

**Report of the Independent Examination  
Norland Neighbourhood Development Plan**

**In the London Borough of Kensington and Chelsea**

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August 2013**

## Summary

- i. The Norland Neighbourhood Plan has been examined during August 2013. The examination has been undertaken by written representations.
- ii. Several modifications are required in order for the plan to meet the basic conditions and other legal requirements, so that it may proceed to referendum.
- iii. I recommend that the Norland Neighbourhood Plan proceed to referendum, subject to the modifications set out in this report being made.
- iv. I recommend that the voting area coincide with the Neighbourhood Area.

## 1. Introduction

- 1.1 I have been appointed to examine the Norland Neighbourhood Plan (referred to as the Neighbourhood Plan), in the Royal Borough of Kensington and Chelsea. The Neighbourhood Plan has been produced under the provisions of the Localism Act 2011, which introduced the means for local communities to produce planning policies for their local areas.
- 1.2 The Neighbourhood Plan has been prepared by the Norland Neighbourhood Forum. There are particular challenges for neighbourhood forums and I recognise the huge effort of all those that have been involved in preparing the Neighbourhood Plan.
- 1.3 The neighbourhood area is primarily residential in nature, with some retail, business and community uses. The Neighbourhood Plan focuses primarily on design, heritage conservation and retention of community uses.
- 1.4 This report must recommend one of the following:
  - (a) that the draft order is submitted to a referendum, or
  - (b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or
  - (c) that the proposal for the order is refused.

In addition, the report must recommend whether the voting area should extend beyond the neighbourhood area.

## 2. Representations

- 2.1 Representations were received during the publicity period from Natural England, Transport for London, Jon Bunker & Ann Mollo, Georgiana Lebus, David Lindsey, and Mort Mirghavameddin. A letter from English Heritage was received after the end of the publicity period and may not be taken into account, therefore.
- 2.2 **Natural England**, letter dated 18 July 2013.
  - 2.2.1 The letter refers to guidance on dealing with the natural environment in neighbourhood plans, but does not make any specific comment on the Neighbourhood Plan.
- 2.3 **Transport for London (TfL)**, letter dated 26 July 2013.
  - 2.3.1 The letter highlights the proximity of Holland Park Avenue and other nearby roads forming part of the Strategic Road Network. No underground stations are within the neighbourhood area, but Latimer Road, Shepherds Bush and Holland Park are within walking distance, as is Shepherds Bush National Rail Station. Two bus services operate through the area and three on Holland Park Avenue to the south. The area has excellent to moderate access to public transport.
  - 2.3.2 The letter refers to section 3.4 of the plan – street assessments for Royal Crescent and St Ann’s Villas. The plan refers to adverse impacts around increase of traffic

flow, which affects the safety and amenity of the plan area, including from buses, though this is not supported with evidence. The letter goes on to say that TfL reviews have demonstrated that there is sufficient demand within the plan area to warrant the level and frequency of bus services.

2.3.3 Comments are included on working with the council to promote alternative modes of transport to the car, reducing congestion and improving safety in Norland. TfL states that it is keen to ensure that the neighbourhood planning process is compliant with the London Plan. It would like to ensure that transport operations infrastructure and enhanced where possible. TfL has no plans to change bus services in the area and points out that any changes to the highway network would need to be tested fully in traffic terms.

2.4 **Jon Bunker & Ann Mollo,** [REDACTED] letter/email dated 26 July 2013.

2.4.1 The letter comments on the zoning of Darnley Terrace as an area where no changes at roof level are to be considered. It points out that 33% of houses already have changes at roof level and that the Norland Conservation Society and Kensington Society take a different view on the desirability of such changes.

2.5 **Georgiana Lebus,** [REDACTED] letter/email dated 18 July 2013.

2.5.1 The letter supports the Neighbourhood Plan and points out that the area has experienced overdevelopment and loss of local amenities. The plan will contribute towards preserving the environment and valued amenities that contribute to the special character of the conservation area and also provide for sustainable and appropriate development.

2.6 **David Lindsay, Ward Councillor for Norland,** letter/email dated 17 July 2013.

2.6.1 This supports the Neighbourhood Plan and praises the Norland Conservation Society.

2.7 **Mort Mirghavameddin,** [REDACTED] letter/email dated 26 July 2013.

2.7.1 The letter questions the categorisation of Darnley Terrace as a street where “no change at the roof level should be allowed”. This is considered to be unnecessarily punitive and it should be re-categorised as “additional storey may be acceptable” or “on its merits”. The letter points out that previous letters from the Norland Conservation Society and Kensington Society supported the erection of a mansard storey to properties in Darnley Terrace.

### **3. Compliance with Legal Requirements**

#### **3.1 Neighbourhood Plan and Area**

3.1.1 The Neighbourhood Plan sets out policies in relation to the development and use of land for the defined neighbourhood area, which accords with the definition of neighbourhood plans in Section 38A of the Town and Country Planning Act 1990.

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3.1.2 The Norland Neighbourhood Area was designated by the Royal Borough of Kensington and Chelsea on 15<sup>th</sup> June 2012. The Neighbourhood Plan relates to the Norland Neighbourhood Area and there are no other neighbourhood development plans for that area.

3.1.3 The Neighbourhood Plan includes matters falling outside of the scope of the development and use of land. More specifically, the sections in question are:

- Most of part 3.4 of the Neighbourhood Plan refers to traffic management matters, falling outside of the scope of land use planning.
- Part 4.3 relates to pavement replacement, street furniture, traffic management and other matters covered by non-planning legislation.
- Part 4.4 deals with traffic management.

**3.1.4 Modification: Non-planning matters should be removed to a separate document or an annex, not forming part of the draft neighbourhood plan order.**

3.1.5 A Neighbourhood Plan may not make designations. It may be advisable to remove text that suggests the plan is making decisions on such matters, for example the proposed action to seek an Article 4 Direction and listing on page 33.

3.1.6 A neighbourhood plan may not be a tool for determining where statutory consents are required. Although such statements could be considered as background information, I have concerns over the accuracy of some statements and they could be vulnerable to changes in primary and secondary legislation. The Neighbourhood Plan makes general statements on where planning permission or listed building consent is required, which in some instances are incorrect.

**3.1.7 Modification: The references to listed building consent being required should be deleted or modified in paragraphs 3.2.4, 4.2.2 (d), 4.2.3, 4.2.6(c and d), and 4.2.7. The reference to listing applying to everything within the curtilage should be deleted from Paragraph 4.3.2. The statement under 4.2.7 that planning permission is not required for internal alterations to listed buildings should be deleted; some internal alterations could be associated with a material change of use.**

## 3.2 Time Period

3.2.1 The Neighbourhood Plan fails to meet the requirement of Section 38B(1)(a) by failing to state the period for which it is to have effect.

**3.2.2 Modification: A statement on the time period for which the Neighbourhood Plan is to have effect must be added.**

## 3.3 Excluded Development

3.3.1 The Neighbourhood Plan does not include policies on excluded development.

## 4. Meeting The Basic Conditions

### 4.1 EU Obligations

- 4.1.1 The Neighbourhood Plan has been screened for Strategic Environmental Assessment (SEA) by the local planning authority. It has not been considered necessary to undertake SEA.
- 4.1.2 There are no habitats that would trigger Habitats Regulations Assessment (HRA).
- 4.1.3 An equalities impact assessment has been undertaken. This indicates neutral or positive impacts on groups with protected characteristics.
- 4.1.4 I am satisfied that the Neighbourhood Plan does not break, and is compatible with, EU Obligations and Convention rights (within the meaning of the Human Rights Act 1998).

### 4.2 Sustainable Development

- 4.2.1 There is little capacity for new development in the Norland Neighbourhood Area. The Neighbourhood Plan does not make site allocations, but does recognise there will be some new development.
- 4.2.2 The Neighbourhood Plan includes land use policies aimed at maintaining business uses in the area. This helps to maintain a range of local services for the local community.
- 4.2.3 The focus of much of the plan is about creating a high quality built environment and protecting and enhancing the historic environment. These are constituents of sustainable development, as set out in the National Planning Policy Framework.
- 4.2.4 I am satisfied that the Neighbourhood Plan is capable of the achievement of sustainable development, subject to the modifications recommended elsewhere in this report.

### 4.3 National Policy and Guidance

- 4.3.1 **Paragraph 17 of the NPPF:** The first of the core planning principles of the National Planning Policy Framework (NPPF) is stated at Paragraph 17, which says that the planning system:

‘be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency’

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This is a clear and fundamental requirement of the NPPF, against which neighbourhood plans should be considered.

4.3.2 The Neighbourhood Plan includes three sets of stated aims. On page 9, aims are included around defining and protecting the character of the conservation area and quality of life. These appear to relate to the format of the plan. Section 1.2 of the plan on page 12 sets out more detailed policy aims relating to character, listed buildings, open spaces and trees, quality of life, heritage and amenities, pedestrians and safety, local character, mix of uses, social diversity and civic pride. Similar aims are stated on page 43, though with an additional aim: “keep the conservation area as a place for families”.

4.3.3 Given that aims normally form a basis for policy and are a material consideration in making decisions, having three sets of aims is likely to cause confusion in making decisions.

**4.3.4 Modification: Having regard to Paragraph 17 of the NPPF, the three sets of aims should be merged to create one clear and coherent set of aims.**

4.3.5 The structure of the Neighbourhood Plan creates difficulties in terms of the requirements of Paragraph 17 of the NPPF. In particular, it is not always clear which parts of the plan constitute policy with supporting interpretation, which parts are background information, which parts define the significance of heritage assets (as set out in Paragraphs 128 and 129 of the NPPF) and which parts do not form part of the Neighbourhood Plan (non-planning matters). For example, Part 4 of the plan is called guidance, but contains policies. Appendices B and C also appear to contain policy under the heading of “Policy Guidelines for North Portland Road” and ‘Heritage Assets and Double Glazing’. Part 3 of the plan also appears to mix policy in with analysis and guidance, for example Paragraphs 3.1.5 and 3.2.3 appear to contain elements of policy.

4.3.6 This lack of clarity over what constitutes policy, what is seeking to define significance of heritage assets and what is unrelated to planning is likely to cause confusion and ambiguity and the possibility of legal challenge of decisions made under the plan.

**4.3.7 Modification: Having regard to Paragraph 17 of the NPPF, the Neighbourhood Plan should be restructured to make clear what constitutes policy, explanatory text, definition of significance of heritage assets, guidance and background information.**

4.3.8 Paragraph 206 of the NPPF states:

‘Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects’.

4.3.9 The Neighbourhood Plan proposes use of planning conditions, requiring reinstatement of historic features. In many instances this would be unreasonable. The plan may encourage reinstatement and this could be a matter for negotiation through the planning process. But reinstatement could only be required where directly relevant to the development in question.

**4.3.10 Modification: The requirement to impose conditions on planning permissions requiring the reinstatement of historic features should be removed from pages 44, 54 and 77.**

4.3.11 The Neighbourhood Plan quotes the term 'historic assets' from the NPPF (page 10, column 2, paragraph 3). The term used in the NPPF is 'heritage assets'.

**4.3.12 Modification: The term 'historic assets' on page 10. Column 2, paragraph 3 should be replaced with the term 'heritage assets'.**

4.3.13 Further modifications in respect of specific policies of the Neighbourhood Plan having appropriate regard to national policy and guidance are recommended in the *Neighbourhood Plan Policies* section of this report.

4.3.14 I am satisfied that the Neighbourhood Plan has appropriate regard to national policies and advice, subject to the modifications set out in this report being made.

## **4.4 Strategic Local Policy**

4.4.1 The Kensington and Chelsea Local Development Framework Core Strategy was adopted on 8 December 2010.

4.4.2 Strategic policies relevant to the Neighbourhood Plan are:

- CF3 Diversity of Uses within Town Centres
- CR4 Streetscape
- CL1 Context and Character
- CL2 New Buildings, Extensions and Modifications to Existing Buildings
- CL3 Heritage Assets – Conservation Areas and Historic Spaces
- CL4 Heritage Assets – Listed Buildings, Scheduled Ancient Monuments and Archaeology.

4.4.3 A number of modifications are necessary for the Neighbourhood Plan to be in general conformity with the above strategic policies. These are set out in the *Neighbourhood Plan Policies* section of this report.

4.4.4 A partial review of the core strategy is underway and publication drafts are currently being consulted on. This includes replacement conservation and design policies. These are broadly similar to the adopted core strategy, but with more emphasis on land use in conservation areas.

4.4.5 Saved policies from the Unitary Development Plan (adopted May 2002) include CD44, CD45 and CD46 relating to additional storeys, roof level alterations and roof terraces. Policies CD47, CD48, CD49 relate to rear extensions and conservatories. Policy CD55 relates to the character of mews properties. Policy CD63 deals with conservation areas.

4.4.6 These policies are broadly similar to the core strategy policies referred to in 4.4.2. The modifications suggested to achieve general conformity with the relevant strategic policies of the Local Development Framework Core Strategy 2010 would

also ensure general conformity with the saved policies from the Unitary Development Plan 2002.

4.4.7 The London Plan 2011 is strategic in nature and contains the following policies:

- 7.4 Local Character
- 7.6 Architecture
- 7.8 Heritage Assets and Archaeology

4.4.8 The modifications suggested to achieve general conformity with the Kensington and Chelsea Local Development Framework Core Strategy 2010 will also ensure general conformity with the London Plan.

4.4.9 I am satisfied that the Neighbourhood Plan is in general conformity with strategic policies of the Development Plan, subject to the modifications set out in this report being made.

## **4.5 Neighbourhood Plan Policies**

**4.5.1 Policy N1:** Policy N1 fails to have appropriate regard to Paragraph 17 of the NPPF due to the high level of uncertainty introduced by the terms 'More flexibility might be permitted in the lesser terraces and mews etc.' and 'eccentric buildings'. Also, the policy ends by stating that the issue of eccentric buildings cannot be set out in policy.

4.5.2 In view of this uncertainty, policy N1 could undermine Strategic Objective CO5 and Policies CL1 and CL2 of the Core Strategy.

**4.5.3 Modification: The word 'etc.' should be deleted from Policy N1. The scope of 'more flexibility' should be defined. The term 'eccentric buildings' should be defined or the policy reworded to exclude the term.**

**4.5.4 Policy N2:** Part D of this policy would fall outside of normal planning controls, unless, for example, a new development had a specific condition. There would be little or no opportunity to condition existing roof spaces.

**4.5.5 Modification: Part D of Policy N2 should be amended to make clear where it would be applied. The associated explanatory paragraph on page 47 should be similarly amended.**

**4.5.6 Policy N3:** There appears to be a word missing from the policy, which should read 'loss of garden space', in all probability. The term 'closet extension' needs to be defined in order to assess its impact on Policy CL2 of the Core Strategy. Use of the word 'should' in both paragraphs of Policy N3 could undermine Policies CL2 and CL6 of the Local Plan Core Strategy, which use more definite terms.

4.5.7 The explanatory text on page 48 places a 2.5 metre maximum height on extensions. Given the requirements of construction, this would be difficult to inhabit for some people and would not meet the requirements of Paragraph 17 of the NPPF.

- 4.5.8 Modifications:** Add the word 'of' between 'loss' and 'garden space' in Policy N3. Replace the word 'should' in both paragraphs of Policy N3 with the word 'must'. Define or replace the term 'closet extensions'. Delete or modify the 2.5 metre height restriction for extensions on page 48. If a specific height limit is retained, an evidence-based justification must be provided.
- 4.5.9 Policy N4:** Whilst reinstatement of features could be negotiated, it is unclear in what circumstances it could be required.
- 4.5.10 The wording of the policy encourages, but does not require the retention of original architectural features. This is a somewhat lesser requirement than that in the Core Strategy and NPPF policies, the latter requiring decisions to be based on an understanding of the significance of heritage assets. The explanatory text quotes part of Policy CL2, but excludes the text from 'Extensions and Modifications' onwards. This could be interpreted as dis-applying the excluded parts of the policy.
- 4.5.11 Modification:** The policy should be reworded to require the retention of architectural features that contribute to the significance of heritage assets. The phrase 'and required where proportionate to the development' should be modified to make clear in what circumstances it could be applied. The partial quotation of Policy CL2 should be deleted.
- 4.5.12 Policy N5:** The explanatory text on page 54 requires conditions to return painted brickwork to its natural state, subject to professional advice on feasibility, where planning permission is granted for development. Such conditions are unlikely to be reasonable. The term 'development' is too wide in scope. The policy uses the term 'should' in relation to unpainted stucco and the colour of paint for stucco. This could undermine the 'significance' based approach in the NPPF.
- 4.5.13 The explanatory text on page 55 stipulates alternative colours for stucco 'if all owners are agreed'. There is no legal scope for planning decisions to be based on such agreement.
- 4.5.14 Modification:** Policy N5 should be reworded, replacing the word 'should' with a more definite wording, reflecting the approach in the NPPF. Delete the requirement for conditions to be imposed requiring the return of painted brickwork to its natural state where development is permitted. The phrase 'if all owners are agreed' should be deleted from page 55.
- 4.5.15 Policy N6:** The word 'should' is used in Policy N6, which is likely to introduce a more flexible approach to solar panels. This does create tension with both local strategic policy and NPPF policy on heritage. Heritage conservation and micro-generation are both aspects of delivering sustainable development. At times, there will be difficulties in reconciling different aspects of policy. A reasonable and holistic approach is necessary when considering whether a neighbourhood plan meets the basic conditions. Therefore, I would not recommend any amendment to Policy N6, other than that already suggested in paragraph 3.1.7 of this report.
- 4.5.16 Policy N7:** There is an error in the policy, which should state 'open spaces' rather than 'opens spaces'. The policy includes the word 'should', which could undermine strategic local policy.

- 4.5.17 The explanatory text on page 58 places a 2.5 metre maximum height on extensions. Given the requirements of construction, this would be difficult to inhabit for some people and would not meet the requirements of Paragraph 17 of the NPPF.
- 4.5.18 The explanatory text on page 58 states that outbuildings are not for use as living accommodation. This needs to be clarified, as the use of such buildings would normally be ancillary to the residential use of the site.
- 4.5.19 Modification: The wording of the policy should be changed to state 'open spaces'. Replace the word 'should' in Policy N7 with the word 'must'. Delete or modify the 2.5 metre height restriction for extensions on page 58. If a specific height limit is retained, an evidence-based justification must be provided. The phrase 'Not for use as living accommodation' should be clarified to make clear it refers to the creation of a separate dwelling, rather than ancillary use to the main dwelling.**
- 4.5.20 Policy N8:** The policy refers to the character and appearance of the neighbourhood area. The use of the phrase 'character and appearance' suggests that the qualifying body may have meant to refer to the conservation area rather than the neighbourhood area. This requires clarification, as the explanatory text on page 59 refers to the conservation area. The policy uses the terms 'should' and 'encourages' which could undermine Policy CL2 of the Local Plan Core Strategy, which uses more definite terminology.
- 4.5.21 Modification: The policy or explanatory text should be amended to create consistency between the policy itself and the explanatory text in terms of referring to the neighbourhood area or the conservation area. Replace the word 'should' in Policy N8 with 'must'.**
- 4.5.22 Policy N9:** This is a statement rather than policy. The policy itself appears to be in the explanatory text. This would fail to meet the requirement of Paragraph 17 of the NPPF.
- 4.5.23 Subject to clarification and re-structuring, the policy is capable of being in general conformity with Policy CF3 of the Kensington and Chelsea Core Strategy 2010.
- 4.5.24 Modification: Policy N9 should be reordered to create a clear policy requirement, supported by explanatory text.**
- 4.5.25 Appendix B: Policy Guidelines for North Portland Road:** Pages 77, 78 and 79 appear to be a mix of policy, explanatory text and background information.
- 4.5.26 Modification: The North Portland Road policy should be moved to the policy section of the Neighbourhood Plan and be given a policy number. There should be a clear separation of policy and explanatory text.**
- 4.5.27 Appendix C: Heritage Assets and Double Glazing:** Pages 81 and 82 appear to contain policy. A neighbourhood plan may not advocate commercial products within its policies (such as Ventrola).

- 4.5.28 Modification: The heritage assets and double-glazing policy should be moved to the policy section of the plan and be given a policy number. Remove the reference to 'Ventrola' (a commercial firm) on page 81.**
- 4.5.29 The section on 'When is planning permission needed' on page 82 could be inaccurate in some circumstances or could be superseded by changes to primary or secondary legislation.
- 4.5.30 Modification: The section on 'When is planning permission needed' on page 82 should be deleted.**
- 4.5.31 Appendix D: A Guide to the care and maintenance of Stucco:** The status of this section of the plan should be made clear. It appears to be a mix of defining significance and technical conservation guidance.
- 4.5.32 Modification: The status of Appendix D should be clarified in terms of whether it forms guidance, defines significance or relates to any of the policies.**
- 4.5.33 **Appendix F:** This comprises the Consultation Statement. There is no need for this to form part of the Neighbourhood Plan Order or to be the subject of the referendum.

## **5. Recommendations**

### **5.1 Referendum**

- 5.1.1 Subject to the modifications set out in this report, I am satisfied that the Norland Neighbourhood Plan is capable of meeting legal requirements set out in the Localism Act 2011, including meeting the basic conditions. Although the modifications are numerous, including restructuring of the Neighbourhood Plan, the essence of the policies would remain.
- 5.1.2 I recommend that the Neighbourhood Plan proceed to referendum, subject to the modifications set out in this report being made.

### **5.2 The Voting Area**

- 5.2.1 The scope and policies of the Neighbourhood Plan are localised in terms of their impacts. The Neighbourhood Plan will not impact significantly on surrounding areas.
- 5.2.2 I recommend that the voting area coincide with the Neighbourhood Area.