

## SOUTH BANK &amp; WATERLOO NEIGHBOURHOOD PLAN

## EXAMINATION STATEMENT ON BEHALF OF SOUTH BANK &amp; WATERLOO NEIGHBOURS

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**1. Introduction**

- 1.1 South Bank and Waterloo Neighbours Forum ('SoWN') has prepared a draft neighbourhood plan ('DNP') which is now subject to independent examination. This statement has been prepared on behalf of SoWN in response to the invitation of the Examiner for SoWN to respond to the Regulation 16 representations made, in particular, by Lambeth Council and Southwark Council, on Policies P1-4, P7, P8, P12 and P20 of the DNP.
- 1.2 A response to the Councils' representations on each of these policies is set out below. However, there are some overarching points about the Councils' approaches which it would be helpful to set out here.
- 1.3 Paragraph 185 of the National Planning Policy Framework 2012 ('NPPF') states that "*Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the local plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the local plan for that neighbourhood, where they are in conflict.*" A repeated complaint in the Councils' representations is that where a DNP policy has a narrower application or contains less detail in some respect than a Council local plan policy, that the local plan policy is undermined and/or that the interaction between the policies will cause confusion for the decision maker. The comments seem to have been made on the basis that, if made, only the DNP policy would apply so the broader application or detail of the local plan policy would be lost. However, this is not the case. The local plan policies in question have all been identified by the Councils as strategic policies so the precedence set out in paragraph 185 does not apply. Since the role of a neighbourhood plan is to provide an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy<sup>1</sup>, the strategic policy and the neighbourhood plan policy should be read alongside each other. A neighbourhood plan is not expected to repeat detail that is contained in the local plan. When the DNP is read in this context, many of the Councils' complaints must fall away.
- 1.4 In view of the above, SoWN would not object to the inclusion of an introductory statement in the DNP to set out the position explaining that 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.
- 1.5 In a number of places within the representations the Councils raise two inconsistent complaints: where a DNP policy goes beyond the local plan policy, they complain that it conflicts with the local plan policy. In other cases, they say that there is no conflict and therefore the DNP policy adds nothing. Taking this approach leaves very little room for neighbourhood planning which is at odds with Parliament's and the Government's intentions in making statutory provision and providing encouragement for neighbourhood planning.
- 1.6 The requirement is for neighbourhood plan policy to be in 'general conformity' with the strategic policies in the adopted development plan (whether or not there is any tension between a policy in the DNP and a policy in emerging local plans not being strictly a matter for the Examiner to determine). There is no definition of 'general conformity' but some degree of conflict does not

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<sup>1</sup> neighbourhood planning PPG: Paragraph: 074 Reference ID: 41-074-20140306

preclude general conformity and ‘there is sufficient elasticity in the evaluation to accommodate some conflict with strategic policies as well as the prospect of strategic policies being reviewed’<sup>2</sup>. SoWN is clear that its intention with the DNP is to add to local plan policies to address specific local concerns that have been raised through the consultation that informed the preparation of the DNP.

- 1.7 The Councils also raise the issue of the potential impact of certain DNP policies on viability. A neighbourhood plan does not override the statutory tests that apply to planning obligations, as set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (‘CIL Regulations’) and the policy in paragraph 204 of the NPPF, which includes the requirement that they must be fairly and reasonably related in scale and kind to the development. Therefore, if a requirement under a neighbourhood plan policy would be disproportionate to the development or its impacts, an obligation should not be required. Where appropriate, individual developments will be subject to viability testing following the principles in the Mayor of London’s adopted supplementary planning document and any policies which are expressed as being subject to viability considerations in the London Plan.
- 1.8 The first paragraph of the Government’s online Planning Practice Guidance (‘PPG’) on neighbourhood planning states that neighbourhood planning “*gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area*”. It was with these principles in mind that SoWN began to prepare the DNP in 2013. The DNP was almost ready for submission in January 2016 according to the ‘healthcheck’ conducted at that time by Timothy Jones QC. Lambeth Council made comments on the Statement of Conditions and these were re-written over the following three months. In July 2017 an examination version of the DNP was prepared and submitted for comment. This process was extended for eighteen months, with perhaps four of those devoted to an intermittent exchange of views on Policy P20. Nonetheless, SoWN’s approach and intention has consistently been to formulate the DNP and each policy within it with the express purpose of addressing specific local concerns. The following sections address the Councils’ comments on the policies identified by the Examiner in his note 1 of 11 March 2019.

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<sup>2</sup> *The Queen on the application of Swan Quay LLP v Swale Borough Council* [2017] EWHC 420 (Admin)

## 2. Policy P1

*Applications which propose any permanent reduction of existing publicly accessible open space will not be supported unless:*

- a) New publicly accessible 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, amenity value and public access of proposed open space both is as good as the lost open space and also meets the additional needs arising from the development.*
- c) In appropriate cases more or better quality open space may be required to compensate for other harm.*

- 2.1 In the representations on basic conditions a) and c) Lambeth Council has stated that DNP Policy P1 conflicts with Lambeth Council's Local Plan<sup>3</sup> (the 'Lambeth LP') Policy EN1 because it only refers to publicly accessible open space, while Policy EN1 protects open space regardless of ownership or accessibility and the same applies as regards the NPPF and the London Plan<sup>4</sup>. Lambeth Council is concerned that Policy P1 duplicates Policy EN1 but "says less than it" as a consequence.
- 2.2 The fact that a neighbourhood plan policy contains less detail in certain respects or has a narrower or more specific application than an adopted local plan policy on the same subject does not mean without anything more that there is a conflict with the local plan or that it is undermined. Both policies form part of the development plan and should be read alongside each other. The suggested introductory wording should provide comfort to Lambeth Council that Policy P1 does not have the effect of reducing the protection for open space as set out in the local plan or NPPF paragraph 74 and the PPG.
- 2.3 The distinct local approach in Policy P1 is that the replacement open space should be provided specifically within the neighbourhood area ('Neighbourhood Plan Area'). The specific concern of local people that was expressed during the consultation on the DNP is that publicly accessible open space can be lost from the area and this neighbourhood plan policy is designed to address that concern.
- 2.4 Southwark Council has objected to the same level of protection applying across the Neighbourhood Plan Area as the Southwark Council approach to protection of open space is based on designated or protected areas. However, it is legitimate for the neighbourhood plan to seek to ensure consistency in policy across the Neighbourhood Plan Area. Policy P1 does not conflict with Southwark Council's policies but it does provide a greater degree of local protection should there be any areas of publicly accessible open space within the area that may in future be subject to proposals to reduce it as a result of development.
- 2.5 In terms of basic condition (b), Lambeth Council has stated that "*draft policy P1 does not make a positive contribution to the environmental principle of sustainable development which is concerned with protecting and enhancing the natural environment by potentially allowing for the loss of open space that is not publicly accessible*". As explained above, when read alongside local plan policy, Policy P1 does not have this effect.

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<sup>3</sup> Lambeth Council local plan (September 2015)

<sup>4</sup> The London Plan (March 2016)

3. **Policy P2**

*Major developments which contribute to the intensification of the neighbourhood area should contribute to the improvement of existing open spaces or provide additional publicly accessible open space where feasible.*

- 3.1 In the representations on basic conditions a) and c), Southwark Council states that DNP Policy P2 is in conformity with its existing and draft local plan policies but more restrictive because it only applies to major developments which contribute to the intensification of the neighbourhood area.
- 3.2 Lambeth Council's response is that there is no direct conflict with its local plan policy but there is concern about confusion from the policies working in parallel and there is no additional level of detail or distinctive local approach. We refer back to our introductory comments on the relationship between policies in the local plan and the neighbourhood plan on the same subject.
- 3.3 Lambeth carries on to state that it considers Policy P2 to duplicate Lambeth LP policy EN1(d)(i) but says less than it and that there is no additional level of detail or distinct local approach within the policy. Lambeth LP Policy EN1 sets out how Lambeth Council intends to meet requirements for open space in the borough, which includes (at EN1(d)) certain named initiatives, but also through the provision of open space in new developments appropriate to their scale, the uses involved and location. This policy is not framed so as to specifically require anything in this regard in proposals for new development (or indeed even so as to be clear that proposals that include open space will be supported) and in any event requires the provision of open space in new developments. The distinct local approach in DNP Policy P2 is that it requires contribution to the improvement of existing open spaces or additional open space from specific development – namely major development which contributes to intensification of the neighbourhood area.
- 3.4 Lambeth Council's policy EN1 d(ii) requires major development in areas of open space deficiency/ areas of access to nature deficiency to provide on-site space and if this is not feasible, a payment in lieu. Most of the Neighbourhood Plan Area is not technically an area of deficiency as assessed in the Lambeth Council Open Spaces Strategy so this policy would not apply throughout the majority of the Neighbourhood Plan Area. Therefore, another distinction in Policy P2 is that it seeks to ensure that there is a similar requirement within the Neighbourhood Plan Area. This is justified because the assessment of open space deficiency is based on the number of residents, so the figures do not take into account the large numbers of commuters, tourists and local workers who create substantial pressure on open spaces in the Neighbourhood Plan Area. This additional pressure from tourism and local workers is a distinctive feature of the Neighbourhood Plan Area justifying a distinct local approach.
- 3.5 Lambeth Council has also stated that there is a lack of clarity as to the words "...contribute to the intensification of the neighbourhood area". If the Examiner is concerned by this, SoWN would not object to the definition of 'intensification' in the glossary of the DNP being amended to a more context specific definition of 'intensification' which reads *"Increased use of an area resulting from densification of development through provision of residential development increasing the number of residents in the area, as well as development increasing the use of the area by attracting an increased number of visitors including tourists and people who work in the area"*. The wording "contribute to" in the policy could also be amended to "result in" for additional certainty.

- 3.6 While SoWN considers that this policy is acceptable as drafted, if the Examiner considers it necessary and/or appropriate, it could be re-ordered so that new green spaces should be provided on site and where this is not feasible, contributions to existing spaces should be made.

4. **Policy P3 Green roofs**

*a. Roofs should be flat where possible and a significant proportion of the roof area should comprise an extensive green roof, accessible to the occupants of the building.*

*b. If developers demonstrate that they cannot meet the requirements in P3a they should make efforts to identify suitable flat roofs on existing buildings in the neighbourhood area to retrofit an extensive green roof.*

*c. Should developers demonstrate that they cannot meet the requirements of P3a and P3b, a range of other climate change mitigating approaches must be considered, including mosses and lichen, intensive green roofs.*

4.1 In terms of basic conditions a) and c), Lambeth Council has objected to this policy on the basis that it does not take into account the feasibility and appropriateness to the development of providing a green roof or heritage, safety or visual limitations. However, the policy includes the words “where possible” so does not impose the requirement in absolute terms. Should the Examiner consider it necessary for further clarity, SoWN would not object to these words being deleted from here and the words “..., in either case, where possible” being added to the end of Policy P3 a. Further it is not normally considered necessary to expressly set out in each policy in a development plan that there are other material considerations that may need to be balanced against the policy in question and/or that there may be conflicts between different policies and that it is for the decision maker to weigh these against each other. However, if the Examiner considers it necessary, and in order to allay Lambeth Council’s concerns, SoWN would be content to replace “where possible” with “where appropriate taking into account heritage, safety, visual and amenity impacts”.

4.2 In terms of Policy P3b, Lambeth Council has stated that it is not clear whether developers would be expected to contribute to retrofitting a green roof or just identifying buildings in the neighbourhood where a green roof could be fitted. A similar issue arises in relation to Policy P3c. SoWN agrees that this wording could be adequately clarified with minor amendments as follows:

*“b. If developers demonstrate that they cannot meet the requirements in P3a, they should ~~make efforts to~~ identify suitable flat roofs or other surfaces on or around existing buildings in the neighbourhood area and should ~~to~~ retrofit an extensive green roof or other appropriate greening measures in the locations identified;*

*c. Should developers demonstrate that they cannot meet the requirements of P3a and P3b, ~~a range of other~~ alternative climate change mitigating approaches or other greening measures must be ~~considered~~ implemented, which may include ~~ing~~ mosses and lichen and intensive green roofs.*

4.3 Lambeth Council also raises the impact of this requirement on overall development viability and states that this has not been tested. First, the statutory test under the CIL Regulations and NPPF policies on viability and deliverability will apply, as will the policies on viability in the Mayor of London’s adopted SPD and the London Plan. This means that viability will be considered in respect of individual developments where required. Secondly, the evidence for a plan should be proportionate (NPPF Paragraph 31). These measures are likely to be a small proportion of the cost of an individual development in the area (especially in light of the flexibility in the policy) and are similar in character to the London Plan policy G5 and draft Lambeth LP policy EN1(f) on urban greening. It is therefore reasonable to assume that these measures will not undermine the deliverability of the plan and it is not proportionate to expect the viability to have been assessed in

detail independently by SoWN for the purposes of this policy and the one other policy where this issue is raised.

- 4.4 Lambeth Council has also objected to the explanatory text on page 26 giving priority to green roofs over brown roofs. The priority of green roofs available to the building's occupants was identified through consultation as set out on page 26, with the reasoning that it reduces pressure on existing open spaces. Therefore, it is appropriate for the neighbourhood plan to prioritise the delivery of green roofs over brown as a distinct local approach. Lambeth Council's position on brown roofs reported in the representations is not set out in its local plan and, in any event, appears simply to be a general Lambeth Council policy preference which is a consideration that goes beyond the ambit and purpose of the examination. SoWN do not consider the proposed amended wording to be necessary.
- 4.5 In terms of basic condition (b), Lambeth Council has stated that "*draft policy P3 does not make a positive contribution to the environmental principle of sustainable development due to the policy's potential impact on local character, particularly Lambeth's heritage assets*". As explained above, when read alongside Lambeth LP policy, Policy P3 does not have this effect. If considered necessary, additional wording could clarify that the policy is subject to these concerns, as also set out above.

5. **Policy P4**

*All major developments must meet the following criteria:*

- a. Include amenity space designed for the exclusive use of occupants. This should be provided primarily on levels away from the ground floor, for example via green roofs and terraces. Some ground floor private amenity space may be provided for the exclusive use of the building's occupants, but the majority of ground floor open space should be publicly accessible.*
- b. Ensure that the design of publicly accessible open space incorporates public seating and enables ease of pedestrian movement.*
- c. Have regard to 'Guidance for developers' document in Appendix 9.*
- d. Address and mitigate any temporary major loss of amenity in surrounding public open space during construction phases through financial compensation, ring-fenced for green infrastructure projects to be delivered in the neighbourhood area, and*
- e. Mitigate loss of any trees. Where trees must be replaced as part of redevelopment:*
  - i. replacement trees should be planted according to the advice of a Council or independent arboricultural adviser with reference to the guidelines referred to in policy P4C, or*
  - ii. the CAVAT model should be applied to provide compensation, ring-fenced for implementation of equivalent green infrastructure near to site.*

**Policy P4a**

- 5.1 Lambeth Council states that Policy P4a duplicates Lambeth LP Policy H5(b) for residential development but does not provide the same level of detail. As set out in the introductory text above, a neighbourhood plan should be read alongside the relevant local plan and, where there is more detail in the local plan, this would still apply. However, as acknowledged by Lambeth Council, there is no similar policy for commercial development and this is the 'distinct local approach' intended with this DNP policy. Southwark Council acknowledges that this requirement could be supported in the neighbourhood plan if strongly justified. The justification is provided in Appendix 1 of the DNP:

*"According to the consultation open and green space is highly valued in the South Bank and Waterloo neighbourhood and many people are concerned that development – and particularly high rise development without private gardens or balconies – creates pressure on these amenities. Many thought that more open space was urgently needed."*

The Appendix continues by explaining that although there is not a shortage of space on official measures when based on the number of residents, these figures do not take into account the large numbers of commuters, tourists and local workers who create substantial pressure on the area's open spaces. As explained above, this additional pressure from tourism and local workers is a distinctive feature of the Neighbourhood Plan Area and therefore it is justified for the neighbourhood plan to place additional requirements on commercial developments, as well as residential, to help mitigate this.

- 5.2 Lambeth Council states that the requirement may be difficult to operate in every case for commercial developments and that the policy should include allowances for particular site



constraints as it may result in the provision of open space that is poor quality and does not serve a proper open space and biodiversity function. The purpose of the policy is for developers to take it into account when designing their development. Where there are particular site constraints these can be taken into account by the decision maker and SoWN's view is that this does not need to be expressly set out in the policy unless the Examiner considers it necessary.

- 5.3 Southwark Council states that the rationale for Policy P4a does not refer to non-residential developments but the final sentence on page 26 states "*These principles apply to non-residential developments also.*"

#### **Policy P4b**

- 5.4 Lambeth Council states that this duplicates the requirements of Lambeth LP Policy Q6 but Policy Q6 does not mention public seating. The provision of seating was a key concern that this part of the policy was intended to address, as local consultees felt that public realm in new developments in the area had been designed in a way that did not provide seating or a welcoming environment for people. Therefore, the policy has an additional level of detail and distinct local approach that addresses an issue that is important to local people without undermining the strategic policy.

#### **Policy P4c**

- 5.5 Lambeth Council welcomes the additional guidance and Southwark Council suggests that the wording "have regard to" is too weak. The wording of this policy was originally stronger but was amended in response to comments from the Councils. SoWN would not object to the wording being strengthened if the Examiner felt that this was appropriate.

#### **Policy P4d**

- 5.6 Lambeth Council states that this policy goes further than local plan policy by requiring financial compensation for temporary loss of public open space during construction. The policy is actually concerned with temporary loss of amenity in surrounding public open space, rather than loss of physical access to the space. As such Lambeth Council's comments on licensing the space and the financial element of such licence will not apply in the cases that the policy is seeking to address.
- 5.7 It is suggested that the term "temporary major loss" needs to be defined. The explanatory text on page refers to "*an impact severe enough to prevent the reasonable enjoyment of any publicly accessible open space*". It should be possible to predict and measure noise levels arising from construction that is planned to take place in proximity to public open space and to predict whether guideline noise limits will be breached in the open space and the approximate duration using standard environmental impact assessment techniques. The same applies to impacts from dust and light pollution.
- 5.8 Lambeth Council also rejects the proposed approach to calculating the mitigation set out in the rationale on the basis that it is not based on evidence and does not deal with the relationship between CIL and obligations required in s106 agreements. SoWN remains of the view that due to the pressure on publicly accessible open space in the Neighbourhood Plan Area, where the amenity of such space is lost due to construction works such that it is unattractive and unpleasant for users, it is appropriate for this loss to be mitigated by enhancements within the Neighbourhood Plan Area as activity will be displaced from the open space affected to other open space in the area. The statutory tests under the CIL regulations and the NPPF tests on planning obligations and conditions will apply. Any compensation will therefore need to be proportionate to the severity and duration of disruption.

- 5.9 Southwark Council supports these comments but adds that the proposed tariff is not sufficiently focused on achieving demonstrable air quality and acoustic design benefits proportionate to the impacts of construction. However, the purpose of the policy is to provide mitigation for the loss of amenity in the public space caused by construction impacts that render public space unattractive and unpleasant to use.
- 5.10 Notwithstanding this, SoWN acknowledges that ringfencing the funds for green infrastructure projects may not result in the most appropriate mitigation for the loss suffered and it may be that temporary enhancements of other open space in the vicinity, such as the provision of temporary street furniture or facilities to relocate activities that normally take place in the affected open space, or provision of alternative quiet walking routes may be more appropriate. An example is the loss of amenity in Lower Marsh which was mitigated by moving traders and their customers elsewhere, strict rules on noise and dust suppression and a contribution to the BID for hoarding design to improve visual amenity. Therefore, in order to try to overcome the Council's concerns, SoWN would be open to considering wording for the policy that refers to appropriate mitigation measures rather than green infrastructure specifically and accepts that the level of contribution should be assessed based on the severity of the loss of amenity and duration.
- 5.11 SoWN also acknowledges Southwark Council's point on the practicality of assessing the impact and suggests that the supporting text is amended to explain that where a development would involve construction in the vicinity of publicly accessible open space, the impact should be estimated through the assessment of the relevant planning application so that an appropriate obligation can be secured.

#### **Policy P4e**

- 5.12 Both Councils have raised a concern that part (e) only relates to mitigation for loss of trees and does not include a policy resisting the loss of trees. The policy is intended to be read alongside the local plans which, in the case of Lambeth Council, does have a policy resisting the loss of trees. Although Southwark Council does not currently have a policy on trees, London Plan policy 7.21 B will also apply, which resists loss of trees. Therefore, this policy will only apply where it has been found necessary to remove trees despite Lambeth LP Policy Q10 and London Plan Policy 7.21.
- 5.13 Lambeth Council states that criterion in Policy P4e.i duplicates Lambeth LP Policy Q10 without adding additional detail. However, P4e.i refers to P4c which in turn refers to the guidance for developers set out in the DNP at Appendix 9. This is not duplicated in policy Q10 and does provide additional detail and a distinct local approach.
- 5.14 Lambeth Council states that criterion P4e.ii sets out a proposed method for calculating 'compensation', which is not currently supported in Lambeth LP Policy Q10. However, in Lambeth's emerging local plan, the 'Draft Revised Lambeth Local Plan' (October 2018), Policy Q10 does include such a policy so it is not clear what Lambeth Council's objection is to this. The distinct local approach is that the compensation should be ring-fenced for equivalent green infrastructure near to site. Lambeth Council objects to the rationale on page 28 of the DNP where it states that "*given the difficulty in identifying suitable locations for new street trees, other green infrastructure, including trees in on-street planters, rain gardens and green walls would be considered acceptable the policy intention is to retain existing trees in the first instance before providing alternative green infrastructure*"; this is on the basis that it undermines the strategic policies which seek to ensure that trees of equivalent value are replanted. We have not been able to identify an existing policy in the Lambeth LP which seeks to ensure this. Draft Policy Q10(g) refers to adequate replacement planting being secured. The local concern was that where trees are removed, it is not always possible for replacements to be secured close to the site and therefore any replacement tree may

be located at a distance from the tree that has been lost. In this case it may be preferable to implement an alternative type of planting or green infrastructure close to the original location to retain some green infrastructure in the immediate area rather than a replacement tree in a different location.

- 5.15 In terms of basic condition (b), Lambeth Council has stated that *“draft policy P5 does not make a positive contribution to the environmental principle of sustainable development by potentially allowing the loss of trees in return for their monetary value..”*. We believe this is referring to Policy P4. As explained above, when read alongside local plan and London Plan policy, Policy P4 does not have this effect.

6. **Policy P7**

*P7 New affordable housing made available for the following target groups would be supported:*

*(i) Low-to-middle income people working within the neighbourhood area*

*(ii) Elderly people from the area including those in need of live-in care*

**Response**

- 6.1 Both Councils have characterised this policy as being restrictive. Lambeth Council is concerned that the implication of the policy is that affordable housing aimed at other groups will not be supported which conflicts with its strategic approach to affordable housing; that it seeks to ring-fence affordable homes; and that developers will therefore only offer affordable housing to the identified groups. However, the wording in the policy cannot be interpreted as restrictive and the Basic Conditions Statement confirms that it is not intended to be restrictive, as Lambeth Council's response acknowledges. The policy simply states that proposals for affordable housing for the specified groups will be supported. As the policy is clearly not restrictive, Lambeth Council's concerns on equality assessment, undermining strategic policy and conflicts with strategic policy have no basis.
- 6.2 It is common for planning policy to be expressed in these terms and does not mean that no other affordable housing would be supported, which would require policy that explicitly states this. The Highgate neighbourhood plan, adopted in 2017, is an example of this type of policy being found acceptable in a neighbourhood plan. Its policy on housing (SC1) provides that "*The ability of a new development to deliver an appropriate mix of homes that meet any of the following needs will be treated as a benefit of significant weight.*" The needs include meeting the Borough's affordable housing targets and inclusion of smaller units to provide a mix of house sizes and to allow older residents to downsize and providing affordable housing products aimed at first time buyers.
- 6.3 Lambeth LP policy H2(c) allows Lambeth Council, in considering the nature of the affordable housing sought, to take into account various considerations, including the characteristics of the area and the size and type of affordable housing needed in particular locations, as well as the impact on mixed and balanced communities within a local neighbourhood. The DNP policy simply adds support for proposals for affordable housing for certain groups, a factor for the Council to take into account when considering an application in the Neighbourhood Plan Area. As set out in Appendix 2 of the DNP, the consultation showed that there is likely to be a demand for accommodation that allows elderly people to remain in the community. SoWN notes the table at the end of Lambeth Council's representations on this policy but wishes to point out that this table only references percentages of Lambeth's population that are over 75 years old and the percentages of current and planned specialist older people's housing. People are often eligible for housing aimed at older people from the age of 60 onwards, as people may consider themselves to be elderly and requiring a different type of housing well before the age of 75. The table is not clear as to whether the current and planned specialist provision is only for those over 75 or whether it is current and planned affordable housing. This policy relates to affordable housing only.
- 6.4 This Appendix also explains that local workers in retail, hospitality and healthcare cannot afford to live within practical reach of their workplace. SoWN is aware of certain large local employers in the hospitality and healthcare sectors that are now building their own accommodation for their staff to combat what they say has become an acute problem, but this is an option only open to large employers with significant resources. Appendix 8 explains that some consultees "*felt that lack of*

*affordability contributed to transient communities: young people growing up in the area would not be able to stay and would therefore have no investment in their neighbourhood. Equally, older people are not well provided for with housing and must leave the neighbourhood to access appropriate care later in life.”* These points can be taken into account by the Council when considering “the impact on mixed and balanced communities within a local neighbourhood” under local plan policy H2(c)(iii).

- 6.5 Southwark Council also states that the borough supports provision of housing which provides specialist care to elder residents. However, this is only part of Policy P7(ii) which supports housing for elderly people in general.
- 6.6 Lambeth Council also asserts that it is not clear how providing affordable housing for local workers would work in practice, whilst Southwark Council states that social rented housing allocation is outside of the planning process. Whilst it is true to say that the planning process does not deal with allocation of affordable housing to particular individuals, it is entirely common for planning policy at the local level to have prioritisation criteria for affordable housing more generally, which may be based on income bands or local connections, and which are secured through the section 106 obligations that secure affordable housing in a development. (The DNP policy does not go as far as including any form of prioritisation in this way however.)
- 6.7 Southwark Council states that no favourable consideration could be given to development proposals that seek to privilege access to residents of the Neighbourhood Plan Area because local plan policies are designed to meet strategic affordable housing needs, i.e. needs defined at borough level. There is no reason why encouraging certain groups in the provision of affordable housing within the small part of the Neighbourhood Plan Area that is within Southwark Council should undermine its strategic policy. If there is no local need, such developments are unlikely to be brought forward, and if they were, the Council would be justified in giving little weight to the policy.

7. **Policy P8**

*Proposals which incorporate features to accommodate one or more of the target groups identified in P7 will be supported. These include, but are not limited to:*

*i) Co-housing*

*ii) Unit sizes that maximise space and affordability by closely aligning with minimum space standards The London Plan*

- 7.1 Lambeth Council states that the policy is not clear and, if it is suggested that minimum standards can never be exceeded, this is not appropriate. It is clear that this is not what the policy is suggesting. The policy is worded as supporting certain features, not mandating them and therefore there would be flexibility for developments to include units that exceed minimum space standards.
- 7.2 Lambeth Council then suggests that the policy may be suggesting that in some cases minimum standards need not be met. The intention of the policy is to support smaller units if the objective of them being smaller is to maximise affordability, while not falling below the minimum space standards. The supporting text refers to “*reducing unit sizes to the minimum standards set out in the London Plan*” (emphasis added). SoWN would be content for a minor change to be made to the wording of Policy P8(ii) so that it would read “*Unit sizes that maximise ~~space and~~ affordability while maintaining sufficient space by closely aligning with minimum space standards in The London Plan.*”
- 7.3 Southwark Council states that the opening sentence of the rationale text for Policy P8 does not reflect Southwark Council’s development plan. It is not clear which text is being referred to or how it differs from Southwark Council’s development plan. However, SoWN recognises that the definition of Affordable Rent has been updated in the 2018 (and 2019) versions of the NPPF and although the 2012 NPPF applies to the examination, SoWN would be content for the definition to be updated to be in line with the current national policy.

## 8. Policy P12

*Within appropriate locations for retail uses, the NP supports proposals that provide retail units with the following characteristics:*

*(i) Interiors fitted out to RIBA category B standards and made available for temporary or pop-up use*

*(ii) A range of unit sizes including units with shop floors under 20 sq/m.*

- 8.1 Lambeth Council agrees that there is no direct conflict with its strategic policies and that it supports and upholds the general principle that the strategic policy is concerned with, whilst Southwark Council agrees that it is consistent with town centre policy aims.
- 8.2 Lambeth Council again raises the concern that the DNP policy goes beyond the Lambeth LP and London Plan policies, but the purpose of neighbourhood plans is to add detail to other policies in the development plan. However, in this case, the text that Lambeth Council is objecting to (concerning units to be let at affordable rents) is not actually in DNP Policy P12, but in the supporting text.
- 8.3 It is worth observing that requirements for a range of unit sizes and affordable rent for units have been imposed by local authorities in London in recent years. For example, at Borough Yards<sup>5</sup> (formerly Vinopolis), Southwark Council imposed specific planning obligations requiring that a significant proportion of the retail units were to be let to small enterprises and a proportion of these were to be at affordable rent. This differs to the proposal in the DNP as it applies across the development as a long-term obligation. We also note that draft London Plan Policy E9 provides that large-scale commercial development proposals should support the provision of small shops and other commercial units (including affordable units where there is evidence of local need). In light of this, should the Examiner consider it appropriate, SoWN would not object to the principle set out in the supporting text being expressly incorporated into the policy, although SoWN's view is that the policy as currently drafted applies a distinct local approach.
- 8.4 In response to Southwark Council's comments, there is no specific list of requirements for RIBA category B standards, but it is understood to mean a completed fit out of the internal space so that it is ready for use by a tenant. The list in the rationale section sets some specifications that the fit out should comply with.

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<sup>5</sup> Application reference 15/AP/3066, granted March 2017

9. **Policy P20**

*The neighbourhood element of CIL generated in the area should where feasible be used to fund the projects set out in section 9 of the neighbourhood plan or other projects in consultation with SoWN*

- 9.1 Lambeth Council has raised two concerns about Policy P20: firstly, that of legal compliance and secondly that it does not meet basic conditions a) and c).
- 9.2 Lambeth Council states that its officers consider that Policy P20 does not amount to a policy relating to the development and use of land. They state that *“CIL expenditure decisions are not planning matters and those decisions must be taken by the Council in accordance with all relevant policies and procedures, and criteria, which govern expenditure decisions.”*. SoWN’s view is that CIL expenditure decisions are indeed planning matters and it is entirely appropriate to have a policy of this nature in a neighbourhood plan. Whilst there may be other of the Council’s general policies and procedures that apply to CIL expenditure decisions, such as procurement requirements for example, it is clear from the legislative and policy frameworks relating to CIL and neighbourhood planning that specific considerations apply, in particular to CIL raised in an area the subject of a neighbourhood plan, which set those expenditure decisions apart from others that the Council may make and/or the manner and basis on which it makes them.
- 9.3 CIL is raised from development to fund infrastructure to support development (Regulation 59 of the CIL Regulations 2010). The provision of infrastructure to support development is squarely a planning matter (see paragraph 7 of the 2012 NPPF which sets out the need for the planning system to perform a number of roles in relation to sustainable development including under the economic role *“identifying and coordinating development requirements, including the provision of infrastructure”* and under the social role *“creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being”*.)
- 9.4 The PPG on neighbourhood planning states that if a qualifying body identifies a need for new or enhanced infrastructure, it *“should set out in their draft neighbourhood plan the prioritised infrastructure required to address the demands of the development identified in the plan.”*<sup>6</sup>. The PPG on CIL states that *“Where a neighbourhood plan has been made, the charging authority and communities should consider how the neighbourhood portion can be used to deliver the infrastructure identified in the neighbourhood plan as required to address the demands of development. They should also have regard to the infrastructure needs of the wider area.”*<sup>7</sup>
- 9.5 Lambeth Council suggests that the Isle of Dogs examination casts doubt on this type of policy. However, the examiner stated that he would consider *“that a policy that relates the spend of the neighbourhood element to a prioritised list of projects that are concerned with the use and development of land, to be capable of being included and of satisfying the Basic Conditions.”* (paragraph 6.2 of the Examiner’s report). Policy P20 of the SoWN plan does exactly as the Isle of Dogs Examiner suggested by setting out a list of projects that are concerned with the use and development of land.
- 9.6 The Locality Community Infrastructure Levy toolkit identifies made neighbourhood plans that have included similar policies, for example Fortune Green and West Hampstead Neighbourhood Development Plan 2015-2031 which had a policy setting out the projects and schemes which are

<sup>6</sup> Paragraph: 046 Reference ID: 41-046-20140306

<sup>7</sup> Paragraph: 073 Reference ID: 25-073-20140612



the neighbourhood plan's priorities for the use of CIL or, if applicable, s106 funding and/or other such schemes in the neighbourhood area.

9.7 To underline this, Lambeth Council has a policy in its own current and draft local plans concerning how CIL expenditure will be applied (Policy D3(c) and (d) (referred to in its statement)).

9.8 It is SoWN's view that Policy P20 therefore does amount to a policy in relation to the development and use of land and should not be removed from the DNP.

#### 10. **Basic conditions (a) and (c)**

10.1 Lambeth Council states that Policy P20 conflicts with Policy D3(d) because local plan policy makes clear that *"the Council will retain funds on behalf of the community to deliver local neighbourhood facilities and improvements through the use of a neighbourhood funding element of CIL; and that the Council will co-produce local neighbourhood infrastructure delivery plans that identify, prioritise and cost projects to be delivered locally via agencies working in co-operation with the council or by the Council itself. The priorities identified in neighbourhood plans can of course inform this process but it is not appropriate for a draft NDP policy to require that NCIL can only be spent on the projects it identifies or in consultation with SoWN"*.

10.2 Lambeth Council's approach to the neighbourhood element of CIL ignores the Government's intentions for neighbourhood plans. The opening paragraph of the PPG states:

*"Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. They are able to choose where they want new homes, shops and offices to be built, have their say on what those new buildings should look like and what infrastructure should be provided, and grant planning permission for the new buildings they want to see go ahead."*<sup>8</sup>(emphasis added).

10.3 The PPG states that the increase from 15% to 25% of CIL receipts when a neighbourhood plan is made is *"To help deliver their vision communities that take a proactive approach by drawing up a neighbourhood plan or Order and secure the consent of local people in a referendum"*. It continues *"Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expresses (sic) by local communities, including priorities set out formally in neighbourhood plans."*<sup>9</sup>

10.4 Arguably Lambeth Council's policy D3 conflicts with government guidance by failing to acknowledge the important role intended for the neighbourhood plan in determining local priorities for CIL spending. In the supporting text to Policy D3, it states that *"Co-operative local investment plans will be considered and coproduced with citizens, developers and agencies during the plan period."* There is no mention of neighbourhood plans or the role of a neighbourhood forum. It does not take account of the fact that the restrictions on the spending of CIL under the regulations differ where a neighbourhood plan is in place, as a neighbourhood plan unlocks the additional 10% that can be applied to the broader purposes set out in Regulation 59F(3) *"to support the development of the relevant area by funding a) the provision, improvement, replacement, operation or maintenance of infrastructure; or (b) anything else that is concerned with addressing the demands that development places on an area"*. Although Lambeth Council's policy is to apply 25% of receipts

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<sup>8</sup> Paragraph: 001 Reference ID: 41-001-20140306

<sup>9</sup> Paragraph: 003 Reference ID: 41-003-20140306.

locally, only the 15% covered by Regulation 59A(5) can be spent in accordance with Regulation 59F(3).

- 10.5 As local plan Policy D3 and the supporting text fail to mention the difference between areas where a neighbourhood plan has been made and the central role of the neighbourhood plan in establishing priorities in the spending of the neighbourhood portion of CIL in a neighbourhood area, neighbourhood plan Policy P20 is not in conflict with this policy. Instead, it provides detail of how Lambeth Council should take into account the projects identified by the community through the neighbourhood plan process and how it should prioritise the expenditure of the CIL neighbourhood portion in the neighbourhood area where the plan has been made. Lambeth Council also objects to consulting with SoWN but it should be noted that there is nothing in the wording of Policy P20 that precludes wider consultation.
- 10.6 Almost six years ago, in mid-2013, Lambeth Council's cabinet resolved to introduce CLIPs. At that time SoWN sought clarity on what was proposed and was informed that an initial pilot scheme was to be taken forward and tested in Vauxhall. SoWN was advised that it would be involved in the relevant CLIP when the time came. It was not until April 2017 that the first CLIP from the pilot was published for Stockwell, Vassall and Larkhall. Although boundaries for seven CLIPs have been established by Lambeth Council, including a Waterloo CLIP which incorporates the SoWN and DNP area, there has been little engagement with SoWN on this, and no other finalised CLIPs can be found on Lambeth Council's website.
- 10.7 A Lambeth Council cabinet report from January 2017 describes CLIPs as "*non-statutory documents setting out priorities in CLIP areas to inform how CIL will be spent locally, based on public engagement*". Neighbourhood fora are bodies that may be constituted by and sit within the wider statutory framework for neighbourhood planning; and neighbourhood plans are, in contrast to CLIPs, statutory documents supported by Government guidance which specifically set out their relevance to neighbourhood CIL expenditure. No other groups or documents are specifically referenced by the legislation or government guidance in the same way. The Council's Regulation 16 response on Policy P20 appears to regard the role of neighbourhood fora and neighbourhood plans in establishing expenditure priorities for the neighbourhood portion of CIL as no different to that of any other stakeholders or considerations that it will engage with in regard to such decisions, which in turn appear to be in its view no different to any other Council expenditure decisions. It is SoWN's view that this is patently the wrong approach given the significance afforded neighbourhood plans, in particular, within the neighbourhood planning statutory framework, the relevant CIL Regulations provisions and associated guidance.

## 11. Southwark Council Regulation 16 response

- 11.1 Southwark Council states that it "*has an established process and procedure for identifying, prioritising and funding projects which are proposed to be the beneficiary of the neighbourhood element of CIL. This is set out in our S106 and CIL SPD (2015). Getting a project onto a community infrastructure project list (or CIPL) requires approval from the relevant community council (in this case the Bankside, Borough and Walworth community council), comprised of the ward councillors of the three relevant wards. Therefore, the NP policy is highly restrictive and does not reflect the council's established processes for NCIL projects. The forum would be welcome to continue to suggest projects to the community council after the adoption (and lifetime) of the plan, either as individuals or part of another community group. However it is not appropriate to accept that individuals/group's suggestions will take precedence over others due to involvement with the*

*neighbourhood forum and associations with the preparation of the neighbourhood plan, as per the NP policy.”*

- 11.2 The SPD is not part of the statutory development plan and therefore there is no requirement for the neighbourhood plan to conform to it. In any event, at paragraph 6.6 of the SPD, it states that *“We will retain local CIL funds and spend them on projects listed in the Community Infrastructure Project Lists (CIPL) or where relevant on projects listed in an adopted neighbourhood plan.”*
- 11.3 Southwark Council has also commented on the DNP projects list and sets out the hierarchy of areas for the neighbourhood portion of CIL to be spent. It states that *“Currently, with no adopted neighbourhood plan, the neighbourhood proportion of CIL contributions raised within the SoWN area would be 25% of CIL receipts to be spent within the BBLB Opportunity Area. With no parish or neighbourhood council established it is the Borough, Bankside and Walworth community council that will decide on what project any NCIL money is spent, in consultation with the local community, including the Neighbourhood Forum.”* The purpose of this examination is to allow a neighbourhood plan to be adopted. If the neighbourhood plan is adopted, the second part of the opening sentence of paragraph 6.6 of the SPD would apply so local CIL funds will be spent on projects listed in an adopted neighbourhood plan.

**April 2019**