



The London Planning Practice LLP

61 Chandos Place
London WC2N 4HG

T +44 (0)20 7557 9990
F +44 (0)20 7240 6176

Partners
Nick de Lotbinière
Jon Dingle
Alex Graham
David Whittington

Associate Partner
Simon Wallis

Our Ref: NdL/RM/

The Executive Director of Planning and Borough Development
f.a.o The Policy Team
The Royal Borough of Kensington and Chelsea
Room 331,
The Town Hall,
Horton Street
London W8 7NX

9 December 2008

Dear Sirs

Proposed Submission Core Strategy for the Royal Borough of Kensington and Chelsea with a focus on North Kensington

I write further to the public consultation on the above LDF document and enclose a copy of our representations in respect of the proposed policies for the Royal Borough of Kensington and Chelsea.

A copy of these representations has also been sent via email.

Yours sincerely

Ros Machin
Principal Planner

For and on behalf of
The London Planning Practice LLP

dd 020 7557 9999
e rm@londonpp.co.uk

enc.

Proposed Submission Core Strategy for the Royal Borough of Kensington and Chelsea with a focus on North Kensington

Development Plan Document

Local Development Framework

Publication Stage Representation Form

Please e-mail this form to: planningpolicy@rbkc.gov.uk

Alternatively send this form to:

Planning Services
Policy Team
Room 328
The Town Hall
Hornton Street
London
W8 7NX

For further information:

Visit our website at: <http://ldf-consult.rbkc.gov.uk>

Phone the LDF hotline on: 020 7361 3879

Responses must be received no later than midday Thursday 10 December 2009

Personal Details

Name:..... ROSALIND MACHIN.....
Organisation:..... THE LONDON PLANNING PRACTICE.....
Address:..... 61 CHANDOS PLACE.....
..... LONDON.....
..... WC2N 4HQ.....
Phone:..... 020 7557 9990.....
E-mail:..... rm @ londonpp.co.uk.....

To be "sound" a core strategy should be JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY.

"Justified" means that the document must be:

- founded on a robust and credible evidence base
- the most appropriate strategy when considered against the reasonable alternatives

"Effective" means that the document must be:

- deliverable
- flexible
- able to be monitored

"Consistent with National Policy" means that it is consistent with government guidance contained within Planning Policy Guidance and Planning Policy Statements

Yes

No

Do you consider the core strategy to be legally compliant?

Do you consider the core strategy to be Sound?

Please tick the appropriate box

If you have selected YES and you wish to support the legal compliance or soundness of the core strategy, please be as precise as possible when setting out your comments below

Please make it clear which Paragraph number, Vision box number, Policy box number or Objective box number you are commenting on.

Please attach additional pages as required

If you have selected NO do you consider the core strategy to be unsound because it is not.

Justified

Effective

Consistent with national policy

Please tick the appropriate box

Please give details of why you consider the core strategy to be unsound or not legally compliant. Please be as precise as possible when setting out your comments below.

Please make it clear which Paragraph number, Vision box number, Policy box number or Objective box number you are commenting on.

PLEASE SEE ATTACHED COMMENTS

Please attach additional pages as required

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1 INTRODUCTION

- 1.1 This statement is submitted in respect of the Core Strategy for the Royal Borough with a focus on North Kensington.
- 1.2 The evaluation of this Core Strategy will be based on the 'soundness' of the plan in relation to the tests identified within "Local Development Frameworks Examining Development Plan Documents: Soundness Guidance July 2008'.
- 1.3 Our clients own sites within the Royal Borough of Kensington and Chelsea and as such the policies within the plan will have a bearing on how these may be developed in the future.
- 1.4 This statement therefore sets out a review of the planning policies within the Core Strategy and an assessment of the soundness of the plan in relation to these policies.
- 1.5 Recommendations are made in relation to the changes required to make the plan sound.
- 1.6 The context of the proposals is defined within this document as follows:
 - Core Strategy Considerations
 - Recommended Changes

2 PLANNING POLICY FRAMEWORK

2.1 Section 20 (5) of the Planning and Compulsory Purchase Act 2004 requires that the purpose of an examination is to determine in respect of a development plan:

- *“Whether it satisfies the requirements of sections 19 and 24 (1), regulations under section 17 (7) and any regulations under section 36 relating to the preparation of development plan documents;*
- *Whether it is sound.”*

2.2 The test of soundness is provided within the Local Development Framework soundness guidance July 2008 and PPS12 (para 4.52) which states that a core strategy should be:

- (i) Justified
- (ii) Effective
- (iii) Consistent with national policy

2.3 The Core Strategy for the Royal Borough of Kensington and Chelsea is not considered to be ‘sound’ when taking into consideration the reasonable tests set out in the document ‘Local Development Frameworks Examining development Plan Documents : Soundness Guidance July 2008’.

2.4 The first and third tests on soundness are the most applicable to this case as they relate to whether the Core Strategy can be justified and whether it is consistent with National Policy.

2.5 Other national policy guidance is relevant to the considerations in this statement and they will include:

- PPS3 Housing
- PPG15 Planning and the Historic Environment
- The London Plan 2008

3 CONSIDERATIONS

3.1 The following sets out the key considerations of the main policies within the Core Strategy against the evidence base and whether they are sound, justified or consistent with national policy.

i) Hotels

3.2 Policy CF8 sets out that:

“The Council will ensure that the visitor economy is supported through appropriate hotel provision. To deliver this the Council will:

- a) *protect hotels across the Borough except in Earl's Court ward;*
- b) *require new hotels to be located within, or immediately adjoining, the Borough's higher order town centres, and in particular Knightsbridge, South Kensington, Kensington High Street, King's Road (East), Brompton Cross and Notting Hill Gate and within the Earl's Court Strategic Site;*
- c) *encourage the upgrading of existing hotels where:*
 - *this will assist in maintaining the vitality of the centre;*
 - *this will not result in the loss of any residential accommodation;*
 - *there will be no material harm to amenity.*

3.3 Although we recognise that visitor accommodation provides an important part of the London economy and that with the forthcoming Olympic Games there is a need for additional hotel bedspaces to be provided across London, it is acknowledged within the Core Strategy that the Royal Borough is not identified within the London Plan as a “*strategically important*” location for new hotels. (our emphasis)

3.4 Evidence supporting the Core Strategy includes a ‘Study of the Visitor Economy’ prepared by Acorn Consulting Partnership February 2009. This establishes that there were around 95 hotels (11,471 rooms) within the Borough (excluding bed and breakfast, hostels and serviced apartments).

- 3.5 The survey included an assessment of a sample of hotels regarding occupancy, number and type of rooms, length of stay etc. This assessment found that the hotels identified within their sample achieved an average room occupancy rate of 76.8% over the 12 month period November 2007 to October 2008 although there was some seasonality factored into this with higher occupancy rates over summer months.
- 3.6 This shows that there is capacity within the existing hotels presently within the Borough.
- 3.7 The hotel survey carried out by Acorn includes reference to the fact that although they attribute the number of hotels in the borough to be in the region of 95; if taken in the wider definition to include other types of hotel accommodation there would be 189 hotel establishments within the Borough.
- 3.8 The Acorn report also includes the data collected as part of the 2004/2005 survey on hotels for the Borough which states that there were 191 hotel establishments containing 30,858 bedspaces in 2004.
- 3.9 The 2004 / 2005 analysis shows that there was a decline in the number of hotel establishments over the period 1992 to 2004 by 23; however there was a substantial increase in the number of bedspaces within hotel establishments, by 3,170 or 11%.
- 3.10 This shows that although there was a rise in the number of hotels being lost to other uses, there was a substantial increase in bedspaces by extension or internal refurbishment works which is more important to the visitor economy.
- 3.11 The recent hotel survey undertaken by Acorn presumably replaces this survey to a degree and shows that there has been a loss in the number of hotels since 2004 but by a very small degree; 3 hotel establishments. It is however more difficult to calculate the number of bed spaces from the recent survey as the survey calculates the number of rooms rather than bed spaces and provides detail only on the sample of hotels.

- 3.12 There has therefore been no significant loss in hotel establishments since the last survey was carried out and it is unlikely that there has been a significant decrease in bed spaces either. The Borough also incorporates two of the most concentrated wards of hotel establishments in Central London including Earls Court and Queen's Gate.
- 3.13 There appears therefore to be capacity within existing hotel establishments to cater for additional visitors to the Borough.
- 3.14 The introduction of these policies conflict with the long standing and future strategic objectives of the London Plan and PPS3 which seek to encourage the provision of additional housing to meet need.
- 3.15 There is already an extreme shortage of land within the Borough preventing new residential development from being brought forward, where as there is a large proportion of hotels with capacity already in existence within the Borough that can address the need for hotel bedspaces and tourist accommodation within Central London.
- 3.16 Whilst the London Plan encourages the provision of 40,000 net additional bedspaces up to 2026, the plan also places an emphasis on the creation of new housing, particularly affordable housing and an adaptable range of market housing due to the expected increase in the population within this part of Central London.
- 3.17 A targets has been established for the Royal Borough of Kensington and Chelsea for the provision of 350 new homes per year
- 3.18 Many existing hotels within the Borough can provide well suited buildings for conversion to residential properties and can also assist with the provision of affordable housing which is a major consideration within the Borough at present due to a significant need for more affordable housing.

3.19 Not all of the hotels within the Borough provide for good quality, visitor accommodation that is utilised to its full capacity and as such, may as an alternative provide a solution to the need for new housing within the borough.

3.20 The London Plan also encourages Council's to give priority to re-using previously developed land and converting surplus non-residential buildings into residential use in order to develop mixed and balanced communities and adhere to the government's principles of sustainability. The conversion of hotels would adhere to these principles.

3.21 It is also important to allow flexibility in designing policies to allow hotels to be converted to provide other types of tourist accommodation in line with the London Plan which encourages other forms of tourist accommodation to be provided.

3.22 It is therefore maintained that Policy CF8 is not justified or consistent with national or regional policy.

ii) Residential

3.23 Policy CH2 of the Core Strategy relates to the provision of new housing, dwelling mix and affordable housing.

3.24 The Council has recently carried out a Housing Market Assessment for the Borough which demonstrates that there is a definitive need for larger dwellings for families in both the market and affordable housing sectors. The Council have emphasised that 80% of new dwellings over the next 20 years should be large dwellings of 3 and 4 bedrooms.

3.25 This is to some degree conflicting with other policies in the Core Strategy such as part (f) of Policy CH2 which seeks to "*resist development which results in the net loss of five or more residential units*"

3.26 This is a very restrictive policy when applied to all future development within the Borough and would not assist in allowing the Council to meeting other objectives such as addressing housing need.

3.27 The policy should be expressed as a ratio rather than numbers of units and other circumstances allowing a greater proportion of units to be lost should be considered particularly where they relate to the refurbishment of listed buildings or where other historic benefits are achieved.

iii) Affordable Housing

3.28 The Council have reviewed their policy for requiring affordable housing in new development and are focussing on the amount of floorspace within new development rather than on a unit basis as previously proposed within the UDP and also as per that within the London Plan.

3.29 Policy CH2 sets out the affordable housing criteria policies on the basis that:

“i) require the maximum reasonable amount of affordable housing with the presumption being at least 50% provision on gross residential floor space in excess of 800sqm;

j) require the provision to be in the form of a commuted sum in lieu of affordable housing where less than 1,200qm of gross external residential floor space is proposed.

k) require affordable housing provision of affordable homes on site where more than 1,200sqm of gross external residential floor space is proposed unless exceptional circumstances exist.”

3.30 The London Plan is clear in its policies and sub text in promoting, not restraining residential and mixed-use development. The provisions made under Policy 3A.10 and supporting paragraphs 3.52-3.53 make it clear that site circumstances and economic viability are crucial in informing a schemes ability to meet the London wide policy aspiration for 50% affordable housing.

3.31 The affordable housing thresholds however which are set out in Policy CH2 are not applied flexibly due to the very low floorspace thresholds within new development providing residential floorspace. However, it is accepted that the Council have addressed the need to consider the viability of sites in their

assessments for requiring affordable housing as part of this policy. The consideration of viability of individual sites will be essential over the early parts of the plan period as a way of encouraging development to come forward rather than restrain it with greater controls.

3.32 The main issue with this policy lies in the considerably low floorspace thresholds which are being applied. The Council has introduced a starting threshold of 800sqm whereby they will require the maximum reasonable amount of affordable housing with a presumption of 50% provision. This figure has been based on the London Plan's threshold of ten units and the Council consider that ten units can reasonably be achieved within 800sqm.

3.33 This threshold figure of 800sqm however is too low as it is unlikely to generate 10 units especially if the Council's dwelling mix policy is adhered to. This threshold would not allow for the creation of all internal elements such as corridors, circulation space and cores all necessary to facilitate a development.

3.34 It is suggested that if a floorspace threshold is considered appropriate, it should be at least 12,500sqft, to allow for notional capacity to reflect reasonable sized units and the Council's dwelling mix policy. Any commuted payment should be introduced on thresholds above 15,000sqft.

3.35 There is also no indication of how the commuted payment towards affordable housing will be calculated by the Council. This forms an important element of this policy and should be considered in relation to the actual mechanism for seeking such payments.

3.36 This part of policy CH2 is therefore not consistent with regional policy nor is it justified.

iv) Sustainability and Renewable Energy

3.37 Policy CE1 seeks the following in respect of sustainable development requirements:

“a) require an assessment to demonstrate that all new buildings and extensions defined as major development achieves the following Code for Sustainable Homes / BREEAM standards:

Residential Development: Code for Sustainable Homes

- *Up to 2015: Level Three;;*
- *2015 to 2021: Level Four;*
- *2021 onwards: Level Five.*

Non Residential Development: Relevant BREEAM Assessment

- *Up to 2015: Excellent;*
- *2016 onwards: Outstanding;*

c) require an assessment to demonstrate that the entire dwelling where subterranean extensions are proposed achieves Code for Sustainable Homes Level Four;

h) require development to incorporate measures that will contribute to on-site sustainable food production commensurate with the scale of development;”

3.38 Currently there is only a Code Level 3 requirement for new homes. In 2010 this will become part of the Building Regulations and all new build development will be required to be built to Code Level 3. At this point it will be deliverable through another regulatory code and will then cease to be a proper subject for planning control. It would not therefore be necessary or reasonable to set a higher standard in planning legislation. Such a higher standard would therefore require a full appraisal of the viability and feasibility of incorporating such measures into new development. The Council should not try to restrict development to including technologies that are already covered by Building Regulations and should pay particular reference to the need to assess the viability of a development should these be required.

3.39 There is also reference in this policy for those developments proposing subterranean development to be compliant with Code for Sustainable Homes Level 4. It is wholly unreasonable for the Council to seek that Code Level 4 is achieved in developments seeking extensions to existing properties. In the conversion of existing buildings the Council acknowledge that it is

unreasonable to seek Code for Sustainable Homes and retain the BREEAM levels of 'very good'.

3.40 Code for Sustainable Homes Level 4 achieves a high level of sustainable design techniques significantly above the building regulations standards and enshrined within the ability to achieve this level relates to the fabric of the building, renewable energy technologies and water preservation. These elements are much more easily achieved in the construction of new development rather than the extension of existing buildings, hence the reason that the Code is not applied to conversions of existing buildings. Therefore there is no justification of the requirement for subterranean extensions to be compliant with Code Level 4 and this element of Policy CE1 is not justified.

v) ***Extensions and Alterations***

3.41 Policy CL2 relates to the extension and alteration of existing buildings and includes reference to the creation of additional storeys and subterranean development in the Borough at part (g) of this policy.

3.42 Part (f) sets out that the Council will ***“require additional storeys and roof level alterations to be sympathetic to the architectural style and character of the building and to either assist in unifying a group of buildings or where there is a detached building to be below the prevailing building height.”***

3.43 This policy and its supporting text at paragraphs 34.3.22 – 34.3.28 of the Core Strategy are extremely prescriptive in establishing a scale of development that would be considered acceptable by the Council across the Borough as a whole. This is a blanket approach policy and would not allow for each site to be considered on its own merits.

3.44 The Royal Borough is located within Central London and some locations, especially where they are in close proximity to transport nodes, town centre uses, could accommodate tall buildings. This will aid the creation of more housing, aid regeneration or the refurbishment of derelict / underused buildings.

- 3.45 By restricting alterations and extensions to existing detached buildings to a height below that prevailing, will constrain development to creating a flat and uninspiring skyline.
- 3.46 As such the Council's policies should be promoting development and design solutions that optimize the potential of sites whilst addressing the need to create high quality and inclusive design that responds to local context and reinforces a sense of place.
- 3.47 Within some parts of the Borough higher buildings could be appropriate to define important routes, crossings, nodes and retail hierarchies.
- 3.48 Part (g) requires that ***it can be demonstrated that subterranean development does not involve excavation underneath a listed building.***
- 3.49 This part of the policy is unsupported by technical evidence or analysis from a reputable historical buildings expert and the Council's arbitrary approach to resisting subterranean development under listed buildings is unjustified.
- 3.50 Paragraph 3.12 of PPG15 states that *"in judging the effect of any alteration or extension it is essential to have assessed the elements that make up the special interest of the building in question."*
- 3.51 Paragraph 3.15 also follows on to state that *"Achieving a proper balance between the special interest of a listed building and proposals for alterations or extensions is demanding and should always be based on specialist expertise; but it is rarely impossible, if reasonable flexibility and imagination are shown by all parties involved"*.
- 3.52 It is therefore argued that as an alternative, if subterranean development is proposed beneath a listed building, the harm to the special interest of the building should be assessed based on specialist expertise. It can already be demonstrated that the structural integrity of buildings are not affected by most subterranean development providing it is carried out in a sensitive and structurally sound manner.

3.53 If the policy remains the Council should at least demonstrate that harm is caused by such development in order to justify this part of Policy CL2.

3.54 This policy is therefore wholly inappropriate, and not in accordance with the advice in PPS12 and PPG15.

vi) Residential Amenity

3.55 Policy CL5 relates to the requirement for new development to achieve high standards of amenity both in relation to the development proposed and to adjoining occupiers.

3.56 The policy sets out a requirement for development to require good daylight and sunlight amenity for buildings and amenity spaces, which includes commercial uses as well as other residential properties.

3.57 This requirement for the preservation of sunlight and daylight to commercial properties cannot be applied as rigorously as it can for residential properties, as the BRE Guidelines does not apply as rigorous requirements for natural light and sunlight to these uses. The policy should therefore take on board the requirements of the BRE Guidelines and adhere more appropriately to these in seeking the preservation of amenity.

4 RECOMMENDED CHANGES

4.1 Early analysis as part of the background evidence to the Core Strategy shows that some of its policies are either unjustified or inconsistent with National policy and should be either removed or revised.

4.2 Suggested changes are as follows:

4.3 **Policy CF8**

"The Council will ensure that the visitor economy is supported through appropriate hotel provision. To deliver this the Council will:

Delete (a)

~~a) protect hotels across the Borough except in Earl's Court ward;~~

b) *require new hotels to be located within, or immediately adjoining, the Borough's higher order town centres, and in particular Knightsbridge, South Kensington, Kensington High Street, King's Road (East), Brompton Cross and Notting Hill Gate and within the Earl's Court Strategic Site;*

c) *encourage the upgrading of existing hotels where:*

- *this will assist in maintaining the vitality of the centre;*
- *this will not result in the loss of any residential accommodation;*
- *there will be no material harm to amenity.*

4.4 **Policy CH2**

Delete the following parts:

(f) resist development which results in the net loss of five or more residential units;

(g) require development that results in the amalgamation of residential units to be subject to a s106 agreement to ensure the resultant units are not further amalgamated in the future;

4.5 **Policy CH2**

"i) require the maximum reasonable amount of affordable housing with the presumption being at least 50% provision on gross residential floor space in excess of 12,500sqft;

j) require the provision to be in the form of a commuted sum in lieu of affordable housing where up to 15,000sqft of gross external residential floor space is proposed.

4.6

Policy CE1

“a) require an assessment to demonstrate that all new buildings and extensions defined as major development achieves the following Code for Sustainable Homes / BREEAM standards:

Residential Development: Code for Sustainable Homes

- *Up to 2015: Level three;*
- *2015 - 2021: Level four;*
- *2021 onwards: Level five.*

Non Residential Development: Relevant BREEAM Assessment

- *Up to 2015: Excellent;*
- *2016 onwards: Outstanding;*

4.7

Policy CL2

part (f)

“require additional storeys and roof level alterations to be sympathetic to the architectural style and character of the building and to either assist in unifying a group of buildings or where there is a detached building to have a height reflective of local context.”

part (g)

“require it is demonstrated that subterranean extensions meet the following criteria:

i excavation underneath or adjacent to a listed building will be resisted where it has a clear and detrimental impact upon the character and setting of a listed building.