

OPDC POST SUBMISSION MODIFIED DRAFT LOCAL PLAN

PART 1 OF REPRESENTATIONS SUBMITTED BY THE OLD OAK NEIGHBOURHOOD FORUM AND ST QUINTIN & WOODLANDS NEIGHBOURHOOD FORUM

These representations have been prepared by the Old Oak Neighbourhood Forum (OONF) and the St Quintin and Woodlands Neighbourhood Forum (StQW).

They follow joint meetings of OONF and the Grand Union Alliance held monthly in 2020 and 2021, and meetings of the StQW Forum discussing that part of the PSMDLP that makes proposals for Scrubs Lane and land in the east of the OPDC area.

OONF and StQW have followed closely the preparation of the OPDFC Draft Local Plan since 2015. Both bodies made written and oral submissions at the EIP hearings in 2019 on the Regulation 19.2 version of the Draft, prior to the suspension of the examination. Both have continued in 2020 and 2021 to attend OPDC and HS2 consultations held online, and to submit responses on individual HS2 Section 17 applications, and on planning applications in the Old Oak area as submitted to OPDC and to LB Ealing for determination.

These representations are in two parts:

Part 1 addresses what we see as key points in terms of the ‘soundness’ of the PSMDLP and its supporting documents.

Part 2 (to follow) covers detailed main and minor modifications in the ‘tracked’ version of the PSMDLP, the OPDC schedule of modifications, and a number of the supporting documents. It also identifies further modifications seen as necessary to remedy lack of soundness of the Draft Plan – were this route to continue onwards to the stage of Local Plan adoption.

Having scrutinised the PSMDLP documentation and undertaken the preparation of these representations, our conclusion is that there is no way of making the Draft Plan sound through a process of further modification during its resumed examination. This is a consequence of

- the scale of changes proposed to be made, which are at a strategic spatial level.
- The time that has elapsed since the 2018 submission of the 19.2 Draft Local Plan and the fact that the Draft Local Plan is being assessed against the 2012 NPPF, now nearly a decade out of date.
- insufficient justification for the changes and modifications, and of evidence for their appropriateness and effectiveness
- lack of adequate OPDC member oversight of preparation of the modifications
- no evidence that the Duty to Cooperate has been met since 2018, and some evidence to the contrary
- a public consultation process framed by OPDC as *the majority of the local plan remains the same* whereas the combination of entirely new proposals and the loss of key elements from the 2018 Draft Local Plan are in reality fundamental to the future of Old Oak.
- lack of compliance with national policy, the 2012 NPPF and the 2021 London Plan
- failure to meet the requirements of the Planning and Compulsory Purchase Act 2004, given the construction of this Act and its separation of the stages of ‘preparation’ and ‘examination’ of a Draft Local Plan.

We also believe that OPDC should never have submitted the 19.2 version of the Draft Local Plan to the Secretary of State on 4th October 2018. As has been revealed in early 2021 by the London Assembly Budget and Performance Committee, OPDC knew at this time that Cargiant as major landowner no longer supported the Plan's proposals. The timings in this sequence of events are explained in the Budget and Performance Committee's report at pages 10 and 11, including the following paragraphs:

Despite being made responsible for the delivery of over a third of the new homes included in the plan, it has emerged that at the time the bid was submitted there was clear evidence that Car Giant had no appetite to develop its land in this way. On 21 September 2018, just 11 days after the HIF bid was submitted by the OPDC, Car Giant wrote to the OPDC to inform it that they were formally objecting to the OPDC HIF bid.

In the Budget and Performance Committee meeting on 14 October 2020, David Lunts, Interim Chief Executive Officer for the OPDC confirmed that "it was, frankly, an error for the OPDC at the time [of the HIF bid] to claim that Car Giant was still supportive when clearly it was no longer supportive."

References to relevant documents, including an important letter from Cargiant to OPDC, are provided in the B&P Committee report. Pages 16 and 17 of this representation give more details.

We believe that the 19.2 version of the Local Plan should not have been submitted to the Secretary of State. **Section 20(2) of the PCPA specifically states that the LPA must not submit the plan unless they think it is ready for independent examination.** OPDC knew at the time of the OPDC Board meeting on 28th September (which approved the 19.2 Local Plan for submission) that this draft version did not have support from the key landowner. Yet this is not stated in the report to that 28th September Board meeting.

This sequence of events did not emerge during the 2019 EIP hearings. It was only after the Assembly's Budget and Performance Committee began its own investigation and in September 2019 used its statutory powers to obtain release by OPDC of the HIF bid and MHCLG conditions, that the details began to become clear.

Regardless of this question of whether the 19.2 Draft Local Plan should ever have been submitted (and why it was not swiftly withdrawn in late 2018) we also believe that adoption of the proposed modified Draft Local Plan will not provide for a sustainable and successful future for the Old Oak area. The 2019 change of plan by the major landowner has had many more repercussions than the removal of two major sites (such as the lack of any vehicle access to the eastern end of OOC station). These repercussions have become apparent in the period since 2019, and in our view make a 'modification' process an unrealistic way forward for the Draft Local Plan as submitted.

In light of a forecast opening date for Old Oak Common Station of 2029-2033, we see no good reason for completing an examination of a Draft Plan which was seriously flawed from the start. A new Draft Local Plan, which takes account of the 2021 London Plan, changes to the NPPF, the *Planning for the Future* White Paper, and the impact on London of a continuing pandemic, would seem a far more rational way of proceeding as of mid 2021.

PART 1 THE TESTS OF SOUNDNESS

In terms of major modifications incorporated in the PSMDLP, and the reasons why we consider the resultant document to fail several of the tests for soundness, we set out our reasoning below. Each of the four NPPF tests for soundness (as per the 2012 version) is examined in turn.

A) Positively prepared – *the plan should be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development* (our emphasis added).

The Local Plan for the OPDC area has an unusual context. A specific housing target was set during preparation of the 2016 Further Alterations to the London Plan. In previous representations we have questioned the evidence base for this target. Identifying the area's *objectively assessed needs* has always raised questions.

As noted by the Inspector in his 2014 report on the FALP, in commenting on this need for revision of the London Plan *This revision has been driven partly by the realisation that the population of London has grown much faster than was anticipated in the 2011 London Plan. However, the extent to which this unexpected level of growth is structural or cyclical is unknown, as is the ability of the Plan's existing strategies and philosophy to successfully accommodate the envisaged level of growth. In light of this, a full review of the Plan will commence in 2015*¹.

In 2021, the lack of any sound population forecasts for London is greater than ever. A combination of Brexit and the pandemic has unleashed population movements that cannot begin to be predicted at this time. The City Intelligence section of the GLA reported on May 24th 2021 *Though it remains too early to reliably quantify population change since the start of the pandemic, given the balance of evidence and our understanding of the dynamics and drivers of population change in London, it is hard not to conclude that the population of London is likely to have fallen. However, the scale of such a fall is likely to be far short of the more dramatic figures reported in the press in recent months.*

This assessment post dates the 2019 EIP review of the 2018 19.2 version of the OPDC Local Plan. Even back then it was accepted that the NPPF processes that normally apply for assessing the area's objectively assessed housing needs had not applied. The Inspector's findings (ID34a) acknowledge that the OPDC Local Plan has 'particular circumstances' in this and other respects.

Hearing session 18 held on 6th June 2019 explored issues around housing targets in the context of the OPDC's IIA and Sustainability Appraisal. The main question at the session was over whether there had been sufficient exploration of alternative options for a spatial strategy. At ID34a paragraph 12 the Inspector has provisionally concluded that *notwithstanding the reference to the guidelines for housing numbers and employment capacity being subject to testing through the local plan process, the particular circumstances of the OPDC area are such that, in practice, no reasonable alternatives in excess of the minimum can be arrived at.*

This was at the same time as when the Draft New London Plan was being examined. This examination by a panel of three inspectors involved expert written representations and intensive debate over density policies, and whether or not the 2016 London Plan density matrix should be retained. Housing targets for opportunity areas came under specific challenge as being over ambitious and unrealistic.

As a result, the Inspectors of the London Plan concluded at paragraph 119 of their report² that: *However, to ensure that targets for jobs and homes in some Opportunity Areas, particularly those that are "nascent" or "ready to grow", are not unrealistically high and thereby lead to unsustainable forms of development, the Mayor has suggested changes to policy SD1 parts B(4) and*

¹ Report on the Examination in Public into the Further Alterations to the London Plan, Report to the Mayor M.A.Thickett, November 2014

² Report to the Mayor of London by Roisin Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC William Fieldhouse BA (Hons) MRTPI and David Smith BA (Hons) DMS MRTPI 8th October 2019

*B(6) and reasoned justification. These make it clear that boroughs should establish the capacity for growth in each Opportunity Area, and that the figures in Table 10.1 are **purely indicative** rather than minimum targets (paragraph 119). (our emphasis added)*

The 2021 London Plan is now in force. The housing figures in Table 2.1 on London's Opportunity Areas are clearly headed *Opportunity Area Indicative capacity for new homes and jobs*. The text at page 36 refers to these *as indicative guideline figures for housing and employment capacity in each area*. The relevant heading in the Site Allocations table at 3.1 of the PSMDLP states *The housing and commercial or industrial floorspace targets are expressed as minimums*. **This treatment of the 25,500 figure for Old Oak is contrary to the 2021 London Plan.**

Local people have been told in meetings with OPDC officers '*we have no option but to meet this target*'. Housing numbers shown for site allocations in the modified PSMDLP are explained as an unalterable given and not as the product of indicative targets to be tested.

It is never made explicit by OPDC whether this 'no option' approach has resulted from the fact that the Development Corporation is part of the Mayoral family. We believe that had the three Boroughs been updating their own Local Plans for the relevant parts of Ealing, Brent and the northern part of Hammersmith, the outcome would have been different. Engagement with local people would have been deeper. In LBHF and LBB, we think that unrealistic London Plan targets would have been questioned, tested and modified if deemed as failing to achieve *sustainable development*.

The March 2021 updated OPDC Development Capacity Study states that Plan period homes have been reduced from 20,100 homes to 19,850 homes. This study is key to OPDC aspirations for housing numbers. The Study's questionable methodology is analysed in Part 2 of these representations.

The public perception is that OPDC Local Plan preparation has become primarily a 'numbers game' driven by Mayoral political aspirations rather than 'plan led' development objectives. The inherent conflicting tensions resulting from combining a planning authority with a 'delivery agency' within a single organisation have become all too apparent³.

During the 2019/20 period in which OPDC pursued its Western Lands strategy and prepared its modifications, time and resources were devoted to preparing 'statements of common ground' with landowners of possibly available sites. In too many cases, these locations at Channel Gate and at Scrubs Lane have no obvious suitability for 'major town centre uses' or for new housing at extreme densities. Up to date statements of common ground between OPDC and the Boroughs are notably absent from the PSMDLP documents.

Local people remain concerned that one result of the last 16 months of OPDC activity has been to escalate land values on these newly identified housing sites. The same process took place in the 2013-15, when initial plans for 'Old Oak Park' were in preparation. The outcome at that time was of speculative developers acquiring sites along Scrubs Lane and seeking early planning consents.

³ As an example, when the HIF documentation was finally [published online](#) by OPDC in early 2020 the following paragraph of legalese is provided on the web page: *The HIF bid was submitted by the GLA on behalf of OPDC. It was produced by OPDC in its role as delivery agency and not as the Local Planning Authority. The assumptions made within the bid, including but not limited to those relating to affordable housing, density and viability, were not discussed or agreed with OPDC in its role as Local Planning Authority. The information contained within the bid should not therefore be used or relied upon by third parties, as being appropriate or acceptable to OPDC in its role as Local Planning Authority.* This appears to be an attempt to distance OPDC planning staff from the decision of the Board to submit the 19.2 Draft Local Plan in October 2018. And also to distance OPDC from the GLA's submission of the HIF bid. Yet the Board is responsible for the Corporation's functions as planning authority and as delivery arm.

Post the OPDCs 2019 ‘change of direction’ and relative stagnation in the London new build housing market, the financial viability of the stalled developments at Scrubs Lane appears to have fallen below the waterline. Hence a series of S96A/S75 applications, and fresh applications, to increase housing numbers and densities to evermore extreme levels. Construction has yet to start on any of the Scrubs Lane developments (albeit that demolition works have taken place at Mitre Yard).

We do not see the process or outcome of OPDC Local Plan preparation from 2016-21 to be compatible to achieving sustainable development. Plan-making has become a reactive process, responding to changed circumstances (primarily the Inspector’s 2019 Interim Findings and a continuing lack of commitment by Government to help with infrastructure funding). We do not see this as ‘positive preparation’ of a Local Plan. Nor do we accept the OPDC claims that the PSMDLP is improved spatial plan for Old Oak as compared with the 19.2 version centred on Old Oak North.

It is worth recalling how the regeneration of Old Oak was portrayed in the 2014 FALP⁴, to give a perspective on the PSMDLP:

Old Oak Common has significant regeneration potential for new housing and jobs and could make a major contribution to London’s position as a world business centre.

Public transport accessibility and availability of amenity space should support high density development which could include a cluster of tall building around the interchange.

Does anyone in 2021 still seriously see the proposals in the PSMDLP as making a measurable new contribution to London’s position as a world business centre? The ‘adjacent site’ to the OOC station is only partially available for development within the plan period. The once promised ‘connectivity’ of locations such as Scrubs Lane/Old Oak North is not going to happen, with no Overground station and no vehicular access to the eastern end of OOC station.

It is very doubtful if an Overground station at Old Oak Common Lane will materialise, given the state of TfL finances and the June 1st 2021 decision of the Secretary of State for Transport to grant TfL only a limited and conditional further ‘emergency bailout). Prospects for linking OOC station to a West London Orbital Line are similarly diminished⁵.

B) Justified – the plan should be the most appropriate strategy, when considered against the **reasonable alternatives**, based on **proportionate evidence**

In its amended text and diagrammatic maps, the PSMDLP might appear superficially to present an ‘appropriate’ strategy for the future of the Old Oak area. Yet from the perspective of those who already live or work there, much of OPDC’s revised approach is seen as increasingly inappropriate.

The PSMDLP has in effect become two Draft Local Plans. One for the northern part of Hammersmith (centred on Scrubs Lane/Hythe Road) and one for east and north Acton, along with Park Royal, in LB Ealing.

These two areas of London have been separated by major rail lines and the MOL of Wormwood Scrubs since this part of the city was developed from rural fields in the 19th century. In this 2021 Draft Local Plan the two areas remain as separated as ever.

The existing borough boundaries between LB Ealing, LBHF and RBKC are not the product of chance. They reflect areas of land for which lines of separation running north/south (mainly railways) date

⁴ The London Plan March 2015 page 354

⁵ <https://www.telegraph.co.uk/business/2021/06/03/flagship-hs2-station-threat-sadiq-khan-shelves-vital-upgrades/>

back 150 years. The original concept of the MDC was to overcome this separation, and to create a new part of London as an integrated whole.

In our view, the PSMDLP no longer achieves this crucial spatial outcome for this part of London. The Mayoral OAPF published in 2015 showed a path towards this objective. But the path has not been taken. The context in 2021 is very different:

- a. The 20 year 'plan period' for the PSMDLP is 2018-38 (as we understand). This timespan is not made clear on the front of the document nor in the introduction⁶
- b. The major new rail interchange at Old Oak Common, linking HS2, the Elizabeth Line and GWR rail services is not now scheduled to be operational before 2029 -2033⁷.
- c. The PSMDLP offers little or no 'proportionate evidence' that a supposed key 'catalyst' for new economic vitality in the form of OOC station will deliver any of the promised outcomes. When the station becomes operational, why will this have any significant impact on the locations now framed as the key areas for concentrated new housing development (North Acton, Acton Wells, Channel Gate and Scrubs Lane). Physical barriers between these locations will remain largely in place.
- d. The 'catalyst' justification for the Local Plan is not obvious. Given the constraints on development in the immediate area around this rail interchange, and without the originally planned links to two new Overground stations, it is unclear why the OOC station (a decade away) will have any significant impact on the surrounding area? How many HS2 and GWR passengers will leave the station interchange to visits '*parts of Old Oak major town centre*' when these are a significant distance away? How many new residents will choose to live at Old Oak, when other Crossrail stations will open soon and with better Overground/Underground links?
- e. The OOC station will be 1km in length and will lie within LBHF. Yet there will now be no vehicle access, by bus, car or taxi, to the eastern end of station.
- f. Longstanding claims of Old Oak as a *super hub*, an *unprecedented opportunity* and *one London's most accessible destinations* no longer stand up to scrutiny. Other London mainline stations with onsite Overground and Underground connections can more justifiably be described in such terms.
- g. For those living in North Hammersmith and North Kensington, the eventual opening of OOC station will result in only modest improvement to PTAL levels.
- h. The original OPDC vision of '*high-density transit oriented*' development is no longer valid. The major sites now proposed for high density development are not close enough to public transport to meet standard definitions as '*transit-oriented locations*' (with the exception of the 'Adjacent Site' – a location the southern parts of which remains safeguarded by DfT for a potential Wycombe/Chiltern line).
- i. The modified PSMDLP document is confusing on the subject of an 'Old Oak Major Town Centre'. Three or four areas (North Acton, Acton Wells, the OOC station site, Channel

⁶ The key table 3.1 on site allocations and housing numbers uses the headings '*over the first ten years of the plan period*' and '*during the 11 to 20 years of the plan period*'. This is very unclear. Years should be specified.

⁷ This is the date range given by HS2 and in National Infrastructure Commission publications. The PSMDLP uses a timeframe of 'after 2028' which is imprecise and disingenuous in suggesting that HS2 may be operational earlier than a realistically assessed date. The Oaklands Rise development (nearing completion) is marketing apartments with the claim that OOC station is '*coming soon*'.

Gate) are variously referred to as ‘parts of a major town centre’ in different sections of the document. The ‘Policy Map’ at Figure/PS2/OPDC/PM4 shows no town centre at Old Oak and a neighbourhood centre at North Acton (see further detail in Part 2 of these representations).

- j. It is not clear how or why ‘*major town centre uses*’ would emerge at any of these locations? They are geographically separated and seem likely to remain so, as a result of physical barriers and disincentives to movement. No ‘*heart of a new Old Oak*’ is now planned.
- k. The modified Plan proposes that Scrubs Lane becomes a ‘*place in its own right*’ with an intensified concentration of new housing. New claims are made for the ‘connectivity’ of this currently industrial street which involve infrastructure 10-20 years away. There is no acknowledgement of the fact that without an adjacent ‘Old Oak Park’ and new Overground station, Scrubs Lane is far less suitable an area for high-density car-free housing than was the case in the 19.2 Draft Local Plan. Yet a fifth ‘cluster’ with further high density housing has now been added at Mitre Way/North Pole Depot.
- l. In the quest to meet a housing target, the development capacity of any and every potential site is to be stretched far beyond what will make for successful and sustainable development, or the London Plan’s stated policies for ‘Good Growth’. Little account is being taken of how concentrations of new housing relate (or do not relate) to one another.
- m. As a direct result of OPDC’s search for sites to replace housing numbers lost at Old Oak North, changes of density and building height between existing and proposed new areas of housing will be both abrupt and extreme. This runs counter to the Government’s new emphasis on ‘*gentle density*’, the outcome of the *Building Better, Building Beautiful Commission*, and the 2021 draft National Model Design Code and NPPF revisions.
- n. The PSMDLP, as for previous versions, lacks any clear and explicit policies on housing densities for different parts of the Plan area. Such material appeared in the 2016 Regulation 18 version but not since then. Draft policy D5 on Tall Buildings and related policies in ‘Place’ sections of the document are worded so as to be opaque to the ordinary citizen.
- o. It is very questionable whether the PSMDLP documentation as drafted meets New London Plan policy D9 on Building Heights, as modified by the Mayor following the intervention by the Secretary of State. Those OPDC officers drafting modifications to the updated ***Tall Buildings Strategy*** do not seem to have recognised the consequences of the addition of the crucial term ‘suitable’ to London Plan D9 as a result of the December 2020 Direction to the Mayor (see details in Part 2 of these representations).
- p. The PSMDLP is premised on identifying new sources of funds for a £347m funding gap. The November 2020 Spending Review and March 2021 Budget announcements give no comfort that Government will invest in Old Oak beyond the HS2 station itself. The Government’s ‘levelling up’ agenda suggests otherwise.

The 2015 OAPF vision of Old Oak is seen by local people as having long been lost along the way. The 19.2 version of the Local Plan at least offered ‘Old Oak Park’ as a new part of London recognisable as a ‘major town centre’ with public transport to match. It was possible to imagine major retail and commercial activities locating at the then proposed ‘Old Oak High Street’, with one or more of London’s cultural providers and/or universities coming into the area as at the Olympic Park.

The 'new focus' on the 'Western Lands', cited by OPDC as an 'improvement' on the 19.2 version of the Draft Plan, has not convinced a local audience as being '*an appropriate strategy*'. The envisaged Channel Gate area lacks the scale, and the level of public transport access, to become a viable '*part of a major town centre*'. North Acton is seen as an area where OPDC misguidedly handed over planning powers to LB Ealing in 2015. This has led to several years of 'regeneration' at this location the results of which are viewed by many as amongst the least successful examples of urban renewal in London.

New high density developments at North Acton, including an over-concentration of student housing and flats aimed at the 25-35 age range, has brought limited 'activation' or sense of a successful 'place' to the area. North Acton is seen with foreboding as an example of what may be imposed at Channel Gate and Scrubs Lane should the PSMDLP be allowed to proceed to adoption.

As a 'delivery body' which has continued to lack any significant Government funding for infrastructure, the Corporation has also had little choice but to come up with a second effort at a Local Plan which is arguably '*more deliverable*'. But deliverability alone should not be used as adequate 'justification' for a set of spatial planning proposals which do not cohere into a forward looking or 'appropriate' vision for one of London's last remaining major areas for renewal.

OPDC planners could not have predicted that they would be making major modifications to a Local Plan at a time when key questions are being asked on how Londoners will live, work, travel, socialise and find entertainment in future. As it is, it seems inevitable that further review of the 2021 London Plan must start shortly in order to address London Recovery issues.

London TravelWatch⁸ has modelled a number of scenarios on the extent to which the travel patterns of Londoners will return to 'normal' after long period of change and working from home. None of these assume a more than 80% return to previous passenger levels. Passenger levels on commuter rail services have been harder hit than on buses and the Underground.

Given all the above, local people see a compelling case **not** to set in stone a Local Plan for Old Oak in 2021. The business case for the HS2 project, in the context of what may prove continued consequences of the pandemic on rail travel patterns, remains under very regular Parliamentary review.

In this new and unanticipated context, and with a Draft Local Plan that already relies largely on an evidence base **already three years out of date**, there are strong arguments for a fresh start. All over London, minds are being turned to how London may need to change and adapt.

Hence the timing of this attempt to adopt a Local Plan via a process of major modifications risks adoption of a Local Plan that seems likely to be regretted for decades to come. We believe that the Plan will come to be seen as a misjudged set of site allocations and policies for Old Oak, based on a 'catalyst' concept that no longer stands up to scrutiny. It will be the Borough Councils of Ealing and Hammersmith & Fulham that live with the consequences.

Does OPDC as a planning authority itself see the PSMDLP as 'justified'?

The PSMDLP documentation has had remarkably little input from the decision-making bodies of the planning authority responsible for the Plan. There is minimal evidence available to the public that the Corporation's Board and Planning Committee members remain convinced of the 'vision' and outcomes promoted in the PSMDLP.

⁸ [The-Journey-Ahead-London-TravelWatch-Report-March-2021.pdf \(amazonaws.com\)](https://www.amazonaws.com/Document/View/115444)

We ask that the renewed examination of this Draft Local Plan should take account of two factors, when assessing 'justification' and other soundness tests:

- the unusual make-up of the OPDC as a combined planning authority and delivery agency with potentially conflicting roles in balancing neutral and objective plan-making with pressure to deliver on housing numbers.
- The Corporation's limited democratic accountability as compared with LPAs generally, and the absence of opportunity for the Corporation's Planning Committee (with knowledgeable local councillors) to make input to the modified Draft Local Plan.

The first response from OPDC to the Inspector's 2019 interim findings was a 13th December press release on a 'change of direction' and a 'new focus' on the 'Western Lands'⁹. No OPDC Board or Planning Committee meeting had preceded this announcement. For the public, it was unclear who had agreed on this revised approach, and when? A scheduled meeting of the Board on November 21st had been cancelled.

On January 30th 2021 the OPDC Board met and agreed 'to note' *the appointment of Prior and Partners, procured from the Old Oak Masterplan call-off contract, to work alongside the OPDC team and key stakeholders to support the development of the new 'Western Land' approach.* The presentation given by these consultants (appointed under delegated powers) was greeted with lukewarm support by the three Borough Leaders present at this meeting as Board members.

Subsequently the OPDC Board received updates on work to modify the Draft Local Plan at meetings as below:

- **24th June 2020** with limited discussion and a minute reading *Approved a delegation to the Chief Executive Officer to authorise expenditure of up to £150,000 to support the Corporation's revised delivery strategy; noting this will take the approval limit to Western Land preparatory work to £358,000.* ('preparatory work' being OPDC's chosen terminology)
- **13th October 2020** which reviewed a presentation on the Local Plan from the CEO, with subsequent minutes that the Board (inter alia) *Reviewed the proposed Local Plan modifications and approved these as the basis for the next stage of formal landowner and community engagement.*
- **12th November 2020** at which the minutes record an update from the Planning Committee stating that *Progress continued to be made on the Local Plan modifications. Meetings were taking place with officers from the local boroughs and landowners. Statements of Common Ground were under discussion, with one being signed already. Other work such as studies and community events had taken place and it was expected that the draft Local Plan would be ready for approval in spring 2021.*
- **March 4th 2021**, at which meeting Board approval was sought to *Agree the submission of the Post Submission Modified Draft Local Plan (Appendix A) and accompanying documents (Appendices B-Q) to the Planning Inspector.* It is notable that these appendices did not include the March 5th 'covering letter' sent to the Inspector with the PSMDLP submission.

During the entire period September 2019 to February 2021, the OPDC Planning Committee received no reports on the Draft Local Plan. The Inspector's September 2019 interim findings were

⁹ OPDC press release 13th December 2019 at <https://www.london.gov.uk/about-us/organisations-we-work/old-oak-and-park-royal-development-corporation-opdc/about-us/press-releases/new-focus-old-oak-and-park-royal-regeneration>

never reported to the committee. Planning Committee meetings scheduled for 11 December 2019, 11th February 2020, 16th April 2020, and 15th December 2020 were cancelled for lack of business.

On February 23rd 2021, the OPDC Planning Committee received a report and presentation on the proposed modifications. There was a lengthy discussion on these, and what seemed to the public to be a number of valid points and concerns were raised by committee members.

While an oral report was made to the OPDC Board on 4th March 2021, by Planning Committee Chair William Hill, there is no sign that this Planning Committee discussion led to any changes in the PSMDLP documentation. Similarly the discussion at the OPDC Board on March 4th (at which LBHF Leader Cllr Stephen Cowan voted against submission of the modifications) led to no changes or amendments.

The fact that the OPDC Planning Committee was never invited to comment on, make input to, or to steer the process of modifications to the OPDC Local Plan has bemused and frustrated local residents. This part of the OPDC decision-making machinery involves four local councillors (2 from LBHF and 1 each from LB Brent and LB Ealing). These elected members (and the 3 Borough Leaders on the OPDC Board) are the only part of the OPDC with any democratic accountability.

We understand that there were some ‘closed briefings’ of OPDC Planning Committee members during the 2019-2021 period, on the modifications. In correspondence with the current Planning Committee Chair (William Hill) we were told of such sessions being held in March, July and October 2020.

After the October 2020 ‘closed session’ session the former Planning Committee Chair (Will McKee) at the OPDC Board on the following day *conveyed that Members of the Planning Committee were supportive of the modifications and the proposals. Members felt that particular attention needed to be paid to place and open spaces and the importance of the Grand Union Canal as a community asset, noting that the north side of the canal had strategic importance*¹⁰.

No papers for such ‘closed’ and private meetings of the Planning Committee have been published. In correspondence, the current Planning Committee Chair has said *Unfortunately we do not have a record of who attended the closed briefing sessions. With regard to the session in October Emma informs me that the presentation was identical to that given to the Board the subsequent evening. As I have set out previously the Planning Committee operates in an advisory capacity in relation to the Local Plan. OPDC officers did not finalise the approach to the modifications prior to the October closed planning committee briefing and board. This was evident from the presentation to Board*¹¹.

These non-transparent arrangements contrast strongly with the workings of local councils operating as planning authorities under the English planning system (as compared with OPDC as a Mayoral Development Corporation). **We ask that the Examination process recognises this lack of accountability and transparency. The PSMDLP material has been assembled by OPDC officers with little or no evidence of substantive input by the Corporation’s advisory and decision-making bodies.**

- No serious attempt has been made by OPDC to use the input and experience of local councillors in the three Boroughs. In preparing the modifications to the Draft Local Plan. In the 2015-2018 period, the OPDC Planning Committee received reports on the Local Plan and was able to contribute to the Regulation 18 and 19 versions.

¹⁰ Draft minutes of October 13th OPDC Board meeting

¹¹ Email of 1st April 2021 from William Hill to StQW Chair Henry Peterson

- The closed and ‘bunker like’ culture of the OPDC has become ever more apparent following strong criticisms from the London Assembly over lack of transparency and abortive public expenditure on the on the HIF bid and Cargiant episodes¹².
- Local people have been deprived of the chance to comment to or lobby local councillors on aspects of the modifications (insofar as these proposed changes were revealed to the public via limited OPDC consultation prior to the March 5th submission to the Inspector).
- A document titled *Plea to the Planning Committee*¹³ submitted to OPDC Planning Committee members by OONF/GUA/StQW prompted discussion at the February 23rd meeting of the committee. The Chair announced at the start of this meeting that the committee would be willing to meet with local residents from these bodies. This session has not happened subsequently, as OPDC officers advised that such a meeting could not be open to the public (as residents wish) during the period of ‘pre-electoral sensitivity’ prior to the May 6th Mayoral elections.

On the basis of the material in the public domain, and our viewing of Planning Committee and Board discussions, we are unconvinced that OPDC officers have even satisfied their own Planning Committee members and all Board members that the modifications included in the PSMDLP are ‘justified’ and meet all other tests for soundness.

The 23 page covering letter from OPDC to the Inspector, making the case for the modifications and enclosed with the March 5th submission of the PSMDLP documents, was not included on the OPDC Board agenda for March 4th. Nor was it on the agenda of the February 23rd Planning Committee. Why was this the case, other than in an attempt to achieve as little scrutiny as possible of questionable assertions and claims made in this letter?

Is this a letter that was properly authorised by OPDC as planning authority, and if so how? Does its content reflect the views of all Board and Planning Committee members, some of whom have made clear that they do not fully support the PSMDLP proposals?

This letter is now published as part of the ‘Examination Library’. Yet the public appear to have no opportunity to challenge its content as part of the examination process. **Will the Inspector accept comments on the unevicenced assertions in this OPDC ‘covering letter’ and will these be published in the Examination Library?**

These above points on whether the PSMDLP is ‘justified’ we ask to be given consideration by the Inspector.

C) Effective – *the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities*

Much of the emphasis of the OPDC covering letter to the Inspector, sent with the full set of PSMDLP modifications on March 5th, is on the increased *deliverability* of the Western Lands strategy.

In terms of cross-boundary strategic working, the context for the OPDC Local Plan is an unusual one. The Draft Plan has been drawn up by a development corporation with a finite lifetime. This will leave the Boroughs to inherit the long-term consequences. Should the Local Plan fail to deliver on its ambitious aspirations, it is the Borough Councils which will be addressing the consequences.

¹² London Assembly Budget and Performance Committee report January 2021 at [The OPDC - Undelivered plans and the financial challenges of COVID-19 \(london.gov.uk\)](https://www.london.gov.uk/press-releases/major/london-assembly-budget-and-performance-committee-report-january-2021)

¹³ OONF/StQW/GUA *Plea to the Planning Committee* Feb 2021 at <http://oldoakneighbourhoodforum.org/wp-content/uploads/2021/03/A-PLEA-TO-THE-OPDC-PLANNING-COMMITTEE.V4.pdf>

Medium and long-term problems may manifest themselves in many ways, including housing developments with problems of high costs of maintenance and repair, social stress arising from 'car-free' high rise towers with inadequate amenities within walking distance, and models of PRS housing where service costs escalate beyond what tenants and 'intermediate' purchasers can afford to pay.

The 19.2 version of the Draft Local Plan was supported by a September 2018 OPDC **Duty to Co-operate Statement**. This documented the extent and nature of regular discussions between OPDC officers and the four Boroughs (including RB Kensington & Chelsea) which currently border on the OPDC area.

This Statement has not been updated for the 2021 submission. Our understanding is that this is not a legal requirement, given that the statutory Duty to Cooperate ceases to have force once a Draft Local Plan is submitted to the Secretary of State. As we understand, whether or not a planning authority has met this duty is normally one of the first questions which an Inspector examines. Completion of the examination and subsequent adoption would, in most circumstances, follow much more swiftly than has proved the case for the OPDC Local Plan.

We are aware that a number of Local Plans across England have been withdrawn, or have not progressed to adoption, as a result of a failure to meet the Duty to Co-operate (City of York and Sevenoaks DC being examples).

In the case of the OPDC PSMDLP, as a result of a 16 month suspension of the examination, the public have no idea (nor any means of finding out) whether the duty to cooperate has continued to be met adequately since September 2018.

OPDC has claimed within the PSMDLP documentation that regular meetings with the four Boroughs have continued. No updated 'statements of common ground' between OPDC and the Boroughs have been published, these being the normal basis for examination of compliance with the duty.

The relevant paragraphs of the 2012 NPPF (against which the PSMDLP is being examined) are at paragraphs 178-181 of this earlier version. These were expanded on in the 2014 NPPG. As we read this material, the legal requirement to show evidence of co-operation **is a continuing one** during the plan preparation process. We also understand that evidence of such co-operation should ***be made publicly available throughout the plan-making process to provide transparency.***

We do not see how it can be argued that OPDC has currently complied with this NPPF requirement?

In terms of *cross boundary strategic matters*, the content of the PSMDLP leaves many questions unanswered or *deferred* beyond the life of the Plan (to use a relevant term from the 2018 NPPF). There are no realisable proposals for new road connections between East Acton and North Hammersmith (as was the case with 'Union Way' at Old Oak North in the 19.2 version).

A proposed 'Wormwood Scrubs Street' has been trailed by OPDC in diagrammatic maps used in presentations (to the public and to OPDC Board and Planning Committee). On closer scrutiny of the PSMDLP, the essential western section of this new 'key route' is a 21+ years project. No road connections are planned to bridge the historic divide between Acton and North Hammersmith.

For this and other reasons, we do not see that the PSMDLP as redrafted is 'effective' as a potential Local Plan for the Old Oak area. Nor is there evidence that this modified version has sufficient support from the Boroughs which will inherit the consequences of this Local Plan. We wait to see how each Borough will respond to the PSMDLP consultation. The public will not see silence or a nil response as meaning support or consent to the PSMDLP proposals.

At the meeting of the OPDC Board on March 4th 2021, Councillor Stephen Cowan (Leader of LBHF) voted against the recommendation that the PSMDLP documents be submitted to the Inspector. He argued for further consultation with local people but was outvoted. Coupled with the fact that the two LBHF councillors on the OPDC Planning Committee abstained on a recommendation to grant planning consent to an 'optimised' planning application at North Kensington Gate (South) on January 14th 2021, these actions suggests that there is disquiet within this Borough Council on the *effectiveness* of the PSMDLP in terms of cross-boundary working and the Duty to Cooperate.

D) Consistent with national policy – *the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.*

In terms of compliance and conformity with the 2012 NPPF and with the 2021 London Plan, we consider the PSMDLP and its supporting document to fail to meet this element of the tests for soundness in the following respects. Were the Plan to be examined against the 2018 NPPF, or the MHCLG consultation version currently being revised, there would be further issues to raise.

i) NPPF paragraph 15 states that *All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption will be applied locally.* We argue that in relation to policies on housing density (a key issue for applicants/developers and for the public) the PSMDLP includes no clear policies. A reference to acceptable densities being in a range of 300-600 hu/hectare has been added to the supporting text, as a late modification. But this leaves the policy position wholly unclear. NPPF 2012 paragraph 47 is clear that local authorities *should set out their own approach to housing density to reflect local circumstances.*

In a context when the previous **London Plan policy 3.2 and Density Matrix** has been removed from the 2021 London Plan, it is now more essential than ever that a Local Plan for a new part of London sets clear expectations on housing densities. This the PSMDLP fails to do.

At national level, the proposed additions to the NPPF signal a direction of travel by Government. So too does the content of the National Model Design Code with its explanation on density levels for different forms of urban and suburban building typologies (see in Part 2 of these representations). **The fact that the PSMDLP is being assessed against the 2012 NPPF feels increasingly untenable, given several clear shifts in Government policy on urban design and implementing the recommendations of the Building Better Building Beautiful Commission.**

The intervention of the Secretary of State in requiring a late modification to **London Plan Policy D9 on Building Heights**, and the accompanying 'Direction Overview' similarly reflected a recognition by Government that the English planning system has failed in the past decade to deliver building typologies that the public in London feel they can relate to. We do not consider that the proposed modifications to the OPDC Local Plan will make it compliant with 2021 London Plan Policy D9.

London Plan Policy D2 **Infrastructure requirements for sustainable densities** continues to provide guidance in the spatial development plan. This includes a requirement that densities *be proportionate to the site's connectivity and accessibility by walking, cycling, and public transport to jobs and services (including both PTAL and access to local services).*

ii) NPPF 2012 Paragraph 157 states that Local Plans *should allocate sites to promote development and flexible use of land, bringing forward new land where necessary and provide detail on form, scale, access and quantum of development where appropriate.* The content of the PSMDLP appears to be deliberately evasive on the subject of housing densities, and hence on 'form' and 'scale' in terms of building heights.

The evidence of decisions by the OPDC Planning Committee (and by LB Ealing on delegated applications) between 2015 and 2021 offer no reassurance that either planning authority intends to pay any heed to changes in national and London Plan policy since 2012. The PSMDLP is required (as we understand) to generally conform with the 2021 London Plan.

This is not the only subject on which PSMDLP draft policies are neither clear nor unambiguous. Further examples are given in Part 2 of these representations.

iii) Duty to Cooperate As noted above in the section on whether the PSMDLP documentation is 'effective', we question the adherence of the PSMDLP to the NPPF 2012 requirements in **paragraphs 178, 179 and 181**. The public have no evidence of Borough involvement in, or views on, the substantial changes made to the spatial plan for Old Oak, beyond brief comments made by Borough Leaders at OPDC Board and Borough councillors on the OPDC Planning Committee. These have been far from fully supportive.

iv) NPPF Paragraph 158 states *Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and take account of relevant market and economic signals.*

For significant sections of the PSMDLP text, we do not see this material as either 'up to date' or 'focused tightly on supporting and justifying the policies concerned'. As explained in the detailed representations in Part 2 of these representations, much of this text is made up of unjustified and generalised assertions. Material drafted for the 19.2 version of the Draft Plan has been overtaken by events, while remaining unaltered in the PSMDLP 'tracked' version. Transport infrastructure and new 'key routes' envisaged in 2018 are no longer going to happen. In Part 2 of our representations, we have identified many sections of the document where further modifications would be needed for the Plan to begin to read as coherent and accurate in the statements and justifications made in support of draft policies.

These defects in the documentation are before any consideration of the extent to which current *market and economic signals* are not reflected in the PSMDLP. We accept that OPDC could not in 2018 have predicted the pandemic. Yet for people living and working in the area, progressing a plan to adoption in a context in which so much has changed adds to loss of confidence in the national planning system.

v) Integrated Impact Assessment Addendum – Post Submission Proposed Modifications

The PSMDLP submission includes the above document, the preparation of which was commissioned by OPDC from Arcadis UK Ltd. While this report includes much detail, its basic premise is to accept the OPDC line that *the majority of the Local Plan will stay the same*¹⁴.

The Arcadis document states *The modifications signify the proposed change in approach to land uses for Strategic Industrial Locations and mixed-use areas now being delivered in both Old Oak and Park Royal. Due to the high level nature of the IIA, the overall effects of the changes to the plan on the assessment, have been negligible.*

The update IIA assessment continues in this vein, in commenting on changes in the location of 'major town centres', reductions in public transport availability, and a significantly reduced road network within in the plan period. Assessment comments such as *'Although, the delivery of Union Way has been removed, the IIA score of major positive against IIA Objective 4 remains unchanged as*

¹⁴ OPDC consultation leaflet May 2021 as delivered to homes in the area.

the Policy still delivers significant connectivity improvements without Union Way' carry no credibility with those who need to move around the Old Oak area on a daily basis.

vi) NPPF paragraphs 156, 184 and 185 cover 'strategic' and 'non-strategic' policies in Local Plan preparation. OPDC's non-conforming approach to this NPPF distinction was raised in written submissions and was discussed at the first of the 2019 EIP hearings as Matter 1.

The outcome was that the Inspector's subsequent list of *Matters Arising* included the conclusion *OPDC to suggest modification to policy DI3 so as to set out a role for Neighbourhood Plans (see particularly discussion in session 16 re Stonebridge Park and Harlesden Station).*

We respectfully contend that this did not address the issue of compliance with the NPPF. The 2012 NPPF at paragraph 184 states *local planning authorities should set out clearly their strategic policies for the area, and ensure an up to date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them.*

Paragraph 185 continued *outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area* Paragraph 21 in the 2018 NPPF repeats this requirement with different wording as *Plans should make explicit which policies are strategic policies. **These should be limited** to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a **clear starting point** for any non-strategic policies that are needed. **Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.** (our emphasis).*

OPDC's approach in the PSMDLP remains the same as at Regulation 18, 19.1 and 19.2 stage, and is to assert at 1.24 of the PSMDLP that *Chapters 3, 4 and 11 will be treated as OPDC's strategic policies when considering the general conformity of neighbourhood planning policies.*

Chapter 4 of the PSMDLP document is made up of the 'Place' sections of the Draft Local Plan. As stated previously we do not see how OPDC can sustain a case that *The Place Policies set out the **overarching** direction and objectives for each place.*

How can dozens of place-specific policies be categorised as 'over-arching', 'strategic' and other than 'detailed' given the additional guidance on NPPF 21, as set out at *NPPG 075 Reference ID: 41-075-20190509 on What is meant by strategic policies*, and *NPPG on Paragraph: 076 Reference ID: 41-076-20190509 on How is a strategic policy determined?* How can many of the OPDC Chapter 4 policies be defined as a 'starting point' for non-strategic policies in the Local Plan, or further neighbourhood plans (following the Harlesden NP, and the draft Old Oak NP) that may come forward?

Paragraph 28 of the 2018 NPPF states *Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.* Many of the policies in the Place sections of the PSMDLP relate to these non-strategic elements of the Plan.

This issue is considered further in the detailed representations in Part 2 of this document. **We contend that OPDC should have taken a much more discriminating approach to the distinction between strategic and non-strategic policies if the 2012 NPPF (and subsequent versions) is to be complied with. The PSMDLP fails this clear NPPF requirement.**

vii) on the housing content of the PSMDLP, we do not consider that **paragraph 41, 57 and 58 of the 2012 NPPF** can be said to be met. Site allocations at Table 3.1 of the PSMDLP are a list of those pieces of land on which it will (or may) prove possible to build, rather than reflecting a coherent spatial strategy of where new housing should be located in relation to town centres and neighbourhood centres, the local road network, and available public transport.

Paragraph 2.4 of the 2021 Development Capacity Study acknowledges that only 3 suggestions came forward as a result of a call for sites. Normally this part of Local Plan preparation would give the planning authority a range of options on potential sites, which can then be assessed for their suitability and spatial relationships.

We do not see the outcome of the allocation of housing sites in the PSMDLP as being the result of a coherent spatial plan, or reflecting these sub-paragraphs of NPPF paragraph 58:

- *Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.*
- *Establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.*
- *Respond to local character and history, reflecting the identity of local surroundings and material, while not preventing or discouraging appropriate innovation.*

While the methodology undertaken in the DCS may reflect standard, practice, the outcome is unusual. As acknowledged at paragraph 2.6 *Exclusions from the assessment are limited reflecting aspirations for optimising development within the OPDC area. However, there are a number of sites considered appropriate to be excluded for housing and/or economic use development.*

The sites excluded are those where development is unachievable for one of several reasons (MOL, open space, the canal, railway embankments etc). Every even faintly plausible housing site has had to be allocated for intensive development to achieve a 10 year housing target, regardless of spatial ‘appropriateness’ or suitability.

viii **NPPF 2012 Paragraph 161** states that LPAs in their Local Plans should assess:

- *The role and functions of town centres and the relationship between them including any trends in the performance of centres*
- *The capacity of existing centres to accommodate new town centre development*

We consider these aspects of the PSMDLP to be particularly weak and confusing (see also Part 2 of these representations). Is North Acton even beginning to perform as a ‘town centre’? Why should town centre uses choose in future to locate at Channel Gate? What assessments have been undertaken in relation to these proposals?

For the above eight reasons, we believe that the PSMDLP in its modified form falls well short of the required level of conformity with the NPPF and National Planning Practice Guidance.

The final section of Part 1 of these representations addresses some legal questions over the extent to which OPDC’s proposed modifications have in reality become a ‘hybrid’ process involving continued ‘preparation’ of a draft local plan undertaken part way through the examination. As we understand, sections 19 and 20 of the PCPA 2004 do not provide for such combined activity. In our view the PSMDLP has become an exercise of ‘revision’ of a Local Plan, whereas a return to Regulation 18 ‘preparation’ stage is required. Hence our comments below.

LEGAL QUESTIONS OVER THE EXTENT OF MODIFICATIONS UNDERTAKEN DURING THE EXAMINATION STAGE

As we understand the legal position, it is established in case law that *There is no provision in the legislation which allows the LPA to replace all or part of the submitted plan with a revised plan during the examination* (paragraph 1.5 of Inspectorate Procedure Guide).

We appreciate that this Guide also states that Main Modifications *can range in scope from redrafting parts of an individual policy or of the reasoned justification, to the deletion of whole policies or site allocations and the insertion of new ones.*

But there must be a point where a boundary is drawn between ‘modification’ and wholesale ‘revision’ of a Local Plan?

Having reviewed in detail the history of the PDMDLP, we argue that OPDC should not have submitted the 19.2 version of the Draft Local Plan to the Secretary of State in October 2018. **This draft did not meet the requirement at Section 20 (2)(b) of the PCPA 2004, that submission should not take place until such time as the LPA thinks that the document is ready for independent examination.**

As explained in the London Assembly Budget and Performance Committee in its January 2021 report¹⁵ *In 2018, the OPDC submitted a bid for £250 million in public money from the Government’s Housing Infrastructure Fund (HIF) without securing the support of the pivotal landholder on the development site, and was subsequently slow to clarify details around this miscalculation*¹⁶.

The October 2018 submission of the draft plan took place after OPDC were aware of Cargiant’s opposition to the HIF bid¹⁷. OPDC subsequently chose not to disclose to the London Assembly (nor to the Inspector in 2019) the fact that the MHCLG conditions for the award of £250m of Housing Investment Funding made clear that this award was time limited and dependant on a series of agreements with landowners and/or strategies around compulsory purchase being in place.

On February 27th 2020, the StQW Neighbourhood Forum wrote to members of the OPDC Audit and Risk Committee with a series of questions including these two below:

Why was the content of the HIF Expression of Interest kept confidential from September 2017 to January 2020, and not released either to Cargiant or to those seeking this information under FoI/EIR? This was a bid for Government funds from a public body, to support a Mayoral regeneration programme. Much earlier public exposure of the assumptions in the bid would have identified potential flaws long before the Planning Inspector’s intervention in September 2019.

*Similarly, why were the conditions attached to the bid not published as soon as these were communicated by MHCLG to OPDC in April 2019? **And why not provided to Planning Inspector Paul***

¹⁵ ***The OPDC - Undelivered plans and the financial challenges of COVID-19 Budget and Performance Committee January 2021***

¹⁶OPDC submitted the 19.2 DLP to the Secretary of State on October 4th 2018. As revealed in the London Assembly January 2021 report, *In the B& P meeting on 14 October 2020, David Lunts, Interim Chief Executive Officer for the OPDC confirmed that “it was, frankly, an error for the OPDC at the time [of the HIF bid] to claim that Car Giant was still supportive when clearly it was no longer supportive.”*

¹⁷ The Assembly B&P Committee report states *On 21 September 2018, just 11 days after the HIF bid was submitted by the OPDC, Car Giant wrote to the OPDC to inform it that they were formally objecting to the OPDC HIF bid. This letter from Cargiant was provided to the committee, but does not appear to have been published by OPDC alongside other HIF documents at [Being open and transparent | London City Hall](#)*

Clark as very relevant to his examination of the Draft Local Plan? (emphasis added). What were the merits of confidentiality at that stage, extending even to London Assembly members?

We consider that the 19.2 version of the Local Plan was never likely to meet the tests for soundness, whether or not Cargiant intervened in the 2019 EIP hearings in the way that it did. As noted by the London Assembly, much public money has been wasted as a result of lack of transparency by OPDC at critical moments between 2018 and 2021.

Structure of the PCPA and separation of the preparation and examination stages of a Local Plan

We understand that the structure of the PCPA 2004 involves a clear separation between preparation and examination stage. The nature of this separation was explored in the case of *Samuel Smith Old Brewery (Tadcaster) and Selby District Council*¹⁸

Paragraph 28 of this Appeal Court judgment states as follows (with our emphasis added): *The stages of the plan-making process constituting, respectively, the preparation of a local development document, as provided for in section 19, and independent examination, as provided for in section 20, are distinct and separate from each other. The language of section 19 is consistent in referring to the activity of "preparing" the plan. The language of section 20 is consistent in referring to the "examination" of a plan that has, by then, been prepared and submitted to the Secretary of State for this further exercise to be carried out as the next stage of the total process.*

Section 20(2) states that an authority can only submit a plan for examination when the authority has "complied" with any relevant requirements (that is to say, the authority has finished doing everything required of it regarding the preparation of the plan as set out in section 19 and, when it applies, in section 33A) and the authority thinks the document is ready for independent examination (i.e. the authority thinks its preparation is complete and at an end). A plan can only be submitted for public examination once it has been prepared, and not while its preparation is still going on.

The concept of plan preparation by the local planning authority and independent examination by an inspector being in any sense concurrent and overlapping stages of the process is alien to the statutory scheme. They are sequential stages. Preparation comes to an end before examination begins. *The former is an activity undertaken by the local planning authority, the latter an activity undertaken by the inspector, albeit with scope for him to call for further work to be done by the authority with a view to making the plan sound. As Ouseley J. observed in paragraph 29 of his judgment, once the plan passes from the stage of preparation to the stage of examination, it leaves the authority's hands – save for the authority's power of withdrawal under section 22 – until it is able within the constraints of section 23 to adopt it.*

And further at paragraph 42 *It is true, as Mr Village submits, that a local planning authority will often undertake further work to refine or amend the provisions of the submitted plan once the examination stage of its plan-making process is under way, whether on its own initiative or prompted by the inspector to do so. And it may well be that such work, had it been done before the submission of the plan to the Secretary of State, would have qualified as activity in the preparation of the plan, within section 19. Sometimes that work will be done while the examination is running, on other occasions during a suspension or adjournment, as happened in this case.*

¹⁸ Court of Appeal case **Neutral Citation Number: [2015] EWCA C= iv 1107 Case No: C1/2014/40991107**

However, as Ouseley J. held, the carrying out of such work, in whatever circumstances it is done after the examination stage has begun, does not displace the autonomous role of the inspector in conducting the examination, nor does it take the process back to the stage of plan preparation, or create a hybrid phase in the process comprising plan preparation and independent examination in a single composite stage.

While this particular legal case centred on the question of stages at which the Duty to Cooperate applies, we contend that in the case of the OPDC Local Plan the reality has been that a ‘hybrid’ stage has been taking place over the period between September 2019 and March 2021. **We consider that the nature and extent of this ‘hybrid’ activity risks an outcome that would be unlawful – were the PSMDLP to proceed to adoption.**

Relevant considerations, we would suggest, are:

- The duration of the suspension of the examination (the last EIP hearing was in July 2019, and the modified draft plan submitted to the Inspector in March 2021, prior the further public consultation period currently being undertaken in mid 2021).
- The fact that in their response to the Inspector in November 2019, OPDC officers advised that modifications would be ready by ‘early 2020’ (7th November 2019 letter from Tom Cardis). A further year of work was then undertaken, which must sensibly be described as ‘preparatory’ (OPDC itself used this term in commissioning work from Prior + Partners).
- The nature and extent of this additional work of ‘preparation’ undertaken by OPDC officers during 2020 and early 2021.
- The extent to which entirely new sections of the PSMDLP have been inserted and others amended in their substance, as compared with the 19.2 version submitted in October 2018.

On the question of further ‘preparation’ post September 2019, there must surely be some limit to extent to which the overall spatial strategy of a Local Plan, its key transport routes, and the siting of its ‘major town centres’ can be varied at post-submission stage while remaining within the statutory framework of S19 and S20 of the 2004 Act?

The Inspector’s September 2019 interim report (ID 33) concluded at paragraph 59 *My interim finding is therefore that site allocations 2 and 3 should be deleted from the plan (subject to adjustments consequent on the progression of phase 1a of Old Oak North) and that consequent adjustments to the numbers of homes and jobs likely to be delivered during the plan period should be made but that no adjustment be made to the proposal to de-designate SIL land or to the figures which recognise the capacity of the plan area beyond the plan period.*

It was OPDC’s choice (announced in November 2019 but not reported to the Board until January 30th 2020) to embark on a whole new ‘Western Lands’ strategy. This strategy has involved identification of a series of further housing sites, redefining various locations as ‘parts of a major Old Oak town centre’, and fundamental changes to the transport network to the area.

The total of OPDC expenditure on its ‘Western Lands’ strategy has proved hard to track but a report to the October 13th 2020 OPDC Board included the following recommendation (which was agreed) **2.4. Approve expenditure of £257,000 in this financial year for preliminary technical work required to prepare a Single Housing Infrastructure Fund (SHIF) bid and business case. Together with two previous approvals, this will commit the remainder of OPDC’s £440,000 budget for Western Lands preparatory work in 2020/21. Note that this expenditure is for externally commissioned consultancy input, and that OPDC refers to this as ‘preparatory work’.**

While OPDC officers (and to a questionable extent Board and Planning Committee members) have in the last 16 months become familiar with this 'change of direction' the proposals set out in the PSMDLP in 2021 now bear little relation to the vision of a 'new Old Oak' as defined in the 2015 OAPF and in the Regulation 18 and 19 OPDC Draft Plans.

Several of the 'Place' sections in Chapter 4 of the PSMDLP are new or have been substantially redrafted. If this and the associated consultancy and inhouse work is not 'preparation' activity on a Local Plan, we question what would fall into this category?

We also question the basic fairness of the current consultation exercise on the PSMDLP. OPDC maintains in its leaflet delivered to 44,000 addresses in the area that *While the majority of the Draft Local Plan remains the same, our proposed updates identify some new sites for housing development and protect others for employment intensification.*

We do not see how this can be accepted as an accurate statement to the public on a Draft Local Plan which includes major proposals never previously published, along with the removal of proposals which were key to the effectiveness of the 2018 Draft version.

For all the above reasons we argue that the PSMDLP documentation has failed the tests of being positively prepared, justified, effective and in accordance with national and London Plan policy.

Modification and adoption of the 19.2 version dating from September 2018 we do not see as a viable or lawful way forward, or one that will lead to successful and sustainable development of this key regeneration area in the 2018-28 period.

The timetable for the opening of the OOC rail interchange in 2029/33 gives time for a full rewrite of the OPDC Local Plan, at a time when a new version can reflect changes in national policy, an updated NPPF, the 2021 London Plan, the National Model Design Code, the results of the 2021 Census and the long-term impacts of the pandemic on London.

We see little merit in a decision that the PSMDLP should proceed to adoption with an immediate start of a new Local Plan. We see several aspects of the process, from the time of submission in October 2018 to the present, which would be open to legal challenge had we the funds to make such an application.

Old Oak Neighbourhood Forum
St Quintin Woodlands Neighbourhood Forum
June 2021.