

**SOUTH BANK & WATERLOO NEIGHBOURHOOD  
PLAN 2017 – 2032 EXAMINATION**

**Report to London Borough of Lambeth  
and London Borough of Southwark**

**by**

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Independent Examiner**

**MAY 2019**

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## **Summary**

I was appointed by the London Boroughs of Lambeth and Southwark to carry out the Independent Examination of the South Bank and Waterloo Neighbourhood Plan 2017-2032. The Examination was carried out between 26 February and [3 May] 2019, and was undertaken by consideration of all the documents submitted to me, including the regulation 16 representations. I prepared three Examination Notes, to which I received responses. I visited the neighbourhood area on 12 April 2019.

The Neighbourhood Plan is based on extensive community engagement, well-researched supporting evidence and provides a distinctive set of local policies, relevant to the needs of the area.

Subject to a number of Modifications in the Report, I conclude that the Neighbourhood Plan meets the statutory requirements and I am pleased to recommend that it should proceed to referendum.

I recommend that the referendums should be confined to the Neighbourhood Plan area.

**Christopher Lockhart-Mummery QC**

**Independent Examiner**

**28 May 2019**

## **Introduction**

1. I was appointed by the London Borough of Lambeth and the London Borough of Southwark, with the support of the South Bank and Waterloo Neighbours (SoWN) Neighbourhood Forum (“the Forum”) to undertake the independent examination of the South Bank and Waterloo Neighbourhood Plan 2017-2032 (“the NP”) as submitted for examination.
2. I am a Queen’s Counsel with over forty years experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections and have no conflicts of interest.

## **The Forum and the NP area**

3. The Forum was originally designated by the London Borough of Lambeth (“LBL”) on 10 February 2014, which designation expired after five years on 10 February 2019. The Forum was re-designated by LBL on 11 February 2019, effective from 19 February 2019.
4. The same circumstances applied in the London Borough of Southwark (“LBS”). The Forum was re-designated on 25 February 2019, effective from 5 March 2019.
5. The designated neighbourhood area is shown on page 14 of the NP. The great majority of the area lies within LBL, the remainder within LBS. The area was designated as a business area under section 61H of the Town and Country Planning Act 1990 (as amended). A business area can be designated where an area is wholly or predominantly business in nature. I **Recommend** that the business area designation is noted in the early pages of the NP, perhaps at page 16. There is no other Neighbourhood Plan for the designated area.

6. The neighbourhood area is bounded on the west and north by the River Thames; on the east by the boundary between LBL and LBS in its northern section, and in its southern section bounded by Blackfriars Road; and on the south by Lambeth Road.
7. The area comprises major and well-known London landmarks including Lambeth Palace, St. Thomas's Hospital, the former County Hall, Jubilee Gardens, the South Bank complex, the Old Vic and Waterloo Station. It is plainly an area of immense importance to London as a whole. Some of the key characteristics of the area are set out on page 15 of the NP. Using "best-fit" census data, the area comprises some 10,000 residents; it accommodates some 55,000 workers, a large student population, and receives some 28 million tourists a year and 100 million commuters a year.

#### **The scope of the Examination**

8. It is the role of the Independent Examiner to consider whether making a Neighbourhood Plan meets the "Basic Conditions".
9. These are that the making of the NP must:
  - have regard to national policies and advice contained in guidance issued by the Secretary of State;
  - contribute to the achievement of sustainable development;
  - be in general conformity with the strategic policies of the Development Plan (see Development Plan, below) for the area; and
  - not breach, and must be otherwise compatible with, European Union (EU) and European Convention on Human Rights (ECHR) obligations.
10. Regulations also require that the NP should not be likely to have a significant effect on a European Site either alone or in combination with other plans or projects.
11. In examining the NP I am also required to establish whether:

- the NP has been prepared and submitted for examination by a qualifying body;
- the NP has been prepared for an area that has been designated under section 61G of the Town and Country Planning Act 1990. This NP area was also designated as a business area under section 61H;
- the NP meets the requirements of section 38A of the Planning and Compulsory Purchase Act 2004, in that it contains policies relating to the development and use of land; and
- the NP meets the requirements of section 38B of the 2004 Act (i.e. the NP must specify the period to which it has effect, must not include provisions about development that is excluded development, and must not relate to more than one neighbourhood area).

12. Finally, I must make one of the following recommendations:

- (a) that the NP should proceed to referendum, on the basis that it meets all legal requirements;
- (b) that the plan once modified to meet all relevant legal requirements should proceed to referendum; or
- (c) that the NP does not proceed to referendum on the basis that it does not meet the relevant legal requirements.

13. If recommending that the NP should go forward to referendum, I am also then required to consider whether or not the referendum area should extend beyond the NP area to which the NP relates. I make my recommendation on the referendum area at the end of this Report.

14. Throughout my Report where I have made recommended modifications, I have indicated what I **Recommend** in bold.

### **NP preparation and public consultation**

15. As page 6 of the NP describes, the NP has been developed by a group of volunteers, experts and local stakeholders, who make up the 550 member-strong SoWN. A steering group elected annually by SoWN members oversaw the production of the NP. This group has some 30 members, representing residents, tenants and Residents Associations, employers, community groups and charities, ward councillors, and others. Care was taken to ensure that members came from different parts of the NP area. SoWN membership is open to all who live and work in the area and efforts have been continually made to involve as many people as possible in developing the NP.
16. A health check report was carried out by Timothy Jones, Barrister, in December 2016.
17. Appendix 8 of the NP describes the evolution of the NP, and the very substantial local engagement and consultation processes undertaken.
18. A document entitled Results of Pre-Submission Consultation describes the consultation process undertaken between 28 November 2016 and 20 January 2017. This describes the process undertaken, and the responses made to consultation.
19. In January 2018 the draft NP was submitted to the two Councils, under regulation 15. Consultation with the Councils, especially in relation to Policy P20 (application of Community Infrastructure Levy) led to re-submission on 19 June 2018.
20. The NP was published for consultation (regulation 16) between 8 November and 20 December 2018. 27 representations were made. The NP was submitted for examination on 26 February 2019.
21. I am in no doubt that the NP has been subject to extensive public consultation to a level meeting, indeed going beyond, the expected level of consultation for a NP of this nature.

### **Environmental Assessment and EU Directives**

22. Under Article 3(3) and 3(4) of the Strategic Environmental Assessment (SEA) Directive 2001/42/EC, SEA is required of plans and programmes which “determine the use of small areas at a local level”. The Councils are the “responsible authority” and they must determine whether the plan is likely to have significant environmental effects. A Screening Report was prepared dated August 2017, to the effect that the NP would not be likely to have such effects. Accordingly, no SEA was required.

### **European Site and Habitats Directive**

23. A Screening Assessment dated October 2017 was prepared. This concluded (page 4) that the NP was unlikely to have any relevant adverse effects. The assessment was made having no regard for any mitigation, and therefore remains valid in the light of recent court decisions on this topic.

### **Human Rights**

24. I have no reason to believe that making the NP breaches or is incompatible with the European Convention on Human Rights.

### **Plan period etc**

25. The plan period is duly specified as 2017-2032. The NP does not relate to excluded development. It only relates to the single neighbourhood area.

### **The Examination process**

26. I was appointed in December 2018. The Examination commenced on 26 February 2019 when I received the email of that date from Dominique Barnett<sup>1</sup> of LBL and attached documents.
27. On 11 March 2019 I issued Examination Note 1.
28. I received responses from the two authorities on 20 March, and from the Forum on 10 April 2019. I issued a second Note on 10 April, and a third Note on 12 April. I received responses to Note 3 on 24 April 2019.
29. In the light of all the representations, I decided (see Examination Note 2) that it was not necessary to hold a hearing or exploratory meeting.
30. I was supplied with an agreed list of locations in the NP area to visit. I carried out an unaccompanied site visit of the area on 12 April 2019.

### **Examination documents**

31. I was supplied with the following:
  - The Examination version of the NP.
  - Results of pre-submission consultation.
  - SEA Screening.
  - HRA screening.
  - Basic Conditions Statement.
  - The London Plan.
  - The adopted and emerging versions of Lambeth's Local Plan.

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<sup>1</sup> By agreement of all parties, Dominique Barnett was the primary point of contact between myself and both local planning authorities and the Forum.

- Extracts from the Adopted Southwark Core Strategy, saved Southwark Plan Policies and emerging New Southwark Plan.
- The regulation 16 representations.

### **National Policies and Guidance**

32. For the NP to be made, it must be appropriate having regard to national policies and advice contained in guidance issued by the Secretary of State.
33. The current NPPF was published in February 2019. However, paragraph 214 provides that where a NP has been submitted to the local planning authority under regulation 15 before 24 January 2019 (as is the case here), the original NPPF dated March 2012 applies.
34. Paragraph 16 of NPPF 2012 advises that Neighbourhood Plans should support the strategic development needs set out in Local Plans, including policies for housing and economic development, and plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan. Paragraph 17 advises that Neighbourhood Plans should provide a practical framework within which decisions on planning applications can be made “with a high degree of predictability and efficiency”.
35. PPG advises that policies in Neighbourhood Plans should be clear and unambiguous. They should be drafted with sufficient clarity that a decision maker can apply policies consistently and with confidence when determining planning applications. They should be concise, precise and supported by appropriate evidence. They should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area: ID: 41-041-20140306.

### **The Development Plan – Strategic Policies**

36. The making of the NP must be in general conformity with the strategic policies contained in the Development Plan for the area of the authority. It is to be noted that the requirement is for general as opposed to specific conformity, and the general conformity must be with the Development Plan(s) as a whole, and not with individual policies within them<sup>2</sup>. In this context, PPG (ID: 41-074-20140306) advises that the Neighbourhood Plan policy may provide an additional level of detail and/or a distinct local approach to that set out in the strategic policy, without undermining that policy. In that context, I **Recommend** that the following text be added to the penultimate sentence on page 12 of the NP:

**The policies in the Plan are intended to provide additional detail or a distinct local approach to the policies in the Councils' Local Plans and decision makers should read the Neighbourhood Plan policies alongside the relevant Local Plan policies.**

37. The Development Plan comprises (1) the London Plan (published March 2016 as a Consolidated Version, as amended), (2) Lambeth's Local Plan (adopted September 2015) and (3) Southwark's Core Strategy (adopted April 2011), and Saved Southwark Plan Policies (2007).
38. All three Development Plans are in process of replacement by emerging plans. While not relevant to basic condition (e), their content is relevant to the achievement of sustainable development, and their evidence base can also be relevant. Lambeth's emerging plan is at regulation 18 stage, with adoption predicted for 2020. Southwark's New Plan is undergoing consultation on a proposed submission version.

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<sup>2</sup> BDW Trading v. Cheshire West and Chester Borough Council

## **The NP**

### **General**

39. The NP is based on 7<sup>3</sup> key themes arising from consultation. The policies aim to address local issues set out under the headings of Green infrastructure, open space and air quality, Housing, Development management, Retail and work, Social infrastructure and culture, Streetscape and transport and Planning gain and mitigation.
40. Under the heading of Guidance and Projects, the NP also includes “non-policy” guidance for developers and local authorities, reflecting local aspirations. It also includes a list of projects, which it states is to be paid for via the local Community Infrastructure levy, which are put forward by the community to realise the vision of the NP in the next 15 years.
41. The NP proposes 20 policies, P1-P20. None proposes any allocation.
42. I wish to pay tribute to all those who have been involved in the formulation of the NP. It is well researched, well presented and undoubtedly provides additional detail and a distinct local approach to the existing Development Plan.
43. I have power to recommend modifications to the NP if (and only if) I consider that they need to be made to ensure that the NP meets the basic conditions, to secure that it is compatible with the Convention on Human Rights, to secure that the NP complies with the requirements of sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 and to correct errors.

### **Introductory sections**

44. Pages 8-19 are “scene setting”. I have the following limited comments.

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<sup>3</sup> Page 8 wrongly states 6.

45. A plan showing the plan area is at page 14. I **Recommend** that this plan should be presented earlier in the NP (either before page 6 or page 8) that it should show the entirety of the plan area and (if possible) show the Waterloo Opportunity Area and the CAZ.
46. Page 15 refers to 2,000 and 12,000 residents and page 94 refers to 9,656 residents. I am advised by Lambeth that the “best-fit” census based figure is just short of 10,000 and I **Recommend** that “**some 10,000**” be inserted in those passages.

### Assessment of Policies

#### Green infrastructure, open space and air quality

47. The Key Issues for this topic are clearly set out at page 24, and the Rationale is at pages 26-30. The evidence is contained in Appendix 1.

#### Policy P1

48. This policy is concerned with the reduction of open space. It is expressed to relate to the reduction of “existing publicly accessible open space”. Lambeth’s policy EN1 protects all open space, public or private, and its emerging Local Plan likewise. Southwark’s policy SP11 protects “important open space”, and therefore not private open space. Its emerging Local Plan would protect a wide range of Other Open Spaces, but not “open spaces that are ancillary to, and/or within the curtilage of a building”. However, NPPF 2012 (paragraph 74) protects all open space. Having regard to these different approaches, I see merit in achieving a greater level of consistency, including consistency with the policies that protect all open space. This would add a distinct local approach.
49. I therefore **Recommend** that “**publicly**” is deleted from the policy and that it be re-written as below. Criterion (c) is not a criterion, but raises a separate matter. The

concept of “other harm” is far too vague and there is no relationship justified between general (“other”) harm and the provision of open space. This point would be better dealt with under P2.

I therefore **Recommend** that P1 provide as follows:

**Applications which propose any permanent reduction of existing open space (other than open space that is ancillary to, and/or within the curtilage of a building) will not be supported unless:**

- a New open space of equivalent quantity is created within the Neighbourhood Plan area which replaces open space lost as a result of that development.**
- b The quality and amenity value of proposed open space is as good as the lost open space, meets the additional needs arising from the development, and where the space lost was publicly accessible, equivalent public access be provided to the proposed open space.**

### **Policy P2**

- 50. This policy addresses major developments which contribute to “the intensification of the neighbourhood area”. This term is far too vague (and the Glossary definition—otherwise worth retaining--does not assist). As the Key Issues imply, it appears that this policy is addressed to major developments affecting pressures on open space.
- 51. Contrary to Lambeth, I do not consider that (when suitably modified) this policy duplicates their policy EN1(d)(i).
- 52. I **Recommend** that the policy be modified in the following terms:

**Major developments (of any land use) which are likely to intensify, to a material degree, pressures on existing publicly accessible open space should contribute – in a manner and to an extent related to the development – to the improvement of such open space or provide additional publicly accessible open space where feasible.**

I also **Recommend** that the Rationale on page 26 headed Policy P2 and P3 be **deleted** and replaced by the following:

**Policy P2 – due to the unique pressure on public open space in this Central London environment, there should be a policy which addresses the effect that major developments (of any land use) can have in exacerbating existing pressure on publicly accessible open space. This policy applies to all developments over 10 residential units or 1,000 sq. m. in the case of non-residential developments. This is the Government’s definition of “major development”.**

**P3 – Green Roofs**

53. This policy seeks to maximise the provision of green roofs, with its Rationale set out at page 26.
54. This is plainly a desirable objective and appropriate in principle to be set out in detail in the NP.
55. However, P3a is too prescriptive, not taking account of relevant factors set out in the representations, that is to say the feasibility and appropriateness of providing a green roof on grounds of visual, amenity, heritage or safety concerns. I therefore **Recommend** that the policy be modified as follows:

- a **Subject to the character of surrounding built form, roofs should be flat where feasible, and be designed to include roof planting. The roof area should be accessible to occupants of the building, subject to safety and amenity considerations.**

56. P3b deals with the position where developers cannot meet the above requirement, in which case they should consider retrofitting a green roof on an existing building. I share the concerns, for example of Lambeth and LCR, as to the viability and practicality of this policy.

57. In my view those concerns can be addressed by the simultaneous consideration of P3c. I therefore **Recommend** that the intent of b and c can be amalgamated in a new b (with the **deletion of c**) to read as follows:

- b **Where it can be demonstrated that it is either inappropriate or not feasible to meet the requirement in P3a, a range of alternative climate change mitigation approaches must be considered, and implemented where feasible.**

Consistent with this change, the second sentence of the supporting text at paragraph P3b should be deleted and replaced by: **An alternative climate change mitigation approach might, subject to all townscape and viability considerations, include the potential for securing additional green roofs on existing buildings in the neighbourhood area.**

#### **Policy P4**

58. This policy contains mandatory open space requirements for major developments: “All major developments must meet the following criteria”. This is too prescriptive, and I **Recommend** that this sentence be modified to read:

**All major development should be encouraged to meet the following criteria:**

59. I have no comments on P4a or b.
60. P4c refers to the “Guidance for developers” document in Appendix 9. There appears to be some confusion here. P4c relates to “major developments” but Appendix 9 refers in its Introduction to “small schemes”. I **Recommend** that the word **small** in the second line of Appendix 9 be **deleted**.
61. In relation to Policy P4d, this again runs the risk of being too prescriptive. While the “simple formula” is stated as being a suggestion on page 28, it might be seen, in practice, as mandatory. Accordingly, I **Recommend** that the last line of Policy P4d be deleted and replaced with:

**be delivered in the neighbourhood area. There may be other appropriate measures which could mitigate such major loss of amenity.**

I also **Recommend** that the following be added to the supporting text at paragraph P4d:

**The above formula is merely a suggestion, and should not be seen as prescriptive. There may be other appropriate measures which could mitigate major losses of amenity in surrounding public open space. The impact of construction on the amenity of such open space should be assessed on a case by case basis.**

62. P4e is a policy to “mitigate loss of any trees”. Lambeth’s Policy Q10 and London Plan policy 7.21B resist the loss of trees of value/significance. Southwark have no equivalent policy. In the highly urbanised Neighbourhood Plan area, it seems to me that all (viable) trees are of value. A policy to protect such trees would be distinct to this area. I share Lambeth’s concern that there is a risk under this policy of trees being lost for their “monetary value” to be spent on other green infrastructure rather than the replacement planting of trees on-site. The supporting text to P4e seems better expressed. I therefore **Recommend** that P4e be deleted and replace by:

**The impact of development on trees is addressed elsewhere in the development plan. Where it is impracticable to identify suitable locations for new trees, alternative forms of replacement or compensation – for example on-street planters, rain gardens and green walls – could be considered acceptable.**

#### **Policy P5 – air quality**

63. P5a-c contain a range of policies designed to improve air quality, which is a severe problem in many parts of the area. P5a and b add a distinctive level of further detail to policies in this area, and are appropriate. I simply **Recommend** that in the first line of P5a the word “**plans**” be substituted by “**proposals**”.
64. The last sentence of the supporting text to P5b—“Ground floor units should be primarily A1, A3 and **sui generis** cultural uses”—might potentially conflict with other policies of the NP, and in any event seems inappropriate to the preceding context. I **Recommend** that it be **deleted**, and replaced by: **Ground floors should reflect Greenways principles, and uses should not detract from the streets’ function as peaceful walking routes.**

65. I share Lambeth's concern over the lack of reference to cycling. To assist sustainability, I **Recommend** the addition of a new c before existing c, as follows:

**Measures to encourage cycling will be explored, especially via routes that seek to protect cyclists from heavy traffic, air pollution and noise.**

66. In relation to existing c, Lambeth see a conflict with their policies in relation to Site 7. But Site 7 is silent as to diesel vehicles, indeed silent as to the critical topic of air quality. I acknowledge the point made by Lambeth that the Mayor of London is responsible for the regulation of taxis and private hire vehicles. The GLA also assert that the use of diesel vehicles is not a material planning consideration.
67. Whilst I accept that the Mayor is responsible for the regulation of taxis and private hire vehicles, the air quality problem at Waterloo Station is particularly acute. In the interests of sustainable development, it seems to me appropriate to have a policy which can guide planning decisions.

I therefore **Recommend** that existing c be deleted, and a new d be added as follows:

**d Development of Waterloo Station should demonstrate that any measures capable of being regulated by development management, to reduce emissions from diesel vehicles, have been investigated.**

The supporting text currently numbered P5c should be re-numbered P5d.

### **Policy P6**

68. I have no concerns or comments in relation to this policy.

## **Housing**

### **Policy P7**

69. This policy would support new affordable housing made available for specified target groups in the Neighbourhood Plan area. Lambeth's affordable housing policy is policy H2. This is based on a SHMA, taking the Borough as the housing market area. The SHMA addresses, for example, the needs of older people. The Southwark policies are on the same basis.
70. In my opinion Policy P7 is not consistent with national policy and guidance, is not in conformity with the Development Plan, and would be uncertain in its effect.
71. Paragraph 47 of NPPF 2012 imposes a duty on each planning authority to meet its full need for affordable housing in its HMA. The Neighbourhood Plan area is not an HMA. There is no quantitative evidence to support the assertions that there is a particular need of a particular type for affordable housing in the Neighbourhood Plan area. P7 is also unclear and potentially ambiguous, since it implies that it would not support affordable housing that is not made available for the specified target groups. (If it does not have that implication, it seems of doubtful value).
72. P7 is not in conformity with the Development Plan. The two Local Plans seek to meet affordable housing needs at a Borough-wide level.
73. I therefore **Recommend** that P7 be **deleted**, together with its supporting text. It would follow that the first row of the housing table on page 8 should be **deleted**. The first bullet point under "housing" on page 19 should nonetheless remain, as being a statement of the original objective of the NP.

### **Policy P8**

74. This policy would encourage features to accommodate the target groups identified in P7, including co-housing and unit sizes.

75. I have similar concerns in relation to P8 as I do for P7, P8 being directly linked to the former.
76. Further, and in relation to co-housing, the Development Plan in both Lambeth and Southwark does not restrict the development of co-housing, subject to relevant policies in each Plan. To the extent that P8 encourages co-housing it therefore seems unnecessary. In relation to space standards, the term “closely aligning with minimum space standards in the London Plan” is uncertain, and inconsistent with the London-wide approach to minimum space standards in the London Plan. I do not think that the suggested change put forward by Town Legal at paragraph 7.2 would assist.
77. I therefore **Recommend** that this policy, and its supporting text, be **deleted**. It would follow that the second and third rows of the housing table on page 8 should be **deleted**. The point made in paragraph 72 above as to page 19 applies equally here.

### **Policy P9**

78. This policy addresses off-site provision of affordable housing, involving a local designated Community Land Trust.
79. This policy generally aligns with Lambeth’s policy H2, though for consistency it should make clear that off-site provision is only permissible in exceptional circumstances. Southwark’s policy SP6 appears to have no comparable constraint (and its emerging policy P1 does not refer to exceptional circumstances). The London Plan (in its published and emerging versions) is clear as to the need for exceptional circumstances. This should be expressed in the policy.
80. I therefore **Recommend** that there be inserted “**in exceptional circumstances**” between “Where” and “affordable”.

81. Under the heading of Housing on page 8, and following the recommended deletion of the current content of the table, text needs to be added to reflect Policy P9. I Recommend that the “**Local Issue**” be stated to be **Delivery of affordable housing**, and **Summary of Policy** be stated as **Where, exceptionally, off-site affordable housing is an option, delivery via a Community Land Trust may be considered.**

**Policy P10**

82. This policy seeks to integrate new hotel development into the local economy. It appears to raise no issues as to conformity with national policy/guidance and the Development Plan.
83. However, the seeming mandatory nature of points 1-4 are inconsistent with higher tier guidance. I therefore **Recommend** that a full stop be inserted after “communities” in the second line. The following text should be added:

**The following objectives will be supported:**

**Policy P11**

84. This policy would require the façades of all new developments to be treated with a permanent anti-graffiti coating.
85. I share the view of Lambeth that more certainty could be added to the policy if it were clarified in the following way. I therefore **Recommend** that the policy be **deleted** and replaced by:

**Where they front publicly accessible spaces the ground floor (and any relevant upper floor) elevations of new development shall be treated with a permanent anti-graffiti coating which shall be maintained for the lifetime of the development.**

### **Development Management: Other guidance**

86. Paragraph 1 relates to affordable housing “clawback”. It is not appropriate at this part of the NP. If it is to be retained, I **Recommend** that it be inserted in Section 8.2, “Housing”.
87. Paragraph 3 of the guidance needs clarifying. I **Recommend** that paragraph 4 be **deleted** as unnecessary. There are established processes for consultation and review of site allocations through Local Plan reviews. This is not appropriate, therefore, for the NP.

### **Policy P12**

88. This policy supports proposals that would provide flexible and affordable retail units.
89. I have no concerns in relation to this policy.
90. Different considerations apply to the supporting text at page 50. This purports to contain an entirely new and separate policy. It is not supported by evidence. There is no evidenced consideration given to the effect of the stated requirements on development viability, including owners’ ability to market units of the mandatory requirement for leases for six months at discounted rents. I therefore **Recommend** the **deletion** of the first paragraph of the text. In relation to the next paragraph, I **Recommend** the **deletion** of the first sentence and its substitution with:

**The following facilities to enable temporary or pop-up uses will be encouraged:**

In the light of the above recommendation, the first line of the table “Retail and work” on page 9 should be **deleted**. In substitution, I **Recommend** that the **Local Issue** be stated as **The need for small, flexible and temporary shops,**

and the **Summary of Policy** be stated as **Proposals for small, flexible and temporary shops will be supported.**

**Policy P13**

91. This policy proposes specific requirements in relation to the CAZ retail frontages in Lower Marsh and The Cut.
92. In my Examination Note 3 I raised a number of queries with SoWN as to the scope of this policy. First, it was clarified that, consistently with Policy PN1(b) of the Lambeth Local Plan, the reference should be to the primary shopping area of the CAZ frontage. However, this is now academic in light of the next point.
93. Second, owing to the current balance of retail/A3 units in Lower Marsh and The Cut, the focus should be on Lower Marsh only. All of Lower Marsh falls within the primary shopping area.
94. Third, I see the force of SoWN's point that a minimum level of A3 uses in Lower Marsh would add to its evening vitality.
95. I therefore **Recommend** that the 1<sup>st</sup> sentence be deleted and replaced by: **In Lower Marsh, planning applications will be required to:**". In the first paragraph of the supporting text, all after "Lower Marsh" should be **deleted**, leaving the 2<sup>nd</sup> paragraph in place.
96. I have no comments in relation to part (b) of the Policy.

**Policy P14**

97. This Policy seeks to encourage flexible business uses "in appropriate parts of the area".
98. This reference is far too vague. It seems to me, as now suggested by SoWN, that this Policy is appropriate for the area as a whole, bearing well in mind the application of

other development plan policies which would act to prevent potential damage to amenity or other harm which might arise.

99. I therefore **Recommend** that “**in appropriate parts of the area**” be deleted, along with the first sentence of the supporting text. For clarity, I Recommend that the first two lines of the Policy read: **Schemes will be encouraged which provide office or workspace with the following characteristics:**

#### **Policy P15**

100. I have no concerns or comments in relation to this policy.

#### **Policy P16**

101. Under the heading of Social Infrastructure and Culture, this policy gives specific protection to community facilities in Lambeth at Waterloo Action Centre, Living Space and Make Space Studios.
102. Lambeth’s policy S1 already gives protection to community facilities. P16 is more stringent, and could be justified in view of the particular importance of the three specified facilities to which the policy applies. However, the supporting text significantly relaxes the policy allowing, for example, redevelopment and replacement anywhere in the neighbourhood area.
103. I therefore **Recommend** that the 2<sup>nd</sup> sentence of the supporting text be redrafted to read: **“Any proposals seeking the redevelopment of these sites should include full**

**reprovision of the community use on the same site and providing equal or increased capacity to the original”.**

### **Policy P17**

104. This policy addresses the special interest and distinctiveness of Leake Street.
105. As the supporting text well articulates, this tunnel makes an important contribution to the cultural life of this part of Waterloo. The 2<sup>nd</sup> sentence of the Policy is, however, too vague. I **Recommend** that it be redrafted as follows: “**Applications which contribute to and promote the use of units adjoining Leake Street and under Waterloo Station for cultural uses will therefore be supported**”.

### **Policy P18**

106. This policy, under the heading of Streetscape and Transport, seeks to implement the Legible London Wayfinding system. I have no concerns or comments on the policy.

### **Policy P19**

107. This policy, under the heading of Policy and Guidance: Planning gain and mitigation, seeks revenue section 106 funding to mitigate the impacts of development.
108. Lambeth express concern over the relationship between CIL and section 106 monies in terms of either the general law or the Council’s regulation 123 list.

I therefore **Recommend** that there be added to the policy the following:

**Subject to the requirements and implications of regulations 122 and 123 of  
the CIL Regulations**

**Policy P20**

109. This policy seeks to direct the neighbourhood element of CIL generated in the area to be used to fund the projects set out in section 9. It is highly controversial for both local planning authorities. There are two reasons why I **Recommend** the **deletion** of this policy, the first more clear-cut than the second.
110. The first reason why the policy must be **deleted** is that it is not a land use policy for the purposes of section 38A(2) of the Planning and Compulsory Purchase Act 2004.
111. Second, I would have concerns over the propriety of this policy constraining the discretion of each Council as to how it should spend its CIL. The effect of regulations 59-59F of the CIL Regulations 2010 is to give a duty to the charging authority to expend CIL on infrastructure, and a discretion as to how it does so. PPG ID: 25-071-20140612 is consistent with this: “Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed”. Consultation with communities, and infrastructure identified in a Neighbourhood Plan, are important guides to the decisions: PPG ID: 25-073-20140612.
112. I note that the Examiner of the Isle of Dogs NP took a different view on this topic. However, the above reflects my view as to the relevant law and policy.
113. Accordingly I **Recommend**:

That Policy 20 be **deleted**, with its supporting rationale at page 69.

It would follow that the first line of the table on page 10 under the heading of Planning gain and mitigation should be **deleted**; the text under Guidance and Projects on the same page should be amended by the deletion of **–to be paid for via the local Community Infrastructure Levy-**; footnote 2 on page 13 should be **deleted**; on page 19, in the second bullet point under Planning gain and mitigation, the phrase **and allocation of neighbourhood CIL** should be **deleted**; on page 58 the **first two bullet points** should be **deleted** (with consequent re-numbering); on page 74 under the heading SoWN’s Role, in the third paragraph the text in line 3 from **and** to the end of that paragraph should be **deleted**, and the fifth paragraph should be **deleted**; on page 75 under the heading SoWN’s Objectives, the second bullet point should be **deleted**, and in the third bullet point the words **neighbourhood CIL** should be **deleted**.

### **Recommendations**

114. I Recommend:

- (1) **That the modifications specified in the above Report are made to the NP, those modifications being required (a) to secure that the NP meets the basic conditions, (b) to secure that the NP complies with section 38A(2) of the Planning and Compulsory Purchase Act 2004 and (c) for correcting errors and other administrative matters.**
- (2) **That the NP, subject to such modifications, be submitted to referendums.**
- (3) **That the area for the referendums should not extend beyond the neighbourhood area.**

**Christopher Lockhart-Mummery QC**

**Independent Examiner**

**28 May 2019**