

**ST QUINTIN AND WOODLANDS  
DRAFT NEIGHBOURHOOD PLAN  
2015-2030  
CONSULTATION VERSION OCTOBER 2014**

**HEALTH CHECK REPORT**

**By**

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## **Introduction**

1. This Report follows my Healthcheck review of the Consultation Version October 2014 St Quintin and Woodlands Draft Neighbourhood Plan 2015-2030. The Plan (NP) has been prepared by the St Quintin and Woodlands Neighbourhood Forum, the Qualifying Body (QB).
2. In undertaking the review I have had close regard to the NPIERS Template for healthcheck reviews, but have not followed it slavishly. The NP raises a number of complex issues, and I have thought it more helpful to deal with these generally on a topic basis.
3. The main documents with which I have been supplied and have considered are:  
  
The NP October 2014  
The Statement of Basic Conditions, October 2014 Version 2  
The Consultation Statement.
4. I have also read background correspondence between the QB and the Royal Borough of Kensington and Chelsea (K&C), Version 3 of the NP dated September 2014, and a consultation leaflet. I have had close regard to the K&C adopted Core Strategy, December 2010. I was taken on a helpful tour on foot to some of the main features of the area.
5. K&C are at an advanced stage of a limited Review of the Core Strategy. Hearing sessions have been held and consultation is taking place on proposed Modifications. K&C have deferred more substantial revisions, including a review of employment policies, to a later date.
6. SEA screening is currently outstanding. As an informal view, I would be most surprised if SEA were necessary.
7. In the light, in particular, of the Consultation Statement, it appears to me that the NP has been the subject of appropriate pre-submission consultation and publicity, and that

there has been a programme of community engagement proportionate to the scale and complexity of the NP.

### **Overview**

8. Neighbourhood planning gives communities “*direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need... Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community...*”: NPPF183-184. The PPG advises:

*“A Neighbourhood Plan must address the development and use of land... Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a Neighbourhood Plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex”.*

9. The NP has formulated twelve key objectives to promote the Vision of the Plan: “*To secure the future of a neighbourhood that offers the best features of life in Central London, for this and future generations*”. In my view, the NP is an exceptionally well-reasoned planning document, which – subject to some reconsideration of detailed elements – amply deserves to form a future element of the statutory development plan. In my view, the NP has had “*regard to national policies and advice contained in guidance issued by the Secretary of State*”. I see no obvious conflicts with the NPPF. There is a clear explanation of the ways that the NP contributes to the achievement of sustainable development. I see no issues around compatibility with human rights or EU obligations.

### **Structure of Report**

10. The main part of this report will deal with the following topics:
- A: The respective roles of the local planning authority, the QB and the Examiner.

- B: Comments on general conformity.
- C: Material other than that defined in section 38A(2) of the Planning and Compulsory Purchase Act 2004.
- D: The Statement of Basic Conditions.
- E: Some detailed comments on the NP.

**A. The respective roles of the local planning authority, the QB and the Examiner**

11. Neighbourhood Plans are a very powerful local planning tool in the hands of a QB. The role of the local planning authority – once a neighbourhood area and QB are in existence – in relation to the NP itself is limited, and (in terms of the statutory provisions) largely administrative. This is made clear by the provisions of paragraphs 5 and 6 of schedule 4B to the 1990 Act, in particular paragraph 6(2) and (3).
12. It is for the QB to consider and decide on the content of the NP, knowing that it will be rejected by the Examiner if it does not meet the basic conditions. Neither the local planning authority, the QB nor the Examiner is concerned to consider whether the Plan is “sound”. It is for the QB (and not the local planning authority) to explain how the NP meets the basic conditions, and to provide a statement accordingly: regulation 15(1)(d) of the Neighbourhood Planning (General) Regulations 2012. In terms of the relationship with the local planning authority, the key constraint is, of course, that of general conformity (see below).
13. An example of the relationship in the present case can be found in the conservation area policies. The relevant duty has been the subject of correspondence between the QB and K&C. The “basic condition” duty to have “special regard” to the desirability of preserving or enhancing the character or appearance of a conservation area applies to NDO’s and not to NP’s, but this point is academic only. The making of a NP is a function to which section 72(1) of the Listed Buildings etc. Act 1990 applies, and hence “*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of [the] area*”. It seems to me that this NP has complied with this duty. There is no issue on general conformity here (K&C not asserting that the conservation policies in the Core Strategy are strategic) but there is a difference of

view as to the merits of certain of the conservation policies in the NP. The QB/NP can take its own view on the appropriateness of these policies, provided it believes that the Examiner will be satisfied that the NP has had regard to national policies and guidance on conservation areas.

**B. General conformity**

14. I deal with this as a separate topic since it is relevant to a key element of the NP, the approach to Latimer Road.
15. Paragraph 8(2)(e) of Schedule 4B to the 1990 Act specifies as one of the basic conditions:

*“The making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)”.*

Section 36(4) – now repealed – used to provide that: “A local plan shall be in general conformity with the structure plan”. In relation to this provision, the Court of Appeal stated:

*“Furthermore the use of “general” allows for the possibility of conflict. Obviously there must at least be broad consistency, but this gives considerable room for manoeuvre. The Court’s role in this process is not simply one of statutory construction. There is every reason why...the application of the general conformity requirement...should rest firmly in the hands of the statutory policy-makers themselves...”.*

16. The test for Neighbourhood Plans is slightly different. The conformity is not with the development plan as a whole, but with the “strategic policies” in the development plan. This distinction did not seem to impress the court in the BDW Trading case (Tattenhall) which stated at paragraph 82:

*“...I accept [the] submission that the only statutory requirement imposed by Condition (e) is that the Neighbourhood Plan as a whole*

*should be in general conformity with the adopted Development Plan as a whole”.*

Whether or not that approach will survive, it represents the law for the time being.

17. The Core Strategy delineates the Freston Road/Latimer Road Employment Zone. This covers a considerable area outside the NP area. Policy in relation to the Employment Zones is set out in paragraphs i-n of Policy CF5. K&C have not supplied a list, with justification, of what are considered to be the “strategic policies”. It seems likely (particularly in the light of the approach to strategic policies taken in the PPG) that some or all of CF5 would be regarded as such.
18. Draft Policy 9 (which I think should be 8) of the NP suggests the “de-designation” of the Latimer Road section of the Employment Zone. A NP can make land use allocations. It can, for example, “de-designate” areas subject to restrictive policies in the development plan (for example “countryside” designations) and allocate the land for, e.g., housing. Subject to the test of general conformity, there would seem to be no reason why part of an Employment Zone should not be re-allocated to a more flexible, mixed use in a NP. Proposed policies 8b) and 8c) propose, in any event, a more flexible approach.
19. I deal with the implications for this part of the NP further below. For the present, I would think there to be good prospects of satisfying an Examiner that the desired flexibility of use in Latimer Road would meet the general conformity test.

**C. Material other than that specified in section 38A(2) of the Planning and Compulsory Purchase Act 2004**

20. This provides:

*“A “neighbourhood development plan” is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan”.*

This raises two points. First, does the content of the NP set out policies for the development and use of land? Second, does it set out those policies in relation to the land comprised within the NP?

21. I have referred above to the PPG advice that actions dealing other than with land use within the NP area “*should be clearly identifiable. For example, set out in a companion document or annex*”.
22. This NP contains a significant proportion of material that does not fall within section 38A(2). Reference is made to the “precedents” of other Examination reports. I do not find this persuasive, and doubt that the Examiner for this NP would find that persuasive. Examination reports are not intended to be precedents, and the NP as a whole should be in a form which best complies with the statute and related guidance.
23. As I will illustrate in relation to certain passages of the NP, there seems to me to be a distinction between (1) suggested “Actions” which directly relate to a valid land use policy and its supporting text, and (2) content that simply does not qualify under section 38A(2).
24. As an example of (1) I would refer to the advocacy contained in the NP in relation to the making of Article 4 Directions by K&C. These concerns relate specifically to conservation policies dealing with the development and use of land.
25. As an example of (2) I would refer to the lengthy section on Transport. This appears to me to have nothing (or almost nothing) to do with policies concerning the development and use of land in the NP area. I will give other examples below. I suggest that this material, if it is to be retained at all, should be dealt with as the PPG advises.

**D. The statement of basic conditions**

26. I make the following suggestions. Section 3 telescopes national policy and the development plan. They are two quite separate matters, dealt with differently in the



legislation, and they should be de-coupled. Regard must be had to national policy; there must be general conformity with the strategic policies.

27. SPD's are not part of the development plan, see paragraph 3.4.
28. There is a lengthy section on Partial Review of the Core Strategy, paragraphs 3.8-3.15. I find this section confusing. Paragraph 3.9 does not appear to follow from paragraph 3.8. Surely, the "non-conforming" parts of the NP are there either better to reflect the "flexible" approach of NPPF, and/or to reflect the detailed circumstances of the locality? Further, I do not think that there need be concern in relation to prematurity (paragraphs 3.12-3.14). As I understand it, there are no relevant draft review policies in existence. In any event, many NP's are bound to be formulated against a changing development plan position.
29. Accordingly, the "above basis" in the summary at paragraph 3.15 is not the correct "basis". I have endeavoured to set out the correct basis above.
30. Paragraph 2.10 refers to "Actions", which I have discussed at paragraphs 20-25 above.

#### **E. The NP**

31. This last section sets out some comments on the drafting of the NP itself. Some of these comments follow from the points of principle that I have discussed above, and some are detailed points. I do not pretend to have covered every detailed point such as the occasional typographical error or duplication in paragraph numbering.
32. In the Introduction, paragraph 0.1.9 wrongly refers to a "general conformity" test with the NPPF.
33. Paragraph 0.1.26 implies that the NP must be in "general conformity" with LBHF policies. It also implies that "updating the existing Article 4 Directions" is a direct task of the NP.

34. Paragraph 0.1.27 refers to “Actions”, a matter discussed above.
35. Paragraph 0.2.10 refers to “the proposal” in the NP for an additional Overground station at Western Circus, which falls outside the scope of the NP.
36. Paragraph 0.4.1 wrongly states that NP’s are required to conform with the NPPF.
37. In relation to paragraph 0.4.2, it would seem sensible that the twelve objectives should be set out before Table 1.
38. I question the need for paragraph 0.4.7. The NP is, in my view, too lengthy, and opportunities should be taken to streamline it.

There is an important point about layout and presentation that first arises at paragraphs 0.6.9-0.6.10. In my view, the best format is, under each topic, to set out the over-arching **objective**; then to set out the complete **reasoned justification** for the subsequent **policy** (an excellent example of this being paragraphs 1.0.1-1.0.5 as supporting the first policy); and finally to set out any **Actions** which directly relate to the land use policy which immediately precedes such a section. I do not see the need to set out Community Views as a separate (or part of a separate) section, since these are contained in the Consultation Statement and can be briefly referred to in the reasoned justification where appropriate.

39. In relation to Objective 1, I have no comment, other than the layout comment just made.
40. In relation to Objective 2, I deal with this (very important) section quite briefly. I have referred above to the relevant conservation area duty. In short, I think that it is legitimate for the NP to “fine-tune” existing conservation area policies, and that a powerful case for the local justification for the proposed policies is set out. I do not think it appropriate for the NP to suggest that it “proposes” variations to Article 4 Directions (see e.g. paragraph 2.4.3) but these could be indicated in related Actions. In the policies, would “allow” be preferable to “cease to resist”? At the end of this section, the Reasoned Justification and Community Views section is a good example

of my criticism as to layout. This is largely repetitive of the earlier (and true) reasoned justification, and to the extent that it isn't, it could be a cause for confusion. Room for streamlining here again.

41. In relation to Objective 3, whilst I understand the concern expressed in paragraphs 3.1.8-3.1.11, I cannot see that they have any place in the NP, for reasons already discussed.
42. I think the same goes for paragraphs 3.2.1-3.2.2.
43. Paragraph 3.5.5 provides good reason why the preceding four paragraphs should be in a different section. The proposed policies should be reviewed in the light of section 38A(2).
44. In relation to Objective 4, I question the need for paragraphs 4.4.1 and 4.6.1-4.6.2, and suggest that paragraphs 4.7.1-4.8.2 should be deleted. I appreciate that the proposal to designate the Nursery Lane site as Local Green Space is (and will be) controversial. It seems to me that a convincing case for this proposal has been made, although I would suggest that the “tranquillity” characteristics of the land could be the subject of greater emphasis in the Annexe. I was not sure where the reasoned justification for policy 4b) appeared.
45. In relation to Objective 5, I have commented on this above. I do not think that this section should be in the NP itself.
46. In relation to Objective 6, I have no comments.
47. In relation to Objective 7, I have one comment. Some of the changes of use specified in policy 7a) are already permitted development. It would therefore be desirable to define the changes that are not permitted development, and confine the policy to those.
48. In relation to Objective 8, I have discussed general conformity above. Paragraph 8.2.16 implies that it is only the Review of the Core Strategy that could “de-

designate” Latimer Road, whereas policy 8a) implies that the NP can effect this. This confusion must be resolved. Whilst doubtless controversial, I have indicated that it might be possible to “de-designate” through the NP. On the BDW approach, there could be no doubt about continuing general conformity. However, the QB may feel that it wishes to minimise, where possible, issues with K&C. In my view, the approach in policies 8b)-8e) form perfectly legitimate content of the NP, and stand a good chance of being found to be in general conformity. It will be recalled that this is a matter which is initially for the overall judgment of the QB, followed by that of the Examiner.

49. I have some more detailed comments on this section. First, it might be desirable to introduce plans showing the extent of the EZ at Latimer Road, and that of the EZ as a whole. The section is, in my view, considerably too long, too discursive and in places argumentative (e.g. paragraphs 8.2.10, 8.6.10-8.6.12). I assume that where the evidence is presently incomplete (pages 63/64 and 69) it will be completed prior to submission to examination. Overall, could the section be cast more as a positive response to NPPF, for example paragraph 22, only referred to at page 70?
50. In relation to Objective 9, I do not see that this adds anything to previous sections.
51. In relation to Objective 10, I have no comments.
52. In relation to Objective 11, I have no comments.
53. In relation to Objective 12, in my view this section should be much shorter. It should not repeat material which has preceded it. I would suggest that references to permitted sites, for example the former Hospital, should either be deleted or much truncated.
54. In relation Objective 13, I am not clear whether it is intended that this is to form part of the NP.

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3 November 2014

