



Report to Council

19th March 2012

LEADER

Councillor Stephen Greenhalgh

**EARL'S COURT AND WEST KENSINGTON
OPPORTUNITY AREA JOINT
SUPPLEMENTARY PLANNING DOCUMENT**

**WARDS
North End
and Fulham
Broadway**

This report seeks a resolution to adopt the Earl's Court and West Kensington Opportunity Area Joint Supplementary Planning Document as a Supplementary Planning Document (SPD) to the Council's Core Strategy (2011).

Attached to the report is (Appendix 1) the SPD; (Appendix 2) a summary of the main issues raised in the representations received during the statutory public consultation period that took place between 11 November and 23rd December 2011; (Appendix 3) a tracked version of the SPD highlighting changes made to the document in response to the comments received during the consultation exercise; (Appendix 4) the Equalities Impact Assessment report; and (Appendix 5) the Estates Regeneration Economic Appraisal: Response to Comments.

CONTRIBUTORS

EDFCG
ADLDS
TTS

Recommendation

That Full Council resolve to adopt the Earl's Court and West Kensington Opportunity Area Joint Supplementary Planning Document (Appendix 1).

**HAS A EIA
BEEN COMPLETED**

YES

1. BACKGROUND

- 1.1. The purpose of the Earl's Court West Kensington Opportunity Area (hereafter referred to as 'the Opportunity Area') Joint Supplementary Planning Document (SPD) is to provide planning guidance related to the policies set out in the LBHF's Core Strategy (2011), RBKC's Core Strategy (2010) and the London Plan (2011). LBHF, RBKC and GLA have been working in partnership to develop the SPD for the Opportunity Area. On completion of the process it is anticipated that along with LBHF adopting the SPD, the Mayor would publish the document as Supplementary Planning Guidance (SPG) to the London Plan and RBKC would adopt it as a SPD to their Core Strategy. As SPG/SPD the document will be a material planning consideration when determining planning applications in the area.
- 1.2 The Opportunity Area is identified in the Core Strategy (2011) for potential major residential-led mixed use regeneration. The core development area lies between Warwick Road and the West London Line to the east, West Cromwell Road (A4) to the north, North End Road to the west and Old Brompton Road/Lillie Road to the south and covers the Earl's Court Exhibition Centres (owned on long lease by Capital and Counties), the TFL Depot (freehold of TfL), the Empress State building (freehold of Capital and Counties) and the West Kensington and Gibbs Green estates (freehold of LBHF). Seagrave Road car park (owned on long lease by Capital and Counties) is also within the Opportunity Area, situated south of Lillie Road and bounded by Seagrave Road and the West London Line (See Appendix 1).
- 1.3 LBHF's Core Strategy (2011) indicates the potential for an indicative 2,900 additional homes and 5,000 to 6,000 new jobs in LBHF. The London Plan (2011) indicates the potential for 4,000 additional homes and 7,000 new jobs across both LBHF and RBKC.

2. SUMMARY OF KEY ELEMENTS OF THE SPD

- 2.1 The SPD is split into 13 chapters. Chapters 1 and 2 set out the context for the Opportunity Area. The content of the other 11 chapters is set out in more detail below:

Vision and Objectives

- Sets out the vision and the key objectives for the SPD, as well as including key images such as an illustrative urban form plan, an illustrative land use plan and an illustrative masterplan.

Urban Form Strategy

- Sets out six 'Key Objectives' which any development proposals would be expected to satisfy, largely addressing the following themes; Connectivity, Urban Grain, Public Open Space, Edges, Skyline and Streets. These are supported by a number of Key Principles and further reasons and justification guiding the ways in which the authorities would like to see these Key Objectives delivered.

- The Key Objectives on Edges, Skyline and Streets all address the potential heights of proposed buildings. They are accompanied by two SPD supporting evidence documents; one on the existing edge conditions and one on townscape and views analysis.

Housing Strategy

- This chapter sets out the housing requirements in relation to estate redevelopment, affordable housing, housing mix, housing size, housing space and amenity space.
- The Housing Strategy sets out an expectation that any comprehensive approach to redevelopment of the Opportunity Area should include the West Kensington and Gibbs Green estates. This position is accompanied by the Estates Regeneration Economic Appraisal supporting evidence document.
- The Strategy reflects LBHF's Core Strategy by requiring 40% of housing in the Opportunity Area to be affordable, with the priority within this to be the replacement of the existing housing, resulting from the redevelopment of the West Kensington and Gibbs Green estates.
- The strategy also requires 25% of any housing on Seagrave Road to be social rented in order to facilitate any phased development of the estates.

Employment Strategy

- This Employment Strategy focuses specifically on the provision of a suitable quantity and variety of business floorspace as this is likely to make the greatest contribution to the minimum new jobs target of 7,000.
- The strategy also sets out the authorities' strategy for securing employment and training across all employment sectors.

Retail Strategy

- This chapter sets out the requirements for the location, capacity and type of retail provision in the Opportunity Area.
- The strategy sets out an expectation that retail should be located around existing centres, transport hubs and a new centre within the Opportunity Area.

Culture Strategy

- Sets out requirements to create a cultural destination comprising of cultural facilities; associated uses, including artists' studios and space for creative industries, public art and hotels.

Social Infrastructure Strategy

- Sets out the requirements for the type, quantum and broad locations for the provision of social and community facilities necessary to support the comprehensive redevelopment of the Opportunity Area, setting out the requirements that a developer would need to satisfy in relation to the provision

of education facilities (nursery, primary and secondary), health facilities, sports and leisure facilities, police facilities and community and library facilities.

Transport and Accessibility Strategy

- Sets out what improvements to the transport network will be necessary to accommodate development. These include improvements to the public realm, improved cycle facilities and increased capacity on the public transport and road networks.
- The chapter assesses a development scenario of 5,560 residential units and 12,165 jobs.
- The Strategy has been informed by a Strategic Transport Study.

Energy Strategy

- Sets out requirements to ensure that development in the Opportunity Area adopts an energy strategy that reduces carbon dioxide emissions.

Environmental Strategy

- The strategy sets out requirements to ensure that development in the Opportunity Area addresses any impact on the environment, including the consideration of climate change, water management, waste, construction and demolition, ecology and air and noise/vibration pollution.

Phasing and Section 106 Strategy

- Outlines the key Section 106 requirements that would need to be negotiated for as part of any planning agreement associated with any development in the Opportunity Area.
- Includes a key objective that seeks to ensure a comprehensive approach to regeneration of the Opportunity and a key principle that looks to use planning obligations to ensure a comprehensive approach to regeneration of the Opportunity Area.

2.2 A number of supporting evidence documents have been produced in order to inform this SPD. A summary of each document is provided below:

Sustainability Appraisal. Assesses the potential impacts of the document on a range of environmental, social and economic criteria.

Equality Impact Assessment (Appendix 4). Assesses the potential impacts of the document on a number of identified minority groups.

Statement of Consultation. A statement setting out those consulted by the authorities in connection with the preparation of the SPD, how the consultations were carried out, a summary of the main issues raised in those consultations (“the Consultation Summary Report”) and how the representations have been addressed in the SPD (“the Consultation Responses Schedule”)

Consultation Summary Report (Appendix 2). Provides a summary of the comments raised during consultation on the revised draft of the SPD.

Consultation Responses Schedule. Sets out the comments received during consultation on the revised draft of the SPD and the officers' responses to these comments.

Character Area Analysis. Is a study of the local urban character of the OA and its surroundings.

Townscape and Visual Analysis. Is a study of the physical fabric of the area and townscape through the analysis of existing views towards the OA from observation points around the OA. The analysis assesses the setting of existing Conservation Areas' skylines through an eye level visual assessment that identifies the key attributes and features in each view.

Edges Study . Is a study of the existing OA boundary edge conditions between the OA and properties which share its boundary.

Development Capacity Scenarios. Sets out the three development capacity scenarios that were published in the first draft SPD. An illustrative Masterplan is provided for each and they are tested against the revised Key Objectives. They are followed by an alternative illustrative masterplan solution demonstrating a different approach to urban design that has the potential to meet all of the Key Objectives. Any masterplan images in this, or any other SPD document, do not and will not fix a design form and layout for the OA.

Earl's Court and West Kensington Opportunity Area Office Study (2011). Explores the potential for office floorspace within the OA.

Earl's Court and West Kensington Opportunity Area Retail Need Assessment (2010). Provides an assessment of retail need in the OA, looking specifically at retail capacity.

Earl's Court and West Kensington Opportunity Area Ecological Aspirations Study (2010). Assesses the ecological and habitat value of the OA and sets out several aspirations to protect and enhance ecology and habitat diversity in the OA.

Decentralised Energy Feasibility Study (2011). This sets out the potential for decentralised energy in the OA and sets out the strategic framework for the development of a site-wide, low carbon, decentralised energy scheme in the OA.

Estates Regeneration Economic Appraisal (2011). Provides a summary of the four options for intervention on the West Kensington and Gibbs Green estates.

Transport Study Review (2011). This Summary Report outlines the findings of the Earl's Court & West Kensington Strategic Transport Study (ECTS) and the independent review carried out by, and on behalf of TfL, LBHF and RBKC. The purpose of the review is to ensure that the ECTS and underlying analysis is acceptable to inform the SPD.

Viability Review (2011). Is a review that assessed the three development capacity scenarios (see para 1.47 above and assesses the viability of development at these three densities. The study was only accurate at the time it was undertaken in 2011 and any applications for development would need to be accompanied by their own viability assessments.

3. SUMMARY OF CONSULTATION PROCESS

- 3.1 The SPD has been consulted on a total of three times. Preliminary consultation was undertaken in October-November 2010. Following this, the first Draft SPD was produced and consulted on in March-April 2011. The authorities received 83 written responses to this consultation, which were broken down into 1,295 separate comments. These comments were considered and responded to and informed the drafting of the Revised Draft SPD, which underwent consultation in November-December 2011. Several consultation techniques were used to engage the public and interested parties and encourage feedback, namely;
- Consultation letter distributed to surrounding properties and interested parties;
 - Public notice in local newspapers;
 - SPD Distribution to interested parties (both hardcopy and CD formats);
 - Availability of the SPD for inspection at several public locations;
 - Dedicated consultation email address;
 - Dedicated consultation phone numbers for both LBHF and RBKC, allowing members of the public to speak directly to the SPD team; and
 - Presentations to interested parties.
- 3.2 335 written responses were received from a wide range of respondents including local Councillors, local amenity societies, residents and other interested individuals, landowners, businesses, developers, statutory organisations and a range of special interest groups. Responses were further broken down into 3,788 separate comments.
- 3.3 The responses to the Revised Draft of the SPD have been considered and where appropriate, they have informed the production of the final SPD (see Appendix 3 for the changes made to the SPD). A summary of the consultation responses is appended to this report (Appendix 2).

4. KEY ISSUES ARISING FROM CONSULTATION AND AMENDMENTS MADE TO THE SPD IN RESPONSE

- **SPD or Area Action Plan?**

A number of consultees have stated that the council and all three authorities involved in the preparation of the SPD should have produced an Area Action Plan (AAP) for the area rather than an SPD and that the document is in effect an AAP.

Officers (together with colleagues from the other authorities) consider that an AAP is not necessary as up to date strategic policies for the Opportunity Area are already set out in the London Plan and Borough Core Strategies. Officers consider that the document as an SPD is appropriate and consistent with Government Guidance set out in Planning Policy Statement 12. Officers have considered strategic policy FRA and strategic site policies FRA1 and FRA2 and form the view that the site allocation of the opportunity area and the level of detail in those policies are such that a supplementary planning document is sufficient in the circumstances.

- **Residential Density**

Consultees raised the need for residential density to be covered in the Housing chapter of the SPD. Both borough's Core Strategies reflect the Mayor's density policy (3.4).

Text has been inserted in the introduction text to the Housing chapter signposting London Plan Policy 3.4 but officers do not consider that the SPD should contain any further guidance on this subject.

- **Estate Regeneration**

A number of consultees objected to the council's position, as planning authority, that any comprehensive approach to redevelopment of the OA should include the West Kensington and Gibbs Green housing estates. Objections question the justification given in the Estates Regeneration Economic Appraisal.

Officers have requested that the company which carried out the appraisal consider the objections and provide a response. This is attached to the report at Appendix 5. In short, it concludes that redevelopment of the estates would improve the economic and social deprivation of the area and promote a more mixed and balanced community and that comprehensive redevelopment of the area is necessary to promote this objective, underlying in the council's core strategy and Government Guidance. Officers have considered these objections, the response provided and consider the evidence in support of

estate redevelopment outweighs the reasons given against estate redevelopment and that redevelopment of the estates as part of a comprehensive approach to redevelopment of the opportunity area is necessary in planning terms. Another principal concern about redevelopment of the estates relates to the disruption caused to residents during and phased redevelopment of the estates. Officers consider that Key Principle HO5 of the SPD is appropriately drafted to address their concerns and ensure that applications deal with any issues that may arise.

- **Impact on Views and Townscape**

A number of consultees raised concerns about the impact that the development will have on the local townscape, particularly when viewed from Brompton Cemetery and other surrounding Conservation Areas.

Officers have considered these concerns, but consider the 'Skyline' section of the Urban Form chapter of the SPD to be robust in this regard, as it sets out a framework that requires any application to demonstrate that it will preserve or enhance the character, appearance and setting of Brompton Cemetery and other surrounding Conservation Areas and to demonstrate that there will be no negative impact on any of the sensitive views identified in the Townscape and Visual Analysis SPD Supporting Evidence Document.

- **Building Heights**

Consultees also raised concerns about the general heights of buildings that may be acceptable in the OA.

In response to these concerns, Officers highlighted the fact that the SPD does not actually propose any specific building heights but rather establishes a framework against which the heights of any proposed buildings could be assessed. This framework includes Key Principles and further guidance on the impact on the local skyline, the design of buildings around the edges of the OA and the composition of streets within the OA. In response to observations made the Design Review Panel, the text on the design of tall buildings was strengthened.

- **Public Open Space**

A number of consultees questioned whether the SPD expects a sufficient amount of public open space to be delivered.

Officers have considered these representations, but consider the requirements set out in the SPD in this regard to be robust. The SPD requires any application for comprehensive redevelopment to include a 2 hectare local park and to

ensure that there is at least 10sqm of publicly accessible green open space per child. This is expected to be distributed in a manner which ensures that as many residential properties as possible are within a 100m walk of a publicly accessible open space.

- **Loss Of Exhibition Centres**

A number of representations were received from event organisers objecting to the redevelopment of the Earl's Court Exhibition Centres.

The exhibition centres are allocated for redevelopment in the Mayor's London Plan and the borough's Core Strategies. The SPD provides supplementary detail to these existing policies and any consideration towards the closure of the exhibition centres would have been considered at the examinations for the London Plan and Core Strategies and the inspector, having considered representations made at these examinations, has not amended or removed these site allocation policies.

- **Public Transport Capacity**

A number of consultees questioned whether the existing public transport networks, in particular the underground, could accommodate extra demand from development given the significant background growth forecast within the Strategic Transport Study.

A number of minor changes were made to the text and key principles to aid understanding and to clarify points that some consultees felt were unclear. Apart from these minor amendments the main findings and key principles of the Transport and Accessibility Strategy remained unchanged and require significant investment in the local transport infrastructure. The Strategic Transport Study that underpins the SPD is based on a robust methodology developed by Transport for London and used for other Opportunity Areas. The study was guided by the three authorities and has been independently audited. With the mitigations set out in the SPD there will be sufficient capacity to accommodate demand from development.

- **Road Network Capacity**

A number of consultees referred to existing areas of congestion on the local road network and questioned whether any demand from development could be accommodated.

A small number of minor changes were made to the text and key principles to aid understanding. The main findings and key principles of the Transport and Accessibility Strategy remained unchanged. The Strategic Transport Study that

underpins the SPD is based on a robust methodology developed by Transport for London and used for other Opportunity Areas. The study was guided by the three authorities and has been independently audited. In reporting the impacts on the road network the current areas of congestion have been highlighted. The Transport and Accessibility Strategy has set out those areas that will need to be addressed as part of any planning applications.

5. PROCESS

- 5.1 Once adopted, the SPD must be made available during normal office hours, together with an adoption statement that specifies the date of adoption and that anyone with sufficient interest in the decision to adopt the SPD may apply, promptly and not later than 3 months after adoption, to the High Court for permission to apply for judicial review of the decision to adopt the SPD. We will also publish the SPD on the council's website and send the adoption statement to anyone who requested to be notified and everyone who has taken part in the consultation.

6. RISK MANAGEMENT

- 6.1 The document has been signed off by senior officers at LBHF, RBKC and the GLA. However, the GLA and RBKC may decide not to adopt the SPD. Any decision by the GLA not to publish the document as a SPG or by RBKC not to adopt the SPD does not preclude the council from adopting the SPD nor does it mean that it should be given any less weight as a material consideration if the council decides to adopt it.
- 6.2 Should the Mayor of London decide to adopt the document as SPG to the London Plan, the document will be revised slightly to a) include his logo and name to the document; and the footnote referencing the document being an SPG subject to adoption will be removed (Page 8, paragraph 1.1 of the SPD).

7. EQUALITY IMPLICATIONS

- 7.1 An Equality Impact Assessment (EIA or EQIA) has been prepared and is attached to this report (Appendix 4). The final EQIA sets out the key issues identified in the previous draft of the EQIA as a result of the consultation process and how these have been addressed through revisions to the final SPD.
- 7.2 Generally, development in accordance in the SPD would have a positive impact on those with protected characteristics, delivering benefits in terms of connectivity and permeability, access to services such as schools, health facilities and shops, employment and housing.
- 7.3 There are negative impacts on age, disability, pregnancy and maternity and race in relation to estate regeneration which are likely to result from the disruption caused through the re-housing process. Key Principle HO5 of the SPD requires any application involving the re-housing of residents from the

West Kensington and Gibbs Green estates to include a phasing strategy, which would need to set out mechanisms to ensure minimal disruption to residents. The EQIA also recommends that assistance is given to those residents during the removal process. There are also negative impacts as a result of the re-housing process moving residents further away from social and community facilities; however, it is acknowledged that all new facilities provided in the OA would need to be accessible to all and where existing facilities are not accessible to all, this would result in an improvement in access to facilities.

- 7.4 The EQIA identifies that any decision by the housing department to redevelop the estates or any proposals to relocate North End Road market, would need to undergo a separate EQIAs. Similarly, any planning application for planning permission to redevelop the estates would need to undergo an EQIA.

8. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE

- 8.1. The adoption of this SPD may trigger blight. Blight indemnity will need to be put in place so as to ensure no financial burden on the council.

9. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 9.1. Adopting the SPD will mean that the document is a material consideration to which regard will have to be had when considering any planning application in the SPD area.
- 9.2 The Planning and Compulsory Purchase Act 2004 (as amended) and The Town and Country Planning (Local Development Document) Regulations 2004 (as amended) require that the SPD be in conformity with the council's core strategy and in general conformity with the London Plan.
- 9.3 The requirements of The Town and Country Planning (Local Development Document) Regulations 2004 (as amended) in respect of consultation and finalising the SPD are explained in Section 3 of this report.
- 9.4 The post-adoption requirements are set out in Section 5 of this report.
- 9.5 The recent case of *Head v Eastbourne BC* [2009] UKUT 271 (LC) in the Lands Tribunal, has led to concern that the adoption of the SPD may give rise to the land affected by the SPD being considered as "blighted land" for the purposes of the Town and Country Planning Act 1990 (as amended). This may entitle some people living in the area to serve a notice on the council requiring it to compulsorily acquire their property in accordance with the provisions of the 1990 Act.
- 9.6 The council's statutory duty under the Equality Act 2010 is relevant. The protected characteristics to which the Public Sector Equality Duty ("PSED") applies now include age as well as the characteristics covered by the

previous equalities legislation applicable to public bodies (i.e. disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex).

9.7 The PSED is set out in section 149 of the Equality Act 2010 ("the Act") provides (so far as relevant) as follows:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

9.8 Case law has established the following principles relevant to compliance with the PSED which Council will need to consider:

(i) Compliance with the general equality duties is a matter of substance not form.

(ii) The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

(iii) Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision-maker is performing.

(iv) The weight to be given to the countervailing factors is in principle a matter for the authority. However in the event of a legal challenge it is for the court to determine whether an authority has given "due regard" to the "needs" listed in s149. This will include the court assessing for itself whether in the circumstances appropriate weight has been given by the authority to those "needs" and not simply deciding whether the authority's decision is a rational or reasonable one.

(v) The duty to have “due regard” to disability equality is particularly important where the decision will have a direct impact on disabled people. The same goes for other protected groups where they will be particularly and directly affected by a decision.

(v) The PSED does not impose a duty on public authorities to carry out a formal equalities impact assessment in all cases when carrying out their functions, but where a significant part of the lives of any protected group will be directly affected by a decision, a formal equalities impact assessment ("EQIA") is likely to be required by the courts as part of the duty to have 'due regard'. The EQIA is attached and will need to be read and taken into account in reaching a decision on the recommendations in the report. Additionally, the equality implications are summarised at paragraph 7 of the report.

(vii) The duty to have “due regard” will normally involve considering whether taking the particular decision would itself be compatible with the equality duty i.e. whether it will eliminate discrimination, promote equality of opportunity and foster good relations. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on any particular protected group, or to take steps to promote equality of opportunity by, for example, treating a particular affected group more favourably.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No	Description of Background Papers	Name/ Ext of holder of file/ copy	Department/ Location
1	Earl’s Court and West Kensington Opportunity Area Joint Supplementary Planning Document	Thomas Cardis Ext 3317	TTS
2.	Consultation Summary Report	Thomas Cardis Ext 3317	TTS
3.	Earl’s Court and West Kensington Opportunity Area Joint Supplementary Planning Document (tracked with changes post Regulation 17 Consultation)	Thomas Cardis Ext 3317	TTS
4.	Equality Impact Assessment	Thomas Cardis Ext 3317	TTS
5.	Estates Regeneration Economic Appraisal (2011) Response to Comments	Thomas Cardis Ext 3317	TTS
Contact Officer		Name: Thomas Cardis Ext: 3317	