



SIXTH OBJECTION FROM THE OLD OAK NEIGHBOURHOOD FORUM TO IMPERIAL COLLEGE'S APPLICATION AT ONE PORTAL WAY (21/0181/OUTOPDC)

This representation is the sixth submitted by the Forum (OONF) on this application since it was originally validated and published for public consultation by OPDC nearly two years ago. There have been two sets of significant changes to the proposals since the original public consultation period ended.

This objection covers the content of the OPDC officer report to the Corporation's Planning Committee on October 12th. It identifies points on which we consider the report to be inadequate.

We argue that the application should be refused or deferred for the reasons set out below. These include the fact that Planning Committee members have not been advised of material considerations which any reasonable planning authority would be taking into account in determining this application.

Questions on the content of the committee report

The content of an officer report to a planning committee is important in legal terms. In this instance what is *not* on the agenda is also significant (i.e the implications of Government announcements on HS2).

The 'description' in that part of the application seeking full permission was varied in 2023 to include wording that allows for options on sui generis use, reading *ground plus 18 storey building (100.175m AOD) providing 384 coliving units (Sui Generis) OR 384 student accommodation units (Sui Generis)*.

We have been told by OPDC planning officers that granting a consent for two options is acceptable, given that both fall under the sui generis definition. **We ask that the committee seeks reassurance on this point.** The description used in a planning consent is of legal significance, should any S73 applications follow. The range of possible sui generis uses is very wide, including casinos, dance halls, and live music venues. Would change of use to any use within this range be permissible without a further application? **If not, why is retaining an 'option' between student housing and co-living accommodation acceptable and can officers provide examples of similar scenarios? Is preferential treatment being given to Imperial College?**

The summary of the report (which might be all that some committee members read) makes no mention of the August 2023 change to the proposals, introducing 'meanwhile' use of much of the existing Carphone Warehouse building on the eastern half of the site. Paragraph 4.15 of the full report says no more than *The proposed phasing of the landscaping has been designed to maximise the proportion of the public open space that can be delivered on a permanent basis within Phase 1 (the detailed phase) of the development.* **This change was made after most of the public consultation on the application had concluded.**

The applicant's [consultation website](#) made these promises to local people:

- *With the arrival of the Elizabeth Line and improvements to North Acton station, the area needs a central public space to bring the community together. A 'green heart' at One Portal Way will provide this.*
- *We are proposing a new landscaped square at the centre of our site. This green heart will be a garden with large trees, flowerbeds and lawns, and cater to a range of needs and activities.*
- *The green heart will also serve as a civic area, providing a space for the community to come together, as well as establishing clear routes to local transport hubs for visitors to the area.*
- *Feedback from our first phase of consultation showed that over 85% of people who answered our digital survey supported the creation and provision of this central space. We are keen to build a community and provide a new heart for North Acton at One Portal Way, which is why we are looking to deliver a large part of our community benefits in the first phase of development. This will include: 95% of the central green space*

OPDC officers advised (in response to specific questioning) that *"The part retention of the existing building results in a temporary reduction of 685sqm of public realm being delivered as part of Phase 1."* But the reality is likely to be the eastern part of the site will be hoarded off for years and the quality of the 'green heart' much diminished. This late change to the application was received badly when explained at an open meeting of the Forum, as might be expected.

Objections to the application are summarised at Table 6.1 of the report to committee. We have raised previously our concerns that reports from OPDC officers do not summarise objections accurately. Paragraph 6.12 states that OONF has submitted objections on four occasions whereas there have been five (all published on the planning register) with this further objection being the sixth.

Our fifth objection included a cumulative summary of the previous four. The main points of objection which we do not consider are addressed in the committee report are as follows:

- The risks involved in OPDC granting planning consent to a hybrid application, the outline elements of which will not be built out for many years to come, at a time when the planning and financial context for development in London is highly uncertain.
- Unresolved legal issues, including the lawfulness of the 2016 LBE planning consent for the site (see the contradictory advice at 3.15 and 3.16 on the relevance of this previous consent).
- Questions over the legal capacity of Imperial College as applicants to undertake this development and the College's willingness to fulfil S106 commitments as entered into as part of securing consent.
- Unfair consultation on the planning application, contrary to the OPDC Statement of Community Involvement, with the applicant team having been granted an opportunity to present the proposals to members of the OPDC Planning Committee on January 20th 2022.
- Description in the application no longer conforms with that validated and published for public consultation.
- Loss of a significant part of the central public open space – a key community benefit from the original application – and resultant impact on the 'planning balance'.
- Strong support to LBHF representation stating *'The scale of the tall buildings proposed would have significant and adverse townscape and heritage impacts when viewed from*

Hammersmith and Fulham. In this respect the proposals are considered to be contrary to Policy P7 of the OPDC Post-submission Modified draft Local Plan (PSMDLP) and Policy DC8 of the H&F Local Plan 2018’.

- Severe Inadequacy of public open space at North Acton in relation to proposed densities.

Our further objections as of October 2023 and taking account of the content of the committee agenda and national announcements, are set out below:

Prematurity

This application has been under consideration by OPDC since November 2021. The OPDC Local Plan was adopted in June 2022. OPDC may argue that there is no basis for refusal on grounds of prematurity.

We take a different view for two reasons:

i) We argue that the application is premature under paragraph 49A of the NPPF which reads

49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan;

It is indisputable that the application is of huge scale and will potentially change the environment of North Acton for the foreseeable future. Although the OPDC Local Plan is adopted and in place, this **meeting of the Planning Committee on October 12th is being asked to approve the start of consultation on a SPD for ‘Old Oak West’ (an area bordering on the site of the proposals for One Portal Way).** Taking account also of the second reason below, we believe that a decision at this meeting, before consultation on the SPD has even begun, would *undermine the plan making process*. We recognise that SPDs are not part of a statutory local plan, but this Draft SPD seeks (contentiously) to ‘amalgamate’ adopted local plan policies relating to Old Oak West.

ii) we argue that this Draft SPD strays into the territory properly of a local plan and that its content is of questionable lawfulness. We are not aware of precedents for SPDs that attempt to *amalgamate the relevant place policies in the Local Plan* (currently separate policies for separate ‘places’). We contest the idea that using the term ‘Principles’ rather than ‘Policies’ overcomes this constraint. The SPD states that these ‘Principles’ are those to which proposals *will be required to comply*. **We see this as fresh policy-making via the back door, an issue on which the Courts have ruled against on several occasions.** This issue will be raised during the consultation on the SPD if not addressed before its publication.

iii) We consider that the case for refusal or deferral on grounds of prematurity is strengthened by the context in which the Planning Committee is meeting on October 12th. The Prime Minister announced major changes to the plans for HS2 on October 4th. The committee agenda and officer report, with recommendations to grant consent to this application was published on October 6th. **It makes no mention of this radical change of direction by Government.**

We argue that it would be premature for the Planning Committee to determine this application until the OPDC Board gives guidance and direction on the Corporation’s future overall strategy for

Old Oak, in this new scenario. While One Portal Way is not as directly affected by the changes to OPDC plans as are sites closer to OOC station, the scaling back of the HS2 proposals is a very major change for the Old Oak area. It is not clear whether a Euston terminus will prove viable, without private investment. It is not clear whether OOC station will be a short term HS2 terminus until the 2040s, or forever. No revised passenger forecasts following cancellation of the project beyond Birmingham have yet been published.

Can any Planning Committee member be confident that they have any certainty on October 12th on the long term planning context for Old Oak West and the remaining part of North Acton? **It is very early days to assume that the application is now fully policy compliant.**

Predetermination

On 20th January 2022 the applicant team from Imperial College gave a presentation to on the proposals for One Portal Way at a meeting of the Planning Committee (meeting in ‘Advisory Panel’ mode during lockdown). The minutes record that *The applicant (Imperial College London) had been invited to the meeting of the Planning Advisory Panel to provide an overview of the submitted scheme and answer any questions arising from members.*

It is not clear why this invitation was made? Such an offer has not been made to other applicants.

Of those committee members who took part in this January 22nd meeting, the following are listed as potential attendees on October 12th.

Chair, William Hill
 Steve Quartermain
 Gary Rice
 Cllr Wesley Harcourt
 Cllr Natalia Perez
 Matt Kelcher (on paternity leave and like to be substituted)

In terms of public confidence in decision-making, it is very important that these committee members approach a decision on October 12th with an entirely open mind, taking account of a new context and uninfluenced by their initial reactions to the proposals when presented in January 2022. The content of the scheme has changed significantly, particularly in terms of new plans for ‘meanwhile use’ on the western part of the site and the consequences for the public open space at the centre of the scheme (see OONF objection No.5 and above).

In particular, we consider that any ‘summing up’ by the committee chair should be wholly objective and neutral in reflecting the discussion at the meeting. We were concerned that at the meeting of the committee on 7th September, which granted consent to the application at **3 School Road** planning application (23/0026/FUMOPDC) the Chair gave a very weighted steer to committee members, supported by committee member Steve Quartermain. We have put on record many times our misgivings that decisions of the committee are effectively made at informal and private pre-meetings.

Material considerations – the status of Imperial College

National Planning Practice Guidance comments as below on what constitutes a ‘material consideration’ to be taken into account when determining an application.

What is a material planning consideration?

A material planning consideration is one which is relevant to making the planning decision in question (e.g whether to grant or refuse an application for planning permission).

*The scope of what can constitute a material consideration is **very wide** and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with **land use in the public interest**, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations. (our emphasis).*

Given this wide definition we see it as proper and necessary for the committee to take account of how the College frames the acquisition as part of its property portfolio, and whether it genuinely has a long-term commitment to the site. **The College is a public body and not a commercial developer.**

In a letter which formed part of the Planning Statement submitted by Icenii in November 2021, Imperial commented:

We are therefore ambitious about this region of London we call home. With White City now scaling up, and with the exceptional potential of the Old Oak and Park Royal opportunity area, we want to forge partnerships with our local planning and development authorities to enable a viable combination of live, work and play to exist once again.

For us to sustain the necessary growth of innovative industries in West London, we must deliver diverse, vibrant, and sustainable places for communities to thrive – and where better than the largest regeneration area in Europe, and soon to be most connected place in the UK.

In response to questions at the January 2022 presentation the College is minuted as making two commitments:

The Committee asked for clarification that the public would have access to all the curated amenity spaces. The applicant confirmed that was correct.

The Committee asked if there was long term plans for the curation of the gardens and outdoor space. The applicant advised there were two ground levels. There would be operators looking after the spaces.

We think that in the current financial climate, the committee should secure a third explicit commitment, that the College will see this project through to completion over a forecast 11 year build programme. While OONF has been given verbal assurances that this will be the case, we have not been given answers (over many months) to questions on how the College intends to finance the scheme.

Material considerations – the financing of the scheme

As a higher education body, subject to guidance from the Office for Students on openness and transparency (and also as an ‘exempt charity’) **we had expected no difficulty in obtaining answers from the College as to how this very ambitious 11 year project is to be funded.**

As a result of changes to the application made in August 2023, the phasing of construction has now been split with the eastern part of the site proposed to remain in ‘meanwhile’ use until a first phase is completed.

This change suggests:

- Potential difficulties securing funding for the timeline of the entire project
- Increased risk that all or parts of the site could be sold on with a planning consent, as property investment by the College rather than a long-term asset made up of buildings core to the College's functions as a university. We have major and unanswered concerns that the proposals include no academic or university functions (other than a possible block of Purpose Built Student Accommodation as an alternative to co-living units).

We have had no success in obtaining answers on how the scheme is to be funded. We have been told that the original development partner Frame Re is no longer involved, although the project still [features on their website](#).

We have established with Imperial that this project is managed by the College's Endowment Board (which handles investments) rather than by the College's Property Committee. We asked on August 29th specifically for a copy of the *Endowment Board's annual report as discussed by the College Council on December 22nd 2022*.

The College decided unilaterally to treat this request as a FoI matter although we had specifically stated we were not making a FoI request. The FoI response failed to provide the document, an annual report from part of the College's governance system. We have appealed under the College's FoI procedure and were told we would receive a further response '*on or before 27th October*'. **We find this concerning. What has the College, as a public body, got to hide?**

OPDC planning officers have indicated that they have undertaken no checks on the College's financial standing and assets, or its means of securing borrowing over an 11 year build period. We are told that only narrowly defined financial viability evidence has been required from the College, as One Portal Way is being treated as a Mayoral 'fast track' scheme.

OPDC has obtained some financial viability reports from BNP Paribas and these have been passed on to OONF following requests. These reports relate to the exercise of 'benchmarking' valuations of the scheme for potential future use in an Early Stage Viability Review of the affordable housing offer (see paragraph 6.85 of the officer report).

From this viability documentation (if we are reading it correctly) BNP Paribas (in liaison with OPDC's cost consultants CDM Project Services) arrive at a **Total Build Cost of £724,765,000**. This assumes that the scheme is forward funded. **Who is providing the forward funding?**

Information on the College's Endowment Fund is not easy to obtain. The College website states that *The Endowment's investment target is to deliver a total return of at least CPI+5% over a rolling 10-year period in order to maintain the value of investments over time whilst providing a regular and growing level of income to support the College's mission*. Elsewhere it is stated that *The Endowment's value as of 31 July 2022 was £542m*.

Conclusion

For all the above reasons, we suggest that the committee should be very wary of granting a planning consent to this application at its meeting on October 12th. The timing is not appropriate.

We believe that there are sufficient grounds for a refusal. We consider that there are very strong grounds for deferring a decision until:

- Public consultation on the Draft SPD for Old Oak West has been held and concluded;

- The Board has learned the outcome of OPDC's Outline Business Case to Government and officers have reported on the implications for the 2022 OPDC Local Plan;
- The OPDC Board has provided the Planning Committee with some strategic guidance on how it sees the future development of Old Oak West in the light of the October 4th announcements and the DfT Command Paper [Network North: transforming British transport \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/);

Until advice on these issues is made available and discussed by the committee, we cannot see that it would be reasonable for this application to be determined.

We will be asking that this sixth objection is circulated to all members of the Planning Committee prior to the meeting on the 12th.

Old Oak Neighbourhood Forum October 9th 2023