

Inspectors response to OPDC's responses to the Inspectors Q's 1-23

I accept the five responses to Q1.

I am not convinced by the responses to Q2, Q6, Q8, Q14 or Q15, for the following reasons. The policies map is meant to show the spatial incidence of policies. It should be capable of being used by potential developers and by development managers in consideration of applications to try to ascertain the effect of the plan on a particular piece of land. If a spatially applicable policy or proposal is not shown on the proposals map then its effectiveness and hence, the effectiveness of the plan, is likely to be compromised. Effectiveness is a component of soundness. The extent to which items are omitted from the policies map and only shown indicatively on figures because exact locations have yet to be defined is an indication of the extent to which further work may need to be done for the plan to be found sound. This subject may benefit from further discussion at a hearing session.

Concerning Q3, I accept the responses in relation to policies SP3(d) and paragraph 3.19, SP8(d), SP10(i), D3(c) and paragraph 5.25, D5(c) and (d), D6(a), (h(i)) and (i(i)) and 5.52, D7(b), EU3(c) and (e), EU4(a) and (b) and paragraph 6.44, EU5(a) and paragraph 6.61, EU6(d)(i) and paragraph 6.66, EU7, EU9(a)(iv)(v) and (vi) and paragraphs 6.97, 6.102 and 6.104, EU13(e) and paragraph 6.133, T7(a) and paragraph 7.51, T8(a), E1(e), E5 (this could be condensed still further; e.g; "Major development proposals should; ((a), (b) and (c) as written)") and paragraph 9.35, TCC1(e) and (f) and paragraphs 10.9 and 10.10, TCC2(b) and paragraph 10.11, TCC5(e), TCC8, TCC9(b) and TCC10(a)

Concerning the response to Q3 in relation to policy D1, I have no quarrel with the OPDC's view that a high quality development design process can help to achieve the government's core planning principle of securing high quality design. But: NPPF(2012) paragraph 154 advises that only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in a plan. The implication of policy D1 as drafted is that any development proposal that does not follow the process outlined in policy D1 will be refused planning permission, even if it manages to achieve a high quality outcome without having followed the prescribed process. It gives no other indication of how a decision maker should react to the proposal. I am not clear that that can be or has been justified.

It may be that OPDC wishes to take the view that the characteristics which identify high quality design are too nebulous or too individual as to be capable of definition in a policy and that they can only be identified through a process such as that described. If so, that may be a good justification for the plan to omit a policy which seeks to identify specifiable design characteristics and to rely on process only but as it is, there is nothing in the policy to indicate to a developer or decision maker

The response to Q3 relating to policy D8 gives rise to similar thoughts. I am not convinced that all parts of this policy meet the test of effectiveness set out in NPPF(2012) paragraph 154. Subsections 8(a) and (b) are effective enough but (c), (d) and (e) are less so. OPDC may wish to discuss the following suggestions with Historic England; "(c) Proposals should (i) reflect in their design a positive response to non-designated heritage assets and (ii) avoid an unjustified adverse

Inspectors response to OPDC's responses to the Inspectors Q's 1-23

effect on the significance of non-designated heritage assets; (d) proposals to demolish a building in a Conservation Area will only be permitted after approval of and commitment to the construction of a replacement building; (e) as drafted but omitting the last five words.

*Concerning the response to Q3 in relation to **policyDI3(e)**, I am grateful for the explanation given for the inclusion of this policy and now understand its purpose. As drafted the policy does not state the intention to require developers to undertake remedial action. Nor is it clear whether it applies to all policy requirements and environmental functioning or only a selection. If the latter, it may be more effective to make it clear in the supporting text to each relevant policy that it will be the subject of post implementation enforcement in the way envisaged. Moreover, I need to be satisfied of the practicality of the policy in action; for example, although it may be feasible to test and rectify any failure of acoustic insulation or decontamination, a failure to achieve calculated sunlight and daylight factors or calculated thermal losses through the building fabric may be less susceptible to correction within the terms of an existing permission. I would be happy to discuss this further at a hearing session.*

I am not convinced by the OPDC's response to Q5, Q7 and Q17 for the reasons given in the references to national Guidance in my question. The OPDC's response refers to NPPF(2012) paragraph 156 but consideration must also be given to NPPF(2012) paragraph 157 with its repeated references to the indication of land-use designations on a proposals map, to the allocation of sites and the identification of areas and of land. This subject may benefit from further discussion at a hearing session.

I am grateful to the OPDC for the signposting given in response to my Qs 9, 10 and 11 which will greatly assist the progress of the examination.

I understand the points about avoiding repetition made in the OPDC's responses to my Qs 12, 13 and 16 but I remain concerned about the effectiveness of the plan in terms of the ability of developers and development managers to identify with ease all the policies and provisions of the plan which may apply to any particular site. This matter may best be discussed further at a hearing session along with my Q2.

I am not convinced by the OPDC response to my Q18 for the following reasons. Paragraph 5.8 of the submitted plan states that the money will be used "to secure design advice on revisions to the scheme." Presumably, revisions to the scheme will require an application to be made to the OPDC. The evaluation of such applications and the procurement of such specialist advice as may be required to assist in their determination is intended to be covered by any fee which the OPDC is entitled to charge. A financial contribution secured via a s106 obligation would duplicate any fee which OPDC is legally entitled to charge. It appears to me to be contrary to the statutory tests for s106 obligations, if not actually ultra vires. If there is specific statutory provision which authorises OPDC to make this charge, I need to be informed of it before I can find this element of the plan sound. I make no comment on agreements which have been reached by the OPDC or the LLDC because I am not concerned with the soundness of such agreements; my concern is with the soundness of the plan and its proposed policies.

3rd Dec 18

ID-01A

Inspectors response to OPDC's responses to the Inspectors Q's 1-23

I accept the responses to Q19, Q20, Q21 and Q23.

The response to Q22 prays in aid the provisions of the emerging Draft New London Plan. A number of representations have commented on the extent to which the OPDC Local Plan anticipates the provisions of the Draft New London Plan being sound and being adopted. This is a matter which is perhaps best discussed further in a hearing session.

Paul Clark
Inspector