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# Miscellaneous Matters Policy Formulation Report

Partial Review of the Core Strategy



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

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Regulation 19, Town and Country Planning (Local Planning) (England) Regulations 2012



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## **1. Introduction**

- 1.1 The 'Miscellaneous Matters' policy review includes a general updating exercise of the Core Strategy to ensure that the text reflects the latest Government guidance in the National Planning Policy Framework (NPPF) and other evidence based documents. It also deals with other Unitary Development Plan policies being incorporated into the Core Strategy, such as servicing, temporary sleeping accommodation and embassy location within the Borough. The relevant Core Strategy replacement to the current EcoHomes Very Good standard in terms of BREEAM for refurbishment is also dealt with.
- 1.2 The Core Strategy is an up to date document, having been adopted in December 2010. However, with the publication of the National Planning Policy Framework (NPPF) in March 2012 the reference to previous Government guidance was clearly outdated. It was also important to include the definition of sustainable development and how planning applications would be dealt with in view of the Government' agenda to support economic growth.

## **2. Purpose of this document**

- 2.1 The Planning Advisory Service (PAS) template for ensuring that the Core Strategy was in conformity with the NPPF was used to identify any general conformity issues and ensure that the Core Strategy can become a Local Plan. Apart from protecting community facilities, (such as public houses) there were no general conformity issues identified, although the employment policies are to be reviewed to ensure that they do their utmost to support economic growth in the Borough.
- 2.2 Much of the text in the adopted Core Strategy is not in need of revision as it is up to date and fit for purpose. However, where evidence base documents have become out of date or corporate and partnership actions have moved on since 2010 the text has been amended. This has not resulted in the substance of any policies having to be changed and on this basis this report does not deal with policy formulation as such, but explains why the remaining Unitary Development Plan (UDP) extant policies which have been brought forward to be put into the Core Strategy are fit for purpose and in conformity with the NPPF. The presumption in favour of sustainable development is noted at paragraph 14 of the NPPF. In terms of decision making taking this forward means that where a development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted subject to adverse impacts significantly and demonstrably outweighing the benefits, or specific policies in the NPPF indicating that development should be restricted. It is therefore important that the Council does not continue to rely on planning policies that were

adopted in 2002 despite the fact that they may still remain fit for purpose.

- 2.3 The opportunity has also been taken to update Chapter 41 of the Core Strategy which is the Policy Replacement Schedule and the Glossary. In terms of extant UDP saved policies these will be dealt with in turn. As discussed policy formulation is not strictly the correct term as the issues and policies involved are well known within the Borough and the options available have already been appraised to arrive at the extant policies. The policies in question have been developed to deal with local issues and circumstances and have proved effective in dealing with the issue in question over many years. However, the opportunity has been taken to update the policies to ensure that they are truly spatial and avoid the repetition of criteria which are addressed by another Core Strategy policy. This reflects the cross cutting theme which was a feature of the planning system introduced under the 2004 Planning and Compensation Act.

### **3. Planning Policy Context**

#### **National Planning Policy Framework**

- 3.1 The Government introduced the National Planning Policy Framework (NPPF) in March 2012. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. The underlying tenet in the NPPF is that the planning system should contribute to the achievement of sustainable development (para 6, NPPF).
- 3.2 Page 2 of the NPPF under the heading Sustainable Development states *"International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy Securing the Future set out five 'guiding principles' of sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly."*
- 3.3 One of the five guiding principles in the UK Sustainable Development Strategy Securing the Future referred to in the NPPF is Using Sound Science Responsibly. This principle is about *"Ensuring policy is developed and implemented on the basis of strong scientific evidence, whilst taking into account scientific uncertainty (through the precautionary principle) as well as public attitudes and values."*
- 3.4 Paragraph 7 of the NPPF sets out the three dimensions of sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of

roles. Para 8 of the NPPF states that *“these roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.”*

- 3.5 Para 9 of the NPPF states that *“Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to): replacing poor design with better design and improving the conditions in which people live, work, travel and take leisure.”* These positive improvements as set out in the NPPF are considered to be directly related to the Miscellaneous Matters publication policies.
- 3.6 Plans and decisions need to take local circumstances into account (para 10, NPPF). The miscellaneous matters policies take account of local circumstances and are bespoke policies for the Royal Borough.
- 3.7 The Council developed sixteen Sustainability Appraisal objectives (SA Objectives) within its initial SEA/SA Scoping report for the Local Development Framework (LDF) in 2005. The sustainability appraisal objectives include objectives relating to the three strands of sustainable development: social, environmental and economic. The miscellaneous matters policies have been subject to a Sustainability Appraisal throughout their preparation.

## **5.0 The Policies in question**

### **Policy CP4: Quality**

This is a new policy which deals with quality. It states that the Council will safeguard the existing high quality townscape and finely grained mix of uses to uphold the residential quality of life. It has been added because, in reviewing the plan in the light of the NPPF, it was realised that there were policies relating to the first two parts of the Core Strategy vision (regeneration and reputation), but not the third part which deals with upholding the residential quality of life in the Borough. It is an overarching policy that brings together the strategic objectives of ‘Making Life Local,’ ‘Renewing the Legacy’ and ‘An Engaging Public Realm’ and their respective policies. It is shown as having a positive outcome with regard to Strategic Environmental Assessment (SEA). In terms of the NPPF it helps to promote healthy communities by planning positively for the provision of community facilities and other local services to enhance the sustainability of communities and residential environments (paragraph 70). It also safeguards the existing high

quality townscape in the Borough which is reflected at paragraphs 126 and 132 of the NPPF.

#### **Policy CF9: Temporary Sleeping Accommodation**

This is a saved extant UDP policy which has served the Borough well over many years. Its originates from the Greater London Council (General Powers ) Act 1973 which was introduced because of the concern, principally from the Royal Borough of Kensington and Chelsea, that permanent residential accommodation was being lost to lettings of less than 90 days. As part of this Act it was established that planning permission was required for this change of use. It serves an important purpose of resisting the loss of permanent residential accommodation to short term lets which consist of accommodation such as time-share schemes, lettings by companies for worker accommodation (when hotels are available) and holiday letting. The Council's planning enforcement team is kept busy investigating such planning breaches and it still serves an important purpose in the Borough. The SEA showed a positive outcome as it helps to preserve the stock of permanent residential accommodation in the borough and contributes to the Royal Borough meeting its housing target set by the London Plan. In terms of the NPPF the policy is considered to be in conformity with paragraph 47 which deals with boosting significantly the supply of housing - clearly a target cannot be reached if a significant proportion of the dwelling stock is being lost to commercial purposes.

#### **Policy CF10: Diplomatic and Allied Uses**

This is a saved extant UDP policy which deals with diplomatic and allied uses. As a desirable central London Borough with excellent transport links it is not surprising that Kensington and Chelsea is a popular location for diplomatic and allied uses. Whilst the Council is not against such uses locating within the borough we wish to ensure that residential amenity is not compromised and that such uses are confined to the central area of the borough. Other areas have been excluded because the properties are generally of a smaller scale and in residential use, the amount of parking space is generally inadequate and the road network is not best suited to accommodate the additional traffic generated by diplomatic uses. THE SEA showed a positive outcome and is considered to be in conformity with paragraph 123 of the NPPF which refers to avoiding noise from giving rise to significant adverse impact on health and quality of life. Paragraph 35 also refers to Plans protecting and exploiting opportunities for the use of sustainable transport modes.

#### **Policies CT1 and CR7: Improving alternatives to car use and Servicing**

Some additional wording has been added to these Core Strategy adopted policies to incorporate the content of former UDP Transportation Policies TR16 to TR21 inclusive which dealt with seeking improvements at public transport interchanges and the provision of interchange facilities, encouraging coach parking facilities

and resisting the loss of off street coach parking. The content and thrust of these policies have been included within the reasoned justification and the Core Strategy policies themselves. The SEA showed a positive impact although the adopted Core Strategy policies had already been appraised as part of the original Core Strategy examination process. The revisions to the policies are considered to be in conformity with paragraph 35 of the NPPF which deals with the use of sustainable transport modes.

#### **Policy CE1: Climate Change**

The changes relate to the Code for Sustainable Homes and BREEAM standards. The Core Strategy policy itself is already adopted. Policy CE1(c) states that EcoHomes Very Good is required with 40% of the credits achieved under the Energy, Water and Materials sections, or comparable when BREEAM for refurbishment is published. BREEAM for refurbishment was published in the summer of 2012 by the Building Research Establishment (BRE). However, further work has had to be undertaken to establish what the comparable standard might be. This is in the form of a consultant's report which forms part of the evidence base. In view of the reservations expressed by the Inspector at the 2010 Core Strategy examination when the requirement for Level 5 and carbon neutral Level 6 was changed to a 'to seek' policy, it is acknowledged by the Council that the technological advances necessary to accommodate new development in a very high quality townscape have not kept abreast with the Code. On this basis the Council is recommending to keep Level 4 at this stage. However, further work will be undertaken to establish how Level 6 can practically be reached by 2016. The SEA showed a positive impact and the changes to the policy are considered to be in conformity with paragraphs 94 and 95 of the NPPF which deal with mitigating the effects of climate change.

#### **Policies CE4: Biodiversity and CE6: Noise and Vibration**

Although there have been minor wording changes to both policies it is considered that the contents of both policies has not changed since they were adopted as part of the Core Strategy in December 2010 and changes reflect updated guidance.

#### **Policy CE7: Contaminated Land**

This is an extant UDP policy which has addressed issues of contamination in the borough and how this should be mitigated. It has been developed to reflect best practice when dealing with contaminated land starting with a desk top analysis and preliminary assessment and moving on to a remediation strategy if one is required and a validation report once remediation has taken place. The SEA shows a positive impact and the policy is considered to be in conformity with paragraph 109 of the NPPF which refers to remediating and mitigating despoiled, degraded, derelict contaminated and unstable land, where appropriate.

## 4. Sustainability Appraisal

- 4.1 Under the Planning and Compulsory Purchase Act 2004 (PCPA), Local Authorities must undertake a Sustainability Appraisal (SA) for Development Plan Documents (DPDs). SA is therefore a statutory requirement for Local Plans along with strategic environmental assessment (SEA).
- 4.2 The Government's approach is to incorporate the requirements of the SEA Directive into a wider SA process that considers economic and social as well as environmental effects.
- 4.3 The Council recognises that the 2010 Core Strategy (and, therefore, the associated SA/SEA) did include the consideration subterranean development. However, the original scoping took place in 2005 and, therefore, requires updating to ensure the current context and environmental baseline is taken into account for the subsequent SA/SEA.
- 4.4 **SA/SEA Scoping Report Addendum (Dec 2012)** –In line with the requirements of the SEA Directive (2001/42/EC) and the Planning and Compulsory Purchase Act (2004) (as amended), the draft policies were subject to a Sustainability Appraisal Scoping Report. Statutory consultees were consulted on the Scoping Report Addendum and their feedback was taken into consideration in the preparation of this report. The consultation on the SA/SEA scoping report took place alongside the Draft Miscellaneous Matters Consultation.
- 4.5 **SA/SEA of the Publication Policy (July 2013)** – This was the SA/SEA of the Publication policy which was consulted on in July/September 2013. The policies had not changed in substance from the previous round of consultation. However, a number of changes were made to improve the clarity of the policy and the text. The SA/SEA examined the compatibility of the proposed policy options with the SA Objectives. The report also appraised the aims of a number of alternative options against the SA Objectives. This included specific consideration of the “business as usual” scenario. The preferred policy and the various options are likely to have a positive relationship with the majority of the SA objectives. The Council considered that the potential negative impact on SA Objectives 3 (To support a diverse and vibrant local economy to foster sustainable economic growth), 9A (Prioritise development on previously developed land) and 13 (To aim that the housing needs of the Royal Borough's residents are met) are unlikely to be significant and to be outweighed by the considerable benefits of the other SA objectives associated with the successful implementation of the policy.
- 4.6 The final SA/SEA indicates that these policies have a predominantly positive relationship with the SA objectives. The appraisal process has not suggested that any of the preferred policies are likely to have any significant negative effect on the SA objectives. It has been identified during the appraisal exercise that the adoption of Option 1 for CF9

could have a potentially negative impact upon the economic growth of the borough by resisting hotels in certain circumstances. However, this impact would not be anticipated to be of such a scale as to be harmful. Such an approach of balancing economic, environmental and social issues is supported in the NPPF (see para 3.5 above)

## **5. Options considered and rejected before consulting on the draft policies**

- 5.1 Following the initial consultation (Dec 2012), a range of options were considered by the Council before progressing to the next stage of consultation on the draft policy. These options were subjected to a Sustainability Appraisal as presented in the SEA/SA document produced in July 2013.

## **6. Consultation**

- 6.1 A separate report titled Miscellaneous Matters Summary of Consultation, April 2014 has been produced. This report sets out details of all the consultation that has been undertaken in formulating the policy in chronological order. It includes a section under each consultation stage that explains how people's comments were taken into account. Further reports on consultations setting out all the comments made during each formal consultation and the Council's response to the comments have also been produced.
- 6.2 The Council undertook a Publication consultation on the soundness of the policy from 9 July 2013 to 3 September 2013.

## **7. Miscellaneous Matters Screening Assessment**

- 7.1 A screening assessment of the publication policies has been undertaken in accordance with the Habitats Directive to assess if it is likely to affect European sites. The two relevant European sites are Richmond Park and Wimbledon Common. The assessment concludes that the publication policies are not likely to affect these European sites.

## **8. Equalities Impact Assessment**

The Council has undertaken an Equalities Impact Assessment (EqIA) of the Publication policy. EqIA was undertaken at every stage of policy development and the report published on the Council's website. The EqIA shows that the publication policies are likely to have a neutral or positive impact on the range of equality issues.