

# Isle of Dogs Neighbourhood Development Plan

## Report of Examination

**Report to London Borough of Tower Hamlets**

by the Independent Examiner:

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## **Summary**

1. From my examination of the submitted Isle of Dogs Neighbourhood Development Plan and the supporting documents, including all the representations made, I have concluded that the Neighbourhood Development Plan should not be made.
2. I have concluded that the plan does not meet the Basic Conditions. In summary, the Basic Conditions are that it must:
  - Be appropriate to make the plan, having regard to national policies and advice;
  - Contribute to the achievement of sustainable development;
  - Be in general conformity with the strategic policies of the development plan; and
  - Not breach, and be otherwise compatible with, European Union and European Convention on Human Rights obligations.
3. I have concluded that, subject to certain modifications, the plan would meet the legal requirements in that:
  - It has been prepared and submitted for examination by a qualifying body – the Isle of Dogs Neighbourhood Forum;
  - It has been prepared for an area properly designated;
  - It does not cover more than one neighbourhood plan area;
  - It does not relate to “excluded development”;
  - It specifies the period to which it has effect – to 2031; and
  - The policies – subject to the removal of those which do not so qualify - would relate to the development and use of land for a designated neighbourhood area.
4. Overall, I have concluded that the Neighbourhood Development Plan should not proceed to Referendum but that if it did, the Referendum Area should be the same as the designated neighbourhood area.

## **1. Introduction**

- 1.1 I am appointed by the London Borough of Tower Hamlets, with the support of the Isle of Dogs Neighbourhood Planning Forum, the Qualifying Body, to undertake an independent examination of the Isle of Dogs Neighbourhood Development Plan, as submitted for examination.
- 1.2 I am an independent planning and development professional of 40 years standing and a member of NPIERS' Panel of Independent Examiners. I am independent of any local connections and have no conflicts of interests.

### **The Scope of the Examination**

- 1.3 It is the role of the Independent Examiner to consider whether making the plan meets the "Basic Conditions." These are that in making the Neighbourhood Plan it must:
- be appropriate to do so, having regard to national policies and advice contained in guidance issued by the Secretary of State;
  - contribute to the achievement of sustainable development;
  - be in general conformity with the strategic policies of the development plan for the area; and
  - not breach, and must otherwise be compatible with, European Union (EU) and European Convention on Human Rights (ECHR) obligations.
- 1.4 Regulations also require that the Neighbourhood Plan should not be likely to have a significant effect on a European Site or a European Offshore Marine Site either alone or in combination with other plans or projects.
- 1.5 In examining the Plan I am also required to establish if the plan complies with certain legal requirements; in summary they are whether it:
- Has been prepared and submitted for examination by a qualifying body;
  - Has been prepared for an area that has been properly designated;
  - Meets the requirements that they must not include excluded development;
  - Relates to more than one Neighbourhood Area; and
  - Relates to the development and use of land.
- 1.6 Finally, as independent Examiner, I must make one of the following recommendations in relation to the Plan proceeding to a Referendum:
- a) that it should proceed to Referendum, on the basis that it meets all legal requirements; or
  - b) that once modified to meet all relevant legal requirements it should proceed to Referendum; or
  - c) that it should not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 1.7 Second, if recommending that the Plan should go forward to Referendum, I am also

then required to consider whether or not the Referendum Area should extend beyond the Neighbourhood Designated Area to which the Plan relates.

### **The Examination process**

1.8 I was formally appointed to examine the plan on 9th April 2018 (though I had been briefed in March). The default position is that neighbourhood plan examinations are conducted by written representations. However, in this case I decided that there were a number of issues that warranted clarification and/or oral evidence at a public hearing. I duly held a public hearing on 10th May and carried out an unaccompanied site visit in the period before that. The agenda for the hearing covered the following topics:

- Development Plan and the significance of the emerging plans
- Infrastructure evidence
- CIL and Estate regeneration – and whether the policies could be considered to be concerned with the use and development of land
- Referendum Area

### **The Examination documents**

1.9 In addition to the legal and national policy framework and guidance (principally The Town and Country Planning Acts, Localism Act, Planning and Compulsory Purchase Act, Neighbourhood Planning Act and Regulations, the National Planning Policy Framework, Written Ministerial Statements and the Planning Practice Guidance) together with the development plan, the relevant documents that were furnished to me - and were identified on the Council's websites as the neighbourhood plan and its supporting documentation for examination - were:

- Draft Isle of Dogs Neighbourhood Plan;
- Basic Conditions Statement;
- Consultation Statement;
- Consultation Statement appendices;
- Environmental Assessment – Determination Letter and Statement of Reasons; and
- Responses received under Regulation 16 (referred to later).

1.10 At the public hearing a number of additional documents were made available to me. I refer to these later in my report.

### **The Qualifying Body and the Designated Area**

1.11 The Isle of Dogs Neighbourhood Planning Forum is the Qualifying Body for the designated area that is the neighbourhood plan area. The Executive Mayor of the London Borough of Tower Hamlets (LBTH), on behalf of the local authority, designated the Neighbourhood Area in April 2016. This is a smaller area than the Forum originally applied for and is not matched to a ward or other boundary used for data collection; in relation to the examination this had implications for evidence that was collected or only available on the original boundary; and may have been an issue in determining the appropriate referendum area – see later. There is no other neighbourhood plan for this area.

## **The Neighbourhood Plan Area**

- 1.12 The plan area is the southern section of the Isle of Dogs, which occupies a loop in the River Thames in Tower Hamlets; it largely comprises former docks, new and established communities, as well as areas regenerated by the London Docklands Development Corporation (LLDC); significant areas of open water remain. The Isle of Dogs has had a history of relative isolation and then dereliction following the closure of the docks but in recent times has seen significant levels of development, mainly focused in and around Canary Wharf – which lies just to the north of the plan area – and is now the fastest growing place in the UK. It is also home to some of the tallest residential buildings in Europe.
- 1.13 The Isle of Dogs is a real island, with the Thames on three sides and water bodies (former docks) at the northern border. There are very limited surface crossing points linking the plan area with the rest of London. This, together with the constrained geography of the Isle, limits movement. Public transport includes DLR, underground, river bus and surface bus services. However, accessibility is patchy; some areas are very good, with very high PTAL ratings; much of the designated area is rated with a PTAL of 2 or 3.
- 1.14 The Isle of Dogs is expected to grow very significantly over the plan period. The GLA Ward Atlas population forecasts estimate that from a 2011 Census base of 40,800 residents the population could reach 79,900 by 2028, three years short of the plan period. House prices are high by UK standards with average sales at £448,444 (2016 prices) and mostly flats (the London average was £501,279).
- 1.15 The demographic composition – using Island Gardens Ward as a proxy - indicates an age profile similar to the Borough's, with a higher proportion of White and Other ethnicities, higher proportion of owner-occupiers (and a lower percentage of social renters) and a higher proportion in employment (with higher qualification levels) than the Borough as a whole.
- 1.16 The plan area contains a range of social and leisure facilities, much of it delivered by the LLDC (which ceased in 1997). The facilities on the Island include sailing and water sports and youth facilities; schools were built, as well as medical centers, some public spaces and there was investment in transport. The extent to which investment can be secured to keep pace with the recent and anticipated growth in the area is a central theme of the plan.

## **2. Neighbourhood Plan preparation and public consultation**

### **The Neighbourhood Development Plan**

- 2.1 The plan is in 11 sections. After two introductory/historical chapters, section 3 sets out the problems the plan seeks to solve. These are concerned with grasping the scale of growth that is anticipated in the area, the impact on this in terms of densification, construction disruption, affordability and quality of life. The next three chapters are concerned with the planning context, the need for a “quick” plan and local forums.
- 2.2 Section 7 sets out the plan's vision, developed around an overall theme of: “A liveable environment in which our diverse community can work, rest and play.” This section explains a core aim of the plan: “... the need for proposed developments that exceed the London Plan's maximum recommended density to only be permitted after

all the infrastructure and services needed to support them and all other developments nearby have been specifically identified and guaranteed.” The chapter then outlines the plan’s multiple objectives (listed a to t).

- 2.3 Section 8 is the heart of the plan – setting out nine main policies. It also concludes with a set of Recommendations – essentially Community advocacy.
- 2.4 The remaining chapters are concerned with explaining the local community’s desire to prepare a much more detailed plan – the “long” plan, this being the “quick” plan – and how a Parish or Town Council for the Isle of Dogs might pursue the longer term objectives of the community; and next steps.

### **Strategic Environmental Assessment and Appropriate Assessment Screening**

- 2.5 Under Article 3(3) and 3(4) of the Strategic Environmental Assessment (SEA) Directive 2001/42/EC an SEA is required of plans and programmes which “determine the use of small areas at a local level”. The Borough Council as “responsible authority” determines if the plan is likely to have significant environmental effects. They determined, in a Screening Statement of 31<sup>st</sup> July 2017, that the plan would not require a Strategic Environmental Assessment or an Appropriate Assessment.

### **Human Rights and European Obligations**

- 2.6 I have no reason to believe that making the plan would breach or is incompatible with the European Convention on Human Rights or other EU obligations.

### **Plan period**

- 2.7 The neighbourhood plan clearly states, in section 8 and elsewhere, that it covers the period to 2031, which is co-terminus with the Council’s Draft Local Plan, rather than the Core Strategy (which is to 2025).

### **Excluded development**

- 2.8 A neighbourhood plan cannot include policies for excluded development, such as minerals and waste. I have concluded that the plan does not do so.

### **Land Use Policies**

- 2.9 A neighbourhood plan cannot include policies that are not concerned with the use or development of land. However, there are a number of instances where the plan advocates community action by the Forum or other parties. In those places where the policies do not relate to the use or development of land I would have recommended that the policies and supporting text be removed from the body of the plan; though they can be retained as part of an Appendix, provided it is clear that they sit under a heading like Community Action and are not stated in any way to be plan policies. The plan already has a sub-section at 8.10 dealing with those aspects of estate regeneration that the drafters felt would not qualify as plan policies. I deal with this issue more fully in section 4 of my report.

### **Public consultation and responses to the submitted plan**

- 2.10 The Consultation Statement sets out the extensive steps taken by the Forum to engage the local community. The statement is accompanied by an extensive (260

pages) set of appendices; eight deal with evidence of the consultation exercises as well as some factual matters (ward demographics, for example); the ninth is described as the Evidence Base, which set out further analysis of the plan area, covering topics of population, housing, infrastructure, green space, environment, crime and health.

- 2.11 The Forum started in late 2014 and The Resident's Group had over 8,000 members by September 2017. From the beginning the Forum used social media extensively: the Facebook page had over 2000 reaches, Twitter 350 followers, the Email newsletter over 700 subscribers; Nextdoor, a local communication website had over 400 members; and the Forum website averaged 235 unique visitors a week. The Forum engaged extensively through public meetings, workshops and with external networks (like New London Architecture). The statement lists the range of surveys, meetings, stakeholder engagement events and other activities, as well as setting out how the Forum responded to representations and comments at the Regulation 14 stage.
- 2.12 A total of 29 parties made representations to the submitted plan; though three were submitted so soon after the deadline that I accepted them. I did, however, refuse to accept some representations made well into the examination. The parties raising substantive matters included: The 4 Estates Forum, One Housing Group, Ashbourne Beech Property Ltd, Historic England, The Canal & River Trust, Ballymore Group, Canary Wharf, Strong Drive Ltd, Westferry Developments, the Greater London Authority and the Council as well as a number of local residents (most local resident representations were simply supportive of the plan, generally). Some statutory undertakers had no comments.
- 2.13 The Forum also made representations its own plan. And at the hearing the Forum introduced Counsel's Opinion on issues that were relevant to the topics on the agenda and which were circulated and which I have taken into account.

### **3. The Neighbourhood Plan in its planning and local context**

#### **National policies and advice**

- 3.1 The neighbourhood plan must have regard to national policies and advice, contained in guidance issued by the Secretary of State, and contribute to the achievement of sustainable development (the first two Basic Conditions). Paragraph 16 of the National Planning Policy Framework (the Framework) is concerned with neighbourhood planning:

*"The application of the presumption [in favour of sustainable development] will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:*

- *"develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development; [and]*
- *plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan;"*

The Framework explains at para 184 that:

*"The ambition of the neighbourhood should be aligned with the strategic needs and*

*priorities of the wider local area*". And: *"Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out on the Local plan or undermine its strategic policies."* The Framework's policy guidance on Local Green Space designations is set out at para 77.

- 3.2 The plan must give sufficient clarity to enable a policy to do the development management job it is intended to do; or to have due regard to Guidance. For example, the Guidance explains that:

*"A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared."* (ref 41-041-20140306)

- 3.3 There has to be appropriate evidence to support particular policies, notwithstanding it may express a strong and well-intentioned aspiration or concern of the local community. The Guidance (recently revised Para 040 ref 41-040-20160211) states:

*"While there are prescribed documents that must be submitted with a neighbourhood plan or Order there is no 'tick box' list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an Order.*

*A local planning authority should share relevant evidence, including that gathered to support its own plan making, with a qualifying body .....*

*Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need.*

*In particular, where a qualifying body is attempting to identify and meet housing need, a local planning authority should share relevant evidence on housing need gathered to support its own plan-making".*

- 3.4 The Basic Conditions Statement (BCS) sets out how the policies in the Neighbourhood Development Plan (NDP) relate to the Framework and the development plan, though it – and section 4 of the NDP - set out the planning context in such a way that it is not clear whether the drafters understand the distinction between the development plan as opposed to emerging plans or supplementary planning documents. Nevertheless, the two documents do set out the relevant development plan context adequately.
- 3.5 Overall, from my review of both the BCS and the NPD, I have concluded that the plan is in general conformity with the strategic policies of the development plan. I have also concluded that the plan seeks to promote sustainable development – both Basic Conditions.

## **The Development Plan - strategic policies**

- 3.6 The neighbourhood development plan must be in general conformity with the strategic policies of the development plan for the area. The development plan comprises:
- The London Plan (LP) 2016; together with
  - LBTH Core Strategy DPD 2010 (which runs to 2025); and
  - LBTH Managing Development DPD 2013.
- 3.7 The London Plan is part of the development plan. In one sense all LP policies are strategic; but not all are directly relevant to the plan. The Basis Conditions Statement set out pages 14-17 those policies that the plan-makers considered the most strategically relevant. These include [not an exhaustive list]: Policies 1.1 (strategic vision), 2.9 (inner London), 2.13 (Opportunity Areas), 3.4 and D1 (optimising housing potential; this includes the Density Matrix referred to on page 21 of the neighbourhood plan). 3.5 (quality and design of housing developments), 3.7 (large residential developments), 3.8 (housing choice), 3.9 (mixed and balanced communities; this is relevant to estate regeneration), 3.16 (protection and enhancement of social infrastructure), 3.17.18 (health, social and education facilities), 5.3 (sustainable design and construction), 7.1 (lifetime neighbourhoods), 7.4 (local character), 7.7 (location and design of tall buildings), 7.14 (air quality) and 8.3 (Community Infrastructure Levy).
- 3.8 The Isle of Dogs lies within the LP Isle of Dogs Opportunity Area, a location for intensification and major change. The LP sets a target of 110,000 extra jobs and a minimum of 10,000 new homes across the whole OA of which the plan area is a part. Over 19,000 new homes currently have been permitted.
- 3.9 The future planning of the Opportunity Area is now being taken forward as part of the Isle of Dogs & South Poplar Opportunity Area Planning Framework (OAPF), which is now out for consultation. This document, which now has an indicative target of 29,000 new homes and 110,000 jobs, is supported by a Draft Development Infrastructure Funding Study (DIFS); both the OAPF and DIFS were only made publicly available the evening before the hearing. I deal with this issue in the next section, Overview.
- 3.10 The London Plan is at an advanced stage of review. A number of representations pointed to the more flexible approach to density in this plan, which no longer includes a Density Matrix.
- 3.11 The Core Strategy has a number of relevant strategic policies which are set out on page 12 of the Basic Conditions Statement. There are also a number of site-specific policies and allocations in the Development Management DPD, including a number relevant to some representations, for example - Site Allocation 19 (Crossharbour Town Centre).
- 3.12 The Council is preparing a new Local Plan: Tower Hamlets Draft Local Plan 2031: Managing Growth and Sharing the Benefits. Regulation 19 consultation started in October 2017.
- 3.13 Overall, I have concluded that the NDP is, in my view, in general conformity with the strategic policies of the development plan for the area.

## 4. Overview

4.1 There is a fundamental difficulty with the plan, as submitted for examination, in relation to the lack of infrastructure evidence to support a central thrust and policy of the plan. The other difficulty is the extent of polices that are not concerned with the use or development of land which, when removed, leaves little of substance left in the plan. I deal with each of these in turn, together with an additional observation about a drafting matter.

### a) Infrastructure evidence

4.2 **Policy D1** (taken as whole) deals with a core aim of the plan - concerning the need for proposed developments that exceed the London Plan's maximum recommended density to only be permitted after all the infrastructure and services needed to support them and all other developments nearby have been specifically identified and guaranteed. The supporting explanation and justification relies on some (confidential at the time) material drawn from an earlier draft of the Development Infrastructure Funding Study (DIFS), which was available to the plan authors at the time, though not in the public domain. The extent and public availability of this evidence was explored at the hearing.

4.3 I spent some time at the hearing discussing the issue of how to deal with the DIFS, given that it substantially underpins the infrastructure evidence in the plan. At the close of the hearing I was handed the June 2017 PowerPoint slides (which was all that was available at the time; a confidential presentation to local Councillors, one of whom was part of the Forum) and the Final Draft DIFS Report (dated November 2017) only then just published by the GLA as a supporting document to the Isle of Dogs and South Poplar OAPF, which is the subject of public consultation<sup>1</sup>.

4.4 The difficulty facing my examination is that a central theme of the plan - the provision of appropriate infrastructure to support the growth that is taking place through development - is not supported, in my view - and that of many of the representations - by evidence - leaving aside whether it was robust or proportionate - that was publicly available at the time the plan was prepared, nor formed part of the public consultation on the plan. The principle evidence cited in the plan (principally found on pages 46 - 47), the DIFS, was not even available to the authors; the only material available to them was an 18 page set of summary slides (though the Forum maintained that some parties may have had a sight of them).

4.5 At the hearing the Forum suggested that I could pursue one (or possibly both) of two courses of action to remedy this deficiency:

1. Adopting an approach described as a Correction of Errors; or
2. Using the Infrastructure Delivery Plan (IDP) - part of the Council's evidence base for the Local Plan, which draws on unpublished DIFS data and which was the subject of public consultation, albeit after the neighbourhood plan was submitted for examination - as a proxy evidence base.

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<sup>1</sup> I stated at the hearing, at the time of being handed these documents that I noted they were prepared by Peter Brett Associates and that I was partner in the firm until four years ago; I explained that I have never had any involvement in any work that firm has carried out in the plan area. I declared this for the record.

- 4.6 I reject both of these approaches: Correcting this deficiency goes far beyond an error; and the IDP is not relied on in the plan, in any event. Instead, I canvassed at the hearing, having given both parties advance warning, the possibility of suspending the examination to enable consultation on the now publicly available DIFS. And in passing, having read the OAPF document, I noted that at 7.1 (third paragraph of the consultation document) that it says that: "It is also fortunate that the timing of the production of the draft Local Plan and Neighbourhood Plan for the Isle of Dogs allows for opportunities to consult jointly on the emerging documents and allow each other to inform the development of the other." (my emphasis).
- 4.7 So, it might have been possible to take advantage of that consultation exercise, if framed appropriately. And I had assurances from both parties that they could accept a fresh consultation and could manage the logistics of doing so. But for this to be an effective solution, I needed to be satisfied that the now published DIFS was substantially the same as the material available to the drafters of the plan and that I could conclude that the core policy of the plan was based on robust and proportionate evidence.
- 4.8 Having reviewed the PowerPoint presentation slides (that came into the possession of the Forum last summer, through a local Councillor) and compared them with the 78 page (double columned) full Draft report, I was not persuaded that this solution was feasible. I explained my provisional conclusions in an email to both parties and asked both the Forum and Council to come to their own views and to let me know. This they did and the email exchanges have now been published on both websites and made available to those who took part in the hearing discussions. The Council agreed with my conclusions; the Forum sought to persuade me that the consistency between the two documents was sufficient for a re-consultation to take place.
- 4.9 Having considered both parties' representations I have concluded that the slides cannot be considered sufficiently robust or proportionate evidence to underpin a core policy in the submitted plan. While the few tables in the slides that are reproduced in the plan are the same, nevertheless the plan necessarily extracts these out of context of the considerable body of material and the wide-ranging arguments in the full (and, at the time, a previous draft) report that was not available to the Forum nor the public at large; further, and crucially, the evidence base used in the plan was not part of the consultation on it. While the general conclusion - that a great deal of extra infrastructure is needed to support the high levels of anticipated growth - is the same, that on its own is not enough to bring the two documents together, in my view, the two documents are simply not comparable in depth or scope.
- 4.10 In terms of rectifying this deficiency I have therefore concluded that consultation on the full DIFS - either as part of the OAPF consultation, or as a stand-alone consultation - cannot rectify this fundamental problem. I consider this represents a **fundamental flaw** in the plan: The infrastructure evidence is simply not robust or proportionate to support a key policy in the plan, has not been consulted on (nor could have been) and so the plan, and Policy D1 in particular, cannot in my view, meet the Basic Conditions.
- 4.11 I have considered simply recommending deletion of all of Policy D1. However, the infrastructure evidence is so central to the plan and Policy D1 is such a core policy that I have rejected deletion as a solution.

## b) Non land-use policies

4.12 A significant proportion of the plan is given over to what is effectively advocacy. The plan explains that these matters – which are significant local concerns - should be policies as they are couched in terms that promote sustainable development and therefore fall within the scope of the national guidance. I am not convinced by this argument; the Guidance makes clear (and is quoted in full in the plan) that:

“Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific actions or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” ID: 41-004-20170728

4.13 The most contentious aspect of those policies, which many representations regarded as not concerned with the use or development of land, were in relation to estate regeneration: Policies ER1-8. These are concerned with matters such as the Right to Vote to approve or reject final proposals, the conduct of elections, resident participation, the right of return, tenant and owner rights and public profit reinvestment. I have concluded that these should be recommended for deletion and I explain why in section 7.

4.14 In addition some other policies also strayed beyond what I considered to be concerned with the use or development of land. These included:

- CIL 1-4: The use of Community Infrastructure Levy (CIL) – and see further in section 7 of my report;
- GR1: Helping Establish new Residents Associations – see section 9; and
- 3D1-2: Use of a 3D model for planning –see section 10;

4.15 I have concluded that all of these policies, as currently drafted, fall outside the scope of land use policies and should not be in the body of the plan; however, they could be added as an annex. If they are taken out, together with Policy D1 (if deletion was the way to rectify the evidence deficiency), there is then very little of substance left in the plan; though this in itself is not a reason for the plan to fail.

4.16 Given the Forum’s desire to prepare a “long” plan it will, I believe, be helpful if I gave an indication of my conclusions on the policies in the plan.

## c) Drafting

4.17 In a number of places, policies in the plan are applied to “any developments which have to be dealt with by a development committee of LBTH (excluding call-ins).” This seeks to define a threshold; however, this is only current in the Borough and could change. The Council has suggested this expression be replaced by “Strategic” or “Referable” development in order to ensure consistency with the Local Plan and so as not to introduce a new threshold. However, neither of these are defined terms nationally, so I would **recommend** the appropriate threshold be Major Development.

4.18 There are a wide range of drafting matters that relate to the examination – those

which do not I have added as an Annex. For the purposes of this report, I would recommend that any new plan takes into account the general matters raised by the Council in Section 3 of their representations, which I generally support.

- 4.19 In a number of polices the Forum seek to be the party consulted. However they have no formal role in development management and a policy cannot specify that they – or indeed any other party – be specifically consulted. All such references need to be removed, which I believe the Forum has already accepted.

## **5. Density and Infrastructure**

- 5.1 Section 8.1 covers the core concern of the plan and in **Policy D1**. I have already dealt with the absence of a robust and proportionate evidence base; this obviously needs to be rectified in any event. Now that the DIFS is published this should be a relatively straightforward task.
- 5.2 The policy also encompasses hotels but there is no identifiable evidence to support that inclusion – or at least at a threshold that makes sense. At present it would apply to a hotel of 10 rooms, which I am sure is not intended. It may be better to remove it from the policy – which is primarily concerned with the impacts from high-density housing - and create a new policy, suitably evidenced and with an appropriate threshold.
- 5.3 The drafting of the policy itself creates some difficulties. The way the first part is framed it could be interpreted as an embargo until a range of factors, likely to be outside the control of the developer, are resolved. Also the list of potential infrastructure solutions in the second part is too unrelated to any development that might be caught by the first part and so would not meet the requirements of para 173 of the Framework and the CIL Regs (122). The drafting needs to achieve real clarity to enable the policy to be an effective development management tool, as pointed out by the GLA. I agree with the Borough Council's recommended modifications as set out in their representations.
- 5.4 A number of representations were critical that it was linked to the London Plan's density matrix; the general suggestion was to use the more flexible approach in the new draft. However, I would reject that argument, as the London Plan is still part of the adopted plan for the area and its approach to density is of a strategic nature. It is perfectly legitimate, in my view, for the plan – given the circumstances – to adopt the approach it has, which complies with the Basic Conditions. The Council helpfully sets out some drafting improvements to D(2), (3) and (4), which I support.

## **6. Community Infrastructure Levy (CIL)**

- 6.1 Section 8.2 of the plan deals with four aspects of the Forum's proposals for the use of CIL. As they are currently drafted I have concluded they are not sufficiently concerned with the use and development of land to meet the Basic Conditions or legal requirements and so should be deleted. However, with some re-drafting some or all could be re-introduced as part of a new plan, to deal with the significant infrastructure-funding gap (which as a general point is not disputed).
- 6.2 **Policy CIL1** is concerned with the neighbourhood pot. The intention is to direct spend on, or investment in, identified projects. However, it is not possible to identify which projects – other than a list in CIL3 – or what priority should be given to those to be found in different parts of the plan. The policy, in my view is at odds with the CIL

Regulations. Also, the quotes in the plan are from the CIL Guidance and are not necessarily applicable to the role of CIL in a neighbourhood plan. I would, however, 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.

- 6.3 **Policy CIL2** is concerned with long-term community financing through CIL and is not a policy concerned with the use or development of land; rather, it is concerned with matters that are governed by the CIL Regulations and Guidance not necessarily land use planning. However, it could be redrafted to clarify this as an infrastructure priority. The non-land use elements could then be transferred to an Annex.
- 6.4 **Policy CIL3** is again not drafted currently as a policy concerned with the use or development of land; it is also concerned with matters that are governed by the CIL Regulations and Guidance. However, it does give an indication of the range of matters that the community wish to see funded and this list could be used as a basis for reaching a prioritised list as I outline above (in 6.2).
- 6.5 **Policy CIL4** seeks to limit all CIL to be spent in the plan area. The rationale behind this is understandable, given the scale of development pressures in the plan area and the limited funding for supporting infrastructure. The principal evidence relied on is the DIFS, on which I have already commented. The assertion is that as there is a significant funding gap all available funds should be spent within the area.
- 6.6 However, this ignores the benefits that can be derived from infrastructure spending outside the area. For example a secondary school located outside the area may have a catchment that serves the plan area; the same can be said for a number of the projects listed in CIL4 - a waste facility, water management, and transport and freight delivery. Ultimately, it is not a policy concerned with the use or development of land, even if it was justified. Nevertheless, this could be redrafted to clarify this as an infrastructure priority. The supporting text could be moved to an evidence base document and cross-referenced here.

## **7. Estate regeneration**

- 7.1 The policies seek to secure for the current occupiers of local estates a greater degree of control and protection over their homes – primarily through a voting mechanism - than would otherwise be possible under development plan policy. This is controversial. Even the plan admits: “...even if they do not fit classic land use policies.” There was clear concern among representations about the impact of recent estate regeneration schemes and both the tenants’ representatives and the estate owners – the focus of the discussion at the hearing was on the four estates in the plan area owned and managed by One Housing – testified to how conscious they were of how such schemes can adversely affect individuals and communities if carried out insensitively. It is likely that the same issues would apply to the other 3 main estates in the area (owned and managed by East End Homes).
- 7.2 However, as I have concluded earlier, whatever their merits in terms of good practice for estate regeneration, they are not policies concerned with the use and development of land; nor do they meet the Basic Conditions or the legal requirements, I see no place for them in the body of the plan. But they could form an extended Annex.

## **8. Empty sites policies**

- 8.1 The policies in this section are primarily aimed at encouraging the use of undeveloped sites – or those awaiting redevelopment – for a range of purposes that would be of benefit, albeit temporary, to the local community. This is clearly relevant to the local circumstances of the area and this issue generally concerns land use. The policy seeks to impose a set of obligations on the developer to submit a feasibility study and impact assessment for a meanwhile use on their sites as part of their application. The policy goes on to list a priority list of projects and then the conditions on which the sites will be provided.
- 8.2 The issue raised by a number of representations was the potentially onerous nature of this policy. The priority order seems not to be well evidenced; rather, it seems to be a set of local preferences. The conditions – which are expressed in mandatory language - need to be reviewed to meet the Basic Conditions. Para 173 of the Framework, for example, explains that polices should not impose onerous obligations or should frustrate strategic sites in the development plan – a concern expressed by some representations. The third bullet, concerned with use of funds, I would judge to be in conflict with the CIL Regulations. Any new policy should be robustly and proportionately evidenced and explain it only applies to Major Development (see earlier).

## **9 Helping Establish New Residents' Associations**

- 9.1 **Policy GR1** requires the promoters of certain classes of development to include, in all leases in the development, automatic membership of a formally recognised residents' association — as well as other conditions. I do not consider this is a policy concerned with the use or development of land and should be deleted, as this does not meet the Basic Conditions. The text could be moved to an Annex as part of the plan's advocacy.
- 9.2 The objectives of the policy are understood, so it may be that a new policy, as the Council suggest, would be better framed within another topic, such as design.

## **10 3D Model for planning**

- 10.1 There are two policies – **3D1** concerned with the use of 3D modeling in formulating future planning polices; and **3D2** with its use in appraising planning applications.
- 10.2 Policy **3D1** is essentially an advocacy policy – it seeks to ensure that the planning of the area be carried out using 3D modeling, to a given specification and standard. This chimes with GLA proposals to create a London-wide 3D model. Given that the only planning bodies in the area are the GLA, LBTH and the Forum, this is not – as currently drafted - a land use policy as such but a local action point. The GLA point out that to be so it would need to explain exactly what official model is involved and to set out the part the developer would play in its funding and on-going management.
- 10.3 Policy **3D2** seeks to add 3D modeling to the validation of all major planning application. The justification is Policy 3D1. This is potentially circular. There is in fact no evidence that it is necessary for every major application. There are a variety of ways to enable a proper appraisal of a development effects. If this policy is to survive in a new plan it needs to be substantiated by robust and proportionate evidence. At present it has neither and should be deleted.

10.4 Overall, it is recommended that these points be re-drafted and included as Community Action points in an Annex.

## **11. Broadband access**

11.1 Policy **BBA1** is concerned with securing fibre to the premises. The GLA point out that the supply of broadband to homes is a commercial matter unless the policy is making site-specific infrastructure requirements. It is not yet development plan policy to require such access, though the draft LP requires developers to include certain design measures to support digital connectivity. The Council points out that this policy ensures a consistency with the Local Plan and doesn't introduce a new threshold. But evidence is also required that this policy is deliverable; it should instead focus on future-proofing. I agree with the GLA's representation and conclude that this policy does not meet the Basic Conditions as drafted, not being concerned with land use and so should be deleted.

11.2 **Policies BBA 2 and 3** effectively require developers to enter in to arrangements that are a commercial matter. As drafted it is not clear as the Council point out, what the planning mechanism would be to deliver this policy; and, they as I do, consider it to fail NPPF para 206 on conditions and so should be deleted.

## **12 Construction management and communication**

12.1 Construction impacts are a very significant issue in the plan area; the effects of construction disruption – largely due to the large number of developments occurring in such close proximity - are listed on page 27 of the plan. At present there is no effective co-ordination process (unlike during the Olympics construction, by way of contrast). The GLA point out that a core aspiration of the OAPF will be to understand and address the impacts of construction delivery and servicing freight.

12.2 **Policy CC1** deals with Construction Co-ordination. It requires construction companies to consult with Forum on material changes to a construction management plan (including encroachment on public land/access); and for the Council to consult the Forum. Proper consultation is a valid land use matter as is the impact of construction but the Forum are not the local planning authority and so cannot, in my view, insist on being directly consulted.

12.3 Given the local circumstances it would be proper for a policy to be included that required applicants – a policy cannot only require construction companies per se - to consult those likely to be directly affected including on proposals that alter construction management plans. The Council makes a similar point; though the policy should only apply to Major or Strategic Development. A Community Action could be added to the Annex that argued for the Forum to be consulted.

12.4 **Policy CC2** concerns Construction Communication. This effectively extends the scope of CC1 to include notification of working hours. The Council point out that this is primarily a matter for the Environmental Health team to monitor. My conclusions on CC1 apply here too.

12.5 **Policy CC3** concerns the Control of Dust and Emissions During Construction and Demolition. It seeks compliance with the GLA's SPD on the same topic; and for data to be shared with the Forum. The main part of this policy seems to me to be reasonably justified by the conditions faced by the local community. But the second sentence, concerning sharing data, is not reasonable and should be deleted.

### **13 Sustainable design**

- 13.1 **Policy SD1** concerns Sustainable Design and applies to all major development categories. It seeks to ensure that BREEAM Excellent ratings are achieved. The policy also includes application of the Home Quality Mark. The reason for its inclusion is that while the policy is in the emerging Draft Local plan the local community wish to see it implemented sooner than the draft plan's timetable would suggest.
- 13.2 In my view this policy can satisfy the Basic Conditions with some drafting modifications. However, as the Council point out, the WMS of 25<sup>th</sup> March 2015 prevents requirements of standards other than the Building Regulations and the optional technical standards. The policy and supporting text should only provide guidance to the relevant decision-maker.

### **14 Air Quality**

- 14.1 **Policy AQ1** is concerned with protecting air quality and securing the goals of the Paris Agreement. It is in four parts, part 2 containing seven criteria or requirements. The Council has raised many concerns with the drafting of this policy, notwithstanding their support for the objectives. It is clearly a local concern of some significance.
- 14.2 However, I agree with their concerns and consider that the suggestions they set out in their representations are valid and could be used to inform an enforceable policy in a new plan. That could meet the Basic Conditions.

### **15 Referendum Area**

- 15.1 The Forum originally argued for a wider area, given the boundary problem but confirmed at the hearing that this was no longer their position and the Council could manage a referendum for the designated area alone.
- 15.2 Planning Practice Guidance on the Independent Examination explains:

*"It may be appropriate to extend the referendum area beyond the neighbourhood area, for example where the scale or nature of the proposals in the draft neighbourhood plan or Order are such that they will have a substantial, direct and demonstrable impact beyond the neighbourhood area."*

Reference ID: 41-059-20140306

- 15.3 There are no formal development site allocations in this plan and in my view the nature and scale of what it proposes would not *have a substantial, direct and demonstrable impact beyond the neighbourhood area*. I would therefore **recommend** that the Referendum Area be the same as the designated neighbourhood area, if the plan went forward to referendum.

### **16 Conclusions and recommendations**

- 16.1 I can see that the Forum and its volunteers have put in a great deal of hard work into the submission of the plan and the supporting documents. It seeks to represent the local community's aspirations, which it does well. Where it has not succeeded is in the way a core policy has not been evidenced. And, many policies would need to be

removed from the body of the plan as they are not concerned with the use or development of land but advocate what is effectively Community Action.

- 16.2 Overall, from my examination of the submitted Neighbourhood Development Plan, together with the supporting documents, including having regard to all the representations made, I have concluded that the plan has a fundamental flaw and that the making of the plan would not meet the Basic Conditions. I conclude, however, that the legal requirements could be met, subject to certain recommended modifications. I have set out my conclusions, drawn from the findings in my report, in the Summary, on page 3.
- 16.3 In summary, I **recommend** that the Isle of Dogs Neighbourhood Development Plan should not proceed to referendum. I **recommend** that if the plan does proceed to referendum then the Referendum Area should be the same as the designated neighbourhood area
- 16.4 Finally, my thanks to both the Council and Forum for their support in the examination.

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7 June 2017

Independent Examiner

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**Annex – this does not form part of the formal report**

There are a variety of presentation and drafting points that do not form part of the formal examination but which could beneficially be addressed in a future plan and on which it may help the drafters to have some feedback:

1. All the headings and paragraphs in the plan need numbering; it will enable easy referencing.
2. Every table, map and image would benefit from a unique reference: Eg. Table 1, Figure 2 etc, for the same reasons.
3. Much of the data quoted and presented might be easier to assimilate and better related to the polices if simplified in its presentation. Where the matter is detailed it may be better to transfer to an evidence base document and cross-referenced in the text.
4. The development plan context could be more clearly set out.
5. The distinction between Explanation and Justification seems artificial.
6. References should be provided in support of statements in the plan, especially “own evidence”.
7. Figures and tables should be updated – and checked – where data is available.