



## New Local Plan Review

### Policy Formulation Report – October, 2022



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

Policy GB6: Air Quality  
Policy GB7: Construction Management  
Policy GB8: Noise and Vibration  
Policy GB9: Odour  
Policy GB10: Light Pollution  
Policy GB20: Contaminated Land

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# 1. INTRODUCTION

## 1.1 NEW LOCAL PLAN REVIEW

1.1.1 The Royal Borough of Kensington and Chelsea (RBKC) is undertaking a New Local Plan Review (NLPR) to ensure the Council has an up-to-date and fit-for-purpose Local Plan to guide the development of the Borough and reflect our values.

1.1.2 The purpose of this Policy Formulation Report (PFR) is to demonstrate how the following policies within Chapter 4 - Green-Blue Future of the RBKC NLPR have been developed and evidenced to a level of detail which cannot be included in the NLPR document itself:

- **Policy GB6: Air Quality**
- **Policy GB7: Construction Management**
- **Policy GB8: Noise and Vibration**
- **Policy GB9: Odour**
- **Policy GB10: Light Pollution**
- **Policy GB20: Contaminated Land**

## 1.2 EXISTING LOCAL PLAN

1.2.1 Policies GB6 – GB10 and GB20 of the NLPR primarily relate to the following chapter and policy of the existing Local Plan:

### **Chapter 24: Respecting Environmental Limits**

Policy CE5: Air Quality

Policy CE6: Noise and Vibration

Policy CE7: Contaminated Land

## 1.3 KEY ISSUES AND POLICY DRIVER

1.3.1 The NLPR is being prepared in the context of a nationally and locally declared climate emergency, with RBKC committing to becoming a carbon neutral borough by 2040, as well as calls for a green recovery from the Covid-19 pandemic. The NLPR therefore represents a timely opportunity to present new and updated policy on pressing environmental matters.

## 2. POLICY GB6: AIR QUALITY

### 2.1 INTRODUCTION

- 2.1.1 Air pollution causes significant detrimental health, environmental and economic impacts. The entire Borough was declared an Air Quality Management Area (AQMA) in 2000, as levels of nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM<sub>10</sub> and now also PM<sub>2.5</sub>) exceeded the National Air Quality Objectives (NAQOs). In addition to the NAQOs, the Council has also committed to achieving the more stringent 2005 World Health Organisation Guideline Values and is therefore key that our Planning Policies help us to do this.
- 2.1.2 Air quality is among the top environmental concerns for residents. The NLPR will strengthen our approach to ensuring development does not cause further deterioration of the Borough's air quality and require certain larger scale developments to adopt an air quality positive approach.

### 2.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

- 2.2.1 There are several requirements and statutory processes relevant to air quality that currently exist within the UK. These are in the form of primary legislation (Acts of Parliament), secondary legislation (Regulations and Orders) and statutory guidance, namely the Control of Pollution Act 1974<sup>1</sup>, Environmental Protection Act 1990<sup>2</sup>, Clean Air Act 1993<sup>3</sup>, The Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2000<sup>4</sup>, Air Quality (England) (Amendment) Regulations 2002<sup>5</sup> and the Environment Act 2021<sup>6</sup>.
- 2.2.2 The London Local Air Quality Management Framework (LLAQM)<sup>7</sup> is the statutory process used to review and improve air quality within London Boroughs. The air quality objectives set out in the Air Quality (England) Amendment Regulations 2002 provide the statutory basis for the air quality objectives under the local air quality management system in London. The legal basis for the LLAQM is Schedule 11 of the 2021 Environment Act (formerly Part IV of the 1995 Act).
- 2.2.3 In addition to the objectives set in the 2000 Regulations, London Boroughs also have a role in working towards reducing emissions and concentrations of PM<sub>2.5</sub> as set out in Chapter 2 of the LLAQM.TG(19).

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<sup>1</sup> HM Government, [Control of Pollution Act, 1974](#).

<sup>2</sup> HM Government, [Environmental Protection Act](#), 1990.

<sup>3</sup> HM Government, [Clean Air Act](#), 1993.

<sup>4</sup> DEFRA, [The Air Quality Strategy for England, Scotland, Wales and Northern Ireland](#), March 2011

<sup>5</sup> HM Government, [Air Quality \(England\) \(Amendment\) Regulations](#), 2002.

<sup>6</sup> HM Government, [Environment Act](#), 2021.

<sup>7</sup> Greater London Authority, [London Local Air Quality Management Framework](#), October 2019.

## NATIONAL POLICY

### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 2.2.4 Section 15, paragraph 174 (part e) of the NPPF<sup>8</sup> sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, “*preventing new and existing development from contributing to... unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve the local environmental conditions such as air and water quality...*”
- 2.2.5 Paragraph 186 states that *Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.*

## REGIONAL POLICY, STRATEGIES AND GUIDANCE

### LONDON PLAN 2021

- 2.2.6 London Plan 2021<sup>9</sup> Policy SI 1 – Improving Air Quality sets out requirements for development to be air quality neutral as a minimum and for larger scale development to explore an air quality positive approach. The full policy is set out below:

#### **Policy SI 1 Improving Air Quality**

- A Development Plans, through relevant strategic, site-specific and area based policies, should seek opportunities to identify and deliver further improvements to air quality and should not reduce air quality benefits that result from the Mayor’s or boroughs’ activities to improve air quality.
- B To tackle poor air quality, protect health and meet legal obligations the following criteria should be addressed:
- 1) Development proposals should not:
    - a) lead to further deterioration of existing poor air quality.
    - b) create any new areas that exceed air quality limits, or delay the date at which compliance will be achieved in areas that are

<sup>8</sup> MHCLG, [National Planning Policy Framework](#), July 2021.

<sup>9</sup> Mayor of London, [London Plan 2021](#), March 2021.

currently in exceedance of legal limits.

- c) create unacceptable risk of high levels of exposure to poor air quality.

2) In order to meet the requirements in Part 1, as a minimum:

- a) development proposals must be at least Air Quality Neutral
- b) development proposals should use design solutions to prevent or minimise increased exposure to existing air pollution and make provision to address local problems of air quality in preference to post-design or retrofitted mitigation measures.
- c) major development proposals must be submitted with an Air Quality Assessment. Air quality assessments should show how the development will meet the requirements of B1.
- d) development proposals in Air Quality Focus Areas or that are likely to be used by large numbers of people particularly vulnerable to poor air quality, such as children or older people should demonstrate that design measures have been used to minimise exposure.

C Masterplans and development briefs for large-scale development proposals subject to an Environmental Impact Assessment should consider how local air quality can be improved across the area of the proposal as part of an air quality positive approach. To achieve this a statement should be submitted demonstrating:

- 1) how proposals have considered ways to maximise benefits to local air quality, and
- 2) what measures or design features will be put in place to reduce exposure to pollution, and how they will achieve this.

D In order to reduce the impact on air quality during the construction and demolition phase development proposals must demonstrate how they plan to comply with the Non-Road Mobile Machinery Low Emission Zone and reduce emissions from the demolition and construction of buildings following best practice guidance.

E Development proposals should ensure that where emissions need to be reduced to meet the requirements of Air Quality Neutral or to make the impact of development on local air quality acceptable, this is done on-site. Where it can be demonstrated that emissions cannot be further reduced by on-site measures, off-site measures to improve local air quality may be acceptable, provided that equivalent air quality benefits can be demonstrated within the area affected by the development.

2.2.7 Further guidance on Policy SI 1, including the air quality neutral and positive approach is set out in paragraphs 9.1.1 – 9.1.23.

#### [AIR QUALITY POSITIVE GUIDANCE, 2021](#)

2.2.8 The Mayor of London has produced an air quality positive guidance document<sup>10</sup> which, considers measures that contribute to the delivery of an Air Quality Positive scheme.

#### [AIR QUALITY NEUTRAL GUIDANCE, 2021](#)

2.2.9 Similarly, the Mayor has produced an air quality neutral guidance<sup>11</sup> which, sets out how development can meet the air quality neutral standard.

#### [LONDON ENVIRONMENT STRATEGY, 2018](#)

2.2.10 The London Environment Strategy<sup>12</sup> sets out an ambitious vision for improving London's environment for the benefit of all Londoners. The strategy provides a holistic plan for tackling the city's environmental challenges. Chapter 5 focuses on air quality and sets out the aim for London to have the best air quality of any major world city by 2050, going beyond the legal requirements to protect human health and minimise inequalities. As is the Council, when it comes to air pollution, it seeks to tackle emissions of nitrogen dioxide and particulate matter.

### **LOCAL**

#### [EXISTING LOCAL PLAN POLICY \(LOCAL PLAN, 2019\)](#)

2.2.11 The existing Local Plan Policy on air quality is set out below:

##### **Policy CE5 Air Quality**

The Council will carefully control the impact of development on air quality, including the consideration of pollution from vehicles, construction and the heating and cooling of buildings. The Council will support measures to improve air quality and will require development to be carried out in a way that minimises the impact on air quality and mitigates exceedances of air pollutants.

To deliver this the Council will:

- a. require an air quality assessment for all major developments;
- b. require developments to be 'air quality neutral' and resist development proposals, which would materially increase exceedance levels of local air pollutants and have an unacceptable impact on amenity or health, unless the development mitigates this impact through physical measures, or financial contributions to implement proposals in the Council's Local Air Quality and Climate Change Action Plan;

<sup>10</sup> Mayor of London, [Air Quality Positive Guidance](#), March 2021.

<sup>11</sup> Mayor of London, [Air Quality Neutral Guidance](#), November 2021.

<sup>12</sup> Mayor of London, [London Environment Strategy](#), May 2018.

- c. resist biomass combustion and combined heat and power technologies/CCHP, which may lead to an increase in emissions, and seek to use greater energy efficiency and non-combustion renewable technologies to make carbon savings, unless its use will not have a detrimental impact on air quality;
- d. require that emissions of particles and NOx are controlled during demolition and construction, and risk assessments are carried out to identify potential impacts and corresponding mitigation measures, including on site monitoring, if required by the Council.

### RBKC GREENING SUPPLEMENTARY PLANNING DOCUMENT, 2021

2.2.12 The Greening SPD, published in June 2021<sup>13</sup>, covers all facets of planning that can contribute towards the reduction of carbon emissions and how the environment will be placed at the centre of decision making. Chapter 10 in particular focuses on air quality.

### RBKC AIR QUALITY ACTION PLAN, 2022-2027

2.2.13 In March 2022, the Council produced a new Air Quality Action Plan (2022-2027)<sup>14</sup>, which includes a dynamic list of measures to reduce pollution, reduce exposure, increase resilience, and influence behaviour change. This action plan has been produced alongside and in support of the Council’s new Climate Emergency Action Plan and Biodiversity Action Plan.

### RBKC AIR QUALITY SUPPLEMENTARY PLANNING DOCUMENT, 2009

2.2.14 The Council’s Air Quality SPD<sup>15</sup> sets out the requirements for improving air quality in new development, conversions and change of use.

2.2.15 The Council is producing an updated Air Quality SPD which will provide more detailed guidance on the requirements for improving air quality in development.

### SUMMARY

Date	Document	Organisation
1974	<a href="#">Control of Pollution Act</a>	HM Government
1990	<a href="#">Environmental Protection Act</a>	HM Government
1993	<a href="#">Clean Air Act</a>	HM Government
Mar. 2011	<a href="#">Air Quality Strategy for England, Scotland, Wales &amp; Northern Ireland</a>	HM Government
2000	<a href="#">Air Quality (England) Regulations</a>	HM Government
2002	<a href="#">Air Quality (England) (Amendment) Regulations</a>	HM Government
2010	<a href="#">Air Quality Standards Regulations</a>	HM Government

<sup>13</sup> [RBKC, Greening SPD, June 2021](#).

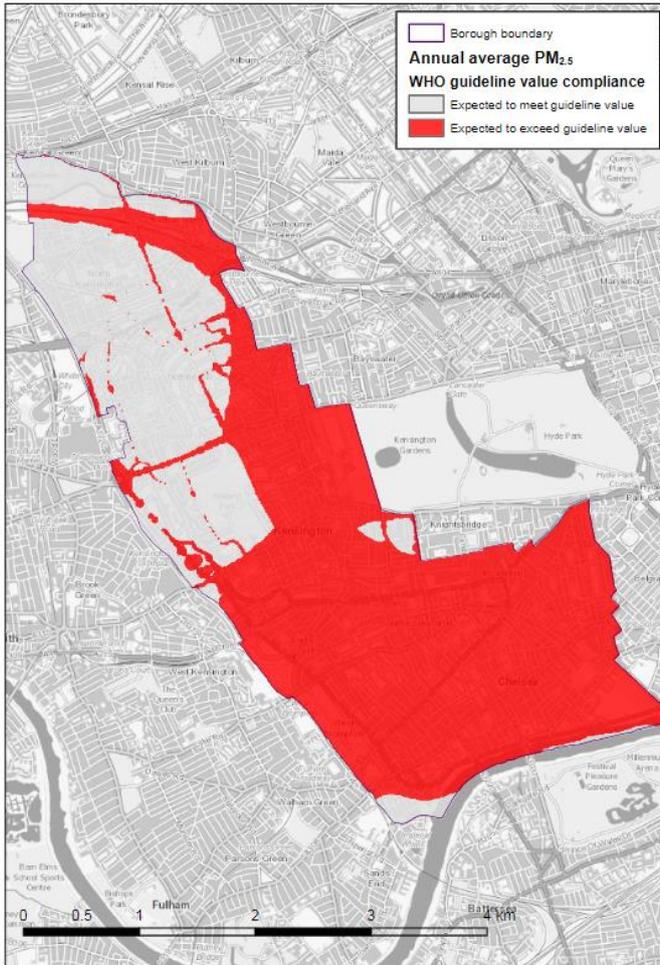
<sup>14</sup> [RBKC, Air Quality and Climate Change Action Plan](#), January 2019.

<sup>15</sup> [RBKC, Air Quality SPD](#), June 2009.

Date	Document	Organisation
May 2018	<a href="#">London Environment Strategy</a>	Mayor of London
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London
2021	<a href="#">Air Quality Positive Guidance</a>	Mayor of London
2021	<a href="#">Air Quality Neutral Guidance</a>	Mayor of London
Oct. 2019	<a href="#">LLAQM.PG 19</a>	GLA
Oct. 2019	<a href="#">LLAQM.TG 19</a>	GLA
Jun. 2021	<a href="#">Greening SPD</a>	RBKC
Mar. 2022	Air Quality Action Plan	RBKC
Jun. 2009	<a href="#">Air Quality SPD</a>	RBKC

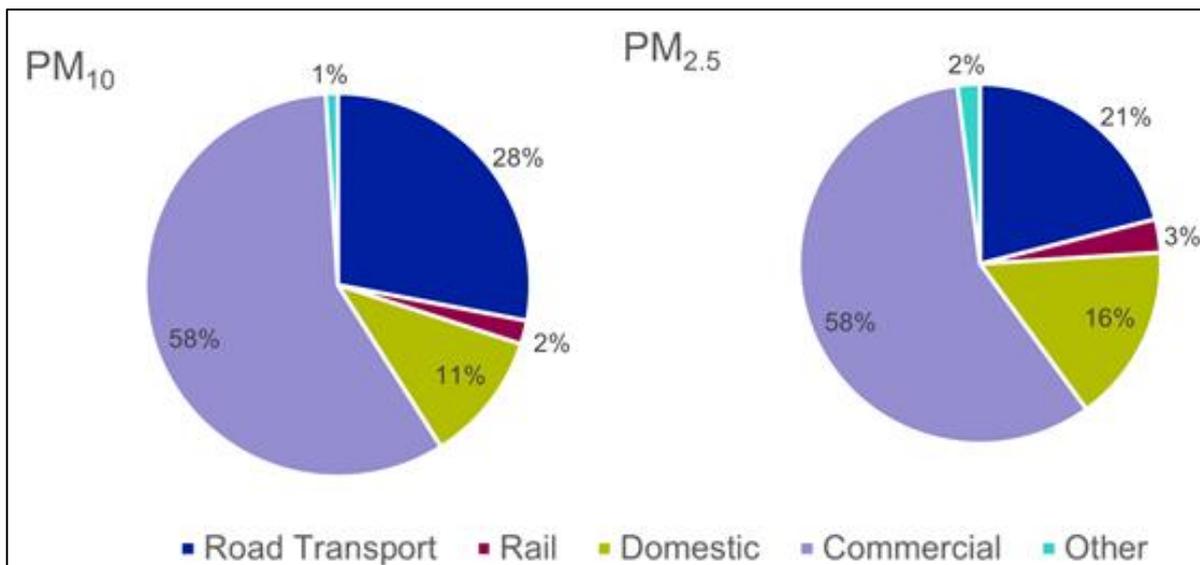
## 2.3 EVIDENCE BASE

- 2.3.1 The Council is committed to achieving the National Air Quality Objectives and the 2005 World Health Organisation Guideline Values.
- 2.3.2 In 2019, the Council commissioned Cambridge Environmental Research Consultants (CERC) to carry out a modelling study to predict pollutant concentrations across the Borough for the years 2016, 2019 and 2022. Results were modelled at heights of 1.5 m (ground level), 4 m (about first floor level) and at 10 m above ground level (worst case scenario for the Westway) to predict annual mean concentrations of nitrogen dioxide (NO<sub>2</sub>) and fine particulates (PM<sub>10</sub> and PM<sub>2.5</sub>) and short-term concentrations of NO<sub>2</sub> (1-hour mean) and PM<sub>10</sub> (24 hour mean) for comparison against the National Air Quality Objectives (NAQO) and 2005 WHO Guideline Values. The results of this modelling exercise are contained with the Council's Air Quality Action Plan 2022-2027.
- 2.3.3 Modelling is a useful tool and will accurately predict air pollution concentrations for most of the Borough; however, it is important to remember that local sources of pollution may not always be accounted for and so the modelling may occasionally either over or underpredict concentrations in some local areas.
- 2.3.4 Currently PM<sub>2.5</sub> is the pollutant of most concern and our modelling shows that over two thirds of the Borough is predicted to exceed the 2005 World Health Guideline Value as shown in Figure 1 below.



**Figure 1. Modelled map for 2022 PM<sub>2.5</sub> compliance with 2005 WHO guideline value.**

- 2.3.5 As part of the modelling study CERC also carried out work to help identify the main sources of nitrogen oxides (NO<sub>x</sub>) and particulate matter within the Borough. This part of the study used the GLA's London Atmospheric Emissions Inventory (LAEI) dataset from 2016, which was the latest available at the time. The dataset identifies the amount of each pollutant produced from various sources (combustion, heating, cooking etc.) within the London region.
- 2.3.4 For sources of particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) derived from within the Borough, commercial emissions formed 58 per cent of PM<sub>10</sub> and PM<sub>2.5</sub> (see Figure 2). Of these commercial emissions, PM<sub>10</sub> was dominated by cooking (51 per cent) and construction (41 per cent), whilst PM<sub>2.5</sub> emissions were dominated by cooking (75 per cent), construction (13 per cent) and heat and power generation (10 per cent).



**Figure 2: Main sources of emissions of PM<sub>10</sub> and PM<sub>2.5</sub>.**

2.3.5 Road sources formed 28 per cent and 21 per cent of emissions for PM<sub>10</sub> and PM<sub>2.5</sub>, respectively. For PM<sub>10</sub>, road-related sources were relatively evenly spread between exhausts, re-suspension and brake, tyres, and road wear. For PM<sub>2.5</sub>, exhausts formed a greater proportion of emissions (42 per cent); however, the largest part of the emissions were still derived from non-exhaust sources.

## SUMMARY

Date	Document	Organisation
Mar. 2022	Air Quality Action Plan	RBKC

## 2.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

2.4.1 Alternative options were consulted on as part of the Borough Issues (September 2020) and Issues and Options (July 2021) consultation documents. The Consultation Schedules and Consultation Summaries for these are set out in the Consultation Statement published alongside the Regulation 19 Publication Policies (September 2022) consultation document. Consultation responses have been reviewed and used to inform the development of, and modification to, the draft NLPR Policies.

2.4.2 A breakdown of the public consultations undertaken by RBKC to inform the production of the NLPR is set out in the table below.

Public Consultation	Timeframe
Borough Issues Consultation	29 September – 10 November 2020
Issues and Options Consultation	26 July – 4 October 2021

Regulation 18 Draft Policies	9 February – 23 March 2022
Regulation 19 Publication	October 2022

**Figure 3:** RBKC NLPR Consultation Timeline.

2.4.3 The options considered through the consultations and within the Integrated Impact Assessment (IIA) are summarised below.

2.4.4 The Council has considered the options particularly in light of the ‘tests of soundness’ which are set out in the NPPF:

- **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs<sup>21</sup>; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- **Justified** – an appropriate strategy, taking into account the reasonable alternative, and based on proportionate evidence;
- **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

<sup>21</sup> Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework.

2.4.5 The options and alternatives considered are:

1	Air quality should be considered at all stages of a development's life (from initial design and construction through to operation) to ensure that any impact is identified and assessed. All development is required to be ‘Air Quality Neutral’ as a minimum which means not worsening existing poor air quality. With masterplans and large-scale development	<b>Preferred option</b>	The entire Borough is in an Air Quality Management Area (AQMA) as levels of pollution exceed some of the National Air Quality Objectives and World Health Organisation Guideline Values for nitrogen dioxide and particulate matter.  Poor air quality has been associated with many health problems and is a considerable concern for residents.
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	proposals subject to an Environmental Impact Assessment (EIA) considering air quality improvements as part of an air quality positive approach.		
2	Major developments are required to submit a Dust Risk Assessment (DRA) alongside the planning application. Sites determined to have a Medium Risk of dust release or higher are required to have air quality monitoring. Through the DRA dust mitigation measures are assigned to the site according to the risk of dust release.	Preferred option	<p>The entire Borough is in an Air Quality Management Area (AQMA) as levels of pollution exceed some of the National Air Quality Objectives and World Health Organisation Guideline Values for nitrogen dioxide and particulate matter.</p> <p>Poor air quality has been associated with many health problems and is a considerable concern for residents.</p>
3	Developments must ensure that construction vehicles comply with the Low Emission Zone (LEZ) and Ultra Low Emissions Zone (ULEZ) and meet European Emission Standards pursuant to the EC Directive 98/69/EC of Euro 4 for petrol vehicles and Euro 6 for diesel vehicles and Euro VI for all lorries and specialist heavy goods vehicles.	Preferred option	<p>The entire Borough is in an Air Quality Management Area (AQMA) as levels of pollution exceed some of the National Air Quality Objectives and World Health Organisation Guideline Values for Nitrogen Dioxide and Particulate Matter.</p> <p>Poor air quality has been associated with many health problems and is a considerable concern for residents.</p>
4	The Council will continue the approach set out in existing Local Plan Policy CE5.	Not a reasonable alternative	Existing Policy CE5 is not up to date with the requirements of London Plan 2021 Policy SI 1. The Local Plan must be in general conformity with the London Plan.

## 2.5 PUBLICATION POLICY

2.5.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB6: Air Quality is proposed as follows.

### **GB6: Air Quality**

- A. All development is required to meet the air quality neutral benchmarks in accordance with the London Plan and associated guidance.
- B. The following developments are required to undertake and submit an Air Quality Assessment:
  - i. All major development.
  - ii. All development introducing new population or receptors in Air Quality Focus Areas (AQFAs).
  - iii. Development that introduces sensitive receptors (e.g. hospitals, schools, residential dwellings, medical facilities) into the location.
  - iv. Developments that include potentially polluting sources, uses or combustion-based technologies.
  - v. Development that is located within close proximity to known pollution sources (such as main roads or railway lines etc.) and introduces new population or sensitive receptors (such as, but not limited to, any school or medical facility).
  - vi. Development which involves significant demolition (total volume of building to be demolished 20,000m<sup>3</sup> or more) or construction.
- C. Major developments located in AQFAs, masterplans, development briefs and large-scale development proposals (that are subject to Environmental Impact Assessments) are required to deliver an 'Air Quality Positive' approach.
- E. Applicants will be required to install non-combustion energy technology where available. Where this technology is not available combustion plant must be ultra-low NOx emitting.
- F. Emissions of particles and NOx must be minimised and controlled during demolition and construction activities. Dust Risk Assessments (DRA's) must be produced to identify potential impacts and corresponding mitigation measures, including on site monitoring, if required by the Council. The Dust Risk Assessment and corresponding mitigation measures are to be in line with the Mayor of London's SPG 'The Control of Dust and Emissions during Construction and Demolition'. All impacts

must be addressed within any submitted Air Quality Assessment.

- G. All major development and smaller scale development that involves potentially 'dusty works', such as basement excavation, soil removal or import, are required to produce a Dust Risk Assessment to identify potential impacts and appropriate corresponding mitigation measures to protect local sensitive receptors from the impact of dust.
- I. Measures to improve air quality should be implemented on-site, however, where it can be demonstrated that on-site provision is impractical or inappropriate, off-site measures to improve local air quality may be acceptable (such as financial contributions to deliver the actions contained within the Council's Air Quality Action Plan), provided that equivalent air quality benefits can be demonstrated.
- J. Air intake points should be located away from existing and potential pollution sources (e.g. busy roads and combustion flues). Whilst fossil fuel systems are not supported, where they are utilised for back up emergency systems, all combustion flues should terminate at least 1 m above the roof height of the tallest part of the development and ensure maximum dispersion of pollutants by having a sufficient efflux velocity.

## 2.6 PROPOSALS MAP

- 2.6.1 No changes are required to be made to the Proposals Map.

## 2.7 DUTY TO COOPERATE AND STRATEGIC ISSUES

- 2.7.1 The legal obligation of the 'duty to cooperate' requires the Council to "engage constructively, actively and on an ongoing basis" and have "regard to activities" (i.e. strategies, plans, policies) of other bodies in the preparation of Local Plans "so far as relating to a strategic matter". This includes "considering whether to consult on and prepare... agreements or joint approaches"<sup>16</sup>.
- 2.7.2 A "strategic matter" relates to "sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular)... in connection with infrastructure that is strategic"<sup>17</sup>. Strategic matters are further defined in paragraph 24 - 27 of the NPPF<sup>18</sup> and paragraph 009 - 017 of the PPG on maintaining effective cooperation<sup>19</sup>.
- 2.7.3 Figure 2 shows the actions the actions the Council has taken with regard to the duty and the relevant prescribed bodies.

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<sup>16</sup> Section 33A of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism Act 2010.

<sup>17</sup> Section 33A(4) of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism Act 2010.

<sup>18</sup> [MHCLG, National Planning Policy Framework \(NPPF\), July 2021.](#)

<sup>19</sup> [DLUHC, MHCLG, Planning Policy Guidance, October 2021.](#)

2.7.4 The Council has prepared a statement ground which sets out where we are in agreement with neighbouring authorities. This will be amended as and when appropriate.

Strategic issue	Relevant prescribed bodies <sup>20</sup>	Council actions Prescribed bodies' strategies, plans and policies which the Council has had regard to
All	The Council has had regard to all relevant strategies, plans and policies of the relevant prescribed bodies in preparing the policies – as set out in Legislation, Policy and Guidance sections of Policy Formulation Reports (PFRs)	Ongoing
All	New Local Plan Review Issues consultation – see Consultation Schedule	Sept. to Oct. 2020
All	New Local Plan Review Issues and Options consultation – see Consultation Schedule	Jun. to Oct. 2021
All	New Local Plan Review Regulation 18 Draft Policies consultation – see Consultation Schedule	Feb. to Mar. 2021

**Figure 4:** Duty to cooperate strategic issues, prescribed bodies and Council action.

<sup>20</sup> Regulation 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012.

## 3. POLICY GB7: CONSTRUCTION MANAGEMENT

### 3.1 INTRODUCTION

- 3.1.1 Issues associated with the impacts of construction projects, such as noise and vibration, construction traffic and air pollution are a major concern of the Borough's residents. Given the significant issues around construction sites in the Borough, the NLPR will need to include a policy that ensures construction site impacts are addressed.

### 3.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

- 3.2.1 A large body of environmental and safety requirements relevant to construction projects exists, in the form of primary legislation (Acts of Parliament), secondary legislation (Statutory Instruments, including Regulations and Orders) and statutory guidance and Codes of Practice namely, the Control of Pollution act 1974, Environmental Protection Act 1990 and BS 5228-1:2009+A1:2014.

#### REGIONAL POLICY, STRATEGIES AND GUIDANCE

##### LONDON PLAN 2021

- 3.2.2 London Plan 2021<sup>21</sup> Policy G7. The full policy is set out below:

#### **Policy G7: Construction Management**

A. Major and minor developments must minimise demolition and construction impacts by complying with the RBKC Code of Construction Practice

- 3.2.3 It is important to note that circular economy principles introduced under London Plan 2021 Policy D3 and SI 7 promote and encourage the minimisation of waste, including construction, demolition and excavation waste. The circular economy is therefore also relevant to construction site management.

##### RBKC CODE OF CONSTRUCTION PRACTICE, 2019

- 3.2.4 The Council's Code of Construction Practice<sup>22</sup> cover the full range of impacts that construction work has on the local environment and residents. It sets out what the Council expects from developers and those involved in construction activities in the Borough. The expectation is that all construction sites in the Borough meet the requirements or best practice set out in the Code, reducing disruption for residents

##### SUSTAINABLE DESIGN AND CONSTRUCTION SPG, 2014

<sup>21</sup> Mayor of London, [London Plan 2021](#), March 2021.

<sup>22</sup> RBKC, [Code of Construction Practice](#), April 2019.

3.2.5 The Mayor's Sustainable Design and Construction SPG<sup>23</sup> provides guidance on pollution management, including land, air, noise and light pollution.

#### THE CONTROL OF DUST AND EMISSIONS DURING CONSTRUCTION AND DEMOLITION SPG,

3.2.6 The Mayor's control of dust and emissions during construction and demolition SPG<sup>24</sup> provides important guidance on the implementation of policy 7.14 (above).

#### LOCAL

#### EXISTING LOCAL PLAN POLICY (LOCAL PLAN, 2019)

3.2.7 The existing Local Plan noise and vibration policy includes requirements for the management of construction sites. The full policy is set out below:

#### **Policy CE6 Noise and Vibration**

The Council will carefully control the impact of noise and vibration generating sources which affect amenity both during the construction and operational phases of development. The Council will require new noise and vibration sensitive developments to mitigate and protect occupiers against existing sources of noise and vibration.

To deliver this the Council will:

- a. require that noise and vibration sensitive development is located in the most appropriate location and, wherever located, is protected against existing sources of noise and vibration, through careful design, layout and use of materials to ensure adequate insulation from sound and vibration;
- b. resist developments which fail to meet adopted local noise and vibration standards;
- c. resist all applications for noise and vibration generating development and plant that would have an unacceptable noise and vibration impact on surrounding amenity;
- d. require that development protects, respects and enhances the special significance of the Borough's tranquil areas.

<sup>23</sup> Mayor of London, [Sustainable Design and Construction SPG](#), April 2014.

<sup>24</sup> Mayor of London, [The Control of Dust and Emissions during Construction and Demolition SPG](#), July 2014.

## SUMMARY

Date	Document	Organisation
Feb. 2014	<a href="#">BS 5228-1:2009+A1:2014</a>	BSI
Jul. 1974	<a href="#">Control of Pollution Act 1974</a>	Government
Nov. 1990	<a href="#">Environmental Protection Act 1990</a>	Government
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London
Apr. 2014	<a href="#">Sustainable Design and Construction SPG</a>	Mayor of London
Jul. 2014	<a href="#">The Control of Dust and Emissions during Construction and Demolition SPG</a>	Mayor of London
Apr. 2019	<a href="#">Code of Construction Practice</a>	RBKC

## 3.3 EVIDENCE BASE

3.3.1 Complaints about noise and disruption caused by new development in the Borough are common. The Council's Noise and Nuisance Team has received an average of over 2,300 complaints about construction noise annually over the last five years. A dedicated Construction Management Team was established in 2019 to proactively mitigate the multi-faceted impact of construction activity in the Borough by checking for compliance with the Council's Code of Construction Practice and implementing the construction bond scheme. Over 1,000 site visits were made to construction sites by the team in the last financial year.

## 3.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

3.4.1 Alternative options were consulted on as part of the Borough Issues (September 2020) and Issues and Options (July 2021) consultation documents. The Consultation Schedules and Consultation Summaries for these are set out in the Consultation Statement published alongside the Regulation 19 Publication Policies (September 2022) consultation document. Consultation responses have been reviewed and used to inform the development of, and modification to, the draft NLPR Policies.

3.4.2 A breakdown of the public consultations undertaken by RBKC to inform the production of the NLPR is set out in the table below.

Public Consultation	Timeframe
Borough Issues Consultation	29 September – 10 November 2020
Issues and Options Consultation	26 July – 4 October 2021
Regulation 18 Draft Policies	9 February – 23 March 2022

Regulation 19 Publication	October 2022
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**Figure 5:** RBKC NLPR Consultation Timeline.

3.4.3 The options considered through the consultations and within the Integrated Impact Assessment (IIA) are summarised below.

3.4.4 The Council has **considered the options particularly in light of the ‘tests of soundness’ which are set out in the NPPF:**

- Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs<sup>21</sup>; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- Justified – an appropriate strategy, taking into account the reasonable alternative, and based on proportionate evidence;
- Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

<sup>21</sup> Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework.

3.4.5 The options and alternatives considered are:

1	Noise, vibration and air quality should be considered at all stages of a development, to maintain and enhance the Borough’s existing policies on the control of noise and vibration from construction sites.	Preferred option	Our existing policies remain robust and effective. We can update these to reflect more recent changes in national policy and legislation.
2	The Council will continue the approach set out in existing Local Plan Policy CE6.	Not a reasonable alternative	Existing Policy CE6 is not up to date with the requirements of London Plan 2021 Policies D10, D13 and D14. The Local Plan must be in general conformity with the London Plan.



## 3.5 PUBLICATION POLICY

- 3.5.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB7: Construction Management is proposed as follows.

### **GB7: Construction Management**

- A. Relevant developments as specified in the RBKC Code of Construction Practice (the Code) must minimise demolition and construction impacts by complying with the Code.

## 3.6 PROPOSALS MAP

- 3.6.1 No changes are required to be made to the Proposals Map.

## 3.7 DUTY TO COOPERATE AND STRATEGIC ISSUES

- 3.7.1 The legal obligation of the ‘duty to cooperate’ requires the Council to “engage constructively, actively and on an ongoing basis” and have “regard to activities” (i.e. strategies, plans, policies) of other bodies in the preparation of Local Plans “so far as relating to a strategic matter”. This includes “considering whether to consult on and prepare... agreements or joint approaches”<sup>25</sup>.
- 3.7.2 A “strategic matter” relates to “sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular)... in connection with infrastructure that is strategic”<sup>26</sup>. Strategic matters are further defined in paragraph 24 - 27 of the NPPF<sup>27</sup> and paragraph 009 - 017 of the PPG on maintaining effective cooperation<sup>28</sup>.
- 3.7.3 Figure 2 shows the actions the actions the Council has taken with regard to the duty and the relevant prescribed bodies.
- 3.7.4 The Council has prepared a statement ground which sets out where we are in agreement with neighbouring authorities. This will be amended as and when appropriate.

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<sup>25</sup> Section 33A of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism Act 2010.

<sup>26</sup> Section 33A(4) of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism Act 2010.

<sup>27</sup> [MHCLG, National Planning Policy Framework \(NPPF\), July 2021.](#)

<sup>28</sup> [DLUHC, MHCLG, Planning Policy Guidance, October 2021.](#)

Strategic issue	Relevant prescribed bodies <sup>29</sup>	Council actions Prescribed bodies' strategies, plans and policies which the Council has had regard to
All	The Council has had regard to all relevant strategies, plans and policies of the relevant prescribed bodies in preparing the policies – as set out in Legislation, Policy and Guidance sections of Policy Formulation Reports (PFRs)	Ongoing
All	New Local Plan Review Issues consultation – see Consultation Schedule	Sept. to Oct. 2020
All	New Local Plan Review Issues and Options consultation – see Consultation Schedule	Jun. to Oct. 2021
All	New Local Plan Review Regulation 18 Draft Policies consultation – see Consultation Schedule	Feb. to Mar. 2021

**Figure 6:** Duty to cooperate strategic issues, prescribed bodies and Council action.

<sup>29</sup> Regulation 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012.

## 4. POLICY GB8: NOISE AND VIBRATION

### 4.1 INTRODUCTION

- 4.1.1 The dominant sources of ambient noise in the Borough are road and rail traffic, and construction activity. Other significant sources are building services plant, and operational noise from restaurants, cafes and pubs (including from outdoor areas such as beer gardens and pavement seating), nightclubs, shops and other businesses, and the noise generated by the associated deliveries and servicing.
- 4.1.2 The evidence on noise and vibration shows that we need a policy to ensure that new noise sensitive development takes account of existing sources of noise and vibration, and proposed noise and vibration generating development does not impact on existing amenity.

### 4.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL LEGISLATION

- 4.2.1 Legislation requires councils to address the causes and manage the effects of environmental pollution.

#### ENVIRONMENTAL PROTECTION ACT, 1990

- 4.2.2 Section 79 of the Environmental Protection Act (1990)<sup>30</sup> sets out the duty for local authorities to investigate complaints involving “statutory nuisances”. These are defined under the act as matters that are deemed prejudicial to health or a nuisance, including noise emitted from premises or caused by a vehicle, machinery or equipment on the street.

#### ENVIRONMENTAL NOISE (ENGLAND) REGULATIONS (2006) AS AMENDED, 2018

- 4.2.3 Further government regulations include the Environmental Noise (England) Regulations (2006) as amended<sup>31</sup>.

#### HOUSING ACT 2004

- 4.2.4 This provides a system of assessing the condition of residential premises, and for that system to be used in the enforcement of housing standards in relation defective or missing sound insulation.

#### NATIONAL POLICY

#### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 4.2.5 Section 15, paragraph 170 (parts e and f) of the NPPF<sup>32</sup> sets out that planning

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<sup>30</sup> HM Government, [Environmental Protection Act](#), 1990.

<sup>31</sup> DEFRA, [Environmental Noise \(England\) Regulations \(2006\), as amended](#), 2018.

<sup>32</sup> MHCLG, [National Planning Policy Framework](#), July 2021.

policies and decisions should contribute to and enhance the natural and local environment by, “*preventing new and existing development from contributing to... unacceptable levels of soil, air, water or noise pollution... [and] ...remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.*”

- 4.2.6 The NPPF also states that planning policies and decisions should ensure that new development is appropriate for its location considering the likely effects of pollution on health, living conditions and the natural environment and the potential sensitivity of the site to impacts that could arise from the development. In doing so, development proposals should, “*mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life... [and] ...limit the impact of light pollution from artificial light on local amenity...*” (Section 15, paragraph 180, part a).
- 4.2.7 In addition, Section 15, paragraph 182 states that, “*Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.*”. Where existing activity could have significant adverse effect on the development, the onus is on the applicant, as the “agent of change”, to provide appropriate mitigation.

#### PLANNING PRACTICE GUIDANCE (PPG)

- 4.2.8 The Government has also produced Planning Practice Guidance<sup>33</sup> on a range of environmental issues, including noise.

### REGIONAL POLICY, STRATEGIES AND GUIDANCE

#### NOISE POLICY STATEMENT FOR ENGLAND (NPSE)

The primary framework for national noise policy is the Noise Policy Statement for England (NPSE). The NPSE was developed to:

‘Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.’ The policy aims to through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development to:

- avoid significant adverse impacts on health and quality of life;
- mitigate and minimise adverse impacts on health and quality of life; and
- where possible, contribute to the improvement of health and quality of life.

#### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

The concepts stated above from within in the NPSE are incorporated into the

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<sup>33</sup> DLUHC, MHCLG, [Planning Practice Guidance: Noise](#), July 2019.

National Planning Policy Framework (NPPF). Within the NPPF Paragraph 180 relates specifically to noise:

Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions, and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development

### NATIONAL PLANNING PRACTICE GUIDANCE

Practical guidance on how the NPPF should be applied is contained within the National Planning Practice Guidance (NPPG). The guidance includes qualitative examples of how to interpret adverse effect levels in a Planning context.

#### BS4142:2014+A1:2009

The BS4142:2014+A1:2009 methodology involves predicting or measuring the specific sound level from the noise source in question and applying rating penalties for acoustic character features such as tonality, impulsivity or irregularity. This rated sound level is then compared to the existing typical LA90 background sound level.

#### BS8233- 2014

BS 8233 provides guidance for the control of noise in and around buildings. BS 8233 is applicable to the design of new buildings, or refurbished buildings undergoing a change of use, but does not provide guidance on assessing the effects of changes in the external noise levels to occupants of an existing building.

### LONDON PLAN 2021

4.2.9 London Plan 2021<sup>34</sup> Policy D14 – Noise sets out requirements for development to manage noise. The full policy is set out below:

#### **Policy D14 Noise**

- A In order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by:
- 1) avoiding significant adverse noise impacts on health and quality of life.
  - 2) reflecting the Agent of Change principle as set out in Policy D13 Agent of Change.
  - 3) mitigating and minimising the existing and potential adverse impacts of noise on, from, within, as a result of, or in the vicinity of new development without placing unreasonable restrictions on existing noise-generating uses.

<sup>34</sup> Mayor of London, [London Plan 2021](#), March 2021.

- 4) improving and enhancing the acoustic environment and promoting appropriate soundscapes (including Quiet Areas and spaces of relative tranquillity).
  - 5) separating new noise-sensitive development from major noise sources (such as road, rail, air transport and some types of industrial use) through the use of distance, screening, layout, orientation, uses and materials – in preference to sole reliance on sound insulation.
  - 6) where it is not possible to achieve separation of noise-sensitive development and noise sources without undue impact on other sustainable development objectives, then any potential adverse effects should be controlled and mitigated through applying good acoustic design principles.
  - 7) promoting new technologies and improved practices to reduce noise at source, and on the transmission path from source to receiver.
- B Boroughs, and others with relevant responsibilities, should identify and nominate new Quiet Areas and protect existing Quiet Areas in line with the procedure in Defra’s Noise Action Plan for Agglomerations.

4.2.10 Further detail on Policy D14 is set out in paragraphs 3.14.1 – 3.14.6.

4.2.11 The London Plan 2021 also introduced the Agent of Change Principle under Policy D13, which is of particular relevance to noise management. This establishes that the onus of responsibility for mitigating the impacts of existing noise generating uses lies within the developer/introducer of new noise sensitive development. The full Policy is set out below:

#### **Policy D13 Agent of Change**

- A The Agent of Change principle places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. Boroughs should ensure that Development Plans and planning decisions reflect the Agent of Change principle and take account of existing noise and other nuisance-generating uses in a sensitive manner when new development is proposed nearby.
- B Development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them.
- C New noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses.

- D Development proposals should manage noise and other potential nuisances by:
- 1) ensuring good design mitigates and minimises existing and potential nuisances generated by existing uses and activities located in the area
  - 2) exploring mitigation measures early in the design stage, with necessary and appropriate provisions including ongoing and future management of mitigation measures secured through planning obligations
  - 3) separating new noise-sensitive development where possible from existing noise-generating businesses and uses through distance, screening, internal layout, sound-proofing, insulation and other acoustic design measures.
- E Boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed.

4.2.12 Further detail on the application of the agent of change principle is set out in paragraphs 3.13.1 – 3.13.11.

## **LOCAL**

### **EXISTING LOCAL PLAN POLICY (LOCAL PLAN, 2019)**

4.2.13 The existing Local Plan noise and vibration policy is set out in full below:

#### **Policy CE6 Noise and Vibration**

The Council will carefully control the impact of noise and vibration generating sources which affect amenity both during the construction and operational phases of development. The Council will require new noise and vibration sensitive developments to mitigate and protect occupiers against existing sources of noise and vibration.

To deliver this the Council will:

- a. require that noise and vibration sensitive development is located in the most appropriate location and, wherever located, is protected against existing sources of noise and vibration, through careful design, layout and use of materials to ensure adequate insulation from sound and vibration;
- b. resist developments which fail to meet adopted local noise and vibration standards;
- c. resist all applications for noise and vibration generating development and plant that would have an unacceptable noise and vibration impact on surrounding amenity;

- d. require that development protects, respects and enhances the special significance of the Borough's tranquil areas.

## RBKC NOISE SPD

- 4.2.14 The Council's Noise SPD<sup>35</sup> sets out the planning advice for controlling noise from new development and protecting noise sensitive new development from existing noise.

### SUMMARY

Date	Document	Organisation
1990	<a href="#">Environmental Protection Act</a>	HM Government
2018	<a href="#">Environmental Noise (England) Regulations (2006), as amended</a>	DEFRA
Jul. 2021	<a href="#">National Planning Policy Framework</a>	MHCLG
Jul. 2019	<a href="#">Planning Practice Guidance: Noise</a>	DLUHC, MHCLG
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London
May 2009	<a href="#">Noise SPD</a>	RBKC

## 4.3 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

- 4.3.1 As set out in section 2.4 above.

- 4.3.2 The options and alternatives considered are:

1	To maintain and enhance the Borough's existing policies on the control of noise and vibration from building services plant and equipment.	Preferred option	Our existing policies remain robust and effective. We can update these to reflect more recent changes in national policy and legislation.
2	To include requirements to consider suitable ventilation and thermal comfort on new residential developments when designing schemes of sound insulation.	Preferred option	This mitigates noise but also assists with reducing energy demand as outlined earlier.

<sup>35</sup> RBKC, [Noise SPD](#), May 2009.

3	To develop a specific policy for controlling noise and vibration from new gyms and fitness centres and ensure the protection of adjoining residents.	Reasonable alternative	Gyms/fitness centres have grown in popularity and generate unique patterns of noise and vibration which can be very challenging to control retrospectively. It is important that noise and vibration issues are considered robustly at the design stage.
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## 4.4 PUBLICATION POLICY

4.4.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB8: Noise and Vibration is proposed as follows.

### **GB8: Noise and Vibration**

- A. The Council will require a Noise and Vibration Impact Assessment to assess the impact of noise and vibration generating sources which affect amenity during the construction and operational phases of development.
- B. New noise and vibration sensitive developments are required to mitigate and protect occupiers against existing sources of noise and vibration in accordance with the Agent of Change Principle.
- C. Noise and vibration sensitive development must be located in the most appropriate location and, wherever located, must be protected against existing sources of noise and vibration, through careful design, layout and use of materials to ensure adequate insulation from sound and vibration. This must be achieved while also providing suitable ventilation and thermal comfort for future occupants
- D. Developments which fail to meet adopted local noise and vibration standards will be resisted.
- E. Applications for noise and vibration generating development and plant (including air conditioning units, ground- and air-source heat pumps), that would have an unacceptable noise and vibration impact on surrounding amenity, will be resisted.

## 4.5 PROPOSALS MAP

4.5.1 No changes are required to be made to the Proposals Map.

## 4.6 DUTY TO COOPERATE AND STRATEGIC ISSUES

4.6.1 As set out in section 2.7 above.

## 5. POLICY GB9: ODOUR

### 5.1 INTRODUCTION

- 5.1.1 Certain uses (such as restaurants, cafes and takeaways) can create odours and fumes which can cause nuisance and harm the amenity of neighbouring residents and businesses. It is important that uses and/or activities that are likely to create odour ensure that the issue is addressed early in the designing and planning stage. The NLPR will introduce a new policy to ensure issues relating to odour generating uses are addressed as far as possible through the planning regime.

### 5.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL LEGISLATION

- 5.2.1 Legislation requires councils to address the causes and manage the effects of environmental pollution, this includes odours.

#### ENVIRONMENTAL PROTECTION ACT, 1990

- 5.2.2 Section 79 of the Environmental Protection Act (1990)<sup>36</sup> sets out the duty for local authorities to investigate complaints involving “statutory nuisances”. These are defined under the act as matters that are deemed prejudicial to health or a nuisance, including dust, steam, smell or other effluvia arising on industrial, trade or business premises.

#### NATIONAL POLICY

#### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 5.2.3 As outlined in section 4.2 above, the NPPF<sup>37</sup> states that planning policies and decisions should ensure that new development is appropriate for its location considering the likely effects of pollution on health, living conditions and the natural environment and the potential sensitivity of the site to impacts that could arise from the development.
- 5.2.4 In addition, Section 15, paragraph 182 states that, “*Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.*”. Where existing activity could have significant adverse effect on the development, the onus is on the applicant, as the “agent of change”, to provide appropriate mitigation.

#### INDUSTRY GUIDANCE

#### INSTITUTE OF AIR QUALITY MANAGEMENT GUIDANCE ON THE ASSESSMENT OF ODOUR FOR PLANNING, 2018

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<sup>36</sup> HM Government, [Environmental Protection Act](#), 1990.

<sup>37</sup> MHCLG, [National Planning Policy Framework](#), July 2021.

- 5.2.5 The IAQM guidance document on the assessment of odour for planning<sup>38</sup> sets out detailed guidance on assessing odour impacts for planning purposes.

#### CONTROL OF ODOUR AND NOISE FROM COMMERCIAL KITCHEN EXHAUST SYSTEMS (EMAQ GUIDANCE)

- 5.2.6 The EMAQ guide aims to be the authoritative document for the provision of technical guidance on various aspects of pollution management by maintaining, enhancing and promoting the highest standards of working practices in the field and for the professional development of those who undertake this work.

#### REGIONAL POLICY, STRATEGIES AND GUIDANCE

##### LONDON PLAN 2021

- 5.2.7 As set out in section 4.2 above, the London Plan 2021 introduced the Agent of Change Principle under Policy D13, which is of relevance to odour producing and sensitive uses. This establishes that the onus of responsibility for mitigating the impacts of existing noise generating uses lies within the developer/introducer of new noise sensitive development. The full Policy is set out below:

##### **Policy D13 Agent of Change**

- A The Agent of Change principle places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. Boroughs should ensure that Development Plans and planning decisions reflect the Agent of Change principle and take account of existing noise and other nuisance-generating uses in a sensitive manner when new development is proposed nearby.
- B Development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them.
- C New noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses.
- D Development proposals should manage noise and other potential nuisances by:
  - 1) ensuring good design mitigates and minimises existing and potential nuisances generated by existing uses and activities located in the area
  - 2) exploring mitigation measures early in the design stage, with necessary and appropriate provisions including ongoing and future management of mitigation measures secured through planning obligations

<sup>38</sup> IAQM, [Institute of Air Quality Management Guidance on the Assessment of Odour for Planning](#), July 2018.

- 3) separating new noise-sensitive development where possible from existing noise-generating businesses and uses through distance, screening, internal layout, sound-proofing, insulation and other acoustic design measures.
- E Boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed.

5.2.8 Further detail on the application of the agent of change principle is set out in paragraphs 3.13.1 – 3.13.11.

**LOCAL**

**EXISTING LOCAL PLAN POLICY (LOCAL PLAN, 2019)**

5.2.9 The existing Local Plan does not include a policy on the control of odour producing development.

**SUMMARY**

Date	Document	Organisation
1990	<a href="#">Environmental Protection Act</a>	HM Government
Jul. 2018	<a href="#">Institute of Air Quality Management Guidance on the Assessment of Odour for Planning</a>	IAQM
Jul. 2021	<a href="#">National Planning Policy Framework</a>	MHCLG
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London

**5.3 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)**

5.3.1 As set out in section 2.4 above.

5.3.2 The options and alternatives considered are:

1	To develop a specific policy for controlling smells/odours from new commercial kitchen ventilation and extraction systems with a presumption that, for most situations/uses, a high level discharge will be required in order to	<b>Preferred option</b>	We do not currently have a policy on odour control. This will be addressed in the new Noise and Nuisance SPD
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	minimise the impact on residents.		
2	No Policy	Not a reasonable option	The issue of bad odours produced by certain uses was raised in the representations submitted to the Council during the Issues and Options and Reg. 18 Draft Policies consultations.

## 5.4 PUBLICATION POLICY

5.4.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB9: Odour is proposed as follows.

### **GB9: Odour**

- A. Odour generating development must address the adverse impact of odour through the incorporation of appropriate mitigation measures in accordance with the Agent of Change principle, adopting a precautionary approach.
- B. Where significant sources of cooking odours are proposed, kitchen extract systems should terminate above the eaves height of the tallest part of the development to ensure the most effective dispersion of smells and fumes.

## 5.5 PROPOSALS MAP

5.5.1 No changes are required to be made to the Proposals Map.

## 5.6 DUTY TO COOPERATE AND STRATEGIC ISSUES

5.6.1 As set out in section 2.7 above.

## 6. POLICY GB10: LIGHT POLLUTION

### 6.1 INTRODUCTION

- 6.1.1 Lighting helps to keep the public realm accessible, legible and safe after dark. Artificial lighting can also help to extend the use of sports facilities for communities. However, light spill and glare can have a negative impact on the amenity of residents and can also be a significant source of wasted energy. It is also important to retain subtly lit and dark spaces to protect biodiversity from light spill. Developments backing on to public or communal gardens for example need to be mindful of light pollution on their setting. The NLPR will introduce a new policy to ensure issues relating to light pollution are addressed as far as possible through the planning regime.

### 6.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL LEGISLATION

- 6.2.1 Legislation requires councils to address the causes and manage the effects of environmental pollution, this includes light pollution.

#### ENVIRONMENTAL PROTECTION ACT, 1990

- 6.2.2 Section 79 of the Environmental Protection Act (1990)<sup>39</sup> sets out the duty for local authorities to investigate complaints involving “statutory nuisances”. These are defined under the act as matters that are deemed prejudicial to health or a nuisance, including artificial light emitted from premises.

#### NATIONAL POLICY

#### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 6.2.3 As outlined in section 4.2 above, the NPPF<sup>40</sup> states that planning policies and decisions should ensure that new development is appropriate for its location considering the likely effects of pollution on health, living conditions and the natural environment and the potential sensitivity of the site to impacts that could arise from the development. In doing so, development proposals should, “*mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life... [and]... limit the impact of light pollution from artificial light on local amenity...*” (Section 15, paragraph 180, part a).
- 6.2.4 In addition, Section 15, paragraph 182 states that, “*Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.*”. Where existing activity could have significant adverse effect on the development, the onus is on the applicant, as the “agent of change”, to provide appropriate mitigation.

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<sup>39</sup> HM Government, [Environmental Protection Act](#), 1990.

<sup>40</sup> MHCLG, [National Planning Policy Framework](#), July 2021.

## INDUSTRY GUIDANCE

### CHARTERED INSTITUTION OF BUILDING SERVICES ENGINEERS (CIBSE) LIGHTING GUIDE 06: THE EXTERIOR ENVIRONMENT, 2016<sup>41</sup>

- 6.2.5 A CIBSE guidance document providing a holistic approach to the design of the exterior environment.

### THE INSTITUTE OF LIGHTING ENGINEERS (ILE) GUIDANCE NOTES FOR THE REDUCTION OF OBTRUSIVE LIGHT<sup>42</sup>

- 6.2.6 A guidance document which details how to reduction light pollution.

## REGIONAL POLICY, STRATEGIES AND GUIDANCE

### LONDON PLAN 2021

- 6.2.7 As set out ins section 4.2 above, the London Plan 2021 introduced the Agent of Change Principle under Policy D13, which is also of relevance to light pollution. This establishes that the onus of responsibility for mitigating the impacts of existing noise generating uses lies within the developer/introducer of new noise sensitive development. The full Policy is set out below:

#### **Policy D13 Agent of Change**

- A The Agent of Change principle places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. Boroughs should ensure that Development Plans and planning decisions reflect the Agent of Change principle and take account of existing noise and other nuisance-generating uses in a sensitive manner when new development is proposed nearby.
- B Development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them.
- C New noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses.
- D Development proposals should manage noise and other potential nuisances by:
  - 1) ensuring good design mitigates and minimises existing and potential nuisances generated by existing uses and activities located in the area

<sup>41</sup> CIBSE, [Chartered Institution of Building Services Engineers \(CIBSE\) Lighting Guide 06: The Exterior Environment](#), May 2016.

<sup>42</sup> ILE, [The Institute of Lighting Engineers \(ILE\) Guidance Notes for the Reduction of Obtrusive Light](#), 2005.

- 2) exploring mitigation measures early in the design stage, with necessary and appropriate provisions including ongoing and future management of mitigation measures secured through planning obligations
  - 3) separating new noise-sensitive development where possible from existing noise-generating businesses and uses through distance, screening, internal layout, sound-proofing, insulation and other acoustic design measures.
- E Boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed.

6.2.8 Further detail on the application of the agent of change principle is set out in paragraphs 3.13.1 – 3.13.11.

## LOCAL

### EXISTING LOCAL PLAN POLICY (LOCAL PLAN, 2019)

6.2.9 The existing Local Plan does not include a specific policy on the control of light pollution.

## SUMMARY

Date	Document	Organisation
1990	<a href="#">Environmental Protection Act</a>	HM Government
May 2016	<a href="#">Chartered Institution of Building Services Engineers (CIBSE) Lighting Guide 06: The Exterior Environment</a>	CIBSE
2005	<a href="#">The Institute of Lighting Engineers (ILE) Guidance Notes for the Reduction of Obtrusive Light</a>	ILE
Jul. 2021	<a href="#">National Planning Policy Framework</a>	MHCLG
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London

## 6.3 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

6.3.1 As set out in section 2.4 above.

6.3.2 This policy was drafted for the Regulation 18 Draft Policies consultation as a result of and informed by responses received during the previous Issues and Options consultation. The options available were to introduce a policy on light pollution or to not bring forward a policy on light pollution.

1	The Council will introduce a policy on the control of light pollution in development.	Preferred option	The negative impact of light pollution of local residential amenity and wildlife was raised in a number of representations received on the Issues and Options consultation.
2	The Council will not introduce a policy on the control of light pollution in development.	Not a reasonable alternative	Not taking the opportunity to introduce a policy on the control of light pollution would not be positively prepared as it is an issue raised in consultation with the public.

## 6.4 PUBLICATION POLICY

- 6.4.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB10: Light Pollution is proposed as follows.

### GB10: Light Pollution

- A. Development must be designed to minimise the impact of glare and light spill on local residential amenity including neighbouring properties and communal gardens, biodiversity, highway and waterway users.

## 6.5 PROPOSALS MAP

- 6.5.1 No changes are required to be made to the Proposals Map.

## 6.6 DUTY TO COOPERATE AND STRATEGIC ISSUES

- 6.6.1 As set out in section 2.7 above.

## 7. POLICY GB20: CONTAMINATED LAND

### 7.1 INTRODUCTION

- 7.1.1 Land contamination, in most cases, is likely to arise from a previous use of the site, or an adjacent site, that had an industrial activity on it at one time or another. For land to be classed as contaminated land, there needs to be a source of pollution, a receptor- something or someone that can be affected by the pollutant (for example people, water courses or buildings) and a pathway i.e. means of that pollutant reaching that receptor.
- 7.1.2 Short and long- term exposure to land contamination can have a significant impact on health. Short-term exposure (over hours or days) to high levels of land contamination can have a range of effects. For example, exposure to high concentrations of lead can result in lead poisoning and in extreme circumstances, death. Such occurrences are rare and are usually connected with children exposed to lead in the home, such as lead paints, rather than lead in the soil.
- 7.1.3 Long-term exposure to land contamination (over years or lifetimes) can result in chronic illnesses and reduce life expectancy. For example, exposure to radon gas in buildings is estimated to result in the death of about 1100 people each year across the UK and long-term exposure to high lead concentrations in the soil can contribute to hypertension, leading to an increased risk of heart attacks.
- 7.1.4 Land contamination has the greatest potential to affect the most vulnerable in society including children and those with health conditions. We know that there is an increased prevalence of health conditions amongst people living in deprived areas and there is also often a strong correlation with inequalities because areas associated with heavier industry are also often the less affluent areas.
- 7.1.5 The potential for land to be contaminated is a material consideration for the purposes of Town and Country Planning and it places the responsibility on owners and developers to establish the extent of any potentially harmful materials on their sites. It is the Local Authority's duty (as regulators) to ensure that owners and developers carry out the appropriate investigations and formulate proposals for dealing with any contamination in a responsible and effective manner to make sure that land is, or will be, made suitable for any proposed use. The NLPR sets out the policy and requirements on how contaminated land must be addressed through the planning regime.

### 7.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL LEGISLATION

- 7.2.1 Legislation requires councils to address the causes and manage the effects of environmental pollution.

## ENVIRONMENTAL PROTECTION ACT 1990 AND ENVIRONMENTAL DAMAGE (PREVENTION AND REMEDIATION) REGULATIONS 2009

- 7.2.2 Most land affected by contamination is addressed through the Planning regime in order to ensure that developments are not contaminated land, as defined by Part 2A of the Environmental Protection Act 1990 (Part 2A), which with the Contaminated Land Statutory Guidance dated 2012 establishes the legal framework for dealing with contaminated land in England . It is a requirement of the Statutory Guidance that routes, such as planning, must be used instead of Part 2A to address land contamination where they are available.
- 7.2.3 The overarching objectives of the Part 2A regime are:
- (a) To identify and remove unacceptable risks to human health and the environment.
  - (b) To seek to ensure that contaminated land is made suitable for its current use.
  - (c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.
- 7.2.3 The Statutory Guidance states that Part 2A should only be used where no appropriate alternative solution exists. For example, land contamination can be addressed when land is developed (or redeveloped) under the planning system, during the building control process, or where action is taken independently by landowners. Other legislative regimes may also provide a means of dealing with land contamination issues, such as building regulations; the regimes for waste, water, and environmental permitting; and the Environmental Damage (Prevention and Remediation) Regulations 2009.
- 7.2.4 The Environmental Damage Regulations 2009, address some instances of Environmental Damage (similar to the definition of contaminated land) which occurred on or after 1 March 2009. Similar to Part 2A, unless there is an imminent threat or actual environmental damage occurring, normally environmental damage should be dealt with through the Planning regime.

## NATIONAL POLICY

### NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 7.2.5 Section 15, paragraph 174 (parts e and f) of the NPPF<sup>43</sup> sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, “*preventing new and existing development from contributing to... unacceptable levels of soil, air, water or noise pollution... [and] ...remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.*”
- 7.2.6 Sections 183 and 184 ‘Ground conditions and pollution’ state that *Planning policies and decisions should ensure that: a) a site is suitable for its proposed use taking*

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<sup>43</sup> MHCLG, [National Planning Policy Framework](#), July 2021.

*account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation); b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.*

- 7.2.7 *Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.*

## PLANNING PRACTICE GUIDANCE (PPG)

- 7.2.8 The Government has also produced Planning Practice Guidance<sup>44</sup> on a range of environmental issues, including land contamination. This sets out how to address land contamination through the planning process and refers the Environment Agency's Land Contamination Risk Management guidance, which in turn references a wide variety of other best practice guidance from the government, Environment Agency and other organisations such as British Standards Institute, CIRIA and BRE. This guidance covers a wider range of issues covering every aspect of contaminated land and how to investigate, remediate and verify contaminated land,

## REGIONAL POLICY, STRATEGIES AND GUIDANCE

### LONDON PLAN 2021

- 7.2.9 London Plan 2021<sup>45</sup> Policy SD1 Opportunity Areas refers to contaminated land in section A(1)(e) and B11. The full policy is set out below:

#### **Policy SD1**

- A To ensure that Opportunity Areas fully realise their growth and regeneration potential, the Mayor will:
- 1) provide support and leadership for the collaborative preparation and implementation of planning frameworks that:
    - a) set out a clear strategy for accommodating growth
    - b) assist in delivering specific infrastructure requirements that unlock capacity for new homes and jobs
    - c) support regeneration
    - d) are prepared in an open and timely manner
    - e) encourage the strategic remediation of contaminated land
  - 2) bring together the range of investment and intervention needed to deliver the vision and ambition for the area

<sup>44</sup> DLUHC, MHCLG, [Planning Practice Guidance: Land Affected by Contamination](#), July 2019.

<sup>45</sup> Mayor of London, [London Plan 2021](#), March 2021.

- 3) support and implement adopted planning frameworks, in order to give them appropriate material weight in planning decisions
- 4) ensure that his agencies (including Transport for London) work together and with others to promote and champion Opportunity Areas, and identify those that require public investment and intervention to achieve their growth potential
- 5) ensure that Opportunity Areas maximise the delivery of affordable housing and create mixed and inclusive communities
- 6) ensure that Opportunity Areas contribute to regeneration objectives by tackling spatial inequalities and environmental, economic and social barriers that affect the lives of people in the area, especially in Local and Strategic Areas for Regeneration
- 7) monitor progress in delivering homes, jobs and infrastructure, taking action where necessary to overcome any barriers to delivery
- 8) ensure that development facilitates ambitious transport mode share targets.

**B** Boroughs, through Development Plans and decisions, should:

- 1) clearly set out how they will encourage and deliver the growth potential of Opportunity Areas
- 2) support development which creates employment opportunities and housing choice for Londoners
- 3) plan for and provide the necessary social and other infrastructure to sustain growth and create mixed and inclusive communities, working with infrastructure providers where necessary
- 4) recognise the role of heritage in place-making
- 5) establish the capacity for growth in Opportunity Areas, taking account of the indicative capacity for homes and jobs in Table 2.1
- 6) support and sustain Strategic Industrial Locations (SIL) and other industrial capacity by considering opportunities to intensify and make more efficient use of land in SIL, in accordance with Policy E4 Land for industry, logistics and services to support London's economic function, Policy E5 Strategic Industrial Locations (SIL), Policy E6 Locally Significant Industrial Sites and Policy E7 Industrial intensification, co-location and substitution, co-location and substitution
- 7) include ambitious transport mode share targets

- 8) support wider regeneration and ensure that development proposals integrate into the surrounding areas, in accordance with Policy SD10 Strategic and local regeneration plan-led approach to providing significant quantities of additional jobs and homes, improvements to transport and other infrastructure, and better access to local services. The Mayor recognises that there are different models for taking these forward depending on the circumstances and development needs of each Opportunity Area, and for translating these frameworks into policy in Development Plan Documents and Supplementary Planning Documents. Whatever model is used, frameworks must be prepared in a collaborative way with local communities and stakeholders.
- 9) ensure planning frameworks are informed by public and stakeholder engagement and collaboration at an early stage and throughout their development
- 10) work with the Mayor, local communities and other stakeholders to review appropriate locations and identify new Opportunity Areas. These should be distinct and significant locations that have capacity for at least 5,000 new jobs and/or 2,500 new homes
- 11) take appropriate measures to deal with contamination that may exist.

## LOCAL

### EXISTING LOCAL PLAN POLICY (LOCAL PLAN, 2019)

7.2.10 The existing Local Plan contaminated land policy is set out in full below:

#### **Policy CE7: Contaminated Land**

A The Council will consider the potential risks of contaminated land and will ensure that it is adequately mitigated before development proceeds.

To deliver this the Council will:

- a. require the reports and investigations shown in criteria (b) to (e) to be carried out by a competent person;
- b. require a desk top study and preliminary risk assessment;
- c. require a site investigation and detailed risk assessment in line with current best practice guidance;
- d. require a remediation strategy that sets out how any identified risks from the reports above are going to be addressed;
- e. require a validation report once remediation has taken place.

## CONTAMINATED LAND INSPECTION STRATEGY (2004)

- 7.2.11 The Council's contaminated land inspection strategy<sup>46</sup> identifies how the Council will address contaminated land in line with Part 2A of the Environmental Act 1990 and sets out local objectives. The strategy acknowledges that most land contamination will be addressed through the Planning regime. The strategy is now outdated and is to be updated by the end of 2023.

### SUMMARY

Date	Document	Organisation
Apr. 2012	<a href="https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101201/20120427-environmental-protection-act-1990-part-2a-contaminated-land-statutory-guidance.pdf">Environmental Protection Act 1990: Part 2A - Contaminated Land Statutory Guidance (publishing.service.gov.uk)</a>	Defra
Jul. 2021	<a href="#">National Planning Policy Framework</a>	MHCLG
Jul. 2019	<a href="#">Planning Practice Guidance: Land Affected by Contamination</a>	DLUHC and MHCLG
Mar. 2021	<a href="#">London Plan 2021</a>	Mayor of London
2002	<a href="#">RBKC Contaminated Land Inspection Strategy</a>	RBKC

## 7.3 EVIDENCE BASE

- 7.3.1 Until the end of the 18th century, the area now covered by Kensington and Chelsea was primarily a rural location. Meadows and pastures were located in the north, and market gardening and orchards were found in the south. The river Thames was used as a means of transporting the perishable foods, grown in the Borough, to the City of London.
- 7.3.2 As London dramatically expanded and industrialised during the 19th century, the demand for residential property increased. In turn this resulted in the creation of sand and gravel extraction, and brick making activities in the Borough. Initially the Paddington Branch of the Grand Union Canal was opened in 1814 and in the 1820s Counter's Creek was canalised. Soon after the rapid conveyance available on the spreading railway network, reduced the need to grow produce locally in Kensington and Chelsea and the open fields became more valuable as residential development land.
- 7.3.3 Railway development also spread through the growing metropolis to serve the demands of the increasing population. The West London Railway built a line along the Borough's western boundaries and the Great Western Railway developed suburban services based on the mainline across the north of the Borough into Paddington. The District and Metropolitan lines were built between the 1860s and 1880s. The railways provided industrial opportunities, and as early as 1845, a gasworks was established beside the Great Western Railway. Large quantities of coal for domestic heating began to be imported and stockpiled in yards adjacent to stations.

<sup>46</sup> RBKC, [Contaminated Land Strategy](#), November 2002.

- 7.3.4 The twentieth century saw a continuation of building, through infill and redevelopment. This resulted in Kensington Gardens, and Holland Park being the only substantial open spaces left in the Borough, with private garden squares for groups of individual properties.

### **Sources of contamination**

#### **Historical land uses**

- 7.3.5 Unlike some other parts of London, the Royal Borough does not have extensive areas of potentially heavily polluted ex-industrial land, although there are significant areas on the northern, western and south-western margins associated with the production of gas, the railways and river wharfage, which have supported past industrial activity, such as manufacturing and services. There are also various typical smaller to medium sized sites distributed throughout the Borough, for example old breaker's yards, timber preservation works, former petrol filling stations and laboratories, where it is reasonable to assume that contamination may have occurred. There is also a single landfill site identified in the south of the Borough, straddling the Borough boundary with Hammersmith and Fulham, which is associated with the infilling of a canalised section of the Counter's Creek River.

#### **Made ground and normal background concentrations of soil**

- 7.3.6 Most of the Borough is covered by Made Ground, which is typically a mixture of soil and demolition, household and industrial sourced waste products. Residential gardens may also be contaminated by lead paints, lead flashing, asbestos containing materials, the spreading of pot ash and blitz bombing during the Second World War. Burning by residential and commercial properties over hundreds of years and emissions from transport have also contributed to compounds such as lead and polycyclic aromatic hydrocarbons (PAHs) being found across urban areas. Occasionally the presence of contaminants in the soil will be at levels that could harm a person regularly coming in to contact with the soil.
- 7.3.7 The British Geological Survey (BGS) has produced several datasets on background soil concentrations, including the Geochemical Baseline Survey of the Environment (G-BASE) and London Earth soil chemistry surveys (LES) for arsenic, cadmium, chromium, copper, calcium, iron, lead, nickel, selenium and zinc. Maps suggest that broadly these contaminants meet conservative government screening criteria across the Borough, although a few areas are shown where cadmium, lead and nickel potentially exceed generic assessment criteria. The maps must be used with caution as they do not always reflect local contamination levels.

#### **Sources of ground gas**

- 7.3.8 Like other urban areas, most of the Borough is covered by Made Ground and in some cases it may be deep (e.g. 2m-10m). Superficial deposits, such as River Terrace Deposits, are often also associated with organic matter. Normally made ground and superficial deposits within the Borough will have a lower gasing potential.
- 7.3.9 Landfilling, such as infilled section of the Counter's Creek River and deeper areas

of made ground are more likely to be associated with higher levels of ground gas. Historical contamination from chemical/fuel storage and industry may also have resulted in soils and groundwater being contaminated by hydrocarbons. In these instances, land and groundwater may contain contaminants with the potential to generate or be associated with ground gases and vapours, for example methane, carbon dioxide and hydrocarbon vapours.

- 7.3.10 Radon is also ubiquitous in the environment and while Kensington and Chelsea is within a 'non-affected area' for radon gas, there is still the potential for radon to exceed target levels (100 Bq m<sup>3</sup>) and action levels for residential property (200 Bq m<sup>3</sup>) and/or commercial property (300 Bq m<sup>3</sup>), particularly within basements.
- 7.3.11 Other less common toxic gases may also need to be considered depending on the site setting and history. These include carbon monoxide, ammonia, hydrogen sulphide and hydrogen cyanide.

**SUMMARY**

Date	Document	Organisation
2002	<a href="#">RBKC Contaminated Land Inspection Strategy</a>	RBKC

**7.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)**

- 7.4.1 As set out in section 2.4 above.
- 7.4.2 This policy was drafted for the Regulation 18 Draft Policies consultation. The options available were to keep the existing policy approach or draft an updated policy.

1	Update policy	Preferred option	The NLPR was an opportunity to update the Council's policy on contaminated land to bring it up to date with the latest legislation and guidance.
2	Keep existing policy	Reasonable alternative	The Council could have saved the existing policy in the adopted Local Plan. However, the NLPR was an opportunity to update policies to reflect the latest legislation and guidance.

**7.5 PUBLICATION POLICY**

- 7.5.1 Following consideration of the options presented above, consultation and reasonable alternatives, Policy GB20: Contaminated Land is proposed as follows.

## **GB20: Contaminated Land**

- A. A preliminary risk assessment of contaminated land is required at the planning application stage for all major development and the following smaller scale sensitive development.
  - i. Conversions and refurbishments (excluding smaller occupier led refurbishments) that increase, maintain or reduce the number of units.
  - ii. Basement developments.
  - iii. Increase in or reduction of ground levels or extensions of garden, yard, or open space areas.
  - iv. Extensions on or within 20m of a potentially significant source of ground gases or vapours.
  - v. Any development that may be impacted by land contamination or pose risks off-site.
- B. Where a satisfactory preliminary risk assessment identifies it is necessary, an intrusive site investigation and quantitative risk assessment are also required, in some cases at the planning application stage.
- C. Where the conclusions of a satisfactory intrusive site investigation and quantitative risk assessment identifies it is necessary, an options appraisal and remediation strategy will be required, in all cases to be followed by a verification report, in some cases at the planning application stage.
- D. Where less sensitive development may be impacted by land contamination or pose risks off-site, they should be addressed as set out in criteria A - C.
- E. The requirements of criteria A – D must be undertaken in line with best practice guidance and by a competent environmental specialist as defined in the Environment Agency Land Contamination Risk Management guidance, NPPF and PPG.
- F. Where possible the excavation and disposal of ground materials offsite and the importation of clean soils should be minimised using quantitative risk assessment and sustainable onsite remedial techniques.
- G. Development that proposes potentially contaminating or polluting activities, or is located in close proximity to hazardous installations or uses, must incorporate mitigation of harmful effects to people and the environment, and where it is considered necessary, provide monitoring of any impact.
- H. On Opportunity Area sites and other large sites within the Borough,

developers should work collaboratively to consider the feasibility of a strategic approach to land remediation where feasible.

### **Water Pollution**

- I. New development must not pose an unacceptable risk to water quality. Development which has the potential to adversely impact water quality, in the opinion of the Council or the Environment Agency, will be required to provide appropriate monitoring and mitigation to alleviate the risk.
- J. Source Protection Zones (SPZs) should be taken into account when considering the environmental impact of a development.

## **7.6 PROPOSALS MAP**

7.6.1 No changes are required to be made to the Proposals Map.

## **7.7 DUTY TO COOPERATE AND STRATEGIC ISSUES**

7.7.1 As set out in section 2.7 above.



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

[www.rbkc.gov.uk/planningpolicy](http://www.rbkc.gov.uk/planningpolicy)