



The Planning Inspectorate

Report to the Council of the Royal Borough of Kensington and Chelsea

by William Fieldhouse BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 November 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE PARTIAL REVIEW OF THE CORE
STRATEGY FOR THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA WITH A
FOCUS ON NORTH KENSINGTON (ADOPTED 2010):**

MISCELLANEOUS MATTERS

Document submitted for Examination on 28 April 2014

Examination Hearing held on 10 September 2014

File Ref: PINS/K5600/429/9

Abbreviations Used in this Report

AA	Appropriate Assessment
LDS	Local Development Scheme
MM	Main Modification
NPPF	The National Planning Policy Framework
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
SPD	Supplementary Planning Document
UDP	Unitary Development Plan

Non-Technical Summary

This report concludes that the Partial Review of the Core Strategy provides an appropriate basis for considering proposals relating to miscellaneous matters over the remaining years of the plan providing that five modifications are made to the Review. The Council has specifically requested that I recommend any modifications necessary to enable them to adopt the Review.

All of my recommended main modifications are based on proposals by the Council, although I have made some detailed wording changes in the interests of clarity and to take account of representations from other parties on these issues.

The modifications can be summarised as follows:

- include a list of saved Unitary Development Plan and Core Strategy policies that the Review intends to supersede, along with appropriate explanatory text, to ensure compliance with legal requirements;
- clarify that part (b) of policy CE6 relates to adopted local noise and vibration standards so that it is effective; and
- clarify part (d) of policy CE6 so that the policy relating to any identified areas of tranquillity is effective.

Introduction

1. This report contains my assessment of the Partial Review of the Core Strategy which relates to miscellaneous matters (hereafter referred to as "the Review") in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers whether the Review is sound and whether it is compliant with the legal requirements. Paragraph 182 of the National Planning Policy Framework ("the NPPF") makes clear that to be sound, a local plan¹ should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound Review document. The basis for my examination is the Miscellaneous Matters Partial Review of the Core Strategy Publication Planning Policies that was submitted in April 2014 (MISC01). This is the same document that was published for consultation in July 2013.
3. My report deals with the main modifications that are needed to make the Review sound and legally compliant and they are identified in bold in this report [**MM**]. In accordance with section 20(7C) of the 2004 Act the Council requested that I should make any modifications needed to rectify matters that make the Plan unsound or not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The main modifications that go to soundness have been subject to public consultation and I have taken the responses into account in writing this report. The Council advised at the Hearing that it considered further sustainability appraisal (SA) to not be necessary, and no one dissented from that view. Given the nature of the recommended main modifications I agree that they are unlikely to have significant effects on the environment, or that they in any way undermine the SA process that informed the Review.
5. A document entitled "Recommended Changes" (dated April 2014) was submitted with the Review, and other changes were suggested by the Council during the Examination. In addition to the main modifications that I am recommending, the Council is able to make minor changes to the Review, for example to ensure factual information is up-to-date and accurate. Such minor changes are a matter for the Council, and they are not, therefore, dealt with further in this report.

Assessment of Legal Compliance

6. The duty to cooperate imposed by Section 33A of the 2004 Act is confined to the preparation of development plan documents insofar as they relate to "strategic matters". None of the matters dealt with by this Review are strategic matters as defined in the Act and, having regard to this and all of the evidence before me, I have no reason to conclude that the Council has failed

¹ "Local plan" is the term used in the NPPF to apply to development plan documents as defined in The Town and Country Planning (Local Planning) (England) Regulations 2012 (regulations 5 and 6). However, for the sake of clarity, I have used the term "Partial Review" or "Review" throughout this report.

to have regard to the legal duty to cooperate. This was not questioned in representations or at the Hearing.

7. My examination of the compliance of the Review with the legal requirements is summarised in the table below. I conclude that the Review meets them all with one exception: this is the requirement that where a policy is intended to supersede a policy in the adopted development plan, this must be stated and the superseded policy be identified². The Review (MISC01) does not explicitly set out the saved Unitary Development Plan ("UDP") and Core Strategy policies it is intending to supersede, although this could be ascertained from documents published as part of the review process. Prior to the Hearing, the Council prepared lists of policies that would be superseded, and provided that these [MM1], along with appropriate revisions to the explanatory text [MM2 and MM3] are included the Review would be legally compliant.

Legal Requirements	
Local Development Scheme (LDS)	The Review is identified within the versions of the LDS approved in November 2012 and April 2014. Although the Review's subject matter is compliant with the LDS, some delays in the timetable for its preparation and adoption have occurred. However, I am satisfied that there is no significant conflict with the LDS or that any third party interests have been prejudiced.
Statement of Community Involvement (SCI) and relevant regulations	The SCI, "Involving People in Planning", was adopted in December 2013. This replaced an earlier version of the SCI adopted in December 2007. Consultation on the Review, which started in 2012, has been compliant with the both the current and earlier version of the SCI. Consultation on the post-submission proposed main modifications took place between 19 September and 31 October 2014.
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	A Habitats Regulations AA Screening Report submitted with the Review sets out why AA is not necessary (MISC14). I agree with that analysis.
National Policy	The Review complies with national policy.
The London Plan	The Greater London Authority has confirmed that the Review is in general conformity with the London Plan and I am satisfied that is the case.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS, "The Future of Our Community".
2004 Act (as amended) and 2012 Regulations.	The Review complies with the Act and the Regulations other than regulation 8(5). This would be rectified by three main modifications [MM1, MM2 and MM3].

² Town and Country Planning (Local Planning) (England) Regulations 2012 regulation 8(5).

Assessment of Soundness

Background and Main Issues

8. The LDS sets out a number of Partial Reviews to the Core Strategy that was adopted in 2010. This particular Review relates to various matters that are not addressed in the other Reviews. It incorporates into the Core Strategy certain elements of a number of saved UDP policies, updates some of the policies adopted in 2010, and makes various other revisions to reflect the NPPF. The Review would result in changes to parts of Chapters 1, 4, 19, 20, 21, 23, 25, 26, 29-34, 36, 41 and 45 of the Core Strategy.
9. The process by which the Council conducted the Review, including the consultation and sustainability appraisal, has not been seriously called into question, and there is no substantive evidence before me to suggest that the Review has been anything other than positively prepared.
10. Therefore, taking account of the representations, written evidence and the discussions that took place at the examination hearing, I have identified the following main issues upon which the soundness of the Review depends:
 - whether the revisions are consistent with national policy with regard to the form and content of local plans and the presumption in favour of sustainable development;
 - whether the revisions to policy CE1 relating to climate change are justified and consistent with national policy, and whether the revised policy will be effective; and
 - whether policy CE6 will be effective in controlling the impact of noise and vibration both during the construction and operational phases of development.

Whether the revisions are consistent with national policy with regard to the form and content of local plans and the presumption in favour of sustainable development

11. The UDP was adopted in 2002, and numerous policies were "saved" in 2007 in accordance with the 2004 Act. The Core Strategy was adopted in 2010, but many saved UDP policies were also retained at that time. A revised version of the London Plan was published in 2011, and further minor alterations have been made since then. The NPPF was published in March 2012.
12. The purpose of the Review is to incorporate relevant saved UDP policies into the Core Strategy in so far as they are not dealt with in one of the topic-based partial reviews set out in the LDS, and also ensure that the Core Strategy is up-to-date and consistent with the London Plan and with the NPPF. The UDP saved policies and Core Strategy policies that would be superseded are clarified by a main modification [MM1]. Significant changes would also be made to the reasoned justification in various parts of the Core Strategy.
13. The Review ensures that Chapter 1 ("Setting the Scene") and Chapter 4 ("Delivering Success: Our Spatial Strategy") are accurate and up-to-date, and

that the housing figures are consistent with the London Plan. Various amendments are made to the corporate and partnership actions set out to deliver the strategy. A new policy (CP4) is included to reflect the third part of the Core Strategy vision which relates to the quality of the townscape and residential quality of life. Policies relating to temporary sleeping accommodation; diplomatic and allied uses; off-street coach parking; public transport interchanges; climate change; biodiversity; noise and vibration; and contaminated land are included. Changes are proposed to Chapter 41 (Policy Replacement Schedule) and to Chapter 45 (Glossary). Further minor, consequential changes could be made if deemed appropriate; this would be a matter for the Council to consider and is not something that I address further in this report.

14. The NPPF is clear that development plans can be partially reviewed³, and the consolidation and updating exercise that this, and the other partial reviews, represent seems to me to be an entirely appropriate and pragmatic approach to take. Bringing all relevant policies into a single development plan document represents a user-friendly approach and creates a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency⁴.
15. Some representors are of the opinion that certain parts of the adopted Core Strategy that are not covered by this Review, or any of the other partial reviews, ought to be updated. However, that is a matter for the Council to consider and set out as appropriate in future versions of the LDS; it is not something that I considered during my examination of the Review. This report, therefore, focuses only on the parts of the Core Strategy that the Council is proposing to change.
16. The changes introduced by this Review go, as far as is practically possible given their extent and the constraints that inevitably exist when amending an existing document, a reasonable way to creating the type of local plan encouraged by the NPPF.
17. The policies are generally expressed in positive terms, for example by setting out actions that need to be taken, and describing the types of development that are being sought or the particular qualities of the local environment that should be preserved or enhanced. There are some negative and restrictive statements, but these are largely aimed at safeguarding high quality places, buildings and characteristics of the Borough that already exist, and do not alter the overall positive tone of the Review. There is nothing to lead me to conclude that any of the policies set out in the Review are expressed in ways that would prevent objectively assessed development needs being met or economic and social benefits associated with policies in other parts of the Core Strategy being achieved. Paragraph 1.1.6 makes it clear that the policies follow the presumption in favour of development, and that planning applications that accord with the development plan will be approved without delay, unless material considerations indicate otherwise. I am, therefore, satisfied that the Review will contribute positively to attaining sustainable

³ NPPF paragraph 153.

⁴ NPPF paragraph 17, first bullet point.

development⁵.

18. I therefore conclude that the Review is consistent with national policy and guidance relating to the form and content of local plans and appropriately reflects the presumption in favour of sustainable development. That said, there are two policies that I need to consider in greater detail; these I turn to now.

Whether the revisions to policy CE1 relating to climate change are justified and consistent with national policy, and whether the revised policy will be effective

19. As part of the approach to implementing a zero carbon homes policy by 2016, the Government is currently in the process of introducing changes to legislation and policy aimed at simplifying the means by which appropriate standards are achieved in housing development⁶. These changes are subject to Parliamentary processes, and will ultimately be likely to alter the role that local plans have in terms of specifying standards, including those relating to the sustainability of buildings. Changes to the Building Regulations and a national statement of policy are expected to come into effect in 2015, and the Code for Sustainable Homes ("the Code") will be wound down. Thereafter, it is intended that local plans should not refer to the Code or set out any additional technical requirements relating to the construction, layout and performance of new dwellings other than those to be set out in the Building Regulations "optional requirements" and other national documents.
20. These changes are likely to mean that Core Strategy policy CE1, and potentially others, will become out-of-date sometime in 2015 or thereafter. The Council is aware of this, but is still of the opinion that the changes to policy CE1 set out in the current Review are appropriate and ought to be adopted as soon as possible. It is my role, therefore, to consider whether the changes to that policy meet the tests of soundness in the context of current national planning policy.
21. The NPPF advises that when setting any local requirement for a building's sustainability, local plans should do so in a way consistent with the Government's zero carbon buildings policy and adopt nationally described standards⁷.
22. The Council has considerable experience dating back to 2010 of applying the standards set out in the current version of policy CE1. There has been some success, but the higher standards set for after 2012 have proved difficult to attain, particularly given the technological advances required to achieve them whilst preserving and enhancing the high quality historic environment that is characteristic of much of the Borough. Accordingly, research was commissioned in 2013⁸; this forms the main justification for the revised policy CE1.

⁵ NPPF paragraphs 14, 15 and 151.

⁶ The Government's Housing Standards Review commenced in 2013, and includes a Technical Consultation published by DCLG in September 2014.

⁷ NPPF paragraph 95.

⁸ Evidence Base for Basements and Policy CE1: Climate Change (Eight Associates, July 2013).

23. Policy CE1 requires all development to make a significant contribution towards achieving the nationally defined targets for reducing CO₂ emissions. Part (a) aims to ensure that all new buildings and extensions over a certain size⁹ achieve the following standards: level 4 of the Code for residential development, and BREEAM "very good" for non-residential development. Part (b) deals with conversions and refurbishments over the same size thresholds, and requires BREEAM "excellent" for residential refurbishment, and BREEAM "very good" for non-residential development. These standards would apply over the plan period, until a further review is completed, or until expected changes to national policy and legislation come into effect. Parts (c) to (h) include a range of other requirements aimed at helping to deliver the overall objective of the policy; these are unchanged from the 2010 version.
24. Local plans should be aspirational, but realistic, deliverable and not undermine the financial viability of development¹⁰. The revised policy is based on the practical experience gained since 2010 and up-to-date research that takes account of the particular characteristics of the Borough, and the opportunities and threats associated with the historic nature and high quality of many of the buildings, and relatively high property values. No substantive evidence has been provided to lead me to conclude that it would be reasonable to insist on the policy applying to smaller scale developments or the retention of the higher standards set in 2010, or that the revised policy is unjustified or conflicts with the NPPF. Furthermore, the intent of the policy is clear, as are the means by which it will be implemented. The required standards are nationally defined and widely understood. It should therefore be effective.
25. I conclude on this issue that revised policy CE1 is justified, consistent with national policy, and will be effective in helping to address climate change.

Whether policy CE6 will be effective in controlling the impact of noise and vibration both during the construction and operational phases of development

26. The NPPF states that planning policies should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse effects from noise from development; and identify and protect areas of tranquillity which have remained relatively undisturbed by noise¹¹. Planning Practice Guidance (PPG) provides detailed advice, and states that local plans may include specific noise standards to apply to various forms of proposed development and locations in their area whilst taking care to avoid these being implemented as fixed thresholds¹².
27. The Review clearly identifies the dominant sources of noise in the Borough as being road and rail traffic; building and construction activity; noisy neighbours; pubs and clubs; pavement cafes/outdoor seating; and building services, plant and equipment. Policy CE6 aims to ensure that noise and vibration generating sources that affect amenity are controlled, and that new noise and vibration sensitive developments mitigate and protect occupiers

⁹ 800m² for residential development, and 1000m² for non-residential development.

¹⁰ NPPF paragraphs 154 and 173.

¹¹ NPPF paragraph 123.

¹² PPG ID30-010-20140306.

against existing sources of noise and vibration. These are clear objectives, and in line with national policy and guidance.

28. Policy CE6 includes a number of criteria intended to achieve its objectives, including (b) which states that developments which fail to meet local noise and vibration standards will be resisted. However, no standards are set out in the Review, meaning that the way in which the policy will be implemented is not at all clear. The Council explained at the Hearing that the "local standards" are set out in an adopted Supplementary Planning Document that has been used effectively for several years to inform the assessment of development proposals and the content of planning conditions where appropriate¹³. A main modification is required to make this clear and thereby ensure that the policy is effective [MM4]. It may be appropriate for minor consequential changes also to be made to the reasoned justification; this is a matter for the Council to consider.
29. Part (d) of policy CE6 is intended to deal with areas of tranquillity. Whilst there are currently no such areas identified in the Borough, the Council is intending to consider this further in due course. It is appropriate for the policy to protect any such areas that may be identified, but the wording of part (d) as submitted is not clear. A main modification would rectify this and make the policy effective [MM5].
30. Planning conditions, construction management plans, and other mechanisms may be used to help implement policy CE6. However, it is not necessary for these to be referred to in the policy or reasoned justification. It is also unnecessary for basement developments to be mentioned as policy CE6 applies to all forms of development where relevant, and a basements policy is subject to a separate partial review.
31. I conclude on this issue that policy CE6 will be effective in controlling the impact of noise and vibration both during the construction and operational phases of development provided that two main modifications [MM4 and MM5] are made.

Other Matters

32. In addition to the main issues that I have considered above, the Review includes several other policies that differ from those in the 2010 version of the Core Strategy and the saved UPD policies. I have taken account of all of the representations about these, but none raise issues of soundness and I do not therefore need to address them further in my report.

Overall Conclusion and Recommendation

33. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.
34. The Council has requested that I recommend main modifications to make the

¹³ Noise Supplementary Planning Document (adopted 2009).

Review sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Miscellaneous Matters Partial Review satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the NPPF.

William Fieldhouse

Inspector

This report is accompanied by the Appendix containing the Main Modifications

Appendix

Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text, or by specifying the modification in words in *italics*.

The page numbers and paragraph numbering below refer to the submission local plan, and do not take account of the deletion or addition of text.

Ref	Page	Policy/ Paragraph	Main Modification
MM1	N/A	N/A	<i>Insert Tables 1 and 2 (below) setting out existing UDP and Core Strategy policies that will be superseded and the policies in the Review that will replace them.</i>
MM2	73	41.0.1	The purpose of the <u>following</u> tables is to show how the former UDP <u>policies and previous iterations of the Core Strategy policies (adopted in 2010)</u> relate to the <u>most up to date version of the Core Strategy (2014)</u> . These tables fulfil the requirements laid out in Regulation 8(5) of the <u>Town and Country Planning (Local Planning) (England) Regulations 2012</u> , and the Core Strategy Policies relate to each other. This schedule sets out the current previous UDP Policies and identifies if there is a relevant policy in the Core Strategy. The specific criteria within each policy have also been identified where appropriate. <u>Most UDP policies have now been superseded except those in the Housing and Offices and Employment chapters which will be superseded in due course.</u>
MM3	73	41.0.2	The Core Strategy policies <u>(2014)</u> are not the same as the UDP policies, <u>or those Core Strategy policies (2010)</u> , that they replace; rather they cover the same topic or issue.
MM4	65	CE6(b)	b. resist developments which fail to meet <u>adopted</u> local noise and vibration standards;
MM5	66	CE6(d)	d. require that development respects, protects and enhances the special significance of the Borough's tranquil areas the attributes of the special significance and tranquillity of tranquil quiet.

Table 1

Core Strategy Policy (2010), now superseded		Core Strategy Policy (2014)	
CP1	Quanta of Development	CP1	Quanta of Development
CP3	Places	CP3	Places
CT1	Improving alternative to car use	CT1	Improving alternative to car use
CR7	Servicing	CR7	Servicing
CE1	Climate Change	CE1 CL7	Climate Change Basements
CE4	Biodiversity	CE4	Biodiversity
CE5	Air Quality	CE5	Air Quality
CE6	Noise and Vibration	CE6	Noise and Vibration
CE7	Contaminated Land	CE7	Contaminated Land

Table 2

Formerly "saved" UDP Policy, now superseded		Core Strategy Policy (2014)
ST 35	Support control of night-time and weekend lorry movement	N/A. To be moved to a Highways and Transportation document
ST 36	Monitor demand in the controlled parking zone	N/A. To be moved to a Highways and Transportation document
ST 37	Oppose any increased capacity at Heathrow Airport	N/A. To be moved to a Highways and Transportation document
OFFICES AND INDUSTRY		
E28	Resist establishment of diplomatic uses in specified areas	Policy CF10
E29	Permit establishment of diplomatic uses in specified areas	Policy CF10
TRANSPORTATION		
TR16	Seek improvements at public transport interchanges	Policy CT1 (j)
TR17	Seek the provision of interchange facilities where none presently exist	Policy CT1 (j)
TR20	Resist the loss of off-street coach parking	Policy CT1 (l)
TR39	Permit only small-scale development in less accessible areas	Policy CT1 provides a strategic overview.
TR40	Resist the formation of new accesses on major roads	N/A. See the Transport SPD
TR44	Resist development which would result in the loss of on-street parking	Policy CT1 (b) -

SOCIAL AND COMMUNITY USES		
SC9	Negotiate provision of workplace nurseries	Policy C1
HOTELS		
T5	Resist provision of new temporary sleeping accommodation	Policy CF9
T6	Allow extensions to temporary sleeping accommodation	Policy CF9
LEISURE AND RECREATION		
LR15	Require that amenity space is provided for new family housing	Policy CH2 (h)
LR20	Require foreshore means of access are safeguarded and supplemented	Policy CR5 (h)
ENVIRONMENT		
PU3	Require additional information for developments on contaminated land	Policy CE7
PU4	Ensure appropriate protection for future users of contaminated land	Policy CE7