



OLD OAK NEIGHBOURHOOD FORUM

David Lunts
Chief Executive Officer
OPDC
Via email

December 23rd 2021

Dear David,

Decision of OPDC Board November 30th 2021 to refuse the OONF designation application

The open meeting of the Old Oak Neighbourhood Forum held on December 7th discussed the decision of the OPDC Board on 30th November to refuse the Forum's designation application to extend the boundary of the currently designated Old Oak neighbourhood area.

The meeting agreed that a further letter on this subject should be sent to OPDC. We accept that there is little or no prospect of OPDC changing its decision. But we have continuing concerns on wider fronts:

- OPDC seem unwilling to pay any heed to Government encouragement of neighbourhood planning and citizen involvement in the planning system.
- We owe it to the 101 local residents who took the trouble to write in to support the OONF proposal to try to explain the motives behind the Board's decision.
- The quality and content of officer advice to the Planning Committee and the Board continues to suggest to the public that OPDC officers are under pressure to come up with a predetermined recommendation. In doing so the accuracy and objectivity of this advice loses credibility in the eyes of the public. This affects all aspects of the work of the Corporation.
- OPDC's use of a contrived methodology for refusing neighbourhood area designations should not be allowed to gain credence elsewhere across the country.

The consequence of the above is a growing loss of trust in the workings of OPDC overall. This impacts on the Corporation's approach to individual planning applications (e.g at One Portal Way) and on the final stages of the Local Plan examination.

It is not unique in London for the public to start to distrust a local planning authority. LB Ealing has the same problem at present, despite commitments by Cllr Peter Mason that 'things will change' following the resignation of the previous Leader of the Council. Where such lack of trust becomes dangerous is when the public conclude that officer advice has become compromised by pressure, from more senior officers and/or from members, to come up with a preferred recommendation that is neither rational nor objective.

OPDC's negative attitude towards neighbourhood planning

We will not dwell on this subject, as we have raised it in previous letters to the Planning Committee and the Board. In the two reports on this latest OONF designation application, there was no explanation of what was motivating OPDC to resist and refuse the designation proposal.

At the Board on November 30th, Liz Peace said '*we are not trying to diminish in any way the opportunities available for communities to have their say about what comes into their area*'. Moments later in the same contribution as Chair she then urged the committee to deny the Old Oak Neighbourhood Forum the use of the one significant and statutory opportunity that exists for local people to 'have their say'. This is the long-

established layer of the English planning system - defined in the NPPG as *giving communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area.*

This is the second time on which the Board has taken this negative stance. We have asked the OPDC Planning Committee very directly, what is it that you are nervous of? There are now 25 'made' neighbourhood plans across London, the latest being in Soho, Queens Park, Fitzrovia West and Grove Park. Is there any evidence that these plans have detracted from, rather than added to, the effectiveness and success of the local plans for these parts of the city?

At a recent CPRE conference, Housing Minister Chris Pincher commented on neighbourhood plans saying that the plans "*tend to be in the South rather than the Midlands and the North, so we need ...to find ways of getting them into more urban, more Midlands and Northern places ... so communities there can benefit from it. And that's something which we'll be working toward.*" This comment reflects recent statements by Michael Gove on the need for planning authorities to bring the public with them, when preparing their local plans.

When we sent a final letter asking OPDC Board members to recognise that other London planning authorities see neighbourhood plans as an opportunity rather than a threat, the officer response (in an Addendum report) was to say *It is not the role of the main report to provide a recent history of the implementation of Neighbourhood Planning.* Why not? When have OPDC Planning Committee and Board members ever been given any briefing, induction or training on this statutory layer of the planning system? The level of discussion and debate at both these bodies, when required to take decisions on designation applications, has proved to be worryingly ill informed.

The nature of OPDC officer advice on neighbourhood planning

We need to be able to explain to the 95% of consultation respondents who supported the application why the OPDC has dismissed their views and why the proposed extended area was deemed 'inappropriate'. The reasoning given in the Decision Statement published by OPDC, and the preceding two officer reports, does not convince anyone who has taken the trouble to look into the details of the neighbourhood planning framework or who is aware of the role played by such plans elsewhere across England.

It is important that other emerging neighbourhood forums in London are not discouraged or misinformed by ideas that a neighbourhood area cannot include sub-areas of 'distinct' or 'different' characteristics.

OPDC's approach in 2017 and 2021 of constructing a 'factual and policy matrix' in response to a designation application is not in itself unreasonable. But this methodology does not feature in the NPPF, NPPG or standard handbook on neighbourhood planning from Locality. The term was introduced by the Respondent in the High Court case on which Supperstone J gave judgment in the High Court and Appeal Court cases on the Daws Hill neighbourhood area

Use of such a 'matrix' methodology by OPDC officer seems intended to add a pseudo-scientific element of objectivity to decisions on 'appropriateness'. It stands up to scrutiny only if the 'facts' and the 'policy' included in the matrix are accurately and objectively applied.

OPDC has used arguments about 'character areas' to support its 2017 and 2021 decisions. As we have said previously, the judgments of Supperstone J and of the Court Of Appeal in upholding in its defence of its decisions at Daws Hill did not rest on a principle that a neighbourhood area should not (or cannot) include sub-areas of different or distinct 'character'. We have pointed out that this cannot be right, as such 'differences' and 'distinctions' will apply in most of the 2,800 areas designated to date (and particularly those in London).

In the judgment of the Court of Appeal, the Master of the Rolls (Sullivan LJ) addressed the issue of 'character' at the conclusion of the judgment. Paragraphs 23 and 24 of the judgment are relevant. These include his comment as follows:

The fact that the two sites were strategic sites was a reflection of their location and size and their "brownfield" character, but they were excluded from the designated neighbourhood area because they were two strategic

sites where the planning process was very well advanced, and **not because they were, in some way unrelated to their strategic characteristics, "out of character" with the remainder of the neighbourhood area.**

In the Forum's discussions in February 2021 with you and OPDC officers, you made clear that you did not wish the Channel Gate/Atlas Road sites to be added to the neighbourhood boundary. Reasons given at the time were because these sites had become a new focus as part of the 'Western Lands'. It was clear that officers would have preferred to cite the fact that these are 'strategic sites' as a primary reason for refusal. But this argument was not used in the November 2021 committee reports because officers are aware that paragraph 036 of NPPG allows for strategic sites to be included in neighbourhood areas. This paragraph was added to the NPPG at the time of the Court of Appeal judgment in Daws Hill in 2014. This suggests that DCLG did not want to add obstacles to neighbourhood area designation.

'Considerations' and not 'criteria' for appropriateness of an area

The most serious flaw in the justifications made by OPDC officers for their recommendation, and in the resultant decision of the Board, is the reliance on Paragraph 0033 of National Planning Practice Advice.

We have several times drawn OPDC's attention to the fact that NPPG Paragraph 033 sets out a number of 'considerations' which 'could' or 'may be' relevant to the appropriateness of an area for designation. Despite this, OPDC officers have persistently stated the view that the proposed extension area *'does not accord with NPPG 033'*.

This statement is repeated in the less than clear and concise statutory Decision Statement published on the OPDC website. This uses the wording *Officers consider that the proposed amendment to the Old Oak Neighbourhood Area does not fully accord with the guidance set out in NPPG paragraph 033.*

There is no requirement for a proposed neighbourhood boundary to 'accord' with this set of 'considerations' fully, partially or at all. These are considerations and nothing more, with several more relevant to rural than to urban areas. In no sense are these requirements for 'appropriateness' and the language of 'could' and 'may' is very clear in the wording of NPPG 033.

While officers have been careful to use the term 'considerations' in written reports, it was evident from the discussion at both the Planning Committee and the Board that the term 'accord' struck home with decision-makers. Members were persuaded that the 'matrix' constructed by officers, coupled with the word 'accord' meant that they had little choice but to refuse an application that was 'inappropriate' or 'failed to accord' and that in refusing the application they would be following Government guidance.

It was noticeable at the Board discussion that both Liz Peace and William Hill used the term 'criteria' when they should have been referring to 'considerations'. Were paragraph 0033, or the NPPF, to set 'criteria' for 'appropriateness' a refusal decision on the OONF designation application would probably be immune from legal challenge. **Yet no officer present at the Board meeting on November 30th ventured to correct this significant misstatement by the chair of the Board, and by the chair of the Planning Committee who had led the earlier discussion resulting in the Planning Committee recommendation to the Board. Why not?**

Officers should not let committee decisions be made under a misapprehension. It is this sort of occasion which creates public concerns about OPDC's decision-making overall. We worry that OPDC officers feel under pressure to ignore inconvenient truths and to come up with recommendations that provide a desired outcome. Whether this pressure comes from you as CEO and other senior managers, or from the OPDC Chair and certain Board or Planning Committee members, is hard to tell from the outside.

OPDC's conduct in late 2018 and 2019 over the HIF saga is a worrying precedent. OPDC's 'mistake' in failing to recognise Cargiant's position in September 2018 has had far-reaching consequences and along with abortive public expenditure. These failings were heavily criticised by the Assembly's Budget and Performance Committee and remain a live issue. Planning Inspector Paul Clark has hitherto accepted *'in good faith'* the OPDC Board decision in September 2018 to submit the Regulation 18 Draft Local Plan as being *'ready for independent examination'*. There is evidence to the contrary, which the Inspector has been asked to review.

We accept that there is now little that local people can do about the Board decision to refuse the OONF designation application. We request that OPDC publishes this letter on its website on the OONF designation application, to make clear that the Board's decision of 30th November 2021 is contested. We don't have the financial resources for a legal challenge.

Allowing the publication of this letter would at least help to reassure other emerging neighbourhood forums that their own area designation applications will not necessarily be dismissed by the relevant local planning authority via arguments of differing 'character areas' and 'criteria' for 'appropriateness', when such arguments have been fashioned by OPDC alone.

Regards,

Henry Peterson
Adviser to the Old Oak Neighbourhood Forum

Cc Liz Peace CBE Chair of OPDC Board
William Hill, Chair of OPDC Planning Committee
Cllr Stehen Cowan Leader LBHF
Cllr Peter Mason Leader LBE
Cllr Muhammed Butt Leader LB Bren
Cllr Wesley Harcourt LBHF
Cllr Natalia Perez LBHF
Cllr Matt Kelcher LBB
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