

**Westminster City Plan 2019-2040 – Examination in Public
Response to Inspector’s Matters, Issues and Questions**

Matter 3 – The Spatial Strategy and Spatial Development Priorities

Policy 1 – Westminster’s Spatial Strategy

(1) – What is the basis for the principles set out in Part A of Policy 1 and are they justified?

(3) – How do they align with the London Plan?

1. The Association supports the principles set out in Policy 1(A) of Westminster City Plan 2019-2040 (“the City Plan”).
2. The principles align with the London Plan. Not least to support and enhance the internationally significant office functions of the CAZ, which is a requirement of regional policy¹.
3. The extent to which the City Plan will achieve these principles is a matter of soundness and conformity with strategic regional policy.
4. WPA considers that aspects of the City Plan are unsound because these principles will not be achieved, contrary to London Plan policy.

(11) – What is the approach to other areas not identified and is this clear?

5. WPA is concerned that the approach to growth on Oxford Street and the Oxford Street District is unclear.
6. The City Plan does not address the level of growth and densification that the street, and District, can potentially provide. The Oxford Street District has characteristics, and capacity, that distinguish it from the wider West End Retail and Leisure Special Policy Area.
7. The recognition of the potential for additional height and further growth on Oxford Street at paragraph 2.8 is welcome but this should be addressed within policy, either Policy 1, Policy 2 or a new policy.

(12) What was the intended purpose of including the Key Development Sites in Appendix 1 and referring to them in Policy 1? What is their status in terms of allocations and what evidence is there to support their inclusion for example in terms of flood risk and the effect on heritage assets?

¹ Policy SD4(B) of the draft New London Plan

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8. WPA notes the City Council’s clarification of the status of the Key Development Sites. The basis upon which sites have been included, or excluded, as Key Development Sites and the effect of this on the scope of the forthcoming Site Allocations DPD is unclear.
9. The City Plan itself does not seek to identify sites with the capacity to meet the scale of growth sought and relies on separate, forthcoming, DPDs. Thus the City Plan is not effective, as it does not show how the scale of growth sought will be deliverable over the plan period. The use of separate Development Plan Documents is inconsistent with Paragraph 18 of the NPPF which indicates that “policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies.”
10. The City Plan does not “[plan] for and [allocate] sufficient sites to deliver the strategic priorities of the area.”²

(13) – What is the basis for the Council’s proposed modifications in relation to these sites? What status would the sites have and how would they contribute to development needs?

11. WPA notes that representing the Key Development Sites as the Housing Trajectory mean that no sites contributing to the delivery of other targets are referred to within the City Plan, beyond the broad indications of the CAZ and Opportunity Areas within Policy 1(B). The City Plan is, therefore, reliant upon the Site Allocations DPD to demonstrate its deliverability.

Policy 2 – Spatial Development Priorities: West End Retail and Leisure Special Policy Area

(19) – Does Policy 2 adequately and effectively deal with the full range of relevant issues? How will these priorities be delivered?

12. WPA has suggested that greater emphasis could be provided on supporting leisure and evening uses within the area. It does not consider that the plan, whether in Policy 2 or elsewhere, contains sufficient direction to support the delivery of a diverse evening and night-time economy and an enhanced cultural offer effectively. There is no non-strategic policy that distinguishes how proposals for such uses will be treated differently, or given a greater level of support, than proposals elsewhere in the City.

(21) – What is the basis for the designation and boundaries of the West End Retail and Leisure Special Policy Area, the West End International Centre

13. WPA also considers that the WERSLPA boundary has been drawn too tightly. It should include Mount Street, which has a distinctive and internationally prominent retail character that complements that of the wider area and the western side of Berkeley Square. Treating the western part of Berkeley Square separately to the eastern part does not recognise the diverse range of uses, including leisure and entertainment uses, on all sides.

² NPPF, Paragraph 23.

Policy 3 – Spatial Development Priorities: Paddington Opportunity Area

(30) – Should Policy 3 specify the amount of housing and employment expected in the Paddington Opportunity Area over the plan period?

14. The City Plan should recognise that the draft New London Plan indicates that the Paddington Opportunity Area should provide an additional 13,000 jobs³, an increase of 260% compared to the current London Plan. This, along with the area’s housing target, should be recognised within the City Plan Policy.

(31) – Is Policy 3 consistent with other policies in the City Plan, particularly Policy 42?

15. WPA is concerned that Policy 42, especially Part E as it relates to Paddington, is not consistent with Policy 3. The Association does not consider that the assessment of prevailing context for the wider Paddington area as being 6 residential floors is correct and based on clear evidence. The prevailing local context within the Paddington Opportunity Area is significantly higher. This is addressed in further detail in the Matter 8 Written Statement.

Policy 4 - Spatial Development Priorities: Paddington Opportunity Area

(38) – Should Policy 4 specify the amount of housing and employment expected in the Victoria Opportunity Area over the plan period?

16. The City Plan should recognise that the draft New London Plan indicates that the Victoria Opportunity Area should provide an additional 4,000 jobs⁴. This, along with the area’s housing target, should be recognised within the City Plan Policy.

(40) – What progress has been made towards the growth targets for the Victoria Opportunity Area and how will future growth be delivered?

17. WPA is concerned that the current framework is insufficiently clear as to how growth targets, especially those relating to jobs and employment, will be achieved. The recategorisation of the Key Development Sites as Housing Sites exacerbates this, as the City Plan does not provide any indication of the source of likely employment growth, in addition to the housing supply that may arise from the housing sites identified in Appendix 1.

Policy 7 – Managing Development for Westminster’s People

(63) – Are the criteria in Policy 7 sufficiently clear and effective?

(64) – Are they justified?

³ Draft New London Plan, Table 2.1 (Opportunity Area Indicative capacity for new homes and jobs)

⁴ Ibid

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18. WPA does not consider that Policy 7, as drafted and as subject to Main Modification M/S/20, is justified. This is because aspects of it do not represent the most appropriate strategy. It is inconsistent, in places, with the emerging New London Plan and national guidance.
19. Main Modification M/S/20 is noted as a response to representations from, inter alia, WPA.
20. For the avoidance of doubt, the proposed modification exacerbates, rather than addresses, the concern raised in the WPA's Regulation 19 response.⁵ Amending the policy to prevent **'material losses'** of daylight and sunlight and to prevent **'significant increases'** in sense of enclosure, overshadowing and loss of privacy and overlooking is a materially different approach to preventing unacceptable impacts.
21. It does not recognise that, in a densely built up urban environment such as Westminster's achieving the scale of growth sought by the Plan will, in some cases, involve changes to levels of daylight, sunlight and other aspects currently enjoyed by surrounding residents and other uses.
22. Policy should seek to prevent unacceptable impacts, as initially drafted, rather than seeking to prevent any material change. Preventing material change whilst accommodating growth has not been shown to be deliverable and would not be effective.
23. The July 2019 update to the NPPG requires decision makers to consider whether a proposed development would have an unreasonable impact on the daylight and sunlight levels enjoyed by neighbouring occupiers. The NPPG also expands on the wider considerations which should be assessed when considering appropriate levels of daylight and sunlight and acknowledge that what is appropriate will **"depend to some extent on the context for the development as well as its detailed design"**.
24. Draft New London Plan policy D6(D) will require new development to **"provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context, whilst avoiding overheating, minimising overshadowing and maximising the usability of outside amenity space."** It does **not** seek to avoid material changes.
25. The emerging New London Plan policy requires decision makers to have regard to **"context"**. The term **"sufficient"** gives focus to retained levels of daylight and sunlight i.e. what amenity is left behind as opposed to what has been taken away.
26. Adopted London Plan policy 7.6 seeks to avoid **"unacceptable harm"** to daylight and sunlight.
27. The City Council's approach within Policy 7, as modified by M/S/20, would not be consistent with the PPG or adopted or emerging New London Plan policy.

⁵ WPA, Regulation 19 response, July 2019, paragraph 3.21

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28. A two stage approach to, firstly, identifying if a material deterioration in daylight and sunlight will occur and, then, in cases where a material deterioration would occur, assessing if that would be unacceptable, has been endorsed by the High Court⁶ and recent appeal decisions. In appeal reference APP/E5900/W/17/3191757, the Inspector acknowledged the role of a two-stage process, stating:

“A recent Court judgment has clarified [that this should be] a two-stage process. In essence, first, as a matter of calculation, whether there would be a material deterioration in conditions and second, as a matter of judgement, whether that deterioration would be acceptable in the particular circumstances of the case.

“The Court held that the first question can be answered by applying the BRE Guidelines... If the guidelines are exceeded the deterioration would be material. In answering the second question – whether that deterioration is acceptable – wider considerations come into play. This indicates to me that the acceptability of a material deterioration in living conditions must be judged in its local context.”

29. Policy 7(A) as drafted within the Submission Version of the City Plan follows this two-stage approach. WPA would support this. It does not support the proposed amendments which would be inconsistent with this approach, and the direction of national guidance and regional policy.

30. M/S/20 should not, therefore be incorporated. Instead, paragraph 7.3 should be amended to align with the original wording of Policy 7(A).

31. The final sentence in paragraph 7.3 states that even when there is **“no material loss of daylight and sunlight, new developments should prevent unacceptable increases in the sense of enclosure.”** Reference to **“no material loss of daylight and sunlight”** is inconsistent with the main policy wording as originally drafted.

32. Paragraph 7.3 also suggests that daylight and sunlight levels are important to decrease energy consumption and reduce the need for heating. It is well established that access to daylight and sunlight level are important to amenity and quality of life, but extending the considerations to include heating and energy consumption introduces new tests which are not relevant to amenity, and which are complex and dependent on a number of other factors other than daylight and sunlight. For example, if considering heating savings it would also be appropriate to consider environmental costs of cooling due to solar gain. This reference should be deleted from paragraph 7.3.

33. Additionally, WPA does not support the policy’s equation of daylight and sunlight with sense of enclosure. The BRE Guidelines do not purport to provide tests or checks to judge sense of enclosure. It is not rational to suggest that because a property may (or may not) suffer a

⁶ Rainbird v London Borough of Tower Hamlets, 2018

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material loss of daylight and sunlight that one can jump to the conclusion that there will be unacceptable impact to sense of enclosure.

34. The Association therefore suggests the following amendments to Paragraph 7.3:

“Negative effects on amenity should be minimised as they can impact on quality of life. ~~Provision of good indoor~~ Daylight and sunlight levels ~~is are~~ important for health and well-being and to decrease energy consumption through reduced need for artificial heating and lighting. Overshadowing affects the quality or operation of adjacent buildings and can negatively impact on the use of public and private open space for recreation, rest and play. Positioning, scale and orientation of buildings as well as the incorporation of design measures should be considered to minimise overshadowing and overlooking and ensure adequate levels of privacy. ~~Even when there may be no material loss of daylight or sunlight, new developments should prevent unacceptable increases in the sense of enclosure.”~~

35. The ‘balanced approach’ referred to within paragraph 7.1, recognising the wider benefits of a scheme, should be incorporated within the policy. Policy should provide that significant weight will be given to the extent to which the proposal will contribute to meeting other priorities of the City Plan, including housing and employment targets.