

New Southwark Plan Examination

Inspectors: David Spencer BA(Hons) MRTPI & Philip Mileham BA(Hons) MA MRTPI

Programme Officer: Jacqueline Wilson

20 April 2020

Dear Ms Seymour,

Examination of the New Southwark Plan (NSP)

Introduction and summary of main initial matters/concerns

- 1.0 We are writing to you at this early point in the examination of the NSP to set out a number of initial matters and concerns that we have identified in respect of the submitted plan, the approach to consultation and elements of the accompanying evidence base that we need to bring to your urgent attention. The purpose of this letter is to set out these matters and advise of the options available to the Council going forward. I appreciate that the current very difficult circumstances in respect of coronavirus may mean that the Council's resources are very stretched and its focus is likely to be on responding to the immediate situation. Nonetheless, the Council has indicated that it wished to receive our initial views as soon as possible.
- 1.1 From our initial examination of the material before us we provide an overview here of what we consider to be the substantive issues:
- Consultation on the Amended Policies Version (APV) does not appear to accord with the Local Plan Regulations 2012. This is capable of remedy but would require options of either reverting to the 2017 Proposed Submission Version (PSV) plan as the starting point for the examination or if accepting the APV content requiring additional consultation on it prior to any hearings. Remedying the APV consultation will create appreciable administrative and soundness matters for the examination to address with consequential resource implications for all parties;
 - In the absence of the yet to be submitted statements of common ground we are unable to reach an initial view on whether or not the Duty to Cooperate has been satisfied.
 - The Habitats Regulation Assessment requires further work to ensure legal compliance and robust conclusions;
 - Significant concerns that the plan (whether the Proposed Submission Version or the Amended Policies Version) would be found unsound for the following initial reasons:
 - Lack of a coherent overarching spatial strategy that bridges between the broad strategy and indicative figures in the London Plan and the area visions and site-specific policies in the NSP (including a lack of key diagram), including overall quantum of development to be delivered in the plan period and the broad distribution of growth;
 - The absence of a housing trajectory that demonstrates a deliverable supply for years 1-5; a developable supply for years 6-10 and broad locations for growth thereafter;
 - Lack of clarity in the site-specific policies regarding the scale of development proposed on the allocations, the extent to which sites are deliverable or constrained, and the degree of underpinning delivery evidence;

- A need to revisit sustainability appraisal to provide a clear demonstration of what would be an appropriate strategy for the plan;
- A need for additional plan-wide viability work; and
- A need for clarity on the approach to meeting the needs of gypsies and travellers as well as any wider caravan/houseboat needs.

1.2 We would emphasise that this list is not exhaustive, such that we have drawn a line at this time recognising that further detailed examination would have every potential to reveal other soundness issues in addition to those listed above and which the Amended Policies Version content and the tracked changes on submission have sought to resolve. As soundness matters, they are potentially capable of remedy within the examination, but it would take time to resolve and add to its complexity.

Context

1.3 The plan submitted to the Inspectorate for examination on 16 January 2020 was an amalgam of the 2017 Proposed Submission Version (the PSV), the 2019 Amended Policies Version¹ (the APV) and a subsequent set of amendments (illustrated by way of tracked changes). These latest tracked changes appear to be a response to the APV consultation, evidence base updates² (a number of which have not been available to accompany a Regulation 19 consultation) and the current situation with the emerging London Plan. We have not yet been advised that the necessary notifications of the submission of the plan have been carried out and therefore we consider it important that the direction of travel for the plan is resolved in order that participants can be advised of the next steps.

1.4 What is clear is that were the proposed 2019 APV content and the degree of tracked changes on submission proposed found to be necessary for soundness, then the plan the Council intends to adopt would be appreciably different from the PSV it consulted on in late 2017. That is without any further potential main modifications we may identify through the examination process as being necessary for plan soundness. The scale of potential changes together with the wider issue of the degree of lag between consulting on the proposed submission version and submitting for examination (some 2 years later) give rise to a number of issues for the practical and smooth running of the examination. This is a recurring theme in this initial letter.

Consultation on the Submitted Plan

1.5 The Proposed Submission Version (PSV) was consulted on between December 2017 and February 2018. It is clear from the Statement of Representations Procedure for the PSV³, that the Council nonetheless enabled comment at the 2017/18 PSV stage either online, by email or via a freepost address for written representations. Without prejudice to any future findings, we find at this initial stage

¹ Which amended 8 policies (c.10% of the plan), introduced 1 new policy on gypsies and travellers, amended Annex 4 on Borough Views, deleted 2 proposed site allocations, amended the boundaries of 6 proposed site allocations, amended 2 Strategic Protected Industrial Land boundaries and amended 1 town centre boundary.

² We note that since proposed submission in 2017 (and in some cases since the 2019 APV) there has been an update of the South East London SHMA, evidence on affordable workspace, evidence on workspace in the Old Kent Road, Southwark's 'Movement Plan', evidence on Health Inequalities and Hot Food Takeaways etc.

³ Document PSV12 on the Previous Stages page of the examination website

on the issue of consultation, that the 2017 Proposed Submission Version is a document we can examine.

- 1.6 The Amended Policies Version (APV) exercise was not a re-consultation on the whole submitted plan but a focused consultation on a small suite of policies and a small number of site allocations. The consultation was carried out between January and May 2019 and was notified as a Regulation 19 consultation. We are not aware of a separate Statement of Representations Procedure for the APV (it is not part of Appendix 2 of the consultation statement (the updated document NSP08 following submission)). The notification for the APV consultation clearly states that it was an online consultation only and that emails would not be accepted. Separate communication from the Planning Policy team to staff at libraries and service points is clear in advising that emails and written representations would not be accepted.
- 1.7 We acknowledge that the Council altered its position and accepted email submissions on the APV during the consultation. However, it remains unclear at what point in the consultation this change occurred and how people were notified that emails were acceptable. As far as we are aware some emails were submitted but no paper copy written submissions were received on the proposed APV content. The important point is that when notifying people of the consultation it was presented as an online only exercise and expressly said emails (and by inference paper copy written representations) would not be accepted.
- 1.8 Consequently, there is the possibility that this approach had the potential to deter people and/or inhibit those unfamiliar with or uncomfortable with using computer technology, despite the Council's offer to assist people to use computers at their offices, libraries and service points. Whilst we acknowledge that digital engagement is important and there is no evidence that the Council has rejected any written representations at the APV stage, it nonetheless remains that Local Plan Regulations at Regulations 3(2) and 17 (second (e)) are unambiguous that any Statement of Representations Procedure must make clear that representations may be made in writing or by way of electronic communications.
- 1.9 Taking this all into account we are of the initial view that consultation on these amended policies has not complied with Regulations 3(2), 17 and 19. Therefore, if the APV content were to form part of the submitted plan for examination it would require remedial consultation to minimise the risk of legal compliance issues and provide for natural fairness.
- 1.10 On submission, the Council presented a January 2020 version of the plan containing a significant number of tracked changes to policies and accompanying text. These changes have not been consulted on and as such we cannot accept them as forming part of the submitted plan. The tracked changes would need to be presented into the examination by the Council as either potential main modifications (i.e. those necessary for soundness) or additional modifications (i.e. minor clarifications etc which do not materially affect the policies of the plan). We are pleased to hear the Council is dealing with this and is preparing to submit respective schedules accordingly. It will be essential that each proposed modification has its own reference to aid identification in any future correspondence/hearing discussion.
- 1.11 As you will be aware, we would need to consider whether or not any of these changes would be necessary for soundness or are capable of remedying a soundness issue in the form submitted. What is becoming apparent at this very early

stage of examination is the degree of change from the original 2017 Proposed Submission Version which was consulted on in late 2017/early 2018. Linked to this is the additional evidence prepared in 2019 that the Council has provided on submission. Like the tracked changes, this evidence has not been available for consultation. Additionally, the London Plan may well trigger the need for further changes to the Southwark Plan to ensure conformity⁴. Cumulatively, this situation will create examination difficulties in terms of: (a) what is being examined; and (b) matters of fairness / natural justice in providing an opportunity for comment or to be heard for those where the proposed changes/latest evidence materially affect their interests.

2.0 The Duty to Cooperate (DtC)

- 2.1 The duty to cooperate (DtC) applies up to the point of submission. We note the submitted DtC statement (document DCS01) and a number of signed and dated statements of common ground (SoCG) with neighbouring authorities and statutory consultees as required by NPPF paragraph 27. A number of other intended statements of common ground are identified but yet to be submitted, including with the Greater London Authority (GLA) and Transport for London (TfL). We have informally requested these expected statements for some time and remain unclear on what may be causing a delay.
- 2.2 For the examination to progress we need to be assured that the Council has adequately discharged any duty imposed on it by the Duty to Cooperate. The Duty is not necessarily a duty to agree and there may well be matters of difference which are ultimately soundness matters rather than legal compliance on cooperation. Nevertheless, we are in a position where the Council's examination website refers to five anticipated SoCGs in respect of the Duty. You will appreciate that until we have seen these or have been further appraised of any residual matters of agreement / disagreement, we are not in a position to reach important initial views as to whether or not the duty is likely to have been met.

3.0 Habitats Regulation Assessment (HRA)

- 3.1 The submitted HRA dated January 2020 (document NSP10) deploys a methodology that pre-dates latest case law⁵ in that mitigation measures (which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and not an earlier screening stage. We note that there are four qualifying sites partially within 10km of the Borough and that recreational pressure and air quality are described as the likely "threats" to the qualifying interest / conservation objectives. The HRA applies the coding from the 2006 Natural England advice on Regional Spatial Strategies and most policies and sites are screened out in Section 7.1 of the HRA on the basis of, amongst other things, code 4 ["Concentration of development in urban areas will not affect European Site and will help to steer development and land use change away from a European Site and associated sensitive areas."].
- 3.2 It is not clear from the HRA whether there is any specific evidence in relation to the SAC and SPA sites about relationships between growth in Southwark and travel patterns (air quality) and visitor numbers (recreational pressure), adding to that

⁴ We are yet to locate/identify a request for general conformity with the London Plan as required by Section 24(4)(a) of the Planning & Compulsory Purchase Act 2004.

⁵ People over Wind, Peter Sweetman v Coillte Teoranta

undertaken as part of the HRA of the latest London Plan. We note the conclusion at section 8 of no likely significant effect for any of the plan's policies or proposals (it is not clear whether that is alone and or in combination with other plans/projects) and therefore there was not a need to progress to AA. We are not aware of any correspondence from Natural England on the approach of the HRA applied to the Southwark Plan. Accordingly, we raise the following initial observations:

- Whether Natural England has been engaged on the HRA and if so, what comments have they provided and in particular have they agreed the 10km buffer and would they support the general over-arching conclusion that Southwark is too far from the Natura 2000 sites identified in the HRA?
- Clarification that the screening accords with the latest case law on when to take mitigation into account.
- Whether the descriptions and conservation objectives for the Natura 2000 sites identified are up-to-date? (the HRA describes them as largely being taken from the 2009 London Plan HRA screening)
- The validity of the broad-brush screening against the 2006 coding and whether some policies required detailed screening in relation to habitat degradation from air pollution or habitat degradation or disturbance from recreational activity? We will require further reassurance that there are no identifiable impact pathways linking the policies and proposals in the NSP with the European Sites or that there will be no foreseeable adverse impact on European sites through Policy implementation.
- Is the submitted HRA justified in not considering whether or not there are any in-combination effects with other plans and projects (as required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017)?

4.0 Approach to the Spatial Strategy, Key Diagram and Housing Trajectory

- 4.1 The Plan identifies 16 area visions for the Borough addressing distinct places and neighbourhoods. Whilst the Plan indicates that development proposals are required to demonstrate how they contribute towards the strategic vision for a particular area, it is unclear as to whether the Council intends these area visions to be policies or are simply background text. Paragraph 20 of the NPPF indicates that Strategic Policies should set out an overall strategy for the pattern, scale and quality of development. The submitted plan does not contain either a single strategic spatial policy or collection of policies that set out the vision for the area as a whole and in broad locations. We recognise that the emerging London Plan identifies a number of the building blocks of a spatial strategy for the Borough by setting out Opportunity Areas, Central Activity Zone and Strategic Industrial Land with their accompanying indicative capacity targets (such as those found at tables 2.1 and 4.1 of the emerging London Plan). However, the submitted NSP does not successfully articulate how the Council has translated these into its own strategy for the area as the London Plan policies leave significant scope for local interpretation.
- 4.2 Furthermore, paragraph 23 of the Framework requires broad locations for development to be shown on a key diagram, but the submitted does not include such a diagram. This approach provides little assurance that the subsequent policies in the plan are capable of delivering the Council's intended vision, and as a result, whether the plan sets out an appropriate strategy for the development of the area. If this were an isolated part of the strategy that is unsound, it would be capable of being made sound through Main Modifications to the plan. However, there are a number of further interrelated concerns that indicate that the scale of Main Modifications may be

significant and that a sound Plan could be very different from that which the Council submitted.

- 4.3 The absence of an identified spatial strategy policy(ies) gives rise to a further soundness concern in that the plan has not identified the overall scale of development that is being planned for. Whilst we recognise that the Plan's housing numbers are derived from the draft London Plan, which identifies a housing target lower than the previous iteration, there is no policy that indicates what the overall quantum of housing and employment is being planned for and crucially, from a strategy perspective, where in the Borough it is proposed to be provided.
- 4.4 We recognise that as the London Plan is not yet adopted there may be some uncertainty as to the final housing figure required to be provided. However, the Statements of Common Ground with neighbouring authorities have been prepared on the basis of the draft London Plan. Due to the absence of a strategic housing figures policy, it is currently unclear whether the Council is intending to provide additional homes beyond its requirement. Furthermore, of significant concern is that the plan does not currently include a housing trajectory to indicate what the expected rate of housing delivery is proposed to be across the plan period. Whilst we recognise that some information is included in the Council's Housing Land Supply statement, this has not been embedded into the plan itself. As a result, the plan does not comply with Paragraph 67 of the Framework. Although this is a matter that could be addressed during the examination, further work is required and it is unclear whether there may be further modifications required should the outcome of that work identify any further issues such as shortfalls or delay to housing delivery.
- 4.5 In addition, we also have significant concerns in respect of the delivery of the proposed site allocations for their intended uses, with particular reference to those that are being relied on to provide net new housing development during the plan period. The supporting evidence base does not adequately identify on a site-by-site basis any constraints to delivery, including but not limited to, the extent of land ownerships, the resultant need for any land assembly or the reliance on utilities infrastructure upgrades. Paragraph 60 of the Planning Practice Guidance indicates that strategic policy-making authorities will need to demonstrate they have engaged with infrastructure providers, ensuring that they are aware of the nature and scale of such proposals. It is also noted that the statement of common ground with Thames Water is still outstanding.
- 4.6 Furthermore, we have identified a number of additional concerns as to the soundness of the site allocation policies. In order for the plan to be sound, it must also be effective. Paragraph 61-60-20190315 of the PPG indicates that *'in order to demonstrate that there is a reasonable prospect that large scale developments can come forward, strategic policy-making authorities are expected to make a realistic assessment about the prospect of sites being developed (and associated delivery rates)'*. In respect of sites which are allocated to provide housing, the site allocation policies contained within the submitted plan do not provide sufficient indication as to what the minimum number of dwellings that are expected to come forward on the site would be.
- 4.7 The plan is also unclear on the extent to which the approach to new housing is dependent on tall buildings and whereabouts in the Borough these might be acceptable. This matter has been raised by Historic England, but also goes to the heart of the plan's strategic approach to housing delivery. The forthcoming Tall

Buildings Background Paper (document SP02) may assist and we are mindful that in an urban location, it may be more challenging for the Council to identify a precise quantum of housing that will come forward on each site without a site-by-site designed capacity approach. However, other approaches to establishing site capacity are capable of being sound and as such, we consider that the absence of any minimum numbers of new housing or ranges of housing that are to be provided on each site in the plan is insufficient to enable a meaningful examination of the soundness of the allocations.

- 4.8 This approach to the site allocations provides little assurance to consultees as to the extent of development proposed in their areas, nor a level of information that would allow strategic infrastructure providers to adequately plan their own investment strategies to deliver any essential improvements. Therefore, we are not persuaded that the plan is positively prepared as currently submitted as it is unclear how the allocations individually and collectively contribute to the delivery of the Council's housing target. The absence of such information would make the examination of the site allocations unnecessarily lengthy and difficult. Therefore, in order to enable the examination of the site allocations to proceed, we would require information on the proposed dwelling capacity and the timing of each site's anticipated delivery, which should be set out against a housing trajectory.
- 4.9 As we have indicated above, we have identified significant issues regarding the soundness of the site allocations policies. Having made an initial examination of the representations received at the pre-submission publication stage, it is clear that there are some sites where significant doubts have been raised about the timing of a site's delivery including from utilities providers or landowners (such as site NSP03). There is a general lack of evidence either through individual site delivery information or through Statements of Common Ground with landowners that a number of site allocations are deliverable or developable.
- 4.10 We have concerns that due to the absence of suitably detailed delivery evidence that the plan may be reliant on the delivery of a significant quantum of housing or employment space that may not come forward when envisaged or indeed at all. There are numerous examples of this, but as one illustration of our concerns site NSP53 Bricklayers Arms appears to be dependent on the reconfiguration or potential removal of a flyover. There does not appear to be any evidence from the relevant strategic transport authority that there are any proposals to alter or remove this infrastructure during the plan period. Furthermore, there is no indication that the proposed highway works are viable, nor is there any appraisal in the IIA/SA as to the social, economic or environmental effects of this element of the proposed allocation. This level of information would need to be provided and made available for our consideration in order to allow the examination to consider whether there is a reasonable prospect of the site coming forward as envisaged. Without such further information being provided and potentially subject to consultation prior to the oral hearing sessions, the examination of the site allocations as submitted would be unlikely to be productive.
- 4.11 There are also parallel considerations in relation to employment provision both in terms of safeguarding strategically protected industrial land but also securing (intensified) employment through mixed-use schemes. A number of proposed allocations are existing employment sites and again there is a combined lack of specificity about the employment floorspace (job densities) and number of homes on

these mixed-use sites. We note the representations of the GLA and others that the Plan should be clearer on the total of all industrial and employment land including floorspace that is proposed for release and any additional provision that the plan is making.

5.0 The approach to Sustainability Appraisal (SA) / Integrated Impact Assessment (IIA), Site selection and Flood Risk

- 5.1 The Council's approach to site assessment and Sustainability Appraisal (SA) are set out in the Integrated Impact Assessment (IIA). From our initial examination of the document we are concerned with the robustness of the approach taken towards the assessment of the site allocations. In particular, the IIA appears to assess site allocations in groupings based on the area visions rather than individually (notwithstanding those instances where only one site is proposed to be allocated in an area). This approach does not allow the consideration of an individual site's performance against the Council's appraisal objectives nor enable the consideration of any potential mitigation measures required. Furthermore, although the site selection methodology background paper identifies, documents and subsequently discounts further sites that were considered to be unreasonable for allocation, it is unclear whether any other reasonable sites that are not otherwise allocated have been considered and subject to SA (i.e. reasonable alternative options).
- 5.2 Through our initial examination of the IIA, we have identified that the document has appraised some alternative options. However, we have significant concerns that this has been carried out on a plan wide basis against a 'business as usual' approach, and a second 'Place Shaping and Place making' option. This approach does not appear to set out what other reasonable alternative options might have been considered on a policy by policy basis. Whilst this may have been carried out at previous stages, the SA should not be a 'paper chase' relying on material only provided at previous rounds of consultation and would need to be incorporated into the NSPs IIA. The absence of a dedicated spatial strategy and strategic housing requirement policy(ies) also means that no reasonable alternative options for the overall strategic approach to development in the Borough have been considered in the appraisal; nor is there a clear and justified statement that there are no reasonable alternatives in this respect. The approach appears to consider the appropriateness of allocating sites from the London Plan SHLAA and from calls for sites, or the alternative options of a 'place making and place shaping strategy' which looks for sites that could accommodate additional regeneration or sustainability objectives. As a result, we have significant concerns that genuinely reasonable alternative options for the spatial distribution of the plan's growth aspirations have not been considered.
- 5.3 In light of the above, we are concerned that the accompanying IIA as currently prepared is not robust and therefore does not enable us to properly consider whether the plan is justified and represents an appropriate strategy as Paragraph 35(b) of the Framework requires. Legally this would be capable of being rectified during the examination, however, we are mindful that this will undoubtedly require significant further work on the Council's part and providing such information is likely to result in a significant delay to the examination. It is also of crucial importance that such work is carried out with an open mind and does not seek to simply retro-fit a justification to the plan as it currently stands. This of course could result in the need for significant changes to the plan.

5.4 The Council has identified that the Borough is at risk of flooding from a number of sources including from the River Thames as well as from ground and surface water flooding. The submitted Strategic Flood Risk Assessment (SFRA) confirms that there appear to be large parts of the Borough are in Flood Zone 3a with a high probability of flooding, albeit our initial examination has not been aided by the crucial flood risk maps not being viewable in SFRA. Notwithstanding this, no evidence appears to have been provided that a sequential, risk based approach to the location of development as required by paragraph 157 of the Framework has been carried out. The consequence of this is that it is unclear whether a sequential approach to site selection has been followed, but in addition, there is insufficient information to establish whether the application of the exceptions test is required and whether this has been carried out. Whilst the Council has agreed a statement of common ground with the Environment Agency, the statement does not comment on or confirm the Agency's position on the adequacy of the sequential approach to site selection or the need for any particular mitigation requirements to be set out in the site allocations policies.

6.0 Plan-wide viability

6.1 Our initial assessment of the plan has found that there are a number of policies⁶ that contain requirements for either the provision of land or developer contributions towards affordable housing other infrastructure or maintenance contributions that are not otherwise covered by the Mayoral CIL or the Council's own CIL. Although the submitted Small Site Viability Study Testing report and Housing and Affordable Workspace Viability Update provide further viability testing, it is difficult to identify where the appraisal has taken account of the cumulative costs of all of the policy requirements in the plan along with both of the CILs that qualifying development in the Borough are subject to. In addition, due to, amongst other things the lack of information on Flood Risk and the sequential test, it is unclear whether there are any other requirements for flood risk mitigation or any other mitigation measures that the plan requires that would cumulatively impact on the achievement of the plan's policy aims or the deliverability of the site allocations.

6.2 Paragraph 34 of the Framework states that plans should set out the contributions expected from development and goes on to state that such policies should not undermine the deliverability of the plan. As such, in order to ensure that the cumulative burden of policy requirements does not undermine the deliverability of the plan, further evidence that provides the examination with a robust assessment of the viability of the whole plan's policy requirements should be considered. Again, we recognise that producing such evidence will not be a swift process and are mindful of the inherent risk of further changes that may be necessary to the plan in light of such further evidence.

7.0 Gypsies and Travellers and wider caravan/houseboat needs

7.1 The 2017 PSV plan was silent on the matter of pitch provision for those that meet the planning definition of gypsy and travellers in the Planning Policy on Traveller Sites (2015). The APV sought (in part) to address this but we would need to consider

⁶ including, amongst others, P1: Social Rented and Intermediate Housing, P2: New Family Homes, P4: Private Rented Homes, P24: Student Housing and P28: Affordable Workspace, P58: Green Infrastructure; P14: Residential design and the requirement for outdoor space in the OKR Opportunity Area

carefully what should be done as part of this plan to achieve consistency with national policy (PPTS) and conformity with the London Plan. We note from the SoCGs that the Council is currently in the process of completing a Needs Assessment with regards to Gypsies and Travellers within the borough of Southwark which is due to be released in Spring 2020. The Council's intended approach appears to be that the needs assessment will become part of the evidence base for an updated Gypsy and Traveller policy as part of a rolling plan review.

- 7.2 The examination would need to look carefully at Policy A of the PPTS in terms of the evidence base and degree of engagement with gypsy and traveller communities (noting Southwark has 4 existing permanent sites, accounting for 7% of London's provision). Policy B of the PPTS is clear that pitch targets should be set and that plans should identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets and identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.
- 7.3 In the absence of the Council's forthcoming GTAA, the London Plan provides a figure of 15 pitches for Southwark in the context of requiring a 10 year pitch target to be set in Borough plans. This should comprise the starting point and we will require clear and persuasive evidence from the Council as to why the submitted NSP cannot set a pitch target and/or make specific pitch provision where there is an identified need for those who meet the planning definition. This is an area where the PSED applies. Again, whilst these are in theory matters which are capable of being resolved during the examination they add significantly to the overall amount and scope of work needed on the plan.
- 7.4 Furthermore, in addition to those who meet the planning definition, Section 124 of the Housing and Planning Act 2016 requires a wider assessment of those who seek caravan or houseboat accommodation. We cannot see that the 2019 SEL SHMA has addressed this and it is important that these wider needs simply do not "slip through the net". We would welcome further information on whether the Council has undertaken this work, is working on such a wider assessment either alone or in partnership or whether there is a programme to carry out a S124 assessment?

8.0 Summary of main issues/concerns identified at this very early stage

- 8.1 We have set out above on page 1 of this letter a number of early but significant issues. We do not repeat them here other than to emphasise the initial list is significant and extensive. As set out elsewhere, we are of a clear view that issues with the APV consultation create complexities for this examination. Examining a 2017 plan in the context of an additional 2 years' worth of evidence, an updated London Plan and a series of changes that the Council already indicates it wishes to make (but have not been consulted on or not consulted on in compliance with the relevant regulations), will mean, even if the legal compliance issues can be resolved, a very large amount of work to address soundness matters. In addition to the significant matters set out in this letter it is likely that other soundness concerns would emerge as the examination progresses. This will also require key policy decisions to be taken by the Council and potentially complicated consultation and public participation.

9.0 Options for the Council's consideration

9.1 Consequently, the options as we see them are broadly twofold:

Option 1

9.2 The submitted plan (the PSV and APV) is withdrawn, the Council re-consults comprehensively on one single proposed submission plan (incorporating the original PSV, the APV content together with the further changes it has identified and any further matters) together with the updates in evidence since the APV consultation. The Council would also have the opportunity, if it so wished, to address the soundness concerns with the plan we have identified above. Whilst we recognise that withdrawing a plan is a difficult course of action, the significant merits of this approach would be the potential to draw together a comprehensively amended proposed submission plan in one document which reflects the latest evidence and is submitted for examination promptly after the Regulation 19 consultation. We envisage that this option would ultimately be likely to lead to a less complex examination – one up-to-date plan, one set of representations and one up-to-date evidence base.

Option 2

9.3 The second option would be to continue with the examination starting from the basis of examining the 2017 proposed submission version (PSV) and the 2019 APV content on the basis that additional consultation on the APV content would be needed at the appropriate stage, and before any main hearings, to ensure everyone has had the opportunity to comment on it.

9.4 However, it is also critical that before any further effort or time is applied to considering whether matters of legal compliance can be addressed through additional consultation(s) and matters of soundness resolved by main modifications and updated evidence, the issue of the duty to cooperate is explored further. It is important that the Council is confident that the duty has been discharged and has submitted all the evidence that it seeks to rely on (recognising the duty cannot be retrospectively complied with post submission (after 16 January 2020)). In this regard the Council would need to confirm as soon as possible that it has submitted all of its duty to cooperate evidence. As such, should the Council wish to pursue option 2, it may be necessary to hold an initial hearing session to consider the Duty to Cooperate before any further progress can be taken forward on the other outstanding procedural and soundness matters that we have identified.

9.5 In pursuing option 2, and assuming duty to cooperate issues are satisfied, the examination would also have to address the two years' worth of additional evidence that is now available as well as consistency issues with the 2019 NPPF and the PPG extant at the point of submission in January 2020 and the latest London Plan. This would create confusion for those with an interest in the plan including those who have already commented on the APV. It is a potentially complicated situation with resource implications for the Council, the Programme Officer and ourselves.

9.6 In addition, the initial high-level over-arching soundness concerns we have identified would require further changes to the plan including updates to sustainability appraisal and evidence base. Consequently, were the examination to proceed we would be seeking the Council to carry out additional work to demonstrate that the plan would be deliverable and could be made sound. Accordingly, it would make sense to

therefore undertake a comprehensive consultation on any changes that stem from this additional work, together with the APV changes and any of the tracked changes to the plan which the Council has already identified may constitute potential main modifications. This consultation would be for a period consistent with the Council's SCI for formal consultation at Regulation 19 (6 weeks), would enable electronic and written submissions on matters of soundness and would identify those who wish to be heard at examination hearings.

- 9.7 Hearings would take place after this consultation. Under this scenario there is every likelihood that hearings would be taking place some 3 years after the Council first published its proposed submission plan at the end of 2017. We consider that this is undesirable and, whilst we would make every effort to pragmatically progress the examination, it would nonetheless have the potential to be an extremely complex and uncertain process. That uncertainty extends to the ability of main modifications to remedy soundness matters and the scope and need for more main modifications. Ultimately whilst it is highly likely that the examination would be very long and complex we cannot guarantee that the plan would be found sound at the end of it.

Conclusion

- 9.8 We recognise this letter will require very careful consideration on the Council's part which will take time and we will not reach a final decision on the way forward for the examination until we have considered your response. We appreciate that the Council's resources are likely to be stretched during the current, very difficult time, but we look forward to hearing from you when you are able to respond.

Yours sincerely,

David Spencer and Philip Mileham

INSPECTORS.