

CED010

# Local Plan Partial Review – Examination Matters, Issues and Questions Hearing Statement

Matter 1: Legal Compliance and Duty to Co-operate  
Issue 1a: Duty to Co-operate

February 2018



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA



# Matter 1 - Legal Compliance and Duty to Co-operate

## Issue 1a: Duty to Co-operate

1. **In preparing the RBKCLPPR, has the Council complied with the requirements of the Duty to Co-operate<sup>1</sup> with particular reference to:**
  - a. **The relevant strategic matters to which the duty applies as defined by S33A(4) of the Planning and Compulsory Purchase Act?**
    - 1.1 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”
    - 1.2 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*”. Strategic matters are further defined in paragraph 156 of the NPPF and paragraph 013 of the NPPG on the duty to cooperate.
    - 1.3 Policy Formulation Reports which cover strategic matters and present details of the actions taken to comply with the duty to co-operate are set out below:
      - Vision and strategic objectives (SUB15)
      - Places and Site Allocations (SUB18 and SUB18.1)
      - Infrastructure and planning contributions (SUB29)
      - Fostering Vitality which includes retail, offices and other business uses, hotels, arts and cultural issues and rail infrastructure (SUB31)
      - Increasing housing supply (SUB43 and 43.1)
      - Affordable housing (SUB44)
      - Housing size mix and standards (SUB45)
      - Specific housing needs (SUB46)
      - Gypsy and Traveller accommodation (SUB48)
      - Flooding and drainage (SUB61)
      - Waste (SUB62)

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<sup>1</sup> Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended)

**b. The relevant local authorities and prescribed bodies as defined by S33A(1) in terms of co-operating on these strategic matters?**

1.4 The Council has consulted with the prescribed duty to cooperate bodies<sup>2</sup> as part of its ongoing drafting of the Local Plan. These are set out in the submitted Consultation Statement (SUB7). It includes all the London Boroughs, the Old Oak and Park Royal Development Corporation (OPDC) and following bodies:

- Environment Agency
- Historic England
- Natural England
- The Mayor of London
- Civil Aviation Authority
- NHS West London Clinical Commissioning Group
- CWHHE Collaborate (the working partnership between Central London, West London, Hammersmith and Fulham, Hounslow and Ealing Clinical Commissioning Groups)
- NHS England
- Transport for London
- Highways England
- Marine Management Organisation
- The London Economic Action Partnership (London's Local Enterprise Partnership)
- London Wildlife Trust

1.5 From 1 April 2012, the GLA took responsibility for programmes, functions and funding from the Homes and Community Agency London region. As such the Council has corresponded with the GLA rather than the HCA in this regard.

**c. Whether the Council has engaged constructively, actively and on an ongoing basis with these organisations on the relevant strategic matters?**

1.6 The respective Policy Formulation Reports for each policy/topic set out how the ongoing engagement with the prescribed duty to cooperate bodies has been undertaken at each stage of the Local Plan's evolution for each of these strategic matters. The topics which each PFR considers are set out in para 1.3 above.

1.7 In summary, the engagement has included (but is not restricted to):

- The Council has had regard to all the relevant strategies, plans and policies of the relevant prescribed bodies. This includes the London's Local Enterprise Partnership (LEAP) and the relevant Local Nature Partnership;
- The Council has consulted all the prescribed bodies on the Issues

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<sup>2</sup> s33A PCPA and 2012 Reg 4(1)

and Options (December 2015 to February 2016); Regulation 18 Draft Policies (October to December 2016); Regulation 19 Publication Policies (February to March 2017);

- Regular liaison meetings with officers from the GLA on the Council's LPPR, on emerging SPG and the emerging London Plan;
- Ongoing contributions to the London Development Database;
- Liaison meetings with GLA to discuss draft housing policies including a meeting in August 2017 to discuss the implications of the deletion of estate regeneration site allocations on the Council's housing land supply and the on-going work on the Mayor's Strategic Housing Land Availability Assessment (SHLAA) 2017;
- Quarterly liaison meetings with our colleagues at LBHF;
- Ongoing liaison meetings with LBHF to consider Joint Gypsy and Traveller Accommodation Needs Assessment and Site Appraisal Study;
- Interview with ORS to inform the Hillingdon Gypsy and Traveller Accommodation Needs Assessment;
- Response to LBHF about their Retail and Leisure Need Study;
- Responses to each of the Brent's, Wandsworth's and WCC's iterations/ consultations of their emerging Local Plans/DPDs/ Integrated Impact Assessments (as appropriate);
- Consultation with neighbouring boroughs (as well as Camden and Islington) on scope of RBKC Strategic Housing Market Assessment;
- Responses to each of the LBHF iterations/ consultations of their emerging Local Plan. The issues of particular interest have included flooding and water use, Sustainable Urban Drainage, Strategic Waste Management, Imperial Wharf, Crossrail station, links with the Old Oak Regeneration Area;
- Regular meetings with the OPDC, and associated Boroughs.
- Response to the OPDC Integrated Water Management Strategy;
- Response to OPDC for Victoria Road Framework;
- Regular liaison with the GLA/TfL on the Kensal Canalside Opportunity Area and Crossrail 1 and 2 and associated stations;
- Discussions with the Mayor of London/TfL re South Kensington Station;
- Meetings with Historic England to mitigate the impact of the development of the Kensal Canalside OA on Kensal Green Cemetery;

- Drafting the Infrastructure Schedule and Infrastructure Delivery Plan updates with the West London CCG, NHS England, TFL and with shared services within LBHF and WCC;
- Discussions with GLA officers to discuss GLA Comparison Retail Need and Hotel Need study;
- Quarterly meeting with TfL and other central London Boroughs as part of the Central London Sub Regional Transport Partnership Panel Meetings;
- Monthly meetings with the Central London Grid Partnership Meetings concerned with delivery of cycle infrastructure;
- Quarterly meetings Drain London and with Central London North Flood Risk Partnership, Lead Local Flood Authorities to discuss the implementation of the Lead Local Flood Authority duties and planning policy on flood risk;
- Response to Marine Management Organisation to the MMO consultation on the South East Marine Plan Areas;
- Response to the Environment Agency regarding Thames Estuary 2100 Plan;
- Contact with GLA Officers to provide input and advice on Waste Technical Paper Brief in respect of determining maximum capacity at existing waste management sites, determining waste management capacity gap and application of the GLA kilo tonnes per hectare;
- Provide technical advice to Environment Agency into Waste Technical Paper;
- Regular meetings with the Western Riverside Waste Authority, OPDC and other relevant Waste Planning Authorities to agree joint waste evidence base;
- Attending quarterly London Waste Planning Forum;
- Response to Waste Planning Authorities is waste movements etc. These include on the North London Waste Plan, the South East London Authorities, Essex and Southend on Sea, Surrey County Council and Suffolk County Council; and
- Ongoing liaison meetings with LBHF concerning joint working on waste evidence base.

1.8 Further details of the Council's actions under the duty to cooperate are provided in the responses to specific Inspector's questions as appropriate. In particular, in response to Question 1d below, with regard to waste, and Question 10b of Issue 3a, with regard to the search for additional pitches for Gypsies and Travellers.

- d. **In the light of the Council’s Response to the Inspector’s Initial Questions (CED001) (questions 15 and 16) has the Council complied with the Duty to Cooperate in respect of the management of waste? What is the current status of the Memorandum of Understanding between the authorities in the Western Riverside Waste Authority on the pooling of waste apportionments and the available capacity for waste streams?**

#### **Duty to Cooperate**

- 1.9 The National Planning Policy for Waste (NPPW) requires that WPAs *“work collaboratively in groups with other waste planning authorities... identify the tonnages and percentage of municipal, and commercial and industrial, waste requiring different types of management in their area over the period of the plan (In London, WPAs should have regard to their apportionments set out in the London Plan when preparing their plans... work collaboratively in groups with other WPAs... through the statutory duty to cooperate, to provide a suitable network of facilities to deliver sustainable waste management”* (paragraph 2- 3).
- 1.10 Waste disposal is carried out by the waste disposal authority which is the Western Riverside Waste Authority (WRWA), a partnership between the Royal Borough, Wandsworth Borough Council, and the London Boroughs of Hammersmith and Fulham, and Lambeth. The Council has therefore been working collaboratively with other waste planning authorities (WPAs) in the WRWA area (Hammersmith and Fulham, Wandsworth & Lambeth including OPDC) in respect of waste matters since early 2014 and will continue to do so. A commitment from WPAs has been received, as set out in the Waste Policy Formulation Report (SUB62) (paragraphs 2.3.44 and 2.3.45 and Appendix 2), to continue to work together towards reaching an agreement. This Council has reflected its commitment in the Proposed Modifications (SUB6 MINOR/071 and 073 and Policy CE3a) and b).
- 1.11 The Council has complied with the Duty to Cooperate and has done everything it possibly can to reach an agreement between the WRWA WPAs on managing waste capacity in the WRWA area. Paragraph 2.3.49 of the Waste Policy Formulation Report (SUB62) and background document (EX001).
- 1.12 Paragraphs 16.1 to 16.18 of the Councils response to the Inspector’s Initial Questions (CED001) and the Waste Policy Formulation Report (SUB62) (paragraph 2.6.3) set out the ongoing engagement in respect of the duty to cooperate that has been undertaken at each stage of the Local Plan’s evolution. Additional details of the duty to cooperate are explained below.
- 1.13 The National Planning Practice Guidance (NPPG) on Waste (Paragraph: 015 Reference ID: 28-015-20141016) states:

*“There is no definitive list of actions that constitute effective cooperation under the duty. However, it may include:*

- *gathering, evaluating and ensuring consistency of data and information required to prepare Local Plans. This may include joint commissioning of studies or the joint preparation of an evidence base*
- *engaging actively in dialogue, particularly on those types of wastes or waste facilities that will impact most on neighbouring authorities*
- *active engagement, where necessary, with planning authorities wider than just those who are their more immediate neighbours, particularly if dealing with waste streams for which there is a need for few facilities*
- *jointly monitoring waste arisings and capacity.*

- 1.14 The Council has addressed bullet point 1 and 2 through preparing joint evidence base with the WRWA WPAs and, as reflected in paragraph 36.3.42 (SUB5) (with Proposed Modification (SUB6) MINOR/073) and Proposed Policy CE3 a) and b) of the LPPR, a commitment to continue working with the WRWA WPAs and other London Boroughs in respect of waste.
- 1.15 In respect of Bullet point 3, the Council has undertaken a joint waste engagement exercise (2015), consulted widely at various preparation stages of the LPPR and in May 2017 undertook a joint waste movements consultation with all waste planning authorities who receive waste from the WRWA area. Figures 2.3 and 2.4 of the Waste Policy Formulation Report (SUB62) lists those WPAs receiving waste from this Borough who were engaged. Further engagement is expected as part of ongoing work between the WRWA WPAs as a follow up to the engagement activities in May 2017 and April 2015.
- 1.16 The Council is currently in the process of undertaking additional work with the WRWA WPAs in respect of further investigating capacity at a site (Powerday) within LBHF/OPDC, please also see paragraphs 1.22, 1.23, 1.26, 1.27 and 1.32 below. It is envisaged that ongoing joint working will also cover joint monitoring arrangements. Submission Policy CE3 a) reflects this.
- 1.17 The grouping of WPAs was established in 2014 to explore potential for pooling waste apportionments following initial independent discussions with Bexley and Greenwich which established that a joint WRWA approach to the South-East London grouping would be more favourably received than individual Borough approaches for surplus capacity. This Council had discussions with Bexley and LBHF prior to a WRWA WPA meeting in May 2014 about sharing waste management capacity. At this May 2014 meeting, each WRWA WPAs fed back on their individual approaches to other waste planning groups. It was reported amongst the group that Bexley and Greenwich, part of the South-East London Waste Planning Group (SEWLPG), stated clearly that groupings such as the WRWA area should exhaust all potential within their own membership. It was agreed at this meeting that a joint evidence base document,

summarising existing capacity in each Borough would be prepared and a joint approach to each of the sub-regional waste planning groupings about potential to pool apportionments would be made.

- 1.18 The primary focus of the WRWA WPAs up until April 2015 was to develop a joint evidence base. This culminated in writing to London Boroughs and London waste planning groupings making a formal request under the duty to cooperate to consider whether or not their authority can share some of their spare capacity to help address waste capacity shortfall in the WRWA area.
- 1.19 The responses received to the letter either indicated that other London Boroughs/existing Waste Planning Authority groupings would not be able to share surplus waste management capacity with the WRWA WPAs or identified refinements to the joint evidence base work. The responses were published as part of a Waste Engagement Statement to support the LPRR Issues and Options consultation in December 2015.
- 1.20 The WRWA WPAs met with representatives (Bexley, Bromley, and Greenwich) of the South East London Waste Planning Group (SELWPG) in November 2015 to discuss the WRWA WPAs joint waste evidence at that time and potential for sharing surplus. The outcome of the meeting was that SELWPG advised the WRWA WPAs to undertake further work on the joint waste evidence to search for additional facilities in the WRWA area that could provide additional waste management capacity.
- 1.21 Between April and July 2016 the WRWA WPAs agreed to undertake consultancy work to address waste related comments in Waste Engagement Statement and LPRR Issues and Options Consultation. The Council led on developing a tender brief (including consulting GLA on the emerging methodology), undertaking a tender process and managing appointed consultants to prepare a joint Waste Technical Paper on behalf of the WRWA WPAs. As detailed in the Waste Policy Formulation Report (2.3.9) the evidence established that the WRWA WPAs are able to jointly meet their London Plan waste apportionment as a single entity. The Waste Technical Paper was published in January 2017 alongside the Councils Publication Policies consultation on 2 February 2017 and alongside LBHF's Submission Local Plan on 28 February 2017.
- 1.22 The WRWA WPAs met with the GLA on 3 February 2017 who sought additional clarification on the Powerday facility (paragraphs 2.3.41 to 2.3.43 of the Waste Policy Formulation Report) located within LBHF/OPDC area. The WRWA WPAs agreed that OPDC would contact the facility operators for additional information in order to prepare a justification statement for the sites assumptions.
- 1.23 The focus of subsequent WRWA WPA meetings has been to make progress with addressing GLA comments made on the Waste Technical Paper (SUB64) around capacity for the Powerday facility in LBHF/OPDC area through preparing a position paper on the site and an addendum update to the Waste Technical Paper.

## **Current Status of the Memorandum of Understanding**

- 1.24 Paragraph 2.3.44 to 2.3.45 of the Waste Policy Formulation Report (SUB62) explains that in January 2017 the WRWA WPAs agreed to continue to work together to meet the pooled London plan apportionment as a grouping of WPAs subject to a Memorandum of Understanding.
- 1.25 The Council has been working jointly with the WRWA WPAs to prepare a joint evidence base with a view to reach an agreement in respect of pooling the London Plan waste apportionment and capacity within the WRWA area.
- 1.26 Since the submission of the LPPR and the Inspector's Initial Questions some progress has been made, a position paper on the Powerday facility has been prepared by OPDC and LBHF. This has been shared with the GLA to ensure that its comments have been addressed, however the paper has not been finalised as there is some additional information outstanding from the facility operators.
- 1.27 The capacity at Powerday is therefore still being investigated as outlined in the letter from OPDC (EX001). The situation at present is that LBHF and OPDC have both acknowledged that there is likely to be surplus capacity at the Powerday site but have been unable to provide clarity on reaching an agreement until further work has been completed. The Council has been reassured by OPDC that this information is being sought from the operators but has not yet been received (See background document EX001).
- 1.28 Therefore, the WRWA WPAs have not been able to reach an agreement as soon as expected. This has caused delay in progressing the further joint engagement activities detailed at paragraphs 16.17 and 16.18 of the Council's response to the Inspectors Initial Questions (CED001).
- 1.29 On 23 January 2018 the Council wrote to LBHF and OPDC under the Duty to Cooperate regarding sharing of surplus waste management capacity in their area (EX001). This was a follow up to a meeting between the WRWA WPAs and the GLA in December 2017 in respect of finalising and seeking GLA endorsement on the position paper and reconfirming that WRWA WPAs were still committed to continue working together.
- 1.30 Notwithstanding this, the council had received commitments from the WRWA WPAs to continue joint work towards reaching a Memorandum of Understanding in April 2017 (Please see Appendix 2 of the Waste Policy Formulation Report). The Council has continued to receive assurances at subsequent meetings, most recently at a meeting with the GLA in December 2017 referred to above and in EX001, that the WRWA WPAs are still committed to working together to reach an agreed position although an MoU cannot be agreed/considered at this stage.
- 1.31 The position paper has been used to inform an addendum update to the Waste Technical Paper in respect of the current London Plan (2016) and

new Draft London plan (December 2017) apportionment. The WRWA WPAs have yet to finalise and agree both the position paper and Waste Technical Paper Addendum update for GLA endorsement. A meeting is in the process of being organised. This Council is hopeful that this can take place before the LPPR examination hearings, however this is dependent on availability of all WRWA WPAs.

- 1.32 The LBHF response to the Council's DtC letter (EX001) confirms it is in the process of discussing this internally and also externally with OPDC, which includes the consideration of pooling apportionments and what happens to surplus capacity available within their Borough. They are unable to confirm their position going forward on pooling arrangements in respect of the surplus waste capacity at Powerday. OPDC explain that they are awaiting a response from Powerday on some technical points before the exact waste capacity that can contribute to apportionment can be derived.
- 1.33 Until the additional work has been completed, agreed by the WRWA WPAs and endorsed by the GLA the WRWA WPA grouping are unable to reach an agreed position on how to move forward. Following GLA endorsement of the Waste Technical Paper Addendum update there will be a need for Members to be briefed to ensure that there is political support. Therefore, it is likely that clarity on an agreed position will be reached, however this is likely to be after LPPR examination.
- 1.34 The joint Waste Technical Paper (SUB64) establishes that this Council has a capacity from exempt sites of 30,660 tonnes per annum to meet the London Plan apportionment. In addition, the Council has capacity from a safeguarded site of 23,400 tonnes per annum. This is from a site being utilised for the Thames Tideway Tunnel project. The capacity will become available following completion of the project. Therefore, there will be 54,060 tonnes of waste management capacity by 2036. Overall there will be a capacity gap of 107,340 tonnes per annum in 2016 and 143,940 tonnes per annum by 2036.
- 1.35 In respect of other waste streams, the joint Waste Technical Paper (SUB64) concludes:
- There is no capacity for Construction Demolition and Excavation waste (tables 39 and 40) but capacity exists in the WRWA area
  - There is no requirement for Low Level Radioactive (SUB64, paragraph 5.2.5 and table 43) or Agricultural Waste (SUB64, paragraph 5.3.2)
  - There is around 90,000 tonnes per annum of permitted hazardous waste capacity in the WRWA area. This is greater than the arisings forecast for this waste streams therefore there are no requirements (SUB64, section 5.4)
  - No additional facilities are required for waste water (SUB64, section 5.5)

