

Royal Borough of Kensington and Chelsea response to St Quintin and Woodlands Draft Neighbourhood Plan Basic Condition Statement

Basic condition (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

The Council considers that the Neighbourhood Plan is not in general conformity with its strategic policies CF5 Location of Business Uses and CE2 Flooding.

The Council's concern in relation to Policy CE2 is a small one and can be resolved with a very minor change to the St Quintin and Woodlands policy 2d, set out in the Council's response to the neighbourhood plan consultation.

However, concerns about the St Quintin and Woodlands Neighbourhood Plan policies 8a, 8b, 8e and 10c's conformity with CF5 are fundamental, as detailed in the consultation response.

The Council's Local Plan does not define strategic policies because it was adopted in 2010 before the NPPF was published in March 2012. The Council has subsequently defined its strategic policies as those which have an impact beyond the borough boundary and/or concern matters on which the Council has a duty to co-operate with other boroughs. The Council considers this is a practical and not unduly restrictive approach which is compatible with the NPPF guidance on strategic policies, in particular paragraphs:

'16. Neighbourhood Plans should develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development, shaping and directing development in their area that is outside the strategic elements of the Local Plan.'

'156. Local Authorities should set out the strategic priorities for the area in the Local Plan. This would include strategic policies to deliver:

- The homes and jobs needed in the area
- The provision of retail, leisure and other commercial development
- The provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat)
- The provision of health, security, community and cultural infrastructure and other local facilities, and
- Climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.'

'157. Crucially Local Plans should ... identify areas where it may be necessary to limit the freedom to change uses of buildings and support such restrictions with a clear explanation.'

'178. Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156.'

‘184. Neighbourhood Plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure an up-to-date plan is in place as quickly as possible. Neighbourhood Plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.’

‘185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.’

and paragraph 076 of the Planning Practice Guidance on Neighbourhood Plans:

‘Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective
- whether the policy seeks to shape the broad characteristics of development
- the scale at which the policy is intended to operate
- whether the policy sets a framework for decisions on how competing priorities should be balanced
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan
- whether the Local Plan identifies the policy as being strategic
- Planning practice guidance on Local Plans provides further advice on strategic policies.’

The Council considers that that its policies on housing, employment land and flooding are clear examples of strategic priorities, which meet this guidance and where a Neighbourhood Plan should not seek to develop policies that undermine the Local Plan’s strategic policies.

In providing advice to the Neighbourhood Forum the Council has consistently advised (in writing from 6.10.2014) that Policy CF5 is a strategic policy in its entirety, which the neighbourhood plan should not undermine. The Council considers that all parts of Policy CF 5 are strategic, since this is how the Council protects land for employment uses and is closely aligned with CO2 Strategic Objective for Fostering Vitality ‘Our strategic objective to foster vitality is that the quality of life of our predominantly residential Borough is enhanced by a wide variety of cultural, creative

and commercial uses which can significantly contribute to the well being of residents and to the capital's role as a world city.'

RBKC response to StQW Basic Condition Statement

The Council would like to make the following specific comments in response to the St Quintin and Woodlands Neighbourhood Plan Basic Condition Statement.

1.0 Introduction

- 1.4 The Council does not agree with the view that all the draft polices are in general conformity with the RBKC Local Plan or that they have regard to the NPPF (see above).

3.0 Regard to National and Local Policy

Is the RBKC Core strategy up to date?

- 3.3 The Council's Local Plan was adopted in 2010 before the NPPF was published in March 2012.
- 3.5 The Council does not accept that its Housing and Enterprise policies are not up to date or that the Local Plan is not consistent with the NPPF.

The strategic housing policies for the Borough consist of the London Plan 2011, consolidated with alterations, and the adopted Local Plan for the Royal Borough of Kensington and Chelsea, consolidated with alterations. Chapter 3 of the London Plan includes policies on Housing Supply including the provision of the borough's annualised supply target which has been informed by recent London wide assessments of housing need and supply. The Local Plan housing policies are set out in the Diversity of Housing Chapter. The Council recognises that elements of Policy CH1 Housing Targets have been superseded by the more recent alterations to the London Plan, increasing the minimum annual target of 600 dwellings per annum planned in the Local Plan to 733 as set out in the London Plan.

The increased housing target is based on the London Strategic Housing Availability Assessment completed in 2013. This provided an up-to-date assessment of land likely to become available for housing up to 2036. This assessment of capacity took account of constraints on potential capacity such as the protection of employment land to ensure that the release of such sites was not required to meet the borough's housing target.

In accordance with the NPPF, the Council is required to demonstrate on an annual basis that it has a five year supply of housing plus a buffer of up to 20% to meet its housing supply target. This housing trajectory is presented in the annual Authority Monitoring Report (AMR). The latest AMR was produced in

April 2015. This shows a trajectory of 5,010 additional dwellings to be delivered over the next five years which equates to 5.7 years of supply inclusive of 20% buffer (recognising that completions have been below the borough's target for the last five years). This demonstrates that the Council is not in the position of needing to identify additional sites for housing in order to meet the requirements of the NPPF. Accordingly, the Council considers that at the strategic level, there is no justification in terms of a need to boost housing supply, which outweighs the need for the policies and allocations in the draft Neighbourhood Plan to be in general conformity with the strategic policies or proposals in the development plan. However, this does not preclude the Neighbourhood Plan from allocating smaller scale housing sites where no such conflicts exist.

The evidence produced in support of the application for exemption from permitted development rights for change of use from office to residential in 2013 provided very fine grain data (a near census of businesses employing more than 10 people and a very good sample below that) which demonstrates the importance of small business located in the borough, particularly those that support the internationally important music industry. It also showed that the value difference between office and residential is so significant that any office that could convert to residential would do so.

- 3.6 The Inspector's comment is acknowledging that the view that other parts of the plan ought to be updated was expressed by representors, it cannot be construed as his view on this subject.
- 3.11 The Council does not consider its evidence base to be out of date and has produced additional evidence to support the Enterprise Review which examines the viability of the Latimer Employment Zone in detail. This evidence is being supplied separately to the Examiner.
- 3.13 The Council is of the opinion that the relevant Local Plan policies are up to date and in conformity with the NPPF.

Status of Conservation Area Proposal Statements

- 3.15 The Council is reviewing its Conservation Area Proposal Statements (CAPS) as Conservation Area Appraisals (CAA) because many of these documents are now quite old (some going back to 1980s), they are not in line with government guidance on the duty to preserve or enhance conservation areas, and some contain policies which have not been through the process of independent examination. As part of this process the Conservation and Design Policies in the Local Plan were reviewed to include CAPS policies, where appropriate. The new CAAs will not include policies, but are evidence base documents.
- 3.16 The Council brought forward the Oxford Gardens CAA in order to provide the evidence base, particularly in relation to roofscape that was needed to justify the draft neighbourhood plan's policies. Consultation on this document has been delayed at the request of the StQW Neighbourhood Forum, although the

Council does not see any conflict between the two documents since the CAA will not contain policies.

- 3.18 The Council's view is that the policies in the CAPS are not compliant with the NPPF, because they have not been through formal examination process and found sound and therefore cannot be given much, if any, weight. However, the guidance in the CAPS would have material weight in determining a planning application.

5.0 Which are the Borough's strategic policies?

- 5.1 The Council's Local Plan does not define strategic policies because it was adopted in 2010 before the NPPF was published in March 2012.
- 5.2 The Council does not acknowledge policies on conservation are non-strategic because they are detailed. However, the Council confirms that they are not regarded as strategic policies for the purpose of the Neighbourhood Plan.
- 5.3 The officers have been clear from their very first response (written email 6.10.2014) to the draft neighbourhood plan that policy CF5 is strategic.
- 5.4 The Council considers this guidance is compatible with its definition of a strategic policy as detailed in relation to basic condition (e) above.

6.0 Can a Neighbourhood Plan 'vary' Local Plan policies?

- 6.2 The Council's view is that the Neighbourhood Plan should provide distinct policies to apply in the Neighbourhood Area. These should be stand alone policies. Whilst the Council fully acknowledge that a Neighbourhood Plan can seek to vary, alter etc. the borough-wide Local Plan policies it would be helpful if this was not explicitly said in the text itself, particularly, as it is the Forum's view only and really it is not up to the Forum to give a commentary on what they think of Local plan policies. To suggest that Local Plan policies are out of date is not acceptable to the Council.

7.0 The legal interpretation of 'general conformity' in relation to neighbourhood plans

- 7.2 The Council considers that policies 2d, 8a, 8b, 8c and 10c do not uphold the general principles of the relevant strategic Local Plan policies as set out in the Council's response to each of these policies.
- 7.4 This remains the Council's opinion and the Council considers the Neighbourhood Planning Guidance in paragraph 076 and the NPPF Guidance on strategic policies referred to above more relevant in setting out the Government's position than this judgement which related to a situation where there was an emerging Local Plan policy which had not been adopted.

Even if this judgement overrides guidance in law it is difficult to argue 'general conformity with the plan as a whole' when this plan is proposing a policy that

would remove one of the few tools the Council has to protect employment uses in this largely residential Borough. One of the key aspects of the Local Plan is to protect non-residential uses which provide employment and vital services for local people and include globally significant sectors, as the evidence produced to obtain exemption from permitted change of use from office to residential demonstrates, see:

<http://www.rbkc.gov.uk/planningandbuildingcontrol/planningapplications/guidanceandadvice/checkifyouneedpermission/changeofusefromcommercial.aspx>

8.0 Whether a Neighbourhood Plan can de-designate areas within an Employment Zone

8.1 This is a similar argument to that rehearsed under 6.2, the Neighbourhood Plan can set policies that will take precedence in the Neighbourhood Area over the Council's Borough wide policies, but these will not be re-written or cease to exist. However, the key issue is that protection of the Employment Zones is a strategic policy which the neighbourhood plan should not seek to undermine.

9.0 The RBKC view that neighbourhood plan policies are read alongside pre-existing Local Plan policies

9.1 This is the same argument as 8.1 the Council does not dispute the weight that would be given to Neighbourhood Plan policies once they are adopted. However, they do not formally supersede Local Plan policies in the way implied.

10.0 Conservation and design policies in the StQW Draft Plan

10.4 Officers have worked with the Forum to ensure that there is evidence to demonstrate that these policies will at least have a neutral (not a harmful) effect on the conservation area and the Council would not be in a position of contravening its duty to have regard to preserving or enhancing the character or appearance of the conservation area. The Council has provided reassurance to Heritage England on the SEA screening in this respect.

10.17 The Council considers policy 2d needs to be amended slightly so that it does not conflict with strategic policy on flooding and the Council's duties as the Lead Local Flood Authority.

11.0 Open Space and proposed Local Green Space designations

11.13 The Council considers this is a matter for the Examiner to consider.

11.14 The Council objects to policy 10c.

11.18 The Council does not consider Latimer Road is a more suitable site for housing.

12.0 Employment and enterprise policies in the StQW Draft Plan – Latimer Road Employment Zone

12.15 The evidence supporting the borough wide exemption from permitted development rights for change of use can be seen at:

<https://www.rbkc.gov.uk/planning-and-building-control/planning-applications/guidance-and-advice/check-if-you-need-permissi-0>

12.16 The Council's evidence shows that all office use in the borough would convert to residential, employment uses are viable in Latimer Road and The Council's policy allows a mix of uses provided they 'directly support the function and character of the zone'

12.17 The Council's view is that this is a strategic matter which should be considered in the context of a review of the Enterprise Core Strategy policies.

12.19 The Council does not agree with this view. It is not correct to make assumptions about employment numbers and use these to justify a reduction of employment floorspace.

13.0 The Council and the Forum's evidence base on Latimer Road

13.14 The 5% return on cost was used as indicating viability because this was an assessment of individual buildings in a known condition rather than an overall assessment across the borough where there was a lot less certainty so a higher margin was considered more realistic. This is explained in the Frost Meadowcroft Latimer Road Report (paragraph 4.3.6).

15.0 Conclusions from this evidence

15.1 The Council does not concur with these conclusions.

15.3 Requirements for infrastructure improvements are likely to be identified as part of the Enterprise Core Strategy Review.

16.0 The extent of policy change on Latimer Road proposed in the StQW Plan

16.2 Given the value of residential property in this borough it is unlikely that residential development in Latimer Road would be affordable.

16.3 Any planning application is considered on its own merits.

16.8 The Council's reservations about this policy are covered in the consultation response.

16.10 The Council does not agree with this view, CF5 is a strategic policy which the neighbourhood plan should reflect and plan positively to support.

17.0 Proposed de-designation of the Latimer Road sections of the Employment Zone

17.3 The Council's consultation response covers this matter in detail.

18.0 Housing Policies in the StQW Draft Plan

The Council does not have an in principle objection to the allocation of new housing sites through the neighbourhood plan were they are in general conformity with the strategic development policies. Detailed comments on each of the proposed housing allocations are given in the Council's consultation response to the draft Neighbourhood Plan.

18.9 Policy 10c is contrary to strategic policy CF5.

19.0 How the StQW Draft Neighbourhood Plan achieves sustainable development

19.4 Section 8 and policy 10c relate to redeveloping existing buildings in active use in an Employment Zone.

21.0 Compliance with European Regulations

21.3 The statutory consultees have confirmed they agree with the Council's SEA screening assessment.