn’t an endless pot to CPO and purchase your way out of this. [...] What is plan B?”

A: “Well the Plan B is the waiting game that I mentioned, we cannot resolve this problem in the next few years. That to my mind is absolutely clear because the proprietor of Car Giant has said he wants to stay put and we don’t have the funds to CPO him. The number you mentioned [£600m] is probably pretty accurate in terms of extinguishing the business which is why we want to work round him.”

“The test that the OPDC is required to meet is that their policy requirements do not threaten the viability of a scheme. It is not required to have regard to factors outside its control, such as prevailing sales values and build costs, and underlying sales values, all of which are determined by the market” . (paragraph 1.11)

However (as BNPP acknowledges later in the paragraph), sites that are envisaged to come forward within the first five years must be tested as per NPPF 2012 footnote 11:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

Plainly this includes Phase 1A but the OPDC has provided no evidence to satisfy you that Phase 1A is deliverable.

Sites to come forward in later years must be tested as per NPPF 2012 footnote 12:

“To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.”

The BNPP report does not begin to engage with this requirement. We are not challenging the potential suitability of the Car Giant site for housing, notwithstanding our objections to its redesignation. However, the BNPP report is deficient in two respects. Firstly, BNPP ignores the requirement of the NPPF which is for there to be a reasonable prospect that a site is “available” at the point envisaged (i.e. years 6-10 of the Plan, or 2023-2027). In ignoring this point they must be assuming, contrary to every “real life” indication and to the position stated directly to this Examination by the landowner, that there is a reasonable prospect that Car Giant would relocate its entire operation for the figures set out in paragraph 3.63 of the BNPP report. Car Giant can confirm to the Inspector that there is no prospect of this occurring.

Secondly, DS2’s critique of BNPP’s response establishes that there is no reasonable prospect of the site being viably developed. It has always been the position, both when Car Giant were actively pursuing relocation and after this exercise ceased, that the cost of relocation and/or extinguishment needed to be factored in to the viability of developing the Car Giant site. This was acknowledged by GL Hearn in their appraisal undertaken for the OPDC. The OPDC and BNPP have still failed to reflect this cost in their assessment of the site, and as such have also failed to demonstrate that there is a reasonable prospect of the site being viably developed.

The inspector will be well aware that NPPF 2012 makes the Government’s policy approach plain: it is not enough for plans to be aspirational, they must be realistic. The tests in footnotes 11 and 12 are in the context of the need for local planning authorities to identify specific sites to “boost significantly the supply of housing” (NPPF 2012, paragraph 47). OPDC’s response falls far short of showing the proposals are realistically deliverable.

We also draw attention to the following passages within NPPF 2012:

“Local plans should be aspirational but realistic” (paragraph 154)

“Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area” and must “take full account of the relevant market and economic signals” (paragraph 158)

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (paragraph 173)

“It is equally important to ensure that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion. To facilitate this, it is important that local planning authorities understand district-wide development costs at the time Local Plans are drawn up.” (paragraph 177)

Finally of course, in order to be sound, plans must be “justified” and “effective” (paragraph 182). In order to be effective, a plan has to be “deliverable over its period”.

Old Oak Park Limited’s position is that even on BNPP’s assumptions, any development coming forward would not at all be in line with policy aspirations, providing only for wholly unacceptably low contributions towards affordable housing and infrastructure, with no competitive return to the landowner when the costs are taken into account. But the real position, as set out in DS2’s report is that there is no reasonable prospect of any development in the plan period on the Car Giant site.

5. Car Giant’s engagement with OPDC on a planning application

We wish to correct the statement at paragraph 1.8 of BNPP’s Section 2 of the Response that *“up until January 2019 the Cargiant strategic site landowner was actively engaging with the OPDC in relation to the development of the site and was working up a planning application”*. As set out at paragraph 12 of our Explanatory Note to the Inspector dated February 2019, Old Oak Park Limited ceased work on its planning application in late 2017, when it was told by OPDC that AECOM would be realigning major pieces of infrastructure on its land. All OOPL engagement with the OPDC since this date was in response to AECOM’s work, not progression of its own. Moreover, such engagement as there was (if that is the correct description) was one-sided since OPDC did not genuinely engage and seek to resolve issues. It may well be the case that this is because, unknown to Car Giant, or anyone else considering the draft plan and SEA/SA, OPDC had decided to rule out any alternatives or to consider alternatives (except affordable housing) though even now the precise basis and form of this is unknown. It is notable that at no stage during this period of so-called engagement did OPDC communicate this clearly to Car Giant.

The OPDC assert that *“This background [i.e. Cargiant’s active engagement to January 2019] strongly suggests that the landowner had themselves considered the site to be developable”*.

This is plainly incorrect. In 2015 Car Giant responded to a threat to its business and proactively sought relocation in order to continue trading. It concluded in 2017 that relocation was not possible – a position reached through first-hand experience of transacting on land, not through a theoretical viability exercise. As such, the background very strongly suggests that Car Giant are in a very good position to confirm that the site is not developable.

6. The relevance of Car Giant’s entitlement to compensation on compulsory acquisition

BNPP’s approach is to ignore the reality that there is no evidence of any prospect that the Car Giant site will be available within the plan period other than by compulsory purchase and therefore it is necessary to consider whether there is a reasonable prospect of that happening (see Ms Peace’s evidence to the London Assembly on 11th June 2019) but it is also necessary to factor in the extent of compensation which would be payable. This was raised by Old Oak Park Limited at the hearing session on 3rd April. The Inspector will recall that, when asked by him to carry out the site-specific appraisal of the Car Giant site, the OPDC representative indicated that they might need some information from Car Giant (and we agreed that we would assist with any requests).

We attach as Appendix 1 the relevant correspondence (without the accompanying sets of annual accounts). The plainly relevant question as to the likely level of compensation payable has not subsequently been addressed in the BNPP document. Nor has there been any consideration as to whether there is any reasonable prospect of successful compulsory acquisition of Phase 1A, the likely timescale for that process and the compensation payable (given Car Giant’s likely position that the Phase 1A land cannot be taken without “material detriment” to its retained land, meaning the likely requirement for acquisition at that point of its entire land holding and likely compensation payable on the basis of extinguishment of its business).

Without considering the issue of the costs of CPO, including compensation, there is simply no realism in OPDC’s assertions about its ability to deliver Phase 1A.

7. Conclusion

In conclusion we do not consider that the information provided by the OPDC in its Response provides you with the confidence that you require pursuant to the advice in the NPPF 2012 to find that the local plan is sound were it still to include its present allocation for Old Oak North.

APPENDIX 1: Correspondence between DP9 and OPDC regarding Cargiant relocation costs

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From: Jonathan Smith <jonathan.smith@dp9.co.uk>
Sent: 29 May 2019 11:20
To: Peter Farnham
Cc: Tom Cardis
Subject: RE: Request for relocation costs information
Attachments: 2014 published Accounts.pdf; 2015 published Accounts.pdf; 2016 published Accounts.pdf; 2017 published Accounts.pdf; 2013 published Accounts.pdf

Hi Peter,

I did have a nice Bank Holiday thank you and hope you did too.

Thank you for your e-mail.

I recall the discussion at the Matter 3 session on 3rd April when in response to a request by the Inspector, Tom Cardis indicated that the OPDC would be carrying out a site-specific viability assessment in relation to the Car Giant site for the purposes of the local plan examination. He indicated that it might require information from Car Giant, to which Simon Ricketts and I indicated that we were confident that our client would be willing to assist in relation to requests for information. You indicated to the inspector that the appraisal work would be available by 31st May (and indeed I understand you were working towards its submission on 24th May before realising that it required sign-off by the Board)..

I am surprised that you first ask this broad question as to "the Cargiant relocation costs information" now, when presumably the work is pretty much complete, with an assumption as to the cost of the land. It would be useful to understand your current assumptions.

You refer to having heard figures "anecdotally". I don't know what specifically that is a reference to but I will try to give you the position as I understand it, although for me to provide you with detail "including itemised components and associated costs" there are some assumptions you will need to help me with, which I set out later in this e-mail.

Can I also first put down the caveat that the figures that we provide, whether in this email or in subsequent correspondence once we have your clarifications:

- are provided only for the purposes of your site-specific viability appraisal being prepared by you in relation to your local plan
- are not provided for the purpose of any compulsory purchase valuation process and have not been reviewed by a compulsory purchase surveyor
- are limited to those matters which Car Giant is able to disclose, strictly for the purpose of the site-specific viability appraisal, without a formal non-disclosure agreement in place - which would be required prior to exchange of more detailed, commercially confidential, calculations
- only relate to Car Giant as opposed to other businesses to be affected by the Old Oak North allocation proposals

Secondly, whilst you refer to "relocation costs" you will understand that my client's concern is that there is not likely to be an operationally acceptable relocation site available which is why reference has been made to the potential of compensation for extinguishment of the business if a suitable relocation site cannot be found.

Starting with the likely cost of extinguishment, this is as I understand it a capitalised sum reflecting the loss of future anticipated net profits from the business. There are differing methods for arriving at a capitalised figure but the starting point is likely to be to apply an appropriate multiplier to the average net profits of the business looking back from the date possession is taken (which is an uncertain date in the future). The scale of the multiplier reflects the certainty of the profit stream.

Car Giant's annual accounts over the last five years (published summaries attached) show the following annual profits:

Year Ending	Gross Profit
Y.E 2013	45,577,000
Y.E 2014	53,710,000
Y.E 2015	66,253,000
Y.E 2016	63,915,000
Y.E 2017	59,735,000

This is a highly profitable and stable business. Indeed, were it not for the threat of compulsory purchase hanging over it, nor the associated immense distraction for key management, it would be growing even more strongly and looking for opportunities to intensify its activities on site.

On this basis Car Giant is working on the assumption of a figure of at least £650m for extinguishment, based on a land value of £260.2m and on an adjusted maintainable EBITDA ("earnings before interest tax depreciation and amortisation") of £30.22m with a profit multiplier of 12 (£362.64m) and a £27.16m contingency representing the loss associated with winding down the business (i.e. redundancy, loss on discounted stock and the gradual decline in sale).

Turning to the question of relocation costs, which would be relevant if a suitable relocation site were to be found, this is where I need some help from you please:

1. Do you agree that the relocation site needs to be at least the same size as the present site (given the efficiencies with building cover that would not be achievable with a modern development)?
2. Where are you assuming that the relocation site is situated? Are you assuming a site at Old Oak/Park Royal or elsewhere in London/the south east? This makes a huge difference in relation to a number of the inputs.
3. Are you assuming (1) that the new site achieves planning permission and is built out prior to acquisition of the current site, (2) some sort of phased handover, (3) that there would not be continuous operation? (4) that the new site would be with vacant possession or (5) that the site would be have sitting tenants whose leases would be run down over a period of time? ? Again this makes a huge difference in relation to a number of the inputs.
4. Are you assuming that the site would be provided to Car Giant by the OPDC for value complete with suitable buildings and other structures or that Car Giant would need to carry out significant works of construction and adaptation at its own expense?
5. What are your assumptions in relation to the costs of staff retention/redundancy/training/hiring costs and loss of profits during the relocation period?

My feeling at present is that this is an extremely artificial exercise given the absence of any site of anything like the size of Car Giant's existing site but I suggest that you provide a couple of examples of the sorts of sites that you have in mind so that we can apply indicative numbers against cost headings.

What is your timing now in relation to your appraisal? I would be concerned if this process as to relocation costs information, first instigated on 28th May by your email six weeks or so after the 3rd April hearing session, is going to elongate the local plan process further - and in consequence the blight looming over my client's business as a result of its inclusion within the boundaries of the Old Oak North allocation. Please can you clarify?

Many thanks
Jonathan

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From: Peter Farnham [mailto:peter.farnham@opdc.london.gov.uk]

Sent: 28 May 2019 12:28

To: Jonathan Smith <jonathan.smith@dp9.co.uk>

Cc: Tom Cardis <tom.cardis@opdc.london.gov.uk>

Subject: Request for relocation costs information

Afternoon Jonathan, hope you had a nice Bank Holiday.

As discussed at the hearing, we would like to request the Cargiant relocation costs information. We have heard anecdotally that this would comprise of somewhere in the region of £600m to £850m and it would be useful to get confirmation of the total and component costs. Please can this information be provided in as much detail as possible including itemised components and associated costs.

If you're able to provide this for close of play Thursday that would be appreciated.

Please let me know if you need any clarifications.

Kind regards,

Pete

Peter Farnham

Head of Planning Policy (Interim)

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