



Liz Peace CBE
Chair, Old Oak and Park Royal Development Corporation
Brent Civic Centre, 32 Engineers Way, Wembley HA9 0FJ By email
(by email)

20th June 2022

Dear Liz Peace,

OPDC Board 22nd June – decision on adoption of the OPDC Local Plan

You will not be surprised to see a further letter from the Forum, prior to the Board meeting on June 22nd at which the OPDC Local Plan is due to be adopted. We have explained to your officers, the Planning Committee, and Planning Inspector Paul Clark why we consider that adoption of the Local Plan in the form recommended to you to be at risk of legal challenge. The Board meeting is the final opportunity to rehearse these risks.

Since the discussion at the Planning Committee on 16th June, William Hill has emailed me and has enclosed a copy of the briefing note provided by Emma Williamson. This has been helpful in clarifying why officers have reached certain conclusions on issues which we have raised, and I will be responding to Emma on the detail.

Her briefing note says Both OPDC and the Planning Inspectorate have sought legal/counsel advice on the scale of modifications and in both cases, the advice has been that the scale of modifications are within the discretion of the inspectorate.

This is a legal question of interest and relevance to the preparation of all local plans. **We therefore ask that any advice in the possession of OPDC (including that from Counsel) is made public.** If OPDC is fully confident of the lawfulness of the extent of modifications to its Local Plan, and on other matters we have questioned such as adequate conformity with London Plan D9 part B on Tall Buildings, we feel that the Corporation should have no problem in a full and transparent explanation of why it has such confidence? This would help to increase support for the Plan amongst local people, and reduce public concerns over the preparation and examination process.

The legal comments at paragraph 9.0 of the Board report do not address any of the legal questions that we have raised, in representations to the Inspector and to OPDC.

We are aware that applications for judicial review of an adoption decision have a very high bar to cross and would need to identify serious failures of process, including by the Planning Inspector as well as by OPDC as planning authority.

We set out in representations to the Inspector in June 2021 the detailed reasons why we considered that finalisation of the local plan through a process of continued modification could not lawfully be achieved, give the scale and extent of changes needed and on other grounds. He has responded in his report to several of the legal points which we have raised. **Is the Board satisfied that the Inspector's views are beyond challenge?**

Below is a final set of questions we ask the Board to consider. These follow on from our letter of June 11th to William Hill and Planning Committee members, parts of which were discussed by that Committee on June 17th.

1. Firstly, we urge Board members to be wary of officer reassurances, and also alert to information gaps in reports and advice at meetings. Officers have previously failed to place highly relevant information in front of the Board at key stages of the Local Plan.
2. Most notably on September 28th 2018 the Board was recommended to submit to the Secretary of State the 19.2 version of the Draft Local Plan at a time when Cargiant had made clear in writing that it had withdrawn its support as landowner – rendering potentially unviable the major first phase of development at Old Oak North. The existence of this letter was concealed from the Board. Much time and public money was wasted as a result.
3. S20(2) of the PCPA Act 2004 requires that local planning authorities submit local plans only when the draft plan is '*ready for independent examination*'. The September 2018 Draft OPDC Plan was clearly not ready and required major further work – as was undertaken over the subsequent three and half years.
4. The Planning Inspector has declined several times to question the Board's decision to submit the Draft Plan when it did, and argues that it is not part of his remit (paragraph 32 of his report refers). The Board cannot therefore rely on his report as a defence. As a ground for challenge to the adopted version, this would be novel legal territory. **The crucial 18th September 2018 letter from Cargiant has not to date been made public. Will OPDC publish it now?** As has been pointed out several times, pages 10/11 of the [January 2021 London Assembly report](#) on the OPDC Budget sets out the context and the sequence of events in autumn 2018.
5. Officers have not commented in their reports to the Planning Committee or to the Board on the high number of major modifications (464) required by the Inspector to enable the Draft Plan to be accepted as 'sound'. This issue was aired at the Planning Committee.
6. The Director of Planning cited to the Inspector's comment at paragraph 33 of his report, where he states *there is a court judgement which confirms that "there is no limitation in the statutory language preventing a "rewrite" of the local plan (whatever that language might mean, when any change is a rewrite)" and so, I do not take the view that the extent of the Modifications renders the Plan unlawful.*
7. **But is the Inspector right on this point?** How is this view compatible with paragraph 1.5 of the Planning Inspectorate Guidance on Examinations? This states 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.* How is Mr Clark's view compatible with previous judgments on the structure of the PCPA 2004 and the separation of the stages of 'preparation' and 'examination'? As requested above, we think that legal advice on this interpretation of the 2004 PCPA should be made public, given its wider relevance and potential precedential impact.
8. In reviewing the set of Policy Maps on your agenda, comparing the left hand side (2018 submission version) with the right hand side (as proposed for adoption) **would a court be persuaded that this not in reality a 'revised' plan?** The changes between October 2018 and today are extensive, in number, scope, and spatial and transport impacts.
9. **Tall Buildings and conformity with London Plan Policy D9** has been an issue which has featured extensively in representations. The Inspector has pronounced himself satisfied, after making late modifications based on document OPDC-51 (published January 2022) following the additional EIP hearing which he held in January 2022 (at our request). Again, this is an issue of widespread legal interest across London. We continue to believe that adequate conformity has

not been achieved in the OPDC Local Plan (quite apart from the lack of public consultation on the content of OPDC-51).

10. While tall buildings were discussed at the Planning Committee on 16th June, neither the slides shown nor the officer comments covered two key points which OONF has raised several times and which we see as significant to a legal challenge:

- Critical information on appropriate heights of tall buildings was not consulted on at any stage of local plan preparation. The Inspector has concluded that this information could be 'deduced' from other material (an exercise in deduction which we question could be undertaken successfully by a judge, let alone ordinary members of the public). In many instances 'suitable locations' have not been identified beyond large areas of land defined as 'Places' in the Local Plan.
- Document OPDC-51 has never been put before the Planning Committee or the Board, to allow OPDC decision-makers to assess the 'appropriateness' of heights at different 'Places' (ranging up to 55 storeys). What confidence can the public have that 'appropriateness' has been properly considered on a sound evidence base and with any seriousness?

11. The Planning Committee spent an hour and 8 minutes on its discussion on the Local Plan. There were several references to 'covering off' points raised in the June 11th letter from OONF. But in a lengthy section of the meeting going through slides listing other modifications required by the Inspector (uncontentious as far as we are aware) our point that the committee had never had the opportunity to form a view on 'appropriate heights' was once again skirted around. **We think that a court would remain unconvinced that these key 'planning judgements' within the Local Plan have been adequately and rationally considered by those appointed to make such judgements.**

12. Even in its final modified form as recommended for adoption, the Inspector acknowledges that OPDC Local Plan falls short of meeting the full requirements of Part B of London Plan Policy D9, in identifying 'suitable locations' and 'appropriate heights' for tall buildings (paragraph 169 of this report). The statement of the Mayor of London that the Local Plan conforms with the London Plan therefore remains open to challenge. The Inspector refers to this position as 'a small matter' which can be remedied at the 'first review' of the Plan - without specifying by when this should take place. Given OPDC's continued encouragement of high-density high-rise residential towers, we think that this issue will be returned to on every planning application that involves tall buildings in the OPDC area.

Whether or not OONF and/or one or more local organisations pursues a legal challenge on a Board decision to adopt the Local Plan will depend to an extent on your response to this letter and on the discussion at the Board meeting. We do not feel that the lengthy discussion at the Planning Committee did much to 'cover off' grounds for challenge.

After June 22nd local residents will need to discuss whether adoption of the local plan will prove to have any significant impact, in encouraging development interest and in the determination of planning applications by OPDC. Would a successful JR application on the adoption decision prove to be a hollow result? In the past 7 years OPDC (and LB Ealing) have granted planning consents in the OPDC area with what has appeared to the public to be little regard to development plan policies.

We think it likely that OPDC will need in reality to have to review shortly its site allocations and 'Place' policies, in the light of events. Promised SPDs cannot create new policy, as OPDC officers acknowledge.

A 2022 OPDC Local Plan may prove to be amongst the last across London to be adopted prior to the changes that enactment of LURB will bring to the planning system. Despite his expertise in the field, we do not share the view of Planning Committee member Steve Quartermain that this Local Plan is better than no local plan, because of the risk of yet higher housing targets in future.

We take a more optimistic view that the present Secretary of State and his Ministerial colleagues have recognised the depth of feeling amongst Londoners that 'more of the same' and high-density high-rise is not the solution to London's future.

Meanwhile, for a range of economic and market reasons, we think it may be that little happens at Old Oak in the next five year period, beyond the grant of further planning consents to a series of contested residential towers at locations which local people consider 'unsuitable' and at heights seen as 'inappropriate'. How many of these planning consents will then be implemented and built out will be monitored closely.

I am copying this letter to the Planning Inspector as a courtesy, albeit that his role in examining the Draft Local Plan concluded with his report of April 1st 2022.

Regards,

Henry Peterson
Adviser to the Old Oak Neighbourhood Forum

Copies to OPDC Board Members and Planning Committee members
Andrew Slaughter MP
Rupa Huq MP
Planning Inspector Paul Clark (via Banks Solutions)
David Lunts OPDC, Emma Williamson OPDC, Tom Cardis OPDC