

Local Plan Independent Examination

OPDC Response to Matter and Issue 2f

Matter 2f: Whether the Plan has been positively prepared in terms of Design (derived from the nineteenth, twenty-first and twenty-second Key Issues of table 5 of Key document 5 identified at Regulation 19(1) stage, Inspector's Q3 relating to policy D1 and representation 2/D5/3 from LBH&F)

Pending examination of all the submitted evidence, this Matter may benefit from a Hearing session. One will be required in any event if participants exercise a right to be heard

OPDC response:

- 1.1. OPDC considers that the Local Plan has been positively prepared terms of Design. The Design policies have been informed by comments from a range of stakeholders during the formal consultation periods and throughout their development. These stakeholders include OPDC's Place Review Group, the Greater London Authority, GLA Strategic Access Panel, host boroughs, Historic England and community groups.
- 1.2. In relation to the nineteenth Key Issue from the Regulation 19(1) consultation relating to fire safety, following the Grenfell tragedy, the Draft New London Plan included policy D11 (Fire Safety) to complement Part B of the Building Regulations to achieve the highest standards of fire safety. OPDC Local Plan policy D4 supporting text paragraph 5.33 makes reference to Draft New London Plan guidance for fire safety of developments and Building Regulations to ensure this policy is implemented within the OPDC area.
- 1.3. In relation to the twenty-first Key Issue from first Regulation 19(1) consultation relating to light pollution, the second Regulation 19 OPDC Local Plan policy D6 was amended to include a requirement to mitigate light pollution in bedrooms and policy EU2 supporting text paragraph 6.24 was amended to require proposals to provide details of protection and mitigation in relation to impacts of light pollution during and after construction on biodiversity.
- 1.4. In relation to the twenty-second Key Issue from the Regulation 19(1) consultation relating to the London Cycling Design Standards (LCDS), the Regulation 19(2) OPDC Local Plan policy T3 was amended to support proposals which ensure new or enhanced cycle networks, infrastructure and parking accords with the London Cycling Design Standards. Figure 7.7 of the OPDC Local Plan shows the indicative future cycle network. The LCDS will be implemented through policy T3 working with developers, OPDC as a delivery agent and the relevant highways authorities.
- 1.5. In relation to representation 2/D5/3 by the London Borough of Hammersmith and Fulham (LBHF), stating that Local Plan Policy D5 (Tall Buildings) does not need to refer to proactive engagement for tall buildings, OPDC officers consider it appropriate to highlight

the need to engage with stakeholders due to the prominence, interest and potential impact of tall buildings on surrounding areas. In relation to LBHF's suggestion to list the main issues concerning tall buildings within the policy, OPDC officers consider that those issues are common to all types of development. Therefore, OPDC Local Plan and London Plan policies relating to public realm, portions of a building, heritage, building design, accessible and inclusive design, views, amenity and transport infrastructure will be used to manage these issues to ensure the OPDC Local Plan is effective in relation to impacts of tall buildings. These issues are referenced in the supporting text to Policy D5.

- 1.6. In relation to the Inspector's Q3 regarding policy D1, document [OPDC-001B](#) pages 3 and 4 set out the Inspector's and OPDC's written correspondence relating to Q3 regarding policy D1. Extracts of OPDC's correspondence are set out in paragraphs 1.7 to 1.10 below.
- 1.7. OPDC notes that Policy D1 (Securing High Quality Design) provides a policy basis for the delivery of a process because it indicates the action that should be taken in certain circumstances. Further, OPDC considers that delivering on the principles of Good Growth (Local Plan Policy SP2) will require a high quality development design process as provided for in Policy D1. Therefore, this policy will be critical to helping to deliver the NPPF (2012) core planning principle (paragraph 12) for seeking to secure high quality design, Delivering Good Design as set out in Draft New London Plan Policy D2, delivering the principles of Good Growth set out in Local Plan policy SP2 and the highest design quality as set out in policy SP9.
- 1.8. OPDC considers the inclusion of policy D1 is supported by case law and considers that the judgment of Lord Clyde in the case of R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL, 23 is relevant to justify providing a policy that sets out the process that the decision maker requires an applicant to follow. The relevant section is below (our emphasis is underlined):
- 1.9. *"The formulation of policies is a perfectly proper course for the provision of guidance in the exercise of an administrative discretion. Indeed policies are an essential element in securing the coherent and consistent performance of administrative functions. There are advantages both to the public and the administrators in having such policies. Of course there are limits to be observed in the way policies are applied. Blanket decisions which leave no room for particular circumstances may be unreasonable. What is crucial is that the policy must not fetter the exercise of the discretion. The particular circumstances always require to be considered. Provided that the policy is not regarded as binding and the authority still retains a free exercise of discretion the policy may serve the useful purpose of giving a reasonable guidance both to applicants and decision-makers"*
- 1.10. Policy D1 sets out what is required from applicants to secure high quality design and as such OPDC considers that it provides "reasonable guidance" to applicants and is therefore supported by the judgment in the above case. In addition, the inclusion of the wording "where relevant and appropriate" at limbs a), b) and c) of the policy ensures that the authority retains an exercise of discretion.
- 1.11. Schemes that have been subject to the processes set out in Policy D1 are considered to more likely result in high quality design outcomes. The requirements set out in the policy enable applicants to clearly demonstrate how the design process has delivered these outcomes. Should a development proposal not demonstrate a high quality design outcome, policy D1 enables the decision maker, i.e. development management officers or OPDC Planning Committee, to carry out a balanced decision in determining the planning application. This is considered to be consistent with paragraph 154 of the NPPF (2012). In light of the above, OPDC officers consider that Policy D1 is sound and should be retained within the Local Plan.