

OPDC Local Plan Examination 2019
Interim findings on Sustainability Appraisal

- 1) Hearing session 18 on Thursday 6th June 2019 was held to consider, amongst other matters, whether the Integrated Impact Assessment (IIA) (which includes a Sustainability Appraisal) is deficient in terms of reasonable alternatives in relation to the Spatial Strategy, Policy Options and Site Allocations. Shortly before the Hearing Session, in May 2019, the OPDC had issued an IIA Addendum, which is taken into account in these findings.

An iterative process

- 2) The Integrated Impact Assessment (Supporting Document SD2) submitted with the plan is the final instalment of a process which, as it explains, is iterative, with regular feedback occurring between the plan makers and the sustainability team as plan options and policies are developed. As such, the fact that Supporting Document SD2 only considers options for one of the policies (Affordable Housing) in the final version of the plan does not mean that Sustainability Appraisal has been inadequate. As paragraph ES3 of the report dated February 2019 by Jam Consult Ltd (the Jam Report) on behalf of Old Oak Park Ltd (OOPL) records, it is necessary to look at the SA process as a whole, given its iterative nature. Therefore, Sustainability Appraisal carried out at earlier stages of plan preparation also needs to be taken into account.
- 3) The Jam report recognises the Scoping Report of 2015, the Regulation 18 IIA of February 2016, the first Regulation 19 consultation of June 2017 and the second Regulation 19 consultation of June 2018, but the preparation of the OPDC Local Plan started even earlier than the 2015 scoping report. A precursor of the plan is the Old Oak and Park Royal Opportunity Area Planning Framework (OOPROAPF), published by the GLA and OPDC in 2015 (Other Supporting Document OSD30), as a Supplementary Planning Document to the Mayor's London Plan and drawing on the earlier Vision for Old Oak 2013. Its foreword describes it as the first step in laying the foundations for OPDC's Local Plan. This was supported by its own Integrated Impact Assessment (IIA), intended to fulfil the requirements of Sustainability Appraisal and Strategic Environmental Assessment. Notwithstanding the comment in the Opinion dated 1 April 2015 from Mr Elvin QC, Counsel to Old Oak Park Ltd, and reiterated in his second Opinion dated 4 June 2019, that this IIA did not carry out any formal testing of alternatives and that its options were not assessed against the IIA framework, it is nevertheless appropriate to take this IIA into account when examining the adequacy of the sustainability process for the OPDC LP.
- 4) Paragraph 7.1 of the Old Oak Strategic Transport Study of February 2015 notes that the Old Oak Common Vision of 2013 presented a number of different scenarios for growth, with three potential development scenarios agreed by the OAPF group in April 2013. Planning Scenario 1 was for 29,000 homes and 30,000 jobs. Planning Scenario 2 was for 24,000 homes and 55,000 jobs. Planning Scenario 3 was for 19,000 homes and 88,000 jobs. The Transport Study records that following initial analysis, Scenario 2 appeared to present the optimum scenario for the area. Although it is true to say, as paragraph ES10 of the Jam

report notes, that Appendix B, paragraph B13.1 of the June 18 IIA notes that the Transport Study didn't consider the impact of the number of homes being proposed nor the number of jobs and, consequently, that this needs careful consideration in the Local Plan, the Transport Study does not constitute the entire IIA. It is incorrect to say that alternative planning scenarios have not been considered during the preparation of the OPDC LP, because they were considered as part of the process of preparing the Old Oak Common Vision.

- 5) The submitted IIA itself makes several references to IIA carried out at earlier plan stages, for example, section 3.4 of the IIA records that overarching strategic options were assessed ahead of the drafting of the regulation 18 Local Plan. It notes that the purpose of the assessment was to determine the sustainability strengths and weaknesses of each option. It refers to section 6.3 of that appraisal. It asserts that the preferred policies and policy options were then assessed alongside one another in detail, which enabled a comparison of their predicted sustainability effects, to inform the development of the preferred policies. The last of the responses to representations listed in appendix C of the IIA records that an assessment of strategic options was carried out in the IIA for the regulation 18 consultation.
- 6) In response to my request, the Corporation provided a copy of Appendix G to the version of the IIA carried out for the 2016 regulation 18 consultation plan, omitted from the submitted document. This demonstrates that policy options were considered for Design policies D5, D7, Housing policies H2 (housing numbers), H3 (housing types), H4 (Affordable housing – four options), H5 (conversions), H6, H7 and H10, Employment policies E2, E3 and E4, Town Centre policies TC2, TC3, TC4 and TC5, Social Infrastructure policies SI1, SI2 and SI5, Transport policies T1, T7, T8, T9 and T10 and Environment and Utilities policies EU2, EU4, EU6, EU7, EU8 and EU10.
- 7) Many of the policy alternatives were annotated with a comment to the effect that there is no direct link between the alternative policy and the Sustainability Appraisal objective. This comment illustrates the difficulty of generating realistic alternatives within the context of the OPDC area but it is clear nevertheless that a number of reasonable alternatives were generated and assessed within the context of the IIA and therefore, that despite the later iterations of the IIA largely considering only a single option (other than for affordable housing), the requirements of the SEA/SA regulations for the consideration of Reasonable Alternatives have been met by this earlier iteration of the IIA.

Conformity with the London Plan

- 8) Sustainability Appraisal is only required to consider reasonable alternatives. As noted earlier in this report, the OPDC Local Plan must be, and has been, certified by the London Mayor as being in general conformity with the London Plan. That necessarily restricts the reasonableness of options available. At the time of the IIA of the OOPROAPF, the London Plan was the version adopted in 2011. Paragraph 5.1 of the OOPROAPF's IIA notes the limitations of that constraint on the generation of options for appraisal. Paragraphs 5.3 to 5.9 of that IIA summarise and examine the two alternative scenarios prepared by Jones Lang LaSalle in association with Peter Brett Associates in March 2014 as part of the preparation of the OOPROAPF.

- 9) The subsequent London Plan 2016 has itself been subject to sustainability appraisal in which four strategic options were considered and it has been found sound, albeit at a strategic, rather than detailed, level.
- 10) The Jam report makes the point that London Plan policy 2.13, part B (which applies to planning decisions, not local development framework preparation), subsection (c) refers to the minimum guidelines for housing and/or indicative estimates for employment capacity set out in London Plan Annex 1 being tested as appropriate through opportunity area planning frameworks and/or local development frameworks. But the London Plan does not say that such testing needs to take place through a Sustainability Appraisal.
- 11) In practice, the OPDC has found, through testing, that the minimum guidelines for housing and indicative estimates for employment cannot be met within the plan period and proposes that reduced figures of 20,100 homes and 40,400 jobs be delivered within the twenty years of the plan period. Paragraph 2.2 of the IIA Addendum dated May 2019 lists the studies which comprise this testing. In further testing the plan, through this examination, my Interim Findings suggest that the figure for housing should be reduced still further, to 14,200 within the plan period. Because the London plan guidelines for housing are meant to be minima, there can be no other reasonable alternative to a figure which is below that minimum other than the maximum found acceptable after the testing of the local plan process.
- 12) I therefore conclude that, notwithstanding the reference to the guidelines for housing numbers and employment capacity being subject to testing through the local plan process, the particular circumstances of the OPDC area are such that, in practice, no reasonable alternatives in excess of the minimum can be arrived at and that, as my Interim Findings on viability have established, even the figure below the minimum put forward by the OPDC turns out not to be a Reasonable Alternative and should be eliminated from consideration for the reasons set out in my Interim Findings.
- 13) Similarly, London Plan policy 2.17 (D) and paragraph 2.83 requires Local Development Frameworks to identify Strategic Industrial Location (SILs) on proposals maps but they are designated in Annex 3 of the London Plan itself, which specifies that only a part of Park Royal be so designated. Consequently, there are no strategic alternatives to be considered. Detailed definition of boundaries is considered in the OPDC's Industrial Land Review (eg paragraph 7.55) and, more particularly, its Addendum (Supporting Document SD47). Supporting Document SD59 (The Land at Abbey Road Development Options Appraisal Report) considers a further variation in relation to one particular site.
- 14) Locations for development are specified in Table A1.1 of the London Plan as Mr Brown, Counsel for the OPDC, points out in his Opinion dated 26 April 2019. There is no indication that these are to be subject to testing through the Local Plan process and so it is right that the Sustainability Appraisal for the OPDC LP should not be considering an alternative spatial strategy.

Alternatives considered not reasonable

15) The Corporation makes the point, which I accept, that, in preparing the plan, each of the many studies and analyses carried out considered options and, for a variety of reasons, discarded them before recommending a preferred option which was carried forward into the plan. The discarded options are therefore regarded as not reasonable options for the purposes of sustainability appraisal. Nevertheless, many of those appraisals were carried out using sustainability criteria, even if not included in any formal sustainability report. Examples include;

- Old Oak North Development Framework Principles (Supporting Document SD5). Principle 5 looks at alternative options for Hythe Road station.
- Park Royal Development Framework Principles (Supporting Document SD6). The appendices examine specific sites in some detail, on the basis of which recommendations are made on the options of inclusion or exclusion from the revised Park Royal town centre boundary.
- Scrubs Lane Development Framework Principles (Supporting Document SD7). Paragraph 4.35 evaluates two alternative height options.
- Grand Union Canal Massing and Enclosure Statement (supporting document SD10) evaluates a range of height to width ratios and options of 5, 7 or 9 storey heights.
- Environmental Modelling Framework (Supporting document SD19) analysed the then current masterplan and considered four alternative layouts for three individual blocks.
- The Environmental Standards Study (Supporting Document SD20) examined three energy demand scenarios in its table 4.2, three onsite renewable energy technologies in its table 4.4, three waste stream scenarios in its table 4.5, three waste treatment/disposal scenarios in its table 4.12, five water/wastewater scenarios in table 4.25, cross-refers to the scenarios examined in the Transport Study in table 4.28, examines options for urban geometry on page 136, and refers to Preferred Policy Option T7 considered at Draft Local Plan stage on page 154. Several of these analyses conclude that only one option can be taken forward to meet the plan's objectives, supporting the OPDC's contention that there are few or no Reasonable Options for evaluation through formal Sustainability Appraisal.
- The Integrated Water Management Strategy (Supporting document SD21) records in its executive summary that within the context of constraints and the water balance, several water management measures were considered and developed. These were assessed against a range of criteria covering deliverability as well as sustainability. These sustainability criteria are set out in paragraph 5.2.1.8 of the Supporting Document. In chapter 6 of the document, six water management scenarios are evaluated using multi-criteria analysis including four sustainability criteria.

- The executive summary of the North Acton District Energy Network Study (supporting document SD22) records that it considered four options for supply and a “kick start network option”.
- Paragraphs 1.3.1 and 3.3.11 of the Utilities Study (Supporting Document SD25) records that four strategic options for the expansion of the electricity supply infrastructure were identified and assessed against objectives developed with OPDC and key stakeholders. Paragraph 3.3.9.1 describes two technical opportunities for reinforcing the electricity network supplying Old Oak. Paragraph 3.5.5 considers intervention options for reinforcing and extending the gas supply. Section 4.7 considers two short term and two long term options for intervention to overcome constraints in the capacity of the existing water supply network. Section 5.6 considers three intervention options for drainage. The various options were evaluated by means of multi criteria analyses including a sustainability criterion.
- At paragraph 3.23 of the Waste Apportionment Study (Supporting Document SD26), the EMR site is excluded from consideration. Paragraph 3.26 records an alternative assessment.
- The Resources and Waste Management Strategy (Supporting Document SD27) considers options for handling waste, not necessarily as alternatives.
- The A40 Study (Supporting Document SD31) does not itself consider alternatives but summarises a Department of Transport Study of 2006 which does report on alternatives.
- The Bus Strategy (Supporting Document SD32) considers options but not necessarily as alternatives.
- The Construction and Logistics Strategy (Supporting Document SD34) considers options but not necessarily as alternatives.
- The North Acton Station Feasibility Study (Supporting Document SD35) identifies a long list of ten options and a short list of three, which were evaluated before recommending one.
- The Old Oak Strategic Transport Study (Supporting Document SD36) records that in testing one of the three Planning Scenarios envisaged at that time, a “longlist” of transport proposals was sifted to arrive at a package of measures for testing (described in section 8 of that Study), that three possible locations for new railway stations were considered as part of what is known as a GRIP study, of which option C was chosen. Paragraph 9.22 of the report records that subsequent to the testing of the package of measures chosen from the long list, three additional scenarios (known as the “turn ban scenario”, the “through route scenario” and the “High PT plus 60%” scenario) were also tested.

- The Park Royal Transport Study of 2016 (Supporting Document SD37) assessed 30 potential interventions against its objectives, concluding with an appended long list of options for consultation.
- The Public Realm, Walking and Cycling Strategy, (Supporting Document SD38) claims that its recommendations emerge from the testing of multiple scenarios. Section 4.2 of its Appendix 3 (the Old Oak and Park Royal Walking, Cycling Streets and Public Realm Strategy Network Modelling) examines three options for the proposed High Street at Willesden Junction, two options for links under the Hythe Road viaduct, options for a northern entrance at North Acton and four options for Canal Bridges.
- The Willesden Station Feasibility Study (Supporting Document SD39) tested three options (“Central”, “Dual” and “Offset”).
- The Affordable Housing Viability Assessment (Supporting Document SD41) tests five scenarios of affordable housing mixes and two options of general dwelling mix and, in its section 10 tested four variations of the unit size mix.
- The Gypsy and Traveller Accommodation Needs Assessment (Supporting Document SD42) examines two options but not necessarily as alternatives
- Paragraph 2.53 of the Future Employment Growth Sectors Study (Supporting Document SD45) records that the Industrial Land Review (Supporting Document SD47) examines two options for the re-use of the Park Royal HS2 site.
- Paragraph 10.3 of the Healthy Town Centres Study (Supporting Document SD52) records two different policy options for the restriction of hot food take-aways considered by the OPDC.
- In the Retail Leisure Needs Study (Supporting Document SD53), paragraph 6.7.3 assesses three alternative levels of retention of comparison goods spending in existing surrounding local centres and in paragraph 6.8 considers three scenarios for comparison goods expenditure retention within the OPDC area. Two options for a new retail hierarchy are considered in paragraph 7.6.9.
- The Social Infrastructure Needs Study (Supporting Study SD54) tests the consequences of two affordable housing targets at paragraph 2.5.2. At paragraph 5.4 it reiterates the two options of health facility provision considered in the 2017 Education and Health Needs Study (a superseded precursor document).
- Paragraph 1.45 of the Development Infrastructure Funding Study (Supporting Document SD57) records that although it uses a Base scenario for its findings, it also examined the implications of four other alternative scenarios. These are tested in its chapter 9. It includes the advice that Powerday is one of the weakest sites in viability terms and so may be presumed to have been a factor in the elimination of that site from the sites proposed for development in the submitted plan.

- Of its nature, the Land at Abbey Road Development Options Appraisal Report (Supporting Document SD59) considered options in general land-use terms at paragraph 4.1 and two specific industrial development options in section 6. A contributory document to this study, the Arcadis High Level Liabilities Assessment evaluated three alternative land contamination remediation scenarios.

Paul Brown QC points out that, in summarising the law relating to reasonable alternatives, Hickinbottom J in *R (on the application of Friends of the Earth England, Wales and Northern Ireland Ltd) v Welsh Ministers [2015 Env LR 1]* noted that an authority may adopt a non-SEA process to identify those options which meet the objectives. It follows that a non-SEA process may be used to eliminate options which would not meet the objectives. I therefore accept the validity of the OPDC's assertion that the options discarded through these non-SEA studies may be regarded as not reasonable options for the purposes of sustainability appraisal.

Suggestions for other reasonable alternatives

- 16) As already noted, Sustainability Appraisal has only to consider reasonable alternatives. It does not have to consider all conceivable alternatives, whether reasonable or not. Paragraph ES13 of the Jam Report suggests seven subjects for which it considers alternatives should have been considered. The suggestion is repeated in paragraph ES8 of the Second Jam Report dated July 2019 responding to the OPDC's Additional Information and IIA Addendum and in Mr Elvin's Third Opinion dated 16 July 2019. The first of these suggestions is "Business as Usual/Do nothing". Although a Business as Usual/Do nothing scenario is a suitable reference point against which to assess Reasonable Alternatives (and Table 5.2 of the Future Employment Growth Sectors Study (Supporting Document SD45) does make a comparison of a policy-on scenario against a do nothing reference case), Business as Usual/Do Nothing can never be considered a reasonable option for a plan expected to be in conformity with the London Plan, which clearly expects something to be done in designated Opportunity Areas. Table 2.2 of the IIA Addendum produced for the Hearing Session on Sustainability identifies the Reasonable Alternatives which were considered for 29 of the policies in the Plan.
- 17) To some extent, the confined extent of the OPDC Local Plan area, combined with the analysis of its existing characteristics, an analysis which features in many of the studies undertaken for the OPDC, makes it obvious that for some areas of study, there are no reasonable alternatives. It would perhaps have been more helpful if this had been made more explicit because what may be obvious to the OPDC may not be so obvious to others.
- 18) For example, the existence of the OPDC, its opportunity area and the plan itself, is predicated on the dramatic increase in public transport accessibility consequent on the expected arrival of the Old Oak HS2 and Crossrail station in 2026. Consequently, any de-designation of SIL and location for development which did not closely relate to the location of that station, would be no more than an academic exercise in the artificial generation of alternatives. Locations for development are anyway specified in Table A1.1 of the London Plan as Mr Brown points out in his Opinion dated 26 April 2019.
- 19) Likewise, it follows that the extent of industrial intensification can only apply to the area of industry which is not de-designated from SIL. I concur with section 2.4 of the submitted IIA

Addendum that there is considered to be no scope for considering spatial options associated with the development of different sites, because all potential viable sites have been identified and are already allocated within the OPDC Local Plan.

- 20) The quantum and mix of development has been considered, not just in the three planning scenarios presented in the 2013 Old Oak Common Vision but also in the Affordable Housing Viability Study. Variations in densities and locations for tall buildings have been explored in the tall buildings statement, the views study and the waste in tall buildings study. Infrastructure requirements have been analysed in the two Transport Studies, the Integrated Water Management Study, the Environmental Standards Study and the Utilities Study. In my view, the range of studies which have been carried out during the preparation for the OPDC Local Plan covers the ground of the other subjects for consideration of alternatives suggested by the Jam Report, albeit not necessarily using the methods or format of Sustainability Appraisal and justifies the OPDC's assertion that these studies found that there were no reasonable alternatives which could be evaluated through a Sustainability Appraisal.

Conclusions

- 21) Overall, I am convinced that, with the Addendum dated May 2019, an adequate Sustainability Appraisal has been carried out. Except that the Addendum dated May 2019 has not been the subject of public consultation, (a matter which can be remedied at Modifications stage), it appears to me that the plan does comply with the law.
- 22) Mr Elvin's second Opinion, dated 4th June 2019 raises the concern that any consultation now carried out would simply pay lip service to the requirement and not offer a genuine opportunity to influence the final form of the draft plan. But the process of consultation on modifications follows the same procedures as regulation 19 consultation and, in my view, is taken as seriously as consultation taken at earlier stages of plan formulation. The Courts have afforded LPAs (and Inspectors) wide latitude in preparing and correcting SAs. Cogent Land v Rochford DC [2012] EWHC 2542 (Admin) found that an addendum SA requested by an Inspector was capable of curing the defects in earlier iterations of the SA, though it must not be an exercise to justify a predetermined strategy. This was confirmed in No Adastral New Town v Suffolk Coastal [2015] EWCA Civ 88, where it was stated that the corrections can address "any deficiencies" in earlier SAs.
- 23) Nevertheless, it is fair to be realistic about the scope for further changes to the plan. My conclusion is that, overall, an adequate Sustainability Appraisal has been carried out in substance. Much of the additional material which I expect to be published with an IIA accompanying the Modifications would simply provide a better explanation of the Sustainability Appraisal which has been followed. Because I have found the Sustainability Appraisal carried out to date to have been adequate, I do not expect matters of substance to be revisited other than those which are the subjects of Modification Proposals themselves.
- 24) It is therefore my Interim Recommendation that an IIA Report for consultation accompanies or precedes the Modifications, that the Report contains the material included in the Addendum of May 2019 as well as summarising and explaining decisions taken on alternatives and rejected alternatives at previous stages of plan preparation, including the OOPROAPF of

2015 and the Old Oak Common Vision of 2013, as well as summarising and explaining the rejection (as not Reasonable Alternatives) of options considered in documents outside the IIA process. As stated earlier, this report should be open for consultation.

25) This paper, together with my Interim Findings on the viability of the CarGiant site allocation 2 previously issued, now concludes my consideration of the issues left outstanding after the hearing sessions of 6 June and 18 July 2019. Throughout the examination, Modifications to the Plan and to the Policies Map have been canvassed by the OPDC or myself, either orally or in writing. Without listing them here, it should now be clear to the OPDC what Major Modifications are necessary to make the Plan sound but, if there is uncertainty, I would be happy to provide clarification. I therefore now invite the OPDC to prepare a Schedule of Major Modifications for me to endorse prior to their publication for public comment.

P. W. Clark

Inspector

29 October 2019