

OPDC Local Plan Examination

Overview Note in response to further materials submitted by OPDC to the local plan examination ahead of 18 July hearing session

Introduction

1. As set out in section 1 of our response document dated 28 June 2019, following the first hearing session on matter 3, the inspector asked OPDC for further information on the specific matters we quoted in that section. The OPDC indicated to the inspector that the responses would not be ready until 31 May 2019.
2. As set out in the programme officer's letter dated 29 May 2019, Old Oak Park Limited ("OOP") was given until 28 June 2019 to respond. The programme officer indicated that she anticipated that the inspector would prepare an agenda for the hearing with some questions to form our responses around.
3. Material was submitted on 31 May 2019 by OPDC.
4. Our response was submitted on 28 June. In our response we noted that parts of OPDC's response were unrelated to the questions asked and that the material provided did not fully address the specific questions which the inspector had asked.
5. On 3 July, the inspector prepared a set of questions for the hearing session.
6. At just past midnight on Friday 5 July, we received a further voluminous set of documents from OPDC. Whilst some of this information seems to be seeking to expand upon the responses to the inspector's questions, for instance greater detail in relation to the phase 1a proposals and additional work that the OPDC seeks to rely upon in connection with the site specific viability study work that it had submitted on 31 May 2019, much of the material either seeks to respond to our response (despite the inspector not having allowed for such a further step) or is separate material not specifically related to matter 3 seeking to make good previous submissions (notably an opinion from Richard Moules on the question of conformity with the London Plan).
7. The inspector has now prepared a revised list of questions.
8. We do not wish to extend unnecessarily this local plan examination, but the inspector will understand that we have been presented, in an unscheduled manner, with a further tranche of documentation. Some of this material substantially changes the case which the OPDC have been making (for instance now asserting that the question of HIF funding and anything to do with phase 1A (see paragraphs 5.20 and 5.25 respectively) should not be taken into account by the inspector in assessing the soundness of the plan) and some of it making assertions and putting forward evidence that no doubt it will seek to rely on in other proceedings.
9. In the limited period of time before the hearing session on 18 July we simply cannot be expected to address the detail of this material and we are conscious that the inspector himself has limited time before 18 July 2019. We are preparing our responses to the inspector's questions, which we are willing to provide in writing if the inspector would find this helpful.
10. However, there is some information which we trust that the inspector will find useful ahead of 18 July:

General Conformity

11. In paragraph 4.3 of its 5 July 2019 Note, OPDC seeks to rely on the Secretary of State's 18 June 2019 letter to the Planning Inspectorate that stressed to inspectors "the importance of being pragmatic in getting plans in place..." The letter cannot of course have any legal effect in terms of the legal tests to be applied in examining the soundness of plans, and compliance with legal requirements but in any event OOP's case is not necessarily that the plan as a whole has to be found unsound - its concerns, both in relation to sustainability appraisal failings and as to lack of soundness, are primarily in relation to the Old Oak North allocation. We are willing to engage in a discussion as to any "pragmatic" solution to address the failings of the plan in that connection.
12. The OPDC seeks to assert, in section 4 of its 5 July 2019 note, that it is constrained by "minimum guidelines for housing and indicative estimates for employment capacity in the OPDC area". The section introduces a further opinion from Richard Moules. For the avoidance of doubt, OOP does not accept that the OPDC's position is legally tenable. We attach at Appendix 1 an opinion by David Elvin QC, which responds in relation to that issue as well as the OPDC's schedules in relation to its sustainability appraisal work, dated 20 and 27 June 2019 respectively. He concludes that OPDC has failed to meet the legal requirements for SEA and has underlined that failure further with its latest material.

HIF/phase 1A

13. In the light of what is stated at section 5 of the OPDC's 5 July 2019 note as to the (according to the OPDC) lack of any relationship between phase 1A and the local plan and as to (according to the OPDC) the irrelevance of the questions as to the "availability or timing surrounding the HIF bid" to the question as to whether the local plan is sound, we ask the inspector to confirm that he will strike a line through the following two passages of document OPDC-DA-001 (the letter dated 18 March 2019 to the inspector from the OPDC's interim chief executive David Lunts):
 - a. *"Last year, OPDC submitted a bid to the Ministry of Housing, Communities and Local Government for £250m of funding from the Housing Infrastructure Fund (HIF). I am pleased to say that the Chancellor's Spring Statement on 13 March confirmed that this bid was successful. This funding will enable OPDC to invest in land assembly and infrastructure to unlock development at Old Oak, bring forward early phases of housing and allow us to build market confidence in the long-term opportunities for the area. The HIF award represents a major vote of confidence from Government (which builds on the Government's Crossrail and HS2 commitments) and a tremendous boost for the future of Old Oak. Funding has been awarded in the clear knowledge that the unlocking of land for timely physical regeneration may require the use of compulsory purchase powers – this approach is supported in Policy D14 paragraphs 11.49 and 11.50 of the draft Local Plan."*
 - b. *"OPDC has instructed a substantial professional team to rapidly bring forward the first phase of major regeneration – Phase 1a. Phase 1a is a residential-led mixed use scheme which includes a major new road (referred to as 'Park Road') running from the south west to the north east of Old Oak North together with adjacent development plots. It is intended to be a catalyst that will facilitate future development. OPDC will seek to acquire all the land and rights required through negotiations with affected landowners and occupiers, but should that not prove possible, a compulsory purchase order will be made, as well as, in due course, a planning application(s). Work is underway to optimise the route of the road to achieve the appropriate balance between maximising regeneration benefits and carefully managing the impacts on existing businesses. Coupled with the new Old Oak Common Station, the delivery of Phase 1a with its new infrastructure will transform the accessibility and market profile*

of the area, creating the conditions for the longer-term positive changes and opportunities set out in the draft Local Plan.”

14. Regarding the assertion made by the OPDC at 5.28 that the plan provided by OOP at Appendix 1 was incorrect and misleading, we do not agree,
15. This plan was not provided as a note as to Car Giant’s land ownership, but as a note as to Car Giant’s operations, hence the designation “Car Giant Operation Land” within the key. This was done to enable the inspector to determine the areas within Old Oak North which would be sensitive to disruption.
16. With regard to the comments made at 5.29 and 5.30, that the boundary indicated on the plan is incorrect, we would draw to your attention that this plan (save for the colouring) was provided to us by Persona Associates who are the consultants employed by the OPDC to undertake their Section 5A statutory land referencing obligations. Therefore, the plan, as well as the boundaries on it, originate from the OPDC and not from Car Giant.
17. With regard to the comments made at 5.29 and 5.30, this plan represents our understanding of the extent to which Car Giant’s land may be subject to a CPO in relation to Phase 1A.
18. Further, we would draw your attention to the comments within the OPDC executive summary itself where it is stated at 5.3 that “the Phase 1A Study Area remains indicative” and that “The exact area of Phase 1A has not yet been finalised”, therefore it should be clear that the boundaries presented in Appendix 2 of the OPDC’s response do not represent the final land take.
19. We ask the inspector to go back and to read that letter without the passages identified in italics above. We also ask him to strike a line through equivalent passages in the OPDC’s written statements on matter 3a (see paragraph 1.2) and matter 3b (see paragraph 1.3) and the OPDC’s “commentary” note submitted on 31 May 2019. We also ask him to make it clear in his final letter to the OPDC at the conclusion of this examination that he has had no regard to these matters.
20. However, we would ask the inspector to go further than acknowledging the OPDC’s changed position that these matters are not now relevant to his conclusions as to whether the plan is sound. The reality is that without the OPDC succeeding in delivering Phase 1A (as described in its most recently submitted material), there is little prospect of the balance of Old Oak North being capable of delivery within the plan period. Mr Lunts was right to describe it as a “catalyst”. But it is no longer sought to be relied upon.
21. Whilst this may no longer it seems be relevant to this local plan examination, Car Giant’s position remains as follows as regards the impact of Phase 1A and the impact of the balance of the Old Oak North allocation on Car Giant’s operations:
22. Car Giant would not be able to continue to operate were the Phase 1A lands to be taken.
23. Mitigation measures are proposed by the OPDC (eg potentially the construction of multi-storey car parking on Car Giant’s retained land) but there is no indication of how in practice these would be achievable, given that the land on which OPDC suggests that the multi-storey car parks could be constructed is in everyday use and therefore construction would have an effect on operations, and further the lead in times required for securing planning permission, planning and then constructing these structures, the phasing of works required and the need for investment and forward funding to secure that these were in place ahead of possession being taken.

Car Giant Site Allocation Viability

24. The OPDC's 5 July 2019 note attaches at Appendix 4 to that note a further response from BNPRE. DS2 has begun to consider this and we attach at Appendix 2 their preliminary comments.

Relocation/Extinguishment of Car Giant Business

25. Should Car Giant not to be able to continue to operate at Old Oak, either in consequence of phase 1A or OPDC's wider aspirations in relation to Old Oak North, we understand that it is accepted by the OPDC that Car Giant's business would either need to be relocated or it would have to be extinguished.
26. In order for relocation to be feasible there would need to be a suitable relocation site with vacant possession but, more than this, arrangements would need to be in place such that substantial work could be funded and carried out well in advance of compulsory acquisition of the existing lands so as to build and have ready the necessary facilities. In order to allow for suitable expansion over time, the relocation site would need to comprise contiguous lands of equivalent scale as Car Giant's existing holdings. We attach as Appendix 3 a note on the adequacy or otherwise of the Wembley and Acton sites referred to in paragraph 6.34 of the OPDC's 5 July 2019 note.
27. The OPDC's 5 July 2019 note attaches a letter from Deloitte which comments on the calculations set out by DS2 in their 28 June 2019 note with respect to the compensation that would be payable by OPDC in the event that Car Giant's business was to be extinguished or alternatively that it would be able to relocate. As Deloitte note, they have limited access to information about Car Giant's financial position, its operations and its relocation requirements. Deloitte's analysis is therefore predicated on a number of inaccurate assumptions. We do not have any significant issues with the methodology set out but wish to bring to the inspector's attention the following matters:
28. While Deloitte is correct to note that a claimant business faced with compulsory purchase has a duty to mitigate its losses, that duty only applies when the acquiring authority has implemented its compulsory purchase powers by serving a notice to treat which provides three months' notice of the compulsory purchase. It is only at the point of service that the acquiring authority becomes liable for costs and losses incurred by a claimant in relocating its business. Given the complexity of any relocation of its business, Car Giant would only be able to mitigate its losses by relocating rather than extinguishing (assuming a suitable site was available) if OPDC were prepared to forward fund that relocation significantly in advance of exercising compulsory purchase powers.
29. Deloitte assert at paragraph 10 of their note that the most significant error in the DS2 approach is that they have double counted the value of the property by failing to make an adjustment for the notional rental value of the property. It is unclear why Deloitte have made that assumption. DS2 have in fact adjusted for a notional rent, albeit that they have calculated the notional rent at £5.95m per annum in contrast to Deloitte's assessment of £11.425m per annum. In arriving at their rental figure, Deloitte have applied a yield which does not take account of the covenant strength of Car Giant as the notional tenant or the security a notional landlord would have that the notional tenant would be highly unlikely to relocate given the difficulty of securing any alternative site.
30. Deloitte go on to say that it is unclear whether the adjusted maintainable EBITDA of £30.22m is based on the most recent trading results for 2017. We can confirm that those results have been taken into account. A multiplier of 12 is appropriate given Car Giant's size in comparison to its competitors and the advantages inherent in being based in a single location.

31. We do not agree with the assertion made by Deloitte at paragraph 20 of their note that the approach taken by DS2 with respect to the costs of a relocation site is “fundamentally flawed”. Deloitte say:

“DS2 appear to have started from the proposition that compensation should be based on the potential cost of acquiring a replacement site that is larger than the site used by the business at a price in excess of market value. Further additions are then made for the cost of demolishing some of the existing buildings and constructing new buildings. From this total amount, credit is then given for the value of the land that has been acquired. It is noted at paragraph 6.34 that “...there are multiple cost headings that have been omitted...”. On this basis, it is our view that the DS2 assessment cannot be considered to be a reliable or useful indication of the likely costs of relocation in the event of compulsory purchase.”

32. DS2’s assumptions with respect to the requirements for a relocation site are set out at paragraph 3.16 of their note. They have assumed a relocation site of equivalent size to Car Giant’s current site and have correctly assumed that it would be necessary to make ready such as site for operational purposes by constructing buildings, structures and installing the necessary infrastructure required.
33. The costs incurred in purchasing and making ready a new site are compensatable in accordance with the compensation code subject to deductions which would apply in the event that the relocation site was an improvement on the current site in terms of delivering increased profitability or an increased value of the land acquired. Deloitte’s analysis is based on the inaccurate assumption that a fully constructed site ready for use by Car Giant is available for it to relocate to. No such site exists and therefore no reliance can be placed on Deloitte’s calculations. Further, no detail is provided as to how Deloitte have arrived at their estimate of relocation costs of £40m (beyond that it is based on their understanding of Car Giant’s business which they concede is limited). Deloitte’s lack of confidence in their calculation is indicated by their allowance of a further £40m contingency.
34. With reference to paragraph 6.49 of the OPDC’s 5 July 2019 note, we agree that the local plan examination “is not the appropriate forum for assessing the basis as to which Cargiant should be compensated for any land which may be compulsorily acquired in the future”. We also agree that “any such compulsory purchase order will only be confirmed if the confirming authority are satisfied that the sources of funding available for acquiring the land and implementing the scheme are available”. Our point is simply that the numbers are agreed to be huge and that the inspector has no evidence before him to give him any reasonable prospect that compulsory purchase of Car Giant’s site will be achievable within any timescale that would deliver homes on it within the plan period in accordance with the Old Oak North allocation. Mr Lunts’ letter dated 18 March 2019 accepted that “development at Old Oak North is challenging” and that “market forces alone are unable to deliver the extraordinary potential of the area.” This may be correct but is no basis for a local plan allocation, having regard to even the most benevolently pragmatic interpretation of the NPPF tests. In particular, we invite the inspector to conclude that the relocation of Car Giant is not reasonably practicable within the plan period save by agreement and we invite him to conclude that there is no economic basis for concluding that there is any reasonable prospect of relocation by agreement and thus no reasonable prospect of delivery of a key element of the plan.

Car Giant’s engagement with OPDC on a planning application

35. At section 7 of their note of 5 July, the OPDC comments on Cargiant’s engagement with OPDC in relation to a planning application and suggests that Cargiant’s representations to the Draft New London Plan (March 2018) and to the OPDC Local Plan (July 2018), ‘continued to confirm its interest in the development of the Cargiant owned land holdings, and thereby relocation of the Cargiant business’. This sits within the context of the OPDC’s assertion at paragraph 3.3

of their note that ‘none of the points Cargiant is now making have any foundation in its representations on the Local Plan’.

36. A factual account of Car Giant’s position on the Local Plan and the development of its land holdings was provided to the Examination in February 2019. We have also explained this position verbally to the Inspector at the hearing sessions. We will not look to duplicate this information here, other than to note that in November 2017 we ceased work on a planning application, but it was not until August 2018 when Car Giant was forced to take measures that closed the opportunity for relocation. Car Giant continued to do what it could to make its site viable and deliverable for as long as possible, but it reached a point where it could no longer maintain this position. It is therefore not apposite to say that Car Giant’s ‘position changed’ in November 2017 and that as a consequence, Car Giant’s current position is inconsistent with its formal representations and should be disregarded. To disregard the genesis of Cargiant’s position on the Plan would serve to disregard one of the most important pieces of evidence as to the viability and deliverability of the Car Giant site – we tried, and failed.
37. We do, also, wish to remind the Inspector that our representations of September 2017 found that the Plan was not fully justified and that it would not be effective. We said that ‘in its current form, its [the Local Plan] approach is not based on sound evidence and places too many constraints on the viability of development at OOP, and we are therefore concerned that it will serve to delay and discourage development here if not rethought’. In our representations to the Second Revised Draft in July 2018, we said ‘We are ready to progress with our masterplan for OOP as soon as certainty on the key elements of transport infrastructure is provided. Our ability to progress with a planning application has been delayed by the latest round of revisions to the Local Plan informed by the Masterplan Framework prepared by AECOM.’ We continued to express concern that the considerable challenges and costs involved in delivering the Car Giant site were not reflected in the Plan.
38. At paragraph 7.3 of its note, the OPDC states in relation to the Hythe Road Overground station that the OPDC ‘continue to support the station’s delivery as part of its Local Plan and will be working with TfL to explore the potential for other funding sources to support the delivery of the station’. However, in response to a question on the future of the Hythe Road Station at the London Assembly Budget and Performance Committee on 11 June 2019, OPDC Chair Liz Peace stated that the station was “off the agenda”, noting that there was no funding and TfL would not build it in any event. This position was clarified on 4 July 2019 by Liz Peace to say that it remains an aspiration, that it is not a funded programme and that a decision would need to be taken in relation to ‘Phase 1B’ as to whether the OPDC would expect a potential developer to fund it. As set out within DS2’s response, the OPDC needs to be clear and consistent in its assumptions for infrastructure funding and residential values linked to the station’s delivery. Given the statements above, no growth should be attributed to the delivery of the Hythe Road station until there is at least a reasonable prospect that it will be funded.

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Town Legal LLP

16 July 2019