

# Central Ealing Neighbourhood Development Plan

## Report of Examination

**Report to Ealing Borough Council**

by the Independent Examiner:

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20 March 2017

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## **Summary**

1. From my examination of the submitted Central Ealing Neighbourhood Development Plan and the supporting documents, including all the representations made, I have concluded that, subject to the modifications I am recommending, the Neighbourhood Development Plan should be made.
2. I have concluded that, subject to modification, the plan meets 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 the plan meets the legal requirements in that:
  - It has been prepared and submitted for examination by a qualifying body – Central Ealing 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 – from 2017 to 2026; and
  - The policies relate to the development and use of land for a designated neighbourhood area.
4. Overall, I have concluded that the Neighbourhood Development Plan should proceed to Referendums.
5. The plan area is also a Business Area, involving both resident and business voters in referendums. I recommend that the Referendum Area should extend beyond the plan area. I recommend that the referendum area be the area as shown on the plan at the Annex to this report, involving the ten Polling Districts in and around the plan area.

## **1. Introduction**

- 1.1 I am appointed by Ealing Borough Council, with the support of the Central Ealing Neighbourhood Forum, the Qualifying Body, to undertake an independent examination of the Central Ealing 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 (see Development Plan, below) for the area; and
  - not breach, and must be 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 they meets all legal requirements;
  - 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 Area to which the Plan relates. This is particularly relevant as this plan area is also a Business Area.

### **The Examination process**

- 1.8 I was appointed to examine the plan on 14<sup>th</sup> December 2016. The default position is that neighbourhood plan examinations are conducted by written representations. However, in this case, there was a range of issues on which I wanted to hear oral evidence. I, therefore, held a public hearing, which took place in Ealing Town Hall on 16<sup>th</sup> February, for which I prepared an agenda in advance. In addition I carried out unaccompanied site visits in January and February 2017.
- 1.9 The Forum and Council continued to discuss their differences post-submission, with my encouragement, and submitted a **Statement of Common Ground** (SoCG) which was used at the hearing as a set of suggested modifications and was helpful to me and the parties present in understanding their current positions. This Statement was further amended in the 10 days following the hearing, posted on the Forum and Council websites and forms the basis of my own modifications; otherwise I have examined the submitted plan with reference to its supporting documents and the representations made to it.

### **The Examination documents**

- 1.10 In addition to the legal and national policy framework and guidance (principally The Town and Country Planning Acts, Localism Act, Neighbourhood Plans Regulations, the National Planning Policy Framework and the Planning Policy 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:

- Central Ealing Neighbourhood Development Plan (submission version) with appendices (Appendix 3 is a separate document);
- Basic Conditions Statement; and
- Consultation Statement.

- 1.11 In addition, I was furnished with:

- A list of policies that LB Ealing considered were strategic;
- A bundle of 33 representations to the neighbourhood plan (allowing for some duplicates or multiple reps from the same organisation, eg Make It Ealing);
- A Health Check, carried out in August 2016; and
- Extracts from the Policies Map (town centre) and the three relevant Conservation Area Appraisals and Management Plans.

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

- 1.12 Central Ealing Neighbourhood Forum, constituted in December 2012, is the Qualifying Body for the designated area that is the neighbourhood plan area. London Borough of Ealing, the local authority, designated the Neighbourhood Area in March 2013. There is no other neighbourhood plan for this area, which is also designated a Business Area.

## **The Neighbourhood Plan Area**

- 1.13 The plan area is focused on the retail and administrative centre of the London Borough of Ealing; central Ealing is also known as Ealing Broadway. It is part of the Metropolitan Town Centre (in the London Plan) which includes West Ealing – which is the subject of a separate neighbourhood plan – and the two core parts are separated by a commercial office quarter and have their own histories and characteristics. Ealing Broadway is also a Business Improvement District (Make it Ealing) the boundary of which is broadly similar to the plan area though it also includes West Ealing
- 1.14 There are no significant distinguishing topographical features. The Great Western Railway provides a significant physical barrier between the main part of the town and the later residential developments. The town centre's defining characteristics are set out in plan paragraphs 4.13 and 4.14: as a whole, the main thoroughfares, the rail tracks and the open areas of haven Green, Ealing Green and Walpole Park. Most buildings are in retail or commercial use. There are three conservation areas, of mainly the Victorian and Edwardian periods; there are a number of significant landmarks and churches, such as Christ the Savior.
- 1.15 The plan is also concerned with the area's economy. Ealing sits in one of the most prosperous areas in the country with high resident earnings and low unemployment. There is a significant shopping centre; generally vacancies are low. But the centre is failing to retain its share of expenditure: The retail function has seen competition from other centres and the internet, among other factors, which the plan seeks to address.
- 1.16 The plan explains that until recently the plan area had a low population – at May 2012 the area contained some 800 homes housing 1,432 voters equating to a population of some 1,840 people – but that this picture is likely to significantly change. Committed and planned schemes are likely to result in the growth of the base population by 3½ times.
- 1.17 The centre services a far larger population. The plan estimates that there are 18,000 people within 1.5km, for many of whom it represents their local shopping centre. As a Metropolitan Town Centre with good public transport, it is estimated to serve a significantly larger catchment. The centre's accessibility will soon be greatly enhanced by the arrival of a Crossrail station.

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

### **The Neighbourhood Development Plan**

- 2.1 After the two introductory chapters, the Neighbourhood Development Plan sets out an aspiration of how Central Ealing should change reflecting how local residents and businesses want it to develop. The plan's Vision (section 3) is built around four main policy themes, in summary:
1. Ealing's Economy – to retain its competitive edge and renewed shopping experience;
  2. Transport and the Public Realm – a network which encourages pedestrian use and cycling;

3. Heritage and the Built Environment – to protect and enhance the quality of the area’s heritage; and
  4. Culture and Community – to be a regional centre of excellence for education and culture; and be an integrated and balanced community.
- 2.2 Section 4 sets the scene for the four policy themes, with a commentary on sustainability, densities, building heights, the plan’s sub-areas and the conservation areas and Craven Avenue. Section 5 sets out the policies, under the four themes (above). Section 6 deals with the plan’s delivery and prioritises the CIL spend.
  - 2.3 The plan contains three site specific policies: CENP1-3. At the hearing it was confirmed that these do not represent site allocations, rather policy aspirations. Even so, they have real implications for each site and I deal with these later in my report.
  - 2.4 The plan contains 11xA3 fold-out maps. In the course of my report I identify modifications or corrections necessary to be consistent with changes to the text.
  - 2.5 The plan uses “will”, “shall” and “should” in its policies. The meaning is explained at the end of the glossary. This is helpful in understanding the nature of any obligations or requirements imposed by a policy, especially those of a site-specific nature. Historic England and Transport for London both make mapping suggestions, which will improve the accuracy and clarity of the plan so I **recommend** be adopted.
  - 2.6 The plan’s three appendices won’t add anything to the use of the plan once made, in my view: App 1 is background data which will quickly get out of date; App 2 is evidence to support Haven Green’s designation as Local Green Space, which I deal with later; and App 3 is a stand-alone Technical Report in support of a policy which I also deal with later. Consequently, I **recommend** they be deleted.
  - 2.7 Finally, the plan contains *Associated Recommended Actions* after each set of policies. These are not land-use policies and do not form part of the formal plan. Guidance recommends that such text is clearly separate, say, in an annexe or separate document. Section 1.11 explains their status clearly and they have a distinct graphic presentation. So I am content to leave them where they are. As they are not land-use related but are essentially advocacy I make no comment on them.

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

- 2.8 Under Article 3(3) and 3(4) of the Strategic Environmental Assessment (SEA) Directive 2001/42/EC a 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.
- 2.9 The Borough Council determined, in a Screening Statement, set out in the Basic Conditions Statement, that the plan would not require a Strategic Environmental Assessment. The Council also determined that the plan would not require an Appropriate Assessment.

## **Pre-submission and Examination version – public consultation responses**

2.10 The key dates in the plan's latter stages are:

Aug 2015	Submission of draft plan to LB Ealing
Feb 2016	Reg 14 Public consultation (extended to 8 April) on draft plan
June 2016	Analysis of comments & plan amendments in response
Sept 2016	Final amendments and submission of plan to LBE
Oct 2016	LBE carries out public consultation (6 weeks) on examination version

2.11 A total of 33 parties made representations to the plan (allowing for duplicates); parties raising substantive matters included: Historic England; Ealing Cycling Campaign; Transport for London; Ealing Ltd; BE Broadway BV; Muse Developments; PBA; CEG; British Land; Make It Ealing; For Arts sake; St George; LB Ealing.

2.12 A significant number of representations were concerned with promoting a Referendum Area beyond the plan area. Many representations were simply supportive of the plan, generally.

## **Human Rights and European Obligations**

2.13 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**

2.14 The neighbourhood plan clearly states, including at para 1.8 and on the cover, that it covers the period to 2026, which is co-terminus with the plan period of the Council's Core Strategy, adopted 2012.

## **Excluded development**

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

## **3. The draft 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, para 042 of 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.”*

- 3.3 Also, there has to be 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 latter references to housing need were added recently and so I asked the Forum to inform me how the plan treated the housing challenge (as explained in the plan), which I cover later in my report.
- 3.5 The Basic Conditions Statement (BCS) is a very short document, which sets out how

the Forum considers that the plan has appropriate regard to national policy and meets the relevant Framework policies. The stated evidence base includes the development plan (BCS para 8.2) and a range of source documents, set out on the website

### **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 Council confirmed to me the following:
- London Plan (adopted with minor alterations in March 2016);
  - Ealing Development Strategy 2012;
  - Development Sites DPD Dec 2013;
  - Development Management DPD Dec 2013;
  - Policies Map 2013; and also  
Joint West London Waste Plan – which is not relevant to a neighbourhood plan, as it covers “excluded development”; and Planning for Schools DPD May 2016, which I did not find relevant.
- 3.7 The Council considered all policies of the London Plan to be strategic. The London Plan designates Ealing town centre as one of 14 Metropolitan Town Centres, which means it serves a wide catchment area and typically contains at least 100,000 sqm of retail, leisure and service floorspace with a significant proportion of higher order comparison goods; and generally have very good accessibility and significant employment, service and leisure functions.
- 3.8 In Policy 2.15 Town Centres are to provide the main foci [beyond the CAZ] of commercial development and intensification, including residential development; the structure for sustaining and improving a competitive choice of goods and services; and the main foci for a sense of place and local identity.
- 3.9 The London Plan’s Annex Two identifies Ealing as having regional/sub-regional significance, a “medium” policy direction (which means a centre with moderate levels of demand and with the physical and infrastructure capacity to accommodate it) and A/B office development potential (A= speculative office development could be promoted on the most efficient and accessible sites; B = some office provision could be promoted as part of wider residential and mixed-use development).
- 3.10 Ealing Council set out for me what they considered to be the strategic policies of the development plan, including:
- In principle, all Development Strategy DPD policies (highlighting a number);
  - Development Sites DPD site allocations for EAL2-9 (I found EAL3, the Arcadia site, the most relevant); and
  - Development Management DPD policies (highlighting a number considered to be integral to delivering the strategic objectives of the plan) – I found Policy 2.18 and 7D (limb B) most relevant to the future status of Haven Green and sites around it.
- 3.11 Delivering the Core Strategy for Ealing involves securing affordable housing (1.2a); applying a sequential approach to the location of new office development (1.2b)

involving a net increase of 90,000 sqm to be encouraged in Ealing town centre; to maintain and increase the supply of retail floorspace (1.2c); to make provision for appropriate supporting infrastructure (1.2d); to support opportunities from Crossrail (1.2e); to ensure that future development achieves the highest standard of sustainable design and construction (1.2f); to support the proactive conservation and enjoyment of Ealing's heritage assets and their significance (1.2g); to support higher densities in areas of good public transport accessibility (1.2h); and to make provision for waste (1.2i).

3.12 Policy 2.1 promotes realising the potential of the Uxbridge/Crossrail corridor by more housing, public transport improvements, balancing regeneration and conservation objectives, enhancing cycling conditions, establishing decentralised energy networks and other projects.

3.13 Policy 2.5 concerns revitalising Ealing Metropolitan Town Centre, under eight main points (in summary):

- a) Regenerating Ealing Town Centre and develop a vibrant and diverse range of new homes, shops, offices, [etc] leading to the provision of 2,580 additional homes, 90,000 offices (with 6500 potential jobs) and 50,000 of gross retail floorspace. Development sites to be identified in a DPD include Dickens Yard [largely completed], Arcadia [and other sites].
- b) To define and reinforce the distinctive character and roles of the different parts of the centre ...
- c) To strengthen and extend the retail core leading to an increase in the quantum, quality and diversity of the offer
- d) To retain and attract new businesses
- e) To protect and enhance the quality of the existing townscape and historic character [identifying six bullets]
- f) To modify the station to accommodate Crossrail
- g) To provide a comprehensive range of cultural, heritage, social, sport and leisure facilities [listing these under six bullets]; and
- h) To establish a decentralised energy network.

#### **4. Neighbourhood Development Plan - Overview**

4.1 The plan is an extremely well presented one with a clear structure and attractively laid out, graphically. The A3 maps are integral and helpful, though with a few minor errors or omissions. The plan drafters are aware of development plan policy, so that the plan seeks to complement or adapt it, so avoiding unnecessary repetition.

4.2 In examining the plan, the significant issue I identify in relation to the Basic Conditions is whether the plan has sufficient regard to national policies and in particular whether it is sufficiently *aligned with the strategic needs and priorities of the wider local area* (Framework para 184). For example, some representations (eg DP9 for BV Broadway) considered that the plan underrepresented the area's role as part of a Metropolitan Town Centre.

- 4.3 The Plan identifies the plan area's housing challenge in para 2.9 and refers to how this is assessed in chapter 3. But in fact the plan makes little further reference to the area's housing needs and contains no policies for responding to them. Of course, the plan doesn't have to, per se, but it is an oddity that such a significant issue for the plan area – and of the development plan's strategic needs and priorities - is not addressed.
- 4.4 The other aspect of the neighbourhood plan that causes me concern is the somewhat protectionist flavour of its overall approach. An underlying motive for the plan seems to be protectiveness of what the local community regards as important because Central Ealing is, and has been for some time, an area under pressure. Tall buildings are a particular local concern – see 4.11-12, for example. The Preface explains:
- “These and other pressures led to the fear that Ealing would lose its character as a unique local town, and become just another clone suburb and a dormitory for weekday commuters to Central London”. And: “[Ealing] would retain and protect its heritage of green spaces, trees and human scale, and re-establish itself as the West London regional centre of arts and culture with a strong independent retail and business base.”*
- 4.5 The hearing exchanges left me with the impression that the Forum's real concerns with the development plan were less to do with the policies themselves but rather the way they have been – or are likely to be – implemented by the Council. Thus, I formed the view that the plan's drafters approach to policies seems to have been conditioned by this anxiety and so the Forum has sought to condition or curtail the potential for exercising the discretion that might exist in the current development plan policy set.
- 4.6 Nevertheless, the plan does promote development on three sites and does recognise the need to accommodate growth and change. So, overall, I have concluded that the plan does contribute to the achievement of sustainable development and is just sufficient to meet the Basic Conditions.
- 4.7 However, a range of policies – and some supporting text - will need to be modified to make them sufficiently precise as development management tools. I deal with these as I proceed through the plan policies. In doing so, I will use the Statement of Common Ground (SoCG) of 22.02.2017 as the basis. Recommended modifications are typically preceded by the expression I **recommend** (in bold).

## 5. Ealing's Economy

- 5.1 Section 5.1 of the plan deals with Ealing's economy. The plan recognises the prosperity of the area but notes that the town centre fails to retain its fair share of retail expenditure: There is competition from elsewhere and online; and while the development plan proposes new retail and office floorspace – mostly in central Ealing – net planned office space has fallen. The plan's four policies that follow are designed to help redress this. Whether they do or don't is not the subject of this examination, of course, but whether - as part of the plan - they meet the Basic Conditions.
- 5.2 The objective of Policy **E1** is to maintain viable and varied active frontages in the town centre. It concerns Retail Frontages and promotes new primary and secondary frontages within a primary shopping area (PSA), avoiding particular types of non-retail

concentrations. A number of objectors sought to clarify what constituted “over-concentration” and some possible unintended consequences of the policy wording. The SoCG provides a helpful set of suggested modifications to both the policy and supporting text (para 5.1.7), which I **recommend** be adopted; also, that Retail Uses should be those within the A Use Classes; and Map 7 should also be altered to show “potential areas for new retail frontages.”

- 5.3 In addition, I **recommend** that the words “primary shopping area” be deleted from the policy, as I found no evidence to support how the boundary was drawn. I noted that while the term is in the Glossary of the Framework and is a well-understood concept there is no PSA in the development plan.
- 5.4 The objective of Policy **E2** is to encourage a high quality of retail offering and to protect local amenity. The policy concerns Diversity of Retail Provision. With “over-concentration” now defined, an issue for a number of objectors, the policy is satisfactory. I **recommend** the clarification regarding pay-day loan shops in the SoCG be adopted; and in relation to para 5.1.11 I **recommend** the Council’s wording.
- 5.5 The objective of Policy **E3** is to ensure there is a sufficient range of services available for an expanding population. The policy seeks to promote mixed-use development. As drafted it effectively requires all major (ie over 1000 sqm) to include a mix of uses, which the plan can’t justify. This was the focus of most objections to this policy. Thus a more appropriate wording would introduce a “demonstrated need” test. I therefore **recommend** the adoption of the suggested policy modification in the SoCG; and also the amendment to supporting text at 5.1.14.
- 5.6 The objective of Policy **E4** is to maintain a balanced work economy with adequate provision for affordable space within a full range of business activities. The policy therefore encourages new business, especially those that are affordable and flexible, and avoid amenity impacts and maintain non-car access. British Land objected to the policy’s blanket approach; however, this is a supporting/encouraging policy and not mandatory.

## **6. Heritage and the Built Environment**

- 6.1 The next sub-section of chapter 5 deals with the plan area’s physical characteristics and heritage assets. The neighbourhood plan explains that 88% of the plan area falls into one of three Conservation Areas; in addition there are buildings that are locally distinct and their significant character derives from both the scale and design of its many Victorian and Edwardian buildings as well as the tree-lined streets and open spaces (para 5.2.1). Historic England made some suggestions to improve consistencies in the plan (see letter of 18.10.16) and I **recommend** these be adopted.
- 6.2 The issue for many of the objectors is that with so much heritage coverage it leaves relatively few parts of the plan area available to accommodate the necessary growth. There are four policies which seek to ensure that sustainable change takes place whilst recognising the area’s special character and how it can contribute to successful development (para 5.2.2).
- 6.3 The objective of **HBE1** is to protect the quality of Ealing’s architectural heritage and enhance it’s setting. It is concerned with the quality of design and requires all development to meet two criteria. Many felt the criteria to be too restrictive; and that

the wording implies that differences in scale and massing should be prevented even where this has no material effect. British Land was not alone in pointing out that as 88% of the plan area is in one of the three Conservation Areas, restricting change, there will need to be significant increases elsewhere. Others said the criteria regarding Conservation Areas should reflect the legislation's approach. I therefore **recommend** that the amendments in the SoCG be adopted.

- 6.4 The objective for Policy **HBE2** is to preserve Ealing's historic character, heritage assets and streetscapes. The policy concerns protecting the townscape, requiring all development to meet five criteria; and an additional element related to the Office Corridor. Many objectors found this policy overly restrictive; and there were a number of issues with the justification for some elements. There were concerns that the language of some of the supporting text (eg 5.2.12 with references to heights) might be imported into a restrictive application of policy.
- 6.5 In particular the second limb sought to include a views policy that the Council persuaded me was unworkable; and I found was without any evidential support. CEG queried how the views had been identified and why they were assessed as worthy of protection. I therefore **recommend** that the relevant amendments in the SoCG be adopted as modifications; the consequential mapping changes will need to be followed through (and the Office Corridor needs to be consistent with the Core Strategy, for example).
- 6.6 The objective for Policy **HBE3** is to ensure careful siting of tall buildings so as to protect Ealing's heritage of human scale. The policy is thus concerned with building heights; it has three limbs. This policy's approach, along with HBE2, was among the most contentious aspects of the plan. The supporting text actually begins at 4.11, which acknowledges that: *"It is rarely appropriate to specify a maximum height for any individual building. Rather, it will be important that developers and others involved ... make full assessments of the development potential of a particular site with respect to heights, bulk, scale and massing of buildings nearby."* Many objectors felt these sentiments were not being followed through to the policy itself.
- 6.7 The supporting text explains (para 4.12) that: *"What is important for Central Ealing is the impact on established street frontages."* It goes on to note that: *"With the exception of Dickens Yard, there are no street frontages higher than 5/6 storeys anywhere within its Conservation Areas."*
- 6.8 The policy has three limbs:
- The first seeks to limit the impact of buildings that are "substantially taller" than their surroundings;
  - The second that within or adjacent to a Conservation Area, buildings taller than six storeys should be set back from the frontage;
  - The third limb concerns developments visible from Walpole Park. This sits uncomfortably in a policy that is primarily about building heights and I support the amendment proposed in the SoCG; I therefore **recommend** that it be added to the end of HBE2, and in a modified form, for clarity.
- 6.9 Objectors pointed out that the policy's approaches to managing heights of buildings were arbitrary and thus overly restrictive. In relation to the first limb I did not share this view. However, the supporting text (5.2.18-19) could be used to interpret the

policy in a more restrictive way. I support the amendments suggested by the Council in relation to 5.2.18 and the suggested amendment in the SoCG in relation to 5.2.19 and I **recommend** these as modifications.

- 6.10 I found the approach to setting back in, or adjoining a CA, was not at all well evidenced. British Land said each proposal needs to be considered on its merits. In my view, the normal statutory approach should apply and I therefore **recommend** that the second limb be deleted.
- 6.11 Policy **HBE4** is concerned with Public Open Space; the objective is to ensure valuable open space is properly designated and fully protected. The policy does not support developments that encroach on public open space. It has three parts: i concerns damaging intrusions from tall buildings; ii designates Haven Green as Local Green Space and restricts development within a buffer strip; and iii restricts buildings or structures in Walpole Park.
- 6.12 Public Open Space is one form of green infrastructure (in Ealing Local Plan terms), so to make its application clear I **recommend** that the title be changed to: Green and Open Spaces.
- 6.13 In my view, the first limb conflicts with development plan strategic policies DM DPD 2.18 and 7D (B). This is because of the plan's preoccupation with building heights, which is just one type of encroachment. In my judgment there is no local justification for the particular approach taken by this limb and I **recommend** that it is deleted.
- 6.14 The most controversial aspect was the first part of the second limb - the proposal to designate Haven Green as Local Green Space (LGS). The Council argues that nothing will be added by this designation, as it is already protected by the development plan's Public Open Space designation (and at the hearing it was confirmed that the proposed designation only relates to the same area, not the diagonal road). On the other hand the LGS designation could, the Council argue, perversely introduce a new test of Very Special Circumstances, as LGS is akin to Green Belt. The Forum did not find the latter point an objection but, rather, a potential advantage.
- 6.15 TfL was concerned about the effect on bus operations, particularly the bus stops and the interchange function with Ealing Broadway station. TfL considered they are an essential part of the transport infrastructure in central Ealing and they have no plans to relocate them.
- 6.16 The Framework sets out clear criteria of designation at para 77. It explains that the designation "will not be appropriate for most green areas or open space". And I note that the Guidance (ID: 37-011-20140306) explains that: "... different types of designation are intended to achieve different purposes". The plan argues that a new layer of protection is necessary, as the current designations have not prevented the space from encroachment – see 5.2.28 (noting that the reference to Metropolitan Open Land is a mistake that needs correcting). At the hearing I heard about the on-going pressures on the space, which were likely to intensify, for example, with the arrival of Crossrail. I also heard evidence that Historic England considered the Haven Green CA one that is vulnerable in the medium term and with a "deteriorating significantly" trend.
- 6.17 In terms of the Framework criteria, I accept the area is in reasonably close proximity to the community it serves, is local in character and is not an extensive area of land.

The Forum set out their evidence - at 5.2.6-7 and at Appendix 2 of the plan - for why the space is demonstrably special to the local community and holds a particular local significance. I have concluded that this meets the criteria in the Framework and that the pressures on Haven Green are such as to warrant the additional protection afforded by a Local Green Space designation. It can stand as part of the policy but would be clearer if it was stand-alone. I **recommend** that a clear map needs to be included, on an OS base, showing the designation's precise boundaries, as clarified earlier.

- 6.18 In terms of the second part of the second limb – the buffer – I heard evidence that the approach was overly prescriptive and restrictive. And I found insufficient analysis or evidence to support such a departure from development plan policies DM DPD 2.18 and 7D. I **recommend** that the second sentence be deleted.
- 6.19 The Council object to the inclusion of limb iii as development plan policies afford, in their view, sufficient protection. The plan explains at 5.2.31 that this extra restriction is to reflect the park's heritage status. Historic England have pointed out that the description needs correcting. The park's status as Common Land is not a planning designation. I have not been presented with sufficient evidence to support the extra level of protection to that which the development plan gives and so I **recommend** that this limb be deleted.
- 6.20 The supporting text needs to be modified as appropriate; however, for example, "this policy" on the fourth line of 5.2.30 can apply to Policy 7D, noting that 7D only identifies a buffer as one tool that might be appropriate. But I do **recommend** that the last sentence of 5.2.30 be deleted and that the whole of 5.2.31 be deleted, to be consistent with my recommended policy modifications. As recommended earlier, App 2 no longer needs to be part of the plan, once made, so I **recommend** that the final two sentences of para 5.2.29 also need to be deleted.

## **7. Transport and the public realm**

- 7.1 Central Ealing is a highly connected place, with 15 day-time bus routes, two tube lines, national rail connections and, in 2019, Crossrail. This makes the plan area a more attractive place to live, work, shop, study and visit. But it can lead to congestion and a reduced experience of the place. The plan seeks to promote and reinforce the use of non-car modes and the impact of traffic. This section of the plan has five policies.
- 7.2 Objective 9 of the plan is to improve the local environment by encouraging sustainable modes of transport and reducing levels of pollution. Accordingly, Policy **T1** deals with Sustainable Transport, which has an aspiration that all developments include appropriate means of enhancing the attractiveness of non-car modes and the reduction in traffic. TfL points out that the area is one of 187 identified Air Quality Focus Areas.
- 7.3 Objective 10 is to balance the need for a reasonable level of visitor parking in the town centre with the need to reduce the volume of traffic entering and crossing the town [centre]. Policy **T2** deals with Parking. It does this by an aspiration for developments to provide sufficient spaces and to reduce traffic volumes. A further limb requires any change of use to take account of its impact on car parking as well as retail mix and any conservation areas. TfL supports the restraint on car parking.
- 7.4 The Council point out that the reference to conservation areas in relation to a parking



policy is misplaced and the Forum agrees. But I also find the reference to impact on the mix of retail uses, equally misplaced, despite the cross-reference to E2. I therefore recommend that the words including and from "...and the mix..." be deleted from the policy.

- 7.5 The supporting text promotes more peripheral car parks. The Council is not convinced this approach will achieve its objective. The text also seems to be advocating changing London Plan and local parking standards. I found there is insufficient justification for either approach and so I **recommend** that 5.3.14 is deleted.
- 7.6 Policy **T3** is concerned with Servicing, following Objective 11, which is to allow adequate access to business properties whilst improving safety. The policy aspiration is that all Major or Strategic developments aim to provide rear servicing or other appropriate measures; TfL also support this.
- 7.7 Objective 12 is to improve safety for all classes of users of the road and other public space. Policy **T4** is concerned with Cycle Paths. TfL recommends that a further reference is made to Cycling Level of Service (CLOs) Assessments. I make no formal recommendation that this be added; it is a matter for the Council when they consider my recommendations on the plan as whole.
- 7.8 Policy **T5** concerns improving public transport, which TfL again support.
- 7.9 The plan then moves on to deal with public realm, with three policies. Objective 14 is to secure improvements to public realm throughout the Plan area and leads into Policy **PR1**, which is concerned with Improving Public Realm. St George recommends an additional limb: iii. Provision of new areas of public realm where appropriate. I make no formal recommendation that this be added; it is a matter for the Council when they consider my recommendations on the plan as whole.
- 7.10 Objective 15 is to improve and ensure the sustainability of quality green space in the public realm and leads to Policy **PR2**, concerned with Landscaping. Objective 16 is to make it easier to move across the town centre through traffic-free areas. Policy **PR3** is concerned with Improving Permeability.

## **8. Culture and Community**

- 8.1 The plan now moves on to supporting and encouraging cultural and community facilities, recognising the area's role as part of a Metropolitan Town Centre. This section (5.4) has three policies.
- 8.2 Objective 17 is to be an integrated and balanced community, catering for diverse and changing needs across all age and social groups. Policy **CC1** concerns Social Infrastructure and is cross-referenced to E3. British Land point out that strategic developments can be acceptable in their own right. St George suggest that the policy be qualified (where suitable, viable). For clarity I **recommend** the amended wording in the SoCG.
- 8.3 Objective 18 is to provide new leisure and recreational facilities, which lead into Policy **CC2** – Community & Cultural Facilities – which supports such facilities, subject to three criteria; these express local priorities. An additional limb opposes loss of such facilities. For clarity, I **recommend** that the text in the SoCG be adopted.

- 8.4 The remainder of this section deals with Ealing's Cultural Quarter. Objective 10 is to be a regional centre of excellence for culture and education. Policy **CC3** – Cultural Quarter – is cross-referenced to E3 and aspires to preserve and enhance the Quarter's special character; there are two sub-aims and a second limb that deals with over-concentration of food and drink establishments. The Council supports the consolidation of the Cultural Quarter. A number of representations, however, expressed concern about the policy's operation.
- 8.5 The second limb's objective is understood but needs to be expressed more clearly and to avoid ruling out the benefits of certain types of concentration: An appropriate food and beverage cluster, for example, could (as experienced in other centres) be quite a positive means of supporting the Quarter. I **recommend** that the clarifying text of the second paragraph in the SoCG be adopted and that the mapping be clarified.

## **9 Site Specific Policies**

- 9.1 Section 5.5 deals with three site-specific policies. At the hearing I was keen to understand whether these were meant to be land-use allocations or not. It was clarified and explained to me that these policies were not land-use allocations but were intended as aspirational policies. I have examined the plan on that basis. Nevertheless, they contain potential obligations that could impact on the delivery of the policies and the achievement of the community's aspirations; also a number of representations were concerned about their impact. The plan notes the development policies and site allocations for Central Ealing and, apart from part of one site (Arcadia), avoids a site specific approach.
- 9.2 Policy **CENP1** concerns 21-22 The Mall, which the plan notes marks the entrance to the town centre from the east. The policy guides the shape of any future redevelopment as well as its preferred use – for public or community service offices and possibly a GP's surgery. This was not a controversial policy.
- 9.3 **CENP2**, however, did prove controversial, not least as it forms part of EAL3, an existing development plan site specific policy, covering a much larger site (and mostly south of the railway) known as the Arcadia site. The policy also affects the area north of the railway – effectively a structure - detached from the main site, facing Haven Green and used as a car park. The policy seeks to protect the southern aspect of Haven Green, introducing a buffer strip, and to promote a preferred use as bus stops and stands.
- 9.4 The Council objected to a policy that it saw conflicted with a strategic policy in the development plan. The owners of the head lease took exception to the nature of the policy's content and objectives, while seeking to rely on the development plan's allocation. TfL effectively supported these objections and took issue with the policy's aspirations to use the site for buses, in order to relieve pressure on Haven Green.
- 9.5 The written representations and the oral evidence at the hearing described the complex ownerships affecting the site and persuaded me that the plan's aspirations for the site were most unlikely to be realised: Network Rail owns the freehold. The head-leaseholder holds the site as a long-term investment; only a genuinely viable proposal could create the conditions for an alternative and delivery is dependent on other organisations, such as TfL who are opposed to the policy.
- 9.6 The evidence about the ability of the structure to take the additional weight, and that related to preferred bus options in the locality, were less persuasive. TfL pointed out

that the site would not provide sufficient turning space. The evidence for the buffer was not robust and was unnecessary, in any event, as the development plan (Policy 2.18 and 7D) covered the issue anyway.

- 9.7 I was not persuaded that any allocation-type policy for this detached part of EAL3 would fail the Basic Conditions. Ealing's point was that this policy was contrary to a strategic development plan site allocation. I accept that, on the face of it, the policy contravenes strategic development plan policy. However, the Basic Condition test is in two parts: "in *general* conformity with the *strategic* policies of the development plan" (my emphasis). It seems to me that this site is both physically detached and in quite different ownerships to the main Arcadia site; also that the main (southern) part was now being promoted for a separate development – indeed, at an Inquiry in a few months time – for a scheme that does not involve the CENP2 site. I noted that the EAL3 allocation reflected earlier plans for a development that, in more buoyant economic times, bridged the tracks.
- 9.8 In those circumstances, I do not see that a separate allocation, as proposed in the form of CENP2, would fail to be in *general* conformity with a strategic policy in the development plan. Nevertheless, I have concluded that, notwithstanding the aspirational nature of the policy, there is no robust evidence that it is deliverable. Furthermore, the policy requirement for a buffer is not robustly evidenced either. In conclusion I **recommend** that CENP2 be deleted.
- 9.9 **CENP3** concerns the Council's main offices and car park at Percival House, fronting Broadway and with a return frontage to Longfield Avenue. The policy aspires to see the redevelopment of this site for 20,000 sqm of offices and for local authority customer service functions. It guides the shape of any redevelopment and its servicing and relationships to its street frontages. Both PBA and the Council objected to its overly prescriptive nature, which – while expressing the aspirations of the local community – I found to be not well evidenced. I agree and so **recommend** that the text changes in the SoCG be adopted.

## 10 Referendum Area

- 10.1 Planning Practice Guidance on the Independent Examination (Paragraph: 059 Reference ID: 41-059-20140306) says:
- "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."*
- 10.2 There are few precedents for how Examiners have applied those tests in reaching their decisions; a significant one is in the report on the Central Milton Keynes neighbourhood plan (also a 'business area' for the purposes of neighbourhood planning). There, the Examiner concluded that the referendums should include the whole population of the borough (some 250,000 individual voters) and not merely the 3,000 people living in the central area covered by the plan.
- 10.3 In the case of Stroud Town Centre NDP, which I examined, and where the plan area was a part of the parish area, the Parish and District Councils both argued, and I agreed, that the whole parish was the appropriate referendum area, given the impact of the plan's proposals and policies on the wider area.

- 10.4 The Forum's case is that the scale of change in the plan will affect far more than the resident and business population of the plan area. They were of the view that the referendum area should indeed be wider than the plan's designated area. Many representations echoed this view, not least as the consultation process had routinely involved a wide area. The Forum looked at some options and came to the conclusions that as the plan directly affected 10 polling districts (PDs), a reasonable and administratively convenient boundary was to include the whole of all 10 PDs.
- 10.5 The Council was of the view that the referendums should be restricted to the plan area only and were prepared to create a bespoke polling division to accommodate it. They said the impact was not sufficient to warrant a wider area, there were few businesses beyond it and, anyway, a wider area would overlap with West Ealing's forthcoming neighbourhood and voters would be confused. I am wholly unpersuaded by the latter point.
- 10.6 I have, however, come to agree with the Forum's arguments and my conclusion is that the impact of the plan's policies would have a *substantial, direct and demonstrable impact* beyond the plan area and I therefore **recommend** that the referendum area be extended beyond the designated area.
- 10.7 The question then is what should be the appropriate new area? I don't consider the whole borough is appropriate, as the impact would be too diffuse. I consider that an area closer to the plan area is more appropriate and, having considered the Forum's options, come to the conclusion that their own suggested boundary – of the 10 Polling Districts in and around the plan area - is the wider area that would be impacted substantially, directly and demonstrably. I therefore **recommend** that if the plan proceeds to referendums then the area should be those 10 Polling Districts.
- 10.8 Following the hearing I was advised by Ealing Council that the boundary for electoral districts has been slightly revised. I have been furnished with an updated plan, as shown at the Annex to my report.

## **11 Conclusions and recommendations**

- 11.1 I can see that the Forum and its constituent organisations and volunteers have put in a great deal of hard work into the submission of the plan and the supporting documents. The plan is exceptionally well presented and clear; and seeks to represent the local community's aspirations, which it does well. Where it has not succeeded so well is in the way the policies have been evidenced.
- 11.2 I sense that the plan reflects the suspicions of its promoters - that the Council is not applying its development plan policies sufficiently well to satisfy local opinion. Consequently, there is a protectionist flavour to the plan's overall approach, selection of policy topics and content; thus, it nearly fails to contribute to sustainable development, a Basic Condition. Furthermore, the means of accommodating identified housing need, a key strategic aim of the development plan, is absent.
- 11.3 Nevertheless, from my examination of the submitted Central Ealing Neighbourhood Development Plan, together with the supporting documents, including having regard to all the representations made and oral evidence, I have concluded that the making of the plan will meet the Basic Conditions; also that the legal requirements are met. I have set out my conclusions, drawn from the findings in my report, in the Summary, on page 2.

- 11.4 In summary, I **recommend** that the Central Ealing Neighbourhood Development Plan should proceed to referendums. I **recommend** that if the plan does proceed to referendums then the referendum area should be wider than the plan area. I **recommend** that the referendum area be extended to include the 10 Polling Districts in and around the designated area, as shown on the plan at the Annex to my report.
- 11.5 Finally, my thanks to both Forum and Ealing Council for their support in making the examination so smooth.

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20 March 2017

**Annex: Recommended area for both referendums (blue line incorporating 10 Polling Districts)**

