

Proposed Old Oak Neighbourhood Area Extension Application

and

Draft Neighbourhood Plan

ADVICE

Introduction

1. I am instructed on behalf of the Old Oak and Park Royal Development Corporation (“**OPDC**”) to provide advice in relation to a proposal by the Old Oak Neighbourhood Forum (the “**Forum**”) to expand the Old Oak Neighbourhood Area (the “**OONA**”) and in relation to a pre-submission consultation version of a draft Old Oak Neighbourhood Plan 2026-2040 (the “**Draft NP**”) which relates to the existing OONA.

Factual background

2. The OONA is within the OPDC area where OPDC acts as the local planning authority.
3. The Forum has stated that it intends to apply to expand the OONA boundary and progress the development of a Neighbourhood Plan at the same time (there is no adopted Old Oak Neighbourhood Plan in place currently). This would be the third time that OPDC has considered an application relating to the OONA. In summary:
 - (1) On 12 September 2017, OPDC Board designated the current OONA. The current OONA includes various sites in the Old Oak masterplan area, but not HS2 construction sites;
 - (2) On 9 February 2018, OPDC designated the Forum as the forum for the OONA.
 - (3) On 30 November 2021, OPDC refused an application to amend the OONA to include portions of OPDC’s draft Local Plan Channel Gate site allocation, but made minor amendments to the existing OONA boundary.
4. The current OONA sits within the Old Oak Masterplan area (formerly known as Old Oak West) and includes development sites identified both in the Local Plan and the Old

Oak Masterplan (the “**Masterplan**”). The Masterplan is being developed to deliver over 8,000 homes and space for 10,000 new jobs. It is being led by the OPDC Delivery Directorate. The Masterplan was endorsed by OPDC Board on November 2025. Previously, OPDC (as local planning authority) published the Old Oak West Supplementary Planning Document (the “**SPD**”) to supplement the Local Plan and provide a planning framework for the Old Oak West area.

5. Two issues have arising in correspondence between the Forum and OPDC: (1) sequencing of the proposed application to amend the OONA with progression of a Draft NP based on the existing OONA; and (2) the amount of new housing that the Draft NP should facilitate.
6. In terms of sequencing, on 2 April 2026, OPDC wrote to the Forum about the sequencing of the area change application and the progression of the Draft NP. The letter referred to the Government’s Neighbourhood Planning Toolkit which was published on 31 March 2026 (the “**Toolkit**”), and the Supreme Court’s judgment in *R (oao Oyston Estates Ltd) v Fylde BC* [2021] 1 W.L.R. 2794. The letter stated:

Part C of the ‘How to create a neighbourhood plan’ toolkit and the Supreme Court’s judgment in *Oyston Estates Ltd v Fylde BC* are clear that neighbourhood planning follows a sequence of consecutive statutory steps, beginning with the designation of the neighbourhood area.

Therefore, a neighbourhood area should be established before a neighbourhood plan can properly be progressed. It is also important to note that, should the neighbourhood area boundary change as a result of an application, the plan-making process would need to restart so that consultation, policy development and assessment are based on the updated boundary.

As such, if the Forum wishes to submit an application for a larger area, this will need to be determined before further work is undertaken on the Neighbourhood Plan.

We hope that’s useful in helping to structure the Forum’s activities.

7. On 9 April 2026, the Forum replied and argued that “*our advice is that a neighbourhood forum can apply to vary or extend an already-designated neighbourhood area at the same time as preparing or submitting a neighbourhood plan for the existing area. These are legally separate statutory processes, and the LPA must determine each on its own merits*”. The letter continued:

We agree with the Fylde judgment that the neighbourhood planning process can be defined as seven sequential stages (as referred to in paragraph 2 and from paragraph 26 onwards. We also agree that were OPDC to approve an extended neighbourhood area, preparation of a neighbourhood plan would start afresh. But we don’t agree that these separate statutory processes can or should be merged in any way by OPDC, or

that one would conflict with the other in terms of sequencing.

We take this position after detailed questioning of two AI systems which cover in detail how the 2011 Act and regulations should be applied, as summarised below. If we are wrong on these points, we would need to see authoritative legal advice before accepting OPDC's view. (my emphasis)

8. The letter said that *“the two processes are governed by distinct parts of the Neighbourhood Planning (General) Regulations 2012, and nothing in the legislation explicitly prohibits them from running in parallel”*. It concluded that *“crucially, the legislation does not prevent these two statutory processes from occurring concurrently. The LPA is legally required to treat them as independent streams, each with its own statutory tests, consultation periods and decision points. For example, the LPA cannot delay processing a submitted neighbourhood plan simply because an area extension application is pending”*.
9. In terms of housing provision, on 23 March 2026, OPDC provided the Forum with an Indicative Housing Requirement (“**IHR**”) for the OONA of a minimum of 510 new homes. OPDC provided a note explaining how it arrived at that figure having regard to: the latest evidence of local housing need; the population of the OONA; and the most recently available planning strategy of the local planning authority. The IHR note refers to five sites and provides a minimum homes capacity for each, namely:
 - (1) Goodhall Street East (DCS site 54, part of) = 42 homes;
 - (2) Ursula Lapp (DCS site 55) = 250 homes;
 - (3) Lords Builders Merchants (site allocation 26, part of) = 158 homes
 - (4) Old Oak Café (2 Victoria Terrace) (DCS site 16) = 10 homes
 - (5) Midland Gate (DCS site 30) = 50 homes
10. In its letter of 9 April 2026, the Forum referred to the recent changes made to the legislation governing neighbourhood planning as follows:

The meeting of the Forum last Thursday discussed the implications of Sections 98 and 99 of LURA 2023, which came into force on March 25th. The new MHCLG documents, which you refer to in your email, cover these changes to the legislative framework for neighbourhood plans albeit that the drafting is sloppy. For example, the fourth paragraph of Part A of *How to Create a Neighbourhood Plan* suggests that the ‘general conformity’ principle remains in place.

All advice that we have seen is that the new “Basic Condition ‘(ea)’ **replaces the former requirement that the plan be in general conformity with strategic policies**.” Part C of this MHCLG publication explains the new set of Basic Conditions more clearly.

We believe that our Draft NP will prove at Examination to have met the new Basic Condition of **'not resulting that the development plan for the area would result in less housing being delivered than if the neighbourhood plan was not made'**. (emphasis in original)

11. The letter said that the Forum's view was based on "*the specific and unusual context that applies*", namely:

The development plan for the neighbourhood area is the 2022 Local Plan. The 2024 Old Oak West SPD is not a development plan document. The 2025 non-statutory Masterplan Framework is also not a DPD. The level of public consultation involved bore no relation to the requirements for a DPD, in that the version endorsed by the Board on November 20th 2025 was published only a week in advance. We think that this weakens such material weight that OPDC may claim for this document, when it comes to the independent examination of a draft NP. You and colleagues are aware of the correspondence between OONF and OPDC on the legal status and weight of the Masterplan Framework.

The Indicative Housing Requirement Note provided with your email of 23rd March gives a total 'requirement' figure of 510 new homes. We consider this to be overstated. This is because 4 of the 5 development sites listed are not included in the 2022 Local Plan as site allocations (in Policy SP10 and accompanying schedule 3.17 and map). The Housing Requirement Note lists these 4 sites as featuring in the 2021 Development Capacity Study, as is indeed the case. But our advice is that while a DCS forms part of the evidence base for a local plan, it is not a development plan document. It is the 2022 Local Plan against which the draft neighbourhood plan will be examined.

12. The letter added that:

This new measurable 'benchmark' in condition 'ea' relates to the **content of the development plan**, as we see the legal position, and not to subsequent aspirations or speculative development proposals that may be relevant to the neighbourhood area. (emphasis in original)

13. Subsequently, on 14 April 2026 the Forum wrote to OPDC stating:

We need to reiterate that 4 of the 5 sites in the Draft NP **are not included in the 2022 Local Plan** and hence we don't accept that they should feature in the Housing Requirement note as 'proposed housing' for the purposes of meeting the new Basic Condition 'ea'. Our reasoning is set out in my letter of April 9th. The 2021 Channel Gate Development Framework Principles is a supporting study and not a DPD. (emphasis in original)

14. The Draft NP contains a section about "*the legal framework for this neighbourhood plan - the Basic Conditions*". At paragraph 1.13, it states that "*as a March 25th (and as a consequence of sections 98 and 99 of the Levelling-up and Regeneration Act 2023) the previous Basic Condition requiring 'general conformity' of neighbourhood plan policies with the 'strategic policies' in a Local Plan has been replaced*". This section of the Draft NP then deals with the IHR and the basic conditions as follows:

1.20 The Forum is in discussions with OPDC on the validity of this Housing

Requirement note. Of the five sites listed, only Lords Builders Merchants appears in the schedule and map of site allocations in the 2022 adopted Local Plan (the Lords site being part of site 26 Channel Gate).

I.21 The remaining four sites feature in a 2021 Development Capacity Study prepared as part of the evidence base for the Local Plan. This study assesses 'deliverability' of 63 possible sites in the OPDC area and gives site areas and housing numbers. But our understanding is that **a Development Capacity Study does not form part of the development plan and therefore the housing numbers shown in this document do not constitute 'housing proposed' for the purposes of the new Basic Condition introduced under sections 98 and 99 of LURA 2023.**

I.22 **Hence the eventual 'making' (adoption) of this neighbourhood plan by OPDC would not (in our view) breach the new Basic Condition. Nor would it promote less development than provided for in other parts of the development plan for the area.** Four of the five development sites in this neighbourhood plan are **not allocated** in the 2022 Local Plan. They are included in a Development Capacity Study which is part of evidence base for the Local Plan, but our advice is that such a study is not part of the statutory development plan. **The new Basic Condition would therefore be satisfied if this draft neighbourhood plan is progressed to adoption by OPDC.**

I.23 The four sites in question (Ursula Lapp, Goodhall Street East, Old Oak Café (Victoria Terrace) and Midland Gate) feature in Table 12.1 and the map a Figure 12.4 of the Old Oak West SPD. But without site allocation numbers and with notes in each case reading '*not a site allocation*'. As a Supplementary Planning Document giving 'policy guidance' and not creating 'new policy' this material **is not part of the development plan and hence not relevant to the new March 2026 Basic Condition.**

I.24 The OPDC 2025 Masterplan Framework document also includes these development sites with illustrations of what buildings might be built on them. In Chapter 5 of the Framework document, these sites are shown as being amongst 13 'Development Zones'. But as the Forum has repeatedly pointed out to OPDC in recent months, this document has not been prepared as a development plan document (with the statutory public consultation and examination that is required by the Planning and Compulsory Purchase Act 2004). **Hence the Framework document is also not relevant to the March 2025 Basic Condition.**

I.25 This legal position has arisen as a result of previous OPDC choices not to prepare its Old Oak West SPD and the latest Masterplan within the statutory framework that applies to development plans. The Forum continues to question why these choices were made, in our correspondence on the status of the Masterplan Framework. Relevant correspondence is here on our website. For the time being we have had to 'agree to disagree' with OPDC on the subject of the 'material weight' that should be given to pronouncements in the Masterplan Framework document. We see it as a prospectus aimed at developers will carry limited 'material weight' when planning applications are decided. OPDC has declined to provide their legal advice on this subject.

I.26 Unless OPDC provide authoritative legal advice that we are wrong in interpreting the new NPPF and Basic Conditions in LURA 2023, **the Forum will progress this draft neighbourhood plan on the basis that all of the Basic Conditions will be met and with the previous 'general conformity' test no longer applying.** The total Housing Requirement set by OPDC should be no greater than the **158**

figure for the Lords site. The site allocations in this Draft NP (with maximum net densities and building heights specified) would deliver well in excess of this figure. The Basic Conditions Statement, required to be included alongside formal submission of this Draft Plan to OPDC as the local planning authority, will set out our legal reasoning at greater length. (emphasis in original)

15. Against that background, I am asked:

- (1) Whether the neighbourhood area extension application should precede the neighbourhood plan;
- (2) To explain the effect of s.99 of the Levelling Up and Regeneration Act 2023 (“**LURA 2023**”) in relation to the basic conditions;
- (3) Whether the sites informally known as Development Capacity/DCS sites form part of the development plan; and
- (4) To identify any errors in the interpretation of legal requirements in the Draft NP.

Legal framework

16. The statutory provisions governing the making of neighbourhood development orders and plans were introduced into the Town and Country Planning Act 1990 (“**TCPA 1990**”) and the Planning and Compulsory Purchase Act 2004 (the “**PCPA 2004**”) by the Localism Act 2011. The relevant legislative scheme is as follows:

- (1) provisions governing the preparation and making of a neighbourhood development plan are in ss. 38A, 38B and 38C PCPA 2004, which make appropriate provision to apply the regime in the TCPA 1990 which governs the making of a neighbourhood development order; and
- (2) detailed procedural requirements concerning neighbourhood development plans are set out at Pt 5 of the Neighbourhood Planning (General) Regulations 2012, regs 14–20 (the “**2012 Regs**”).

17. As the Supreme Court explained in *R (oao Oyston Estates Ltd) v Fylde BC* [2021] 1 W.L.R. 2794 at §2, the making of neighbourhood development plans requires the taking of what may loosely be described as seven consecutive steps, mainly by the relevant local planning authority. They are, in summary:

- (1) designating a neighbourhood area;
- (2) pre-submission preparation and consultation;
- (3) submission of a proposal;

- (4) consideration by an independent examiner;
 - (5) consideration of the examiner's report;
 - (6) holding a local referendum;
 - (7) making the order or plan.
18. The Forum's approach proposes to twin track step (1), with steps (2) and (3) -albeit it proposes to undertake steps (2) and (3) by reference to the existing OONA whilst also progressing step (1) by reference to different geographical area.

Analysis of the questions asked

(1) Whether the neighbourhood area extension application should precede the neighbourhood plan?

19. In my view, the Forum cannot simultaneously progress an area application and a neighbourhood plan which is prepared on the basis of a different geographic area compared to that specified in the area application.
20. The Forum correctly accepts that if the area application were to result in a change to the OONA then it would be necessary to re-start the neighbourhood plan-making process. This is because the proposed neighbourhood plan and any consultation already carried out would be based on a neighbourhood area that had been superseded. It is also not possible to assess the environmental impacts of a neighbourhood plan or its compliance with the basic conditions unless it is clear which area the plan applies to.
21. The Forum's argument is that there is nothing in the legislation that expressly prohibits it from submitting an area application simultaneously with progressing a neighbourhood plan based on the existing OONA -even if the success of one application would cause the other application to have to restart on a different basis.
22. I agree that there is no express prohibition, but I consider that it is implicit in the legislative scheme that mutually inconsistent concurrent applications would conflict with the statutory purpose. I also consider that it may well be impossible to conduct lawful concurrent consultations on the area application and Draft NP because the common law rules on fairness would be breached.
23. The general principles applicable to the interpretation of legislation were conveniently summarized recently by the Supreme Court in *Wathen-Fayed v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 32. At [53]-[54], Lord Hamblen

(with whom the other members of the Court agreed) set out the general principles as follows:

General principles

53. It is well established that courts are to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: see, for example, *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687, para 8 (per Lord Bingham of Cornhill); *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 29-31 (per Lord Hodge).

54. As Lord Bingham stated in *Quintavalle* (para 8):

"The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

24. It is not sufficient therefore to point to the separate provisions governing area applications and neighbourhood plan submission and then to deduce from the absence of express prohibition that Parliament intended local planning authorities to determine concurrent yet mutually inconsistent applications. Such a process of reasoning ignores the requirement to interpret the words given the context and purpose of the Act.
25. In terms of the context, in *Oyston Estates Ltd* the Supreme Court identified that under the statutory scheme, the neighbourhood planning process consists of 7 "consecutive steps". Step 1 (determining the neighbourhood area) is a separate and necessarily prior step to the progression of the neighbourhood plan itself. The fact that the Supreme Court examined the statutory scheme and held that it consisted of "consecutive steps" strongly indicates that the Forum's approach is wrong because the Forum relies on the absence of express prohibition to justify taking concurrent and mutually inconsistent steps. That is the opposite of the Supreme Court's analysis of the consecutive nature of the process.
26. Although not an aid to the interpretation of the legislation, I note that Part C of the Toolkit also treats the "three main stages" for producing a neighbourhood plan using a sequential approach.
27. This conclusion is reinforced because the legislation is obviously drafted on an apparent assumption that the neighbourhood area is settled before the neighbourhood plan-making process starts -not least because the consultation provisions in the 2012 Regs rely fundamentally on the area being identified. For instance, Regulation 14 requires pre-submission consultation whereby the draft plan is publicized "in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area". Regulation 15 requires that a Qualifying Body should submit a map or statement

identifying the area to which the plan relates with its plan proposal. Regulation 15(2) also requires the Qualifying Body to submit a “consultation statement” which details who was consulted about the proposed neighbourhood plan so as to ensure a correlation between the plan area, the neighbourhood area and the breadth of consultation undertaken.

28. The Forum accepts that if the neighbourhood area changes then the plan-making process must begin again to comply with the consultation requirements. Yet the Forum has not identified any good reason why there should be simultaneous progression of an area application and an inconsistent neighbourhood plan in circumstances where the decision on the area application could render the consultation etc on the neighbourhood plan abortive. In short, the Forum has not identified any principled reason why a court should interpret the legislation to conclude that mutually inconsistent applications should be entertained.
29. In that regard, it is relevant that the legislation does contain express and implied ‘anti-abuse’ protections. Regulation 5 of the 2012 Regs provides a power for a local planning authority to decline an area application if it is still determining a previous area application so as to prevent two concurrent area applications being made. Similarly, in Daws Hill Neighbourhood Forum v Wycombe District Council [2014] 1 W.L.R. 1362, Sullivan LJ dealt with a hypothetical scenario in support of a (rejected) submission that the discretion under s.61G TCPA 1990 is a discretion as to *which* area land should form part of. The hypothetical scenario concerned a repeat application made by a different body. At [18] Sullivan LJ held that the statutory scheme entitled the local planning authority to reject an application that was akin to an abuse of process:

18. While Parliament clearly envisaged that there might be repeat applications for designation, it would, to put it at its lowest, be surprising if, in enacting section 61G(5), Parliament had intended that a lawful decision by a local planning authority that the whole of a specified area was not an appropriate area to be designated as a neighbourhood area and that only some of the area was an appropriate area to be so designated, could be circumvented by the simple expedient of another body capable of being designated as a neighbourhood forum making a further application in respect of the excluded area, and then the repetition of that process as often as necessary in order to eventually secure the designation of the whole of the originally specified area. For the reasons set out above, I do not accept Mr Stinchcombe’s submission that we are driven to reach such an improbable conclusion. If such a repeat application was made by an organisation or body which passed the capability threshold in section 61G(2)(a) in respect of an area which the local planning authority had previously considered was not an appropriate area to be designated as a neighbourhood area, the local planning authority would be entitled to refuse the application for neighbourhood forum designation under section 61F(5), and that would dispose of the repeat application. It does not follow that the local planning authority would necessarily refuse a repeat application for designation. Circumstances might have

changed so as to justify a fresh application in respect of the excluded area. Whatever the precise extent of the power conferred by section 61F(5), it is sufficiently broad to enable local planning authorities to refuse repeat applications of the kind envisaged by Mr Stinchcombe, which would in other contexts be described as an abuse of process. The submission that it was Parliament's intention that the whole of England and Wales should, wherever it is the wish of the local community, be covered by a patchwork of neighbourhood areas conflicts with the express terms of section 61G whether one is considering an application by a neighbourhood forum or a parish council: see para 8 above. (my emphasis)

30. In my view, this shows that the courts will readily interpret the neighbourhood planning legislation purposively in a way prevents inappropriate applications. Without any principled justification for entertaining the inconsistent area application and Draft NP, I consider that OPDC would be entitled to treat the inconsistent applications as impermissible and contrary to the statutory purpose.
31. In addition to this purposive interpretation of the legislation, it is also important to have regard to the common law rules on fairness which also apply to any consultation about the area application and the Draft NP notwithstanding the 2012 Regs. As the Supreme Court held in Bank Mellat v HM Treasury [2014] A.C. 700, at [35]:

The duty of fairness governing the exercise of a statutory power is a limitation on the discretion of the decision-maker which is implied into the statute. But the fact that the statute makes some provision for the procedure to be followed before or after the exercise of the statutory power does not of itself impliedly exclude either the duty of fairness in general or the duty of prior consultation in particular, where they would otherwise arise.

32. The common law requirements for a fair consultation include the so-called *Gunning* criteria which were summarized by Lord Woolf MR in R v North and East Devon Health Authority ex p Coughlan [2001] Q.B. 213, at [108] as follows:

To be proper, consultation must be undertaken at a time when proposals are still at a formulative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of the consultation must be conscientiously taken into account when the ultimate decision is taken.

33. The Forum has not explained how it would be possible to hold consultations on a mutually inconsistent area application and Draft NP consistently with the *Gunning* principles. In my view, there are obvious difficulties in consulting the public on inconsistent concurrent applications e.g.
 - (1) There is a risk that the two consultations will confuse the public as to what is proposed and thus hinder their ability to respond appropriately; and
 - (2) It is unclear how the Forum envisages the timing and the contents of the

consultations would relate to one another (noting that the area application is subject to a minimum of 13 weeks' consultation under Regulation 6A whereas the pre-submission consultation under Regulation 6 is only for a minimum of 6 weeks).

34. The difficulties entailed in conducting two mutually inconsistent consultations again point strongly against the Forum's proposed course of action.
35. For these reasons, I consider that the Forum's proposed area application should be submitted and determined in advance of progressing a neighbourhood plan.

(2) The effect of s.99 of LURA 2023 in relation to the basic conditions

36. I agree with the Forum that, with effect from 25 March 2026, s.99 of LURA 2023 has removed the basic condition that required a neighbourhood plan to be in general conformity with strategic policies in the development plan. It has substituted a new basic condition that is concerned with housing provision.
37. Paragraph 8(2)(e) of Schedule 4B to the TCPA 1990 ("*(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*") was replaced on 25 March 2026 when s.99(1)(a) of the LURA 2023 substituted it for new paragraph 8(2)(ea) of Schedule 4B to the TCPA 1990. That substitution came into force on 25 March 2026 as specified in SI 2026/169 Regulation 3(a).
38. As amended by s.99 of LURA 2023, s.38C(5) PCPA 2004 now reads:
 - (5) Schedule 4B to the principal Act is to apply in accordance with 38A(3) of this Act with the following modifications—
 - (a) the reference to section 61E(8) of the principal Act is to be read as a reference to section 38A(6) of this Act,
 - (b) references to the provision made by or under sections 61E(2), 61J and 61L of the principal Act are to be read as references to the provision made by or under sections 38A and 38B of this Act,
 - (c) references to section 61L(2)(b) or (5) of the principal Act are to be disregarded, and
 - (d) paragraph 8 is to have effect as if—
 - (i) sub-paragraphs (2)(b) and (c) were omitted,
 - (ii) in sub-paragraph (2), for paragraph (ea) there were substituted—

"(ea) the making of the neighbourhood development plan would not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the

neighbourhood development plan were not to be made," and

(iii) sub-paragraphs (3) to (5) were omitted.

39. The effect of that is that for the purposes of neighbourhood plan making, Schedule 4B of the TCPA 1990 is to be read as providing that:

(1) The examiner must consider the following—

(a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2)),

(b) whether the draft order complies with the provision made by or under sections 38A and 38B PCPA 2004,

...

(d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and

(e) such other matters as may be prescribed.

(2) A draft order meets the basic conditions if—

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

...

(d) the making of the order contributes to the achievement of sustainable development,

(ea) the making of the neighbourhood development plan would not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the neighbourhood development plan were not to be made,

(f) the making of the order does not breach, and is otherwise compatible with, assimilated obligations,

(fa) any requirements imposed in relation to the order by or under Part 6 of the Levelling-up and Regeneration Act 2023 (environmental outcomes reports) have been complied with, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

...

(6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights).

40. The changes effected by LURA 2023 do not alter the need to consider whether, having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan.

(3) Whether the sites informally known as Development Capacity/DCS sites form part of the development plan

41. In my view there are really two issues concerning the DCS sites which the Forum has incorrectly conflated. The first issue is whether the DCS sites are relevant to producing the IHR and the second issue is whether the DCS sites are relevant to assessing compliance with the new basic condition in paragraph 8(2)(ea) of Schedule 4 to the TCPA 1990.
42. In terms of setting the IHR, the applicable guidance makes clear that this requires a broad exercise of judgement and it is not confined to identifying local plan allocations. The Planning Practice Guidance (“PPG”) gives the following guidance on the IHR:

How should a housing requirement figure be set for designated neighbourhood areas?

The National Planning Policy Framework expects most strategic policy-making authorities to set housing requirement figures for designated neighbourhood areas as part of their strategic policies. While there is no set method for doing this, the general policy making process already undertaken by local authorities can continue to be used to direct development requirements and balance needs and protections by taking into consideration relevant policies such as the spatial strategy, evidence such as the Housing and economic land availability assessment, and the characteristics of the neighbourhood area, including its population and role in providing services. In setting requirements for housing in designated neighbourhood areas, plan-making authorities should consider the areas or assets of particular importance (as set out in paragraph 11, footnote 6), which may restrict the scale, type or distribution of development in a neighbourhood plan area.

Within the administrative area of a National Park, the Broads Authority or a Development Corporation (where planning powers are conferred), each local planning authority should set a housing requirement figure for the proportion of the designated neighbourhood area which is covered by their administration.

Paragraph: 101 Reference ID: 41-101-20190509

Revision date: 09 05 2019

How should local planning authorities identify indicative housing requirement figures for designated neighbourhood areas, when these are needed?

Where an indicative housing requirement figure is requested by a neighbourhood planning body, the local planning authority can follow a similar process to that for providing a housing requirement figure. They can use the authority’s local housing need as a starting point, taking into consideration relevant policies such as an existing or emerging spatial strategy, alongside the characteristics of the neighbourhood plan area.

Proactive engagement with neighbourhood plan-making bodies is important as part of this process, in order for them to understand how the figures are reached. This is important to avoid disagreements at neighbourhood plan or local plan examinations, and minimise the risk of neighbourhood plan figures being superseded when new strategic policies are adopted.

Paragraph: 102 Reference ID: 41-102-20190509

Revision date: 09 05 2019 (my emphasis)

43. The PPG makes clear that an IHR may be provided following a similar approach to that for providing a housing requirement figure i.e. it is a broad assessment that looks at relevant policies such as the spatial strategy, evidence such as the housing and economic land availability assessment, and the characteristics of the neighbourhood area, including its population and role in providing services.
44. The Forum’s argument that the DCS sites should not be included in the IHR because they are not local plan allocations is inconsistent with the PPG which expressly deals with how a local planning authority should provide an IHR.
45. The consultation draft of the NPPF maintains this approach of requiring a broad planning judgement informed by wider considerations. Draft Policy HO2 “*setting requirement figures for homes*” states at paragraph 5 that:

(5) In the case of local plans, a housing requirement figure should also be set for designated neighbourhood plan areas, unless it is impractical to do so (because a neighbourhood planning area has been designated at a late stage in the local plan preparation process, or after the plan has been adopted, or in instances where the local plan is out of date; in which case the local planning authority should provide an indicative figure). This requirement figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority. Local planning authorities should avoid setting housing requirement figures for neighbourhood planning areas at nil other than where: a. The local plan already meets or exceeds the housing need figure for the neighbourhood planning area; b. The neighbourhood planning area has a clear and well evidenced need for no additional housing; or c. The constraints within the neighbourhood planning area are so substantial as to preclude any additional housing of any kind from coming forward. (my emphasis)
46. Importantly, it is wrong to say that the DCS sites are not part of the Local Plan. The starting point is that it is a question of law what the Local Plan means. Planning policies should be interpreted objectively, in accordance with the language used, read in its proper context. They should not be interpreted as if they were statutes or contracts: see *Tesco Stores Ltd v Dundee* [2012] P.T.S.R. 983.
47. In *Rectory Homes Ltd v. Secretary of State for Housing Communities and Local Government* [2021] P.T.S.R. 143 at [44], Holgate J explained that planning policies:

are not analogous in nature or purpose to a statute or contract. They are intended to guide or shape practical decision-making and should be interpreted with that purpose in mind. They have to be applied and understood by planning professionals and by the public to whom they are primarily addressed. Decision-makers are entitled to expect both national and local planning policy to be as clearly and simply stated as it can be and, however well or badly it may be expressed, the courts to provide a straightforward interpretation of such policy.

48. Additionally, in *Canterbury CC v Secretary of State for Communities and Local Government* [2019] P.T.S.R. 81, at [23], Dove J emphasised that the context of a policy includes its subject matter and the planning objectives it seeks to achieve, together with the wider policy framework within which it sits:

23. In my view in the light of the authorities the following principles emerge as to how questions of interpretation of planning policy of the kind which arise in this case are to be resolved:

(i) The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purposes of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.

(ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision: see the *Tesco Stores case* [2012] PTSR 983, para 19 and the *Hopkins Homes case* [2017] PTSR 623, para 25. Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

(iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: see the *Tesco Stores case*, at paras 18 and 21. The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.

(iv) As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken: see the *Tesco Stores case*, at paras 19 and 21. It is of vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker: see the *Hopkins Homes case*, at para 26. (my emphasis)

49. In *R (Cherkley Campaign Ltd) v Mole Valley District Council* [2014] EWCA Civ 567 at [16], the Court of Appeal held that the supporting text is descriptive and explanatory matter and/or reasoned justification which is relevant to the interpretation, but not part of, the policy.

50. Here, Policy SP4 of the Local Plan provides that:

Proposals should promote lifetime neighbourhoods, social cohesion and the integration of new and existing communities through:

a) protecting existing and providing new homes that help to meet a local and London-wide need by:

i) providing a range of housing tenures, types and sizes that deliver mixed and inclusive communities; and

ii) delivering at least 19,850 additional homes between 2018-38, including 13,670 additional homes within the 2019-29 London Plan 0-10 year period and supporting the attainment of an overarching 50% affordable housing target, measured in habitable rooms and subject to viability.

...

51. The supporting text to Policy SP4 explains (at paragraph 3.20) that the London Plan identifies that the Old Oak and Park Royal Opportunity Area have the capacity to deliver an indicative 25,500 new homes. It continues “*OPDC’s Development Capacity Study demonstrates that this target can be achieved over the total development period in the next 30 years, that at least 19,850 new homes are deliverable within the Local Plan period (2018-2029) and that at least 13,670 new homes are deliverable within the London Plan 0-10 year period (2019-2029)*”.

52. Policy SP10 (“*integrated delivery*”) provides that:

Proposals should enable a comprehensive and integrated approach to the delivery of development and infrastructure that:

a) supports and brings forward development in accordance with, or in advance of, the phasing identified in figure 3.16, to support OPDC’s homes and jobs targets, particularly through the development of sites identified for redevelopment in the first 10 years and/or Site Allocations in table 3.1;

...

53. Figure 3.16 (“*development phasing*”) shows among other things the DCS sites and shows the phasing of delivery.

54. Thus:

(1) The policy in SP4(a)(ii) is to deliver “*at least 19,850 additional homes*”;

(2) The policy in SP10 supports and brings forward development in accordance with, or in advance of, the phasing identified in figure 3.16, to support OPDC’s homes target i.e. including the 19,850 additional homes over the plan period;

- (3) The figure of 19,850 is derived from the DCS as explained in paragraph 3.20 of the supporting text; and
- (4) The DCS sites are shown in the phasing identified in figure 3.16 that policy SPI0 expressly refers to.
55. In my view, applying the principles of interpretation set out above, it is clear that the DCS sites are ‘part of the Local Plan’. The housing target in policy SP4 is derived from the DCS (as explained by the supporting text) and policy SPI0 expressly secures the phasing shown in figure 3.16 (including on the DCS sites) to achieve that target. Having regard to the words used in the policy, interpreted in light of the supporting text and the planning objectives that policies SP4 and SPI0 seeks to achieve (i.e. the delivery of the Local Plan’s housing target derived from the DCS), it is undoubtedly the case that the DCS sites form part of the spatial strategy in the Local Plan.
56. Accordingly, the DCS sites are relevant to the provision of a IHR given the guidance in the PPG and the what the Local Plan actually says about the DCS sites.
57. Turning to the second issue, basic condition in paragraph 8(2)(ea) of Schedule 4B to the TCPA 1990, provides that:
- the making of the neighbourhood development plan would not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the neighbourhood development plan were not to be made
58. This provision requires a comparison between the scenario in which the neighbourhood plan is made and the counterfactual scenario in which it is not made. The question is whether the making of the neighbourhood plan would result in the development plan “*proposing that less housing is provided by means of development taking place*” than if the neighbourhood plan were not made.
59. The first step therefore is to identify how much housing the Local Plan is proposing before examining how the Draft NP would affect that position. Importantly, the basic condition is not confined to housing allocations. Instead, the simple question is how much housing is proposed in the development plan. Housing may be proposed by a development plan in a number of ways that do not involve site allocations e.g. identification of a housing requirement that relies on a component of windfall sites, and/or reliance on a criteria based permissive policy to encourage development on unallocated sites. It would be a clear misinterpretation of the basic condition to read it as being only concerned with new housing on allocated sites as opposed to new housing proposed in a development plan document generally.

60. The answer to the relevant question is clear from policy SP4 of the Local Plan which contains an express target of 19,850 new homes over the plan period. That is the amount of new housing that the Local Plan proposes -a point made even clearer by Policy SP10 which supports development in accordance with, or in advance of, the phasing identified in figure 3.16, “to support OPDC’s homes and jobs targets”. That reference to 19,850 being the homes target can only sensible be interpreted as the amount of new housing that the Local Plan proposes.
61. Consequently, the correct application of the basic condition requires one to ask whether the Draft NP would result in the development plan proposing less than the 19,850 new homes proposed in the Local Plan.

(4) Are there any errors in the interpretation of legal requirements in the Draft NP?

62. In my view there is a clear misinterpretation of the legal requirements in the Draft NP. The Draft NP proceeds on the incorrect basis that the DCS sites “do not form part of the development plan” and that “therefore the housing numbers shown in this document do not constitute ‘housing proposed’ for the purposes of the new Basic Condition...”. The correct approach is to treat the figure of 19,850 as the amount of new housing proposed by the Local Plan.
63. I agree with paragraph 1.13 of the Draft NP i.e. that the new basic condition replaces the requirement to be in conformity with strategic policies (see my detailed reasoning in answer to question 2).
64. I also agree that the DCS itself, the Masterplan and the SPD are not relevant to applying the basic condition which involves consideration only of the development plan -with and without the proposed neighbourhood plan.
65. But where I part company with the Forum’s analysis is the suggestion that the DCS sites are irrelevant to the amount of housing proposed in the Local Plan. As explained above, properly interpreted, the amount of new housing proposed by the Local Plan is 19,850 -a figure which includes the DCS sites shown on fig 3.16. That is not to rely on non-development plan material. The amount of housing proposed and the location of it is clear on the face of the policies of the Local Plan itself.

Conclusion

66. In summary:
- (1) Interpreting the statutory framework purposively and having regard to common

law principles of fair consultation, the Forum cannot simultaneously progress an area application and a neighbourhood plan;

- (2) I agree with the Forum that, with effect from 25 March 2026, s.99 of LURA 2023 has removed the basic condition that required a neighbourhood plan to be in general conformity with strategic policies in the development plan. It has substituted a new basic condition that is concerned with housing provision;
 - (3) The DCS sites are 'part of the Local Plan' so:
 - (a) they are relevant to the provision of a IHR given the guidance in the PPG;
 - (b) the application of the new basic condition requires one to ask whether the Draft NP would result in the development plan proposing less than the 19,850 new homes proposed in the Local Plan
 - (4) there is a clear misinterpretation of the legal requirements in the Draft NP. The Draft NP proceeds on the incorrect basis that the DCS sites "*do not form part of the development plan*" and that "*therefore the housing numbers shown in this document do not constitute 'housing proposed' for the purposes of the new Basic Condition...*". The correct approach is to treat the figure of 19,850 as the amount of new housing proposed by the Local Plan
67. If there any questions arising out of this advice, those instructing me should not hesitate to contact me in Chambers.

Richard Moules KC
Landmark Chambers
21 April 2026