

OBJECTION FROM OLD OAK NEIGHBOURHOOD FORUM TO APPLICATION AT ONE PORTAL WAY 21/0181/OUTOPDC

The Old Oak Neighbourhood Forum wishes to object to this application and asks that it be refused or withdrawn. The Forum was designated by OPDC in 2018 and has a membership of 60 residents living within the neighbourhood boundary and a further 60 affiliate members within Ealing and the northern part of Hammersmith.

BACKGROUND TO THE OLD OAK NEIGHBOURHOOD FORUM

The Forum has been involved in every stage of the preparation of the OPDC Draft Local Plan, and in responding to consultations on individual planning applications in the LB Ealing part of the OPDC area. We submitted representations on the Modifications in summer 2021, leading to the Inspector agreeing to hold further hearings on two of our most fundamental concerns about the Draft Local Plan. These are:

- reduced PTAL levels and connectivity for and between locations, in the modified version of the Plan, as compared with the 19.2 version submitted in October 2018
- whether the Draft Plan meets requirements for 'general conformity' with the 2021 London Plan in respect of Policy D9 on Tall Buildings. This EIP session on January 11th will be highly relevant to this application.

We have previously expressed concerns on the inadequate 'description' of the development as included in this application, and on the fact that the consultation period has fallen within the Christmas and New Year period. Important documents have been added to the OPDC online planning file in the course of the consultation period. We have asked OPDC to extend the timescale for representations, given this context.

PROBLEMS ON PRE-APPLICATION ADVICE AND THE APPLICATION PROCESS

We have had to ask twice for copies of pre-application advice to be added to the OPDC online planning register. The OPDC Statement of Community Involvement commits to making these documents available once an application is submitted. Having initially been assured by OPDC that such material was limited to 4 notes on detailed issues, from OPDC and from LB Ealing, we questioned this and OPDC subsequently provided two sets of GLA pre-application advice, dating from June and October 2021. A third (and significant) GLA pre-application advice note was published on 5th January 2022, three days before the consultation deadline.

The planning statement submitted with the application is badged as coming from Icen Projects while '*prepared by Pilbrow and Partners*'. The sections of the Planning Statement at paragraphs 7 through to 13 draw very heavily on the text of the GLA pre-application advice, to the extent of being near 'cut-and paste'. This Planning Statement (to our eyes) is thin in terms of content which specifically and clearly addresses the content of the London Plan, Ealing development plan, and emerging OPDC Local Plan in relation to policy on tall buildings. This has meant that our representation has had to cover an unusual level of detail.

In the GLA advice of 3rd June 2021, London Plan Policy is referred to at paragraph 37 as follows: *With respect to tall buildings, London Plan Policy D9 is clear that tall buildings should only be developed in locations identified as suitable in development plans. Policy D9 also requires tall buildings to be assessed against visual, functional, environmental and cumulative impacts. The GLA notes that Ealing's development plan states that tall buildings may be suitable in the gateway to Park Royal and*

as such this broadly addresses the locational requirement of Policy D9, Part B. However, the detailed design and impact criteria outlined in Part C of the policy must also be addressed before confirming compliance with Policy D9. We do not see Part B of Policy D9 as having been adequately addressed in the documents submitted with the application.

In the second set of GLA pre-application advice (July 29th 2021) there is commentary on building heights and on how a 'cluster' has emerged at North Acton. There is also the statement *It should also be noted that all the buildings currently proposed in the scheme are tall buildings by definition, and the requirements of London Plan Policy D9 will therefore be rigorously applied to all the buildings in the scheme.* We trust that this rigorous application of Policy D9 will prove to be the case.

In the third set of GLA advice of October 19th 2021 there is no further mention of London Plan D9, nor of building heights.

Flaws in the application process - Description of the Development

We have corresponded with OPDC on the 'description' of the development as provided on the application form submitted by Imperial College. This provides no quantification of residential and commercial floorspace, building heights/numbers of storeys proposed for the 7 buildings proposed, nor the number of housing units. It appears that post the Finney judgment, the applicants wish to retain maximum flexibility to vary any or all of these aspects of the 'description' post planning consent.

The applicants have provided a more detailed 'description' at section 4 of the Iceni planning statement. OPDC has agreed that this will be used for public consultation purposes but has declined to confirm that it will be 'carried through' and used in the Decision Notice on the planning consent. We see this as an unacceptable position to take. The public need clarity on what is being consulted on, and what has been consented. We concur with the judgment in the Finney case that if a developer wishes to make material changes to a planning consent, a fresh application is the way forward. The content of a 'description' is a key element of any planning application or consent.

Submission of the application

The application is dated 28th October 2021. The required information was submitted on an OPDC application form and states *The current proposals have evolved through extensive pre-application meetings and discussions with officers from both OPDC and LBE, including Alex Jackson, Chris Maltby, Jon Sheldon and Claire O'Brien. Please refer to the Planning Statement submitted with this application for further detail summarising the advice received in pre-application meetings.*

The cover letter from Iceni Projects (also dated 28th October) enclosing the application documents is addressed to Alex Jackson at LB Ealing, suggesting that even at this late stage the applicants assumed that LBE would be determining the application under the OPDC Scheme of Delegation. This part of the process appears to have been contrary to the 'Protocol' that forms part of the Scheme of Delegation from OPDC to LBE, which states as below:

- *All applications for planning permission and other types of planning consent will be submitted to OPDC in this first instance, as the local planning authority.*
- *Any applications submitted to LBE in error shall be returned to the applicant, with advice to resubmit to OPDC.*

We have been provided with copies of the exchange of letters between Shital Manro LBE Planning Committee Chair (3rd November) and OPDC CEO David Lunts (16th November) in which the two

bodies argued over which should decide the application. OPDC confirmed to LBE on 16th November that the Corporation as statutory planning authority retains the right to decide applications, at all times. (OONF/StQW had pointed out this fact to OPDC in February 2020, during extensive correspondence on the OPDC Scheme of Delegation). LB Ealing seemingly found this position hard to accept.

We believe that an assumption by the applicants that LBE would be the decision-maker steered Imperial College and its development partner towards a set of proposals which they came to assume would achieve consent without undue difficulty. This was on the basis of other very high density/high rise developments at North Acton (cited in the Planning Statement for 21/0181/OUTOPDC) on which the LBE Planning Committee has granted consents since 2015.

These applications (delegated from OPDC) were approved by Ealing's Planning Committee primarily on the basis of a site allocation OIS1 in an Ealing 2013 development plan document. Because of the way the delegation scheme was operated by LB Ealing, the lawfulness of a number of these committee decisions (those between April 2015 and December 2020) is questionable (see below).

In terms of a report and recommendation to OPDC Planning Committee, the weight to be given to these LBE planning consents as precedents needs to be assessed and justified by OPDC with care and with supporting detail on their lawfulness (if any significant weight is to be given to them).

The formal decision of OPDC to 'retain' application 21/0181/OUTOPDC for its own decision was made on the 10th November by OPDC, via an OPDC *Record of Decision to Delegate or Retain a Planning Application*. Pre-application discussions between the applicants, OPDC, and LBE had taken place under Planning Performance Agreements entered into with both planning authorities.

Grounds for objection

We return to some of these background points in our grounds for objection to application 21/0181/OUTOPDC, as set out below. These grounds cover the following four matters:

- Prematurity
- Reliance on an extant consent on the site, of doubtful lawfulness
- Non-compliance with the NPPF
- Non-compliance with the statutory development plan (London Plan D9, Ealing development plan, 2015 OAPF, emerging OPDC Draft Local Plan).

Given that new documents have been added to the OPDC planning register as recently as January 5th, we may submit a second representation should further relevant information emerge.

GROUND 1 FOR REFUSAL/WITHDRAWAL OF THE APPLICATION – PREMATURITY AND LB EALING POLICY ON OUTLINE APPLICATIONS AT NORTH ACTON

The NPPF states as below:

48. Local planning authorities may give weight to relevant policies in emerging plans according to:

(a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

(b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

(c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given) ²⁴.

49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

(b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

As covered in more detail below, we do not consider the application to comply with policies in the 2021 London Plan, Ealing development plan, nor the emerging OPDC Local Plan. We consider this application to have been submitted prematurely. Under NPPF 48b) above there are unresolved conflicts over OPDC Draft Policy SP9 on Building Heights and modified Figure 3.15 which maps locations for tall buildings.

We also contend that this is a scenario in which the ‘limited circumstances’ as defined in 49 (a) and 49 (b) both apply. The cumulative effect of the development would be very substantial and the emerging OPDC Draft Local Plan remains the subject of an imminent EIP hearing on conformity with London Plan Policy D9 on Tall Buildings.

The plan-making process for the OPDC Draft Local Plan is (in our view) at a stage when the final outcome would be seriously undermined by a decision prior to the Inspector’s report and adoption of a finalised local plan. The question of compliance with London Plan Policy D9 is a matter of wide significance to Londoners far beyond North Acton. **Hence we argue that the application is premature and should be withdrawn or refused on that basis.**

Had the application been validated by LB Ealing rather than by OPDC, we believe that it would have fallen at the first hurdle. Site allocation OIS1 in the Ealing Development Sites DPD, on which the Council’s Planning Committee has previously relied when granting major developments at North Acton, states at c) *The site is considered in principle an appropriate location for tall buildings, however the acceptability of tall buildings will be determined based on the detailed design as presented in a full planning application; **outline planning applications for a tall building will not be considered.*** (our emphasis).

This is a clear statement that would have (or certainly should have) ruled out validation by LB Ealing of the outline part of this application. We do not know why this issue was not addressed in pre-application discussions. We do not know if this is one of the reasons behind the late decision to switch the decision-making body from LBE to OPDC.

In any event, we see it as a sound policy by LBE not to consider outline applications for tall buildings. The hybrid nature of the application is a major concern of our members. The phase of the development for which outline approval is sought will not be built out for several years. Planning parameters set in 2022 may prove wholly inappropriate by 2030, in the eyes of the then planning authority (which may be LB Ealing or OPDC). Government planning reforms are imminent in 2022. London planning and transport policies are in a state of flux in a continuing pandemic.

We argue that OPDC should take full account of Ealing Council's Policy OIS1 and its clear statement that outline applications for tall buildings at North Acton will not be considered. **The outline elements of application 21/0181/OUTOPDC should be withdrawn or refused on this basis.**

GROUND 2 - PLANNING HISTORY OF THE SITE AND PLANNING CONSENT PP/2015/0095

We contend that the planning consent issued by LBE on 8th August 2016 on PP/2015/0095 should be set aside as null and void. and should play no part in the consideration and decision on application 21/0181/OUTOPDC. This is for the following reasons:

- a. LBE ceased to be the planning authority for the site at One Portal Way as from the establishment of OPDC from 1st April 2015.
- b. The report to the LB Ealing Planning Committee on 5th August 2015, on the basis of which LBE purported on 8th August 2016 to grant consent to outline application P/2015/0095, made no mention of the fact that the site lay within the OPDC boundary. Nor was there any explanation or evidence that the determination of the application was a decision delegated to LBE.
- c. While the OPDC Board at its meeting on April 1st 2015 had approved a '*Scheme of Delegation*' between OPDC and LBE Ealing, this scheme was not formally entered into by LB Ealing until 2020. Despite a number of requests for documentation recording any formal decision by Ealing Council to enter into this delegation arrangement in 2015, LBE has failed to provide such evidence.¹
- d. It has not proved possible to find evidence on either the OPDC or LBE planning registers to show that the application P/2015/0095 was ever submitted or referred to OPDC as the relevant planning authority for its determination. Nor is there evidence of documentation showing that OPDC made any decision to delegate the determination of this application to LB Ealing (i.e no *Record of a Decision to Delegate or Retain*). This application had no OPDC reference number.
- e. The GLA reports on Mayoral decisions on stages 1 and 2 similarly make no mention of the fact that OPDC was the planning authority at the time of determination of the application.

The Scheme of Delegation from OPDC to LB Ealing as approved by the OPDC Board on April 1st 2015 was a legal arrangement requiring the consent of both parties. It contained no special provisions or transitional arrangements for applications lodged with LBE prior to April 1st 2015 to be determined by LBE. After that date, OPDC took on the relevant planning powers for determining applications within its boundary. LBE as a planning authority was no longer in a position to exercise these powers except in instances of lawful delegation from OPDC.

¹ A report to the LBE Council meeting on 24th February 2015 on *Changes to Constitution* referred to the forthcoming establishment of a Mayoral Development Corporation and to the concept of a scheme of delegation under which LBE would continue to make certain planning decisions. Paragraph 2.10 stated *In order to give effect to the Scheme of Delegation, full Council must accept the delegation. It is therefore proposed that a report be submitted to full Council with a recommendation that the proposed Scheme of Delegation be accepted.* For whatever reason, no such subsequent report was submitted to Council until after OPDC had reviewed and revised the terms of the Scheme in 2020. LBE did not therefore '*accept the delegation*' during the intervening years. In our view, this renders a series of Decision Notices issued by LBE as null and void until such time as LBE can provide certified copies of these and/or retake these decisions.

The planning decision notice signed and issued on behalf of LB Ealing on 8th August 2016 on P/2015/0095 we contend is void for want of proper authority. It is hence irrelevant as a material consideration on any decision on application 21/0181/OUTOPDC.

We ask that the Planning Statement submitted with application 21/0181/OUTOPDC is withdrawn and re-issued with paragraphs 1.2, 1.3, 2.1 and 2.10-2.13 deleted as inaccurate. These paragraphs assumed that the application would be determined by LB Ealing which is not now the case.

In a nutshell, application P/2015/0095 was purportedly consented by a planning authority on a site outside its area of responsibility, and without the necessary delegated powers to make such a decision. We do not accept that there is a valid and lawful planning consent at 1 Portal Way (Carphone Warehouse) as represented by a signed decision notice and issued by David Scourfield on 8th August 2016, unless and until OPDC and LBE can produce documentary evidence to demonstrate that:

a) LB Ealing had by that date made a formal decision to enter into the 2015 Scheme of Delegation with OPDC.

b) OPDC had made a decision to delegate this application, under the Scheme.

GROUND 3 – APPLICATION CONTRARY TO NATIONAL PLANNING POLICY

We see the July 2021 changes to the NPPF as increasing the focus on design quality, not only for sites individually but for places as a whole.

Paragraph 22 of the NPPF includes a new insertion to paragraph 22 “*Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery*”.

There is no published ‘vision’ for North Acton that corresponds with what has happened on the ground since LB Ealing adopted its Core Strategy a decade ago. The OPDC PSMDLP draft ‘Place’ Policy for North Acton and Acton Wells has a brief ‘vision’ as defined below

North Acton and Acton Wells will be a high density mixed use area accommodating tall buildings in appropriate locations. An improved street network will provide a choice of greened routes to Old Oak, Park Royal and West Acton. A new neighbourhood town centre will sit within a high quality and coordinated public realm along Victoria Road and Portal Way. Old Oak major town centre will connect to an enhanced North Acton station delivering a range of active uses.

Local people recognise the statements on high density and tall buildings. The ‘improved street network’ remains a distant proposition. The ‘Old Oak major town centre’ referred to will not be at the location previously planned when this text was first drafted. Active uses within the ground floors of the tall buildings already at North Acton have proved a disappointing mix, aimed mainly at a transient student population.

OPDC officers acknowledge, after years of taking little interest in LBE planning decisions made on their behalf, that the resultant public realm has major problems in terms of traffic/pedestrian conflicts, wind tunnels between tall buildings, lack of daylight/sunlight, and other features.

This scenario reflects what has happened on the ground to date. We support the principle that local plan policies should (where possible) look ahead 30 years, but such visions should allow for changed

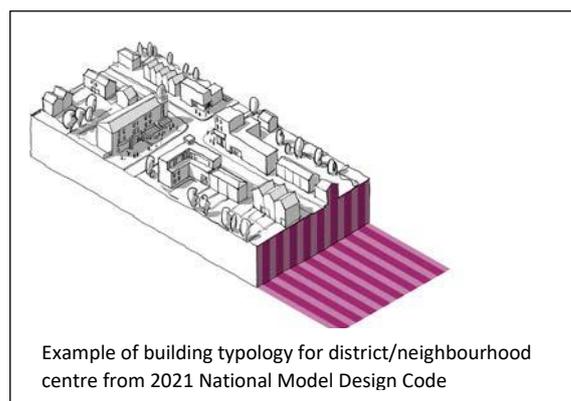
circumstances (as Government has acknowledged). It is for this latter reason that we object strongly to a hybrid application for this site, which seeks to fix a set of planning parameters via an outline consent, for later phases which will not be built out for many years to come.

Chapter 12 of the NPPF on *Achieving Well-designed Places* includes significant new material. A much bigger focus is placed on making 'beautiful' and 'sustainable' places, and the use of plans, design policy, guidance and codes is encouraged. For example, Paragraph 128 (previously 126) sets out that *"all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences."*

The applicants have duly submitted a Design Code document, prepared by their architects Pilbrow and Partners. The stated aim of this documents *to facilitate the development of future Reserved Matters Applications (RMAs) in accordance with the high level design principles and strategic masterplan framework established in the Masterplan Design and Access Statement.*

The contents of this Code focus on the site and the series of proposed later buildings, rather than on the wider public realm of North Acton. Nothing in it persuades us that North Acton will become a beautiful and sustainable place. The document appears aimed at easing the passage of future applications for 'reserved matters'.

The CGI image below of a North Acton were this application to be built out (along with other consents yet to be constructed) does not lift the hearts of local people. It bears no relation to the building typology for a 'neighbourhood centre' in the national model design code.



CGI image from Pilbrow and Partners as included in the Design and Access Statement for application 21/0181/OUTOPDC c

The GLA pre-application advice note of 29th July comments at paragraph 44 that *The future character of the North Acton town centre and the broader Old Oak and Park Royal context will be defined by the proposed building heights in this scheme given the significant changes to the skyline and the cluster formation of the new very tall buildings. It is acknowledged that the proposals introduce a significant new public open space, and thus there could be justification for marking out this civic heart with tall buildings (instead of clustering tall buildings around North Acton Station as envisaged in the Old Oak and Park Royal OAPF). However, the spatial hierarchy of the town centre will need to be reconsidered as a result to justify this approach, and the cumulative impact of the proposals with other new consented schemes in North Acton must be carefully scrutinised under Policy D4 (Delivering good design) of the London Plan.*

We see no evidence of any planned 'spatial hierarchy of the town centre' at North Acton. As result of OPDC's 'change of direction' the Policies Map in the modified version of its Draft Local Plan

includes North Acton as part of 'neighbourhood centre' and also a 'primary shopping area'. The location is also seen as part of a strangely shaped and extended 'Old Oak major town centre' spreading from Channel Gate to North Acton and including future development adjacent to OOC station.

But the 'North Acton cluster' is now becoming weighted towards very high density development closer to the A40 rather than around North Acton station (where surrounding towers now look modest as compared to this application). We see no evidence that this application will help in the long term to make North Acton a successful place, with a coherent spatial hierarchy, in the manner expected both by the NPPF and D4 of the London Plan.

As a neighbourhood forum, we see ourselves as being close to current public debates within London on the future of the city. We recognise that public opinion has impacted on DLUHC policy, following the *Building Better Building Beautiful Commission* and the establishment of the Office for Place. In terms of national planning policy, application 21/0181/OUTOPDC comes across as a set of proposals from an era which London is leaving (given the experience of Vauxhall/Nine Elms/Battersea) rather than moving towards.

We therefore consider application 21/0181/OUTOPDC to fail to recognise the direction of travel on national planning policy. This is a further reason why we argue that the application should be withdrawn, to await adoption of the OPDC Local plan and Government's publication of its long awaited Planning Bill and related reforms.

GROUND 4 – NON CONFORMITY WITH THE 2021 LONDON PLAN

As per GLA pre-application advice and paragraph 5.2 of the Iceni Planning Statement, we agree that apart from the NPPF, the planning policy framework for this application consists of:

- The London Plan (2021)
- The Ealing Core Strategy/Development DPD (2012)
- The Ealing Development Management DPD (2013);
- The Ealing Development Sites DPD (2013); and
- The OPDC Opportunity Area Planning Framework (2015).

The **2015 OAPF** (albeit overtaken by OPDC's 2019 'change of direction') remains a Supplementary Planning Document to the London Plan. It includes a 'Principle D3' stating that *Proposals should accord with London Plan policies 2.13, 7.6 and 7.7 and deliver* (there follow a series of sub-paragraphs). Policy 7.7. on Tall Buildings has since been replaced by Policy D9 in the 2021 London Plan.

The section of the OAPF on North Acton (page 80) refers to the aim of '*supporting mixed use intensification*'. The text and the map at Figure 60 provide no information on suitable locations and appropriate heights for tall buildings, of the kind which would assist in demonstrating conformity of application 21/0181/OUTOPDC with the 2021 London Plan and its modified policy D9.

In terms of compliance with the 2021 London Plan, we consider the main considerations for this application as relating to delivery of London Plan housing targets, and the modified London Plan Policy D9 on Tall Buildings. Insofar that there is a 'planning balance' to be struck, these are two policies which will pull in different directions.

Housing targets

On housing targets, paragraph 5.5 of the Icen Planning Statement notes that the London Plan *sets out an expectation for all London Boroughs to achieve, and exceed, their relevant minimum borough housing targets. With regards to the LBE, the minimum ten-year target is set at 21,570 new homes over the plan period (2019/20-2028/29), or, 2,157 new homes per annum.*

Housing delivery figures for LBE have been opaque for several years as a result of the Council's failure to publish an Authority Monitoring Report since the version for the year 2013/14. After complaints from local amenity groups and an adverse Ombudsman finding, LBE published an interim report for subsequent years. This does not include a 5 Year Land Supply or Housing Trajectory.

Our understanding is that LBE has delivered housing numbers in excess of its target in recent years, in terms of planning consents. The argument made at 6.12 of the Icen planning statement, on the scheme's contribution to LBE housing targets therefore has limited relevance. The OPDC on the other hand is behind on its targets. Its AMR shows that within the 2020/21 monitoring period 561 new housing units were completed in the OPDC area (against a Local Plan target of 1,005). The AMR comments *While this number of completions is lower than the annual housing target of 1,005 as set out in the submitted draft Local Plan, the 5-year supply of homes noted in Table 4.1 indicates a significant uplift in housing delivery will be achieved in future years as development across Old Oak and Park Royal progresses.* Time will tell.

Figure 3.1 in the OPDC PSMDLP lists site allocations and expected housing numbers for development sites within the Draft Plan, with 764 units allocated for One Portal Way in the first 10 years of the Plan (2018-28). Policy P7 in the document (North Acton and Acton Wells) shows an amended figure of 5,250 new homes for 'early delivery' for this 'Place' as compared with 3,200 in the version submitted for examination in October 2018. No spatial or planning rationale is provided for this increase.

We see this as a classic example of OPDC's Local Plan becoming 'developer led' rather than 'plan led' over the period since the Corporation's 'change of direction' in November 2019. As was the case for Scrubs Lane in the period 2014-17 period, developer aspirations for sites in their ownership lead to pre-application discussions, PPAs, and OPDC site allocations adjusted to reflect emerging developer proposals. This process has taken place largely regardless of any OPDC published analysis of site capacity or explanation of the 'suitability' of specific locations for high density tall buildings.

OPDC's reactive approach has facilitated a 2018 housing figure of 3,200 new homes for North Acton/Acton Wells in a 19.2 Local Plan submitted in 2018, to morph into a 5,350 figure via a 'modification' which remains under examination. Planning application 21/0181/OUTOPDC has been submitted, and may well be determined, before the local plan is adopted. **This is not 'plan-led' development by any description.**

It is not yet clear whether application 21/0181/OUTOPDC will be assessed against LBE's record of housing delivery, and annual targets, or those of OPDC? London's housing targets are in any event the subject of review by the Secretary of State. The 2021 London Plan targets are 'indicative' and to be tested through masterplanning. We comment below on the detail of LBE and OPDC policies specific to North Acton and to the application site.

Density

Paragraph 3.3.22 of the 2021 London Plan states *To help assess, monitor and compare development proposals several measures of density are required to be provided by the applicant. Density measures related to the residential population will be relevant for infrastructure provision, while measures of*

density related to the built form and massing will inform its integration with the surrounding context. The following measurements of density should be provided for all planning applications that include new residential units:

- 1) number of units per hectare*
- 2) number of habitable rooms per hectare*
- 3) number of bedrooms per hectare*
- 4) number of bedspaces per hectare.*

We do not see any such figures in the Iceni Planning Statement, nor in the Design and Access Statement from Pilbrow and Partners.

London Plan Policy D9 on Tall Buildings

The Old Oak Neighbourhood Forum has submitted a detailed submission to Planning Inspector Paul Clark, setting out why we consider the OPDC PSMDLP to fail to 'generally conform' with this London Plan policy. The policy was modified by the Mayor of London at a very late stage of finalisation of the London Plan and in response to a Direction issued by the Secretary of State in December 2021.

An EIP hearing on this specific question of OPDC PSMDLP conformity with London plan D9 is due to be held on Tuesday 11th January 2022. This is three days after the OPDC's deadline for representations on application 21/0181/OUTOPDC. We reserve the right to add to our objections to this application in light of the discussion at this hearing and the Inspector's findings on this matter.

We consider application 21/0181/OUTOPDC to be contrary to London Plan Policy D9. Pre-application advice from GLA officers in June 2019 may have stated that the proposals complied, but we beg to differ. Our representation to the Planning Inspector overseeing the EIP gives more detail as to why, as does the GLA's own [detailed assessment of London LPA conformity with D9](#) (as reported to the London Assembly's Planning and Regeneration Committee on 9th November 2021).

The 2021 London Plan was formally adopted on March 2nd 2021. Policy D9 addresses 'tall buildings'. Parts A and B state materially as follows:

Policy D9 Tall buildings

Definition:

A) Based on local context, Development Plans should define what is considered a tall building for specific localities, the height of which will vary between and within different parts of London but should not be less than 6 storeys or 18 metres measured from ground to the floor level of the uppermost storey.

Locations

*B) Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting the other requirements of the Plan. This process should include engagement with neighbouring boroughs that may be affected by tall building developments in identified locations. **Any such locations and appropriate tall building heights should be identified on maps in Development Plans. Tall buildings should only be developed in locations that are identified as suitable in Development Plans.** (our emphasis).*

The covering letter from the Secretary of State sent with the Direction in December 2020 stated: *I am issuing a new Direction regarding Policy D9 (Tall Buildings). There is clearly a place for tall buildings in London, especially where there are existing clusters. However, there are some areas where tall buildings don't reflect the local character. I believe boroughs should be empowered to choose where tall buildings are built within their communities. Your draft policy goes some way to dealing with this concern. In my view we should go further and I am issuing a further Direction to strengthen the policy to ensure such **developments are only brought forward in appropriate and***

clearly defined areas, as determined by the boroughs whilst still enabling gentle density across London. I am sure that you share my concern about such proposals and will make the required change which will ensure tall buildings do not come forward in inappropriate areas of the capital (our emphasis)

We contend that neither the LBE development plan, nor the emerging OPDC Modified Draft Local Plan conform with the London Plan in respect of Policy D9. Application 21/0181/OUTOPDC has to be assessed and determined as an individual application. The Secretary of State has sought to ensure that locations for tall buildings are determined by the boroughs. Yet neither LBE nor OPDC have (as yet) prepared development plan documents (adopted or emerging) that meet the requirements of London Plan D9(B).

At its 9th November meeting the Planning and Regeneration Committee of the London Assembly received the results of an analysis by GLA officers on [London boroughs' compliance with Policy D9 Tall buildings Parts A and B \(Updated August 2021\)](#).

This GLA analysis of the position as of August 2021 interrogated Local Plans across London by asking the following questions:

Question 1 D9 Part A: *Does the Development Plan have a definition of a tall building for all or parts of the borough*

Question 2 D9 Part A: *Does TB (the?) definition meet policy requirement of not being less than 6 storeys or 18 metres measured from ground to the floor level of the uppermost storey - and is given as height in m/ storeys or is subjective?*

Question 3 D9 Part B 1) & 2): *Has the borough identified locations where tall buildings may be appropriate in its Development Plan in accordance with para 3.9.2?*

Question 4 Part B 2): *In identified tall building locations is there a maximum or appropriate height for tall buildings?*

Question 5 D9 Part B 3): *Does the Development Plan restrict tall building development to locations that are identified within the Plan as suitable for tall buildings?*

Question 6 *Other useful information (policy related e.g. SPD)*

Question 7 *Relevant evidence base information (e.g. study)*

Question 8 *Does the plan pre-date London Plan EiP? (Jan 2019)*

The OPDC Draft Local Plan was assessed by GLA officers with the answer 'no' to questions 4 and 5. The full set of Ealing DPD documents was assessed with answers 'no' to these same two questions. The Development Sites DPD was given a partial 'yes' to Question 3 reading *Yes but process unclear Locations Text and mapped (refer to specific sites for detail as to whether location is considered appropriate)*. **We contend that the map shown in LBE OIS1 shares the same failing as Figure 3.15 in the OPDC PSMDLP. No specific locations for tall buildings are shown in the map covering a large area of North Acton.**

We accept that in the recent case of *LB Hillingdon v the Mayor of London* [2021] EWHC 3387 (Admin) the judgment concludes that provisions of a local plan 'may sometimes pull in different directions' and that a specific set of development proposals may not fully accord with London Plan D9.

The Hillingdon case involved an 11 storey building. We do not accept that a hybrid application with a building of 56 storeys and two of 'up to 50 storeys' can skirt round the new requirements of London Plan D9. Secretaries of State do not intervene every day of the week on the content of local or regional plans. The Direction Overview issued by (then) MHCLG was very clear in *stating This Direction is designed to ensure that there is clear policy against tall buildings outside any areas that*

boroughs determine are appropriate for tall buildings, whilst ensuring that the concept of gentle density is embedded London wide.

In September 2020 the Chair of the London Assembly Planning and Regeneration Committee wrote to all London councillors in September 2020 following the committee's investigation of building typologies. His letter covered the following points:

- The costs of tall buildings
- Density
- The impact on families
- Quality of design
- Post-COVID 19

He concluded in his letter *Our key finding is that the Committee does not believe that tall buildings are the answer to London's housing needs and should not be encouraged outside of a few designated and carefully managed areas.*

North Acton is an area in which very tall buildings have been allowed to proliferate, as a result of LB Ealing decisions made pre 2015 and subsequent decisions made on behalf of the OPDC (with little oversight). This part of West London may prove to be the most lasting legacy of the Development Corporation. **OPDC Planning Committee members should think very hard when making a decision on application 21/0181/OUTOPDC.** In our view Imperial College should have taken much fuller advice from very experienced planning consultants and legal advisers, prior to submitting this application. Instead the College appears to be relying on inadequately considered assurances from GLA officers that London Plan Policy D9 is met by the proposals.

In terms of connectivity and PTAL levels, the Planning Statement says at 2.5 *The Site lies approximately 200m south of North Acton underground station and is well served by public transport. Although the site is partially within PTAL 4 and partially PTAL 5 it has been agreed with officers at LBE and TFL to assess the site as having a PTAL rating of 5 'very good'. The accessibility of the Site is set to further increase with the introduction of HS2 and Crossrail station at Old Oak.*

Old Oak Common Station (Hs2/Crossrail) is not due to come into operation until some date between 2029 and 2033. The site at One Portal Way is some 800m north of Acton Mainline station which will provide access to Crossrail (a 650m distance is claimed in the application). The TfL online WEBCAT tool gives a PTAL level of between 4 and 5 in the 2031 forecast, so we would see the location as having a 'good' rather than 'very good' level of access to public transport.

GROUND 4 - LOCAL PLAN POLICIES OF LB EALING AND OF OPDC: NON-COMPLIANCE WITH THESE POLICIES

Assessment against LBE planning policies

The LB Ealing Core Strategy 2012, Development Management DPD 2013 and Development Sites DPD 2013 make up one of the most outdated Local Plans across London. The Council's preparation of a new Local Plan has moved slowly in the last 2 years. This new document will not include North Acton and other parts of Ealing that lie within the OPDC boundary,

As noted above LBE has issued Decision Notices on a series of major developments in North Acton between April 2015 and December 2020 under an OPDC Scheme of Delegation. The LBE planning policies which have been relied upon to justify these decisions have referred to the context that *The site is located within the Park Royal Southern Gateway (OIS1) as identified within the Council's adopted Development Sites DPD (December 2013).* The fact that sites lie within the OPDC boundary

has begun to be mentioned in LBE reports more explicitly in recent years, with reference to policy guidance in the emerging OPDC Draft Local Plan. But the text and map of site allocation OIS1 in the LBE Development Sites DPD has to date remained the primary local plan policy justification for tall buildings at North Acton.

The Icen Planning Statement for application 21/0181/OUTOPDC states at 2.15 *As noted above, the surrounding area is currently undergoing large-scale regeneration, with several planning applications recently granted and development commenced and/or completed for residential proposals, extending up to 55 storeys (237.335m AOD) in height. The schemes coming forward on key sites in the immediate vicinity of the application site are summarised below.* (The schemes listed are those delegated by OPDC to LBE for determination and include four potential developments at 2 Portal Way, 4 Portal Way, The Portal and the Castle Pub for which final decisions are awaited or construction not started).

Paragraph 5.8 of the Planning Statement continues *As outlined earlier in Section 2, the Site is allocated within this document (LBE Development Sites DPD) as part of the wider site reference 'OIS1 Park Royal Southern Gateway, Park Royal, W3'. The Site Allocation refers to mixed use development, including residential and employment with ancillary retail and community uses, as well as the provision of new public spaces.*

Paragraph 5.9 states *The site's allocation also highlights that the Site is suitable for the development of tall buildings, subject to design quality.*

These two paragraphs are an inadequate and selective summary of the text of this LBE DPD content on 'OIS1 Park Royal Southern Gateway'. It is not yet clear how OPDC will approach its assessment of application 21/0181/OUTOPDC. **But if this LBE document is to be relied on as material, the following would need to be taken into consideration:**

a) the DPD document and its content on an OIS1 site allocation is seriously out of date. In relation to 'Design Principles' it refers to the need to consider '*specific guidance in the Park Royal OAPF*' a separate document dating from 2011 which has long been superseded by the 2015 OAPF for the OPDC area and by the Regulation 18, 19.1 and 19.2 iterations of the OPDC Draft Local Plan.

b) beyond stating that North Acton is allocated for *mixed use development including residential and employment, with ancillary retail and community uses and provision of new public spaces*, OIS1 provides very little further guidance on building typologies, massing and height.

c) the site allocation text states *The site is considered in principle an appropriate location for tall buildings, however the acceptability of tall buildings will be determined based on the detailed design as presented in a full planning application; outline planning applications for a tall building will not be considered.*

d) there is no content in the LBE Development Sites DPD or elsewhere in the Ealing development plan which comes close to meeting Part B of Policy D9 in the London Plan. Nothing in the site allocation policy OIS1 identifies 'suitable locations' for tall buildings with any specificity. Nothing identifies what building heights would be 'appropriate' were such locations to have been mapped.

It must be remembered that previous decisions of LB Ealing Planning Committee on developments involving tall buildings in North Acton pre-date the adoption of the 2021 London Plan, and the Direction issued by the Secretary of State in December 2020. **The planning policy context for this application 21/0181/OUTOPDC has changed as compared with previous LBE consents granted at**

North Acton. LBE previous decisions on precedent buildings need to be given limited weight (if established as lawful).

The Secretary of State's Direction and the modified Policy D9 are clear that individual planning authorities may continue to grant consent to tall buildings, **once they have defined in the local plans what constitutes a tall building (Part A of D9) and then identified suitable locations and appropriate heights (Part B).** Part C provides criteria against which proposals for tall buildings may be assessed.

LB Ealing's development plan documents do not conform with these requirements in Part B, even on a generous interpretation (see also above on the August 2021 GLA survey of London LPA conformity with Policy D9).

Assessment against OPDC planning policies

OPDC may choose to base its assessment of application 21/0181/OUTOPDC on its own emerging Draft Local Plan. Relevant considerations in this instance would be:

- a) whether the Local Plan has achieved adoption by the date of determination of the application
- b) the Inspector's findings following a further evidence session on London plan D9, due to be held on January 11th 2022.
- c) whether a combination of **Local Plan Policy SP9, Figure 3.15** as modified, and **Policy P7 (North Acton and Acton Wells)** along with **Policy P7C1: North Acton Town Centre Cluster** are sufficient to comply with London Plan D9.

In our view c) above is clearly not met. OPDC modified Figure 3.15 shows an area of approximately 33 hectares at North Acton/Acton Wells deemed to be 'appropriate for tall buildings'². No specific locations for tall buildings are identified on the map. By contrast, locations are shown for tall buildings along Scrubs Lane, within a separate 'Place' as defined in the OPDC Draft Local Plan. As we have argued in our separate submission to the Planning Inspector, an area of the size of 33 hectares cannot be reasonably be considered as a 'location' or 'particular place' in the sense now incorporated in the modified London Plan D9.

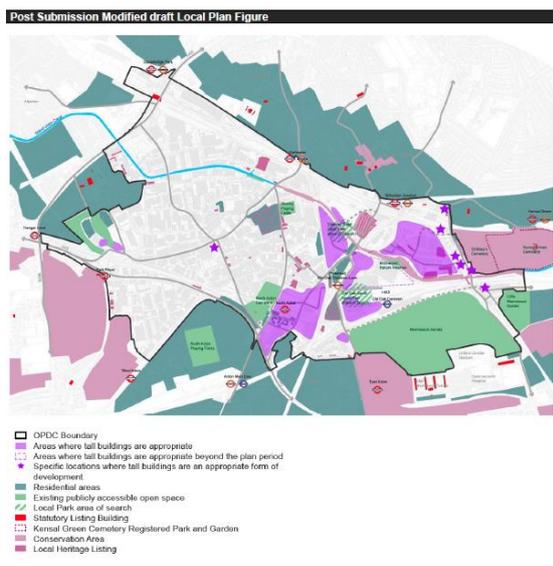


Figure 3.15 from Modified Draft OPDC Local Plan. This shows specific locations for tall buildings along Scrubs Lane. But no such locations at North Acton. We consider this contrary to Part B of London Plan Policy D9.

² The 2015 OPDC OAPF gives a figure of 32.9 hectares for 'North Acton'

OPDC Place Policy P7 is specific to the 'Place' defined by OPDC as North Acton and Acton Wells and is included within the main local plan document, thereby meeting one of the requirements of London Plan D9 (B). But the text gives far too little information on '*appropriate building heights*' to justify any claims of compliance with B2 of London Plan D9, when determining an application for three buildings of over and up to 50 storeys.

The supporting text at paragraph 4.108 and in table 4.1 does not help in terms of policy justification. While referring to a range of heights given in the table, the only range mentioned is '*generally 10-12 storeys facing onto Victoria Road*' and '*increased heights and massing adjacent to the A40 and railways*'.

OPDC Place Policy POLICY P7C1: North Acton Town Centre Cluster is more location-specific than Policy P7. This is the part of the Draft Local Plan in which the content could have been drafted and consulted on as an upfront statement of OPDC's intentions to support extreme building heights as 'appropriate' or 'suitable' for the location. OPDC chose not to go down this route.

Unlike for Policy P7, the text of Policy P7C1 makes no reference to Building Heights whatsoever. Sub-paragraph b) of the Policy states *Supporting the delivery of a neighbourhood town centre by clustering a range of permanent and meanwhile town centre uses and Use Class E uses, that are appropriately designed and serviced to support the town centre, around the existing southern and new northern station squares, along Victoria Road south of North Acton Station and along Portal Way with residential above;*

Modified Figure 4.71 in the PSMDLP is a detailed map referring to Policy P7 (see overleaf). Modified Figure 4.73 is a further map referring to Policy PC7C1. Neither map shows suitable or appropriate locations for tall buildings. Nor do they include information on appropriate heights.

It is notable that the Iceni planning statement for application 21/0181/OUTOPDC makes no reference to these OPDC maps, in its brief content at 5.7-5-10 on compliance with Local Plan policies. Minimal reference is made to individual OPDC policies relevant to North Acton or to the application. The document comments under the heading **OPDC Modified Draft Local Plan (May 2021)** at paragraph 5.10 *As mentioned in the 'Site and Surrounding Area' section of this planning statement, the Site lies within the North Acton area of the OPDC. Whilst the OPDC currently do not have adopted planning policy documents in place, modified Local Plan has been published which serves as a material consideration for this application. Key policies of relevance to the proposed scheme include the following (there follows a list of OPDC Draft Policies)*

Having listed these OPDC policies, the Planning Statement makes no structured attempt to demonstrate that application 21/0181/OUTOPDC complies with them.

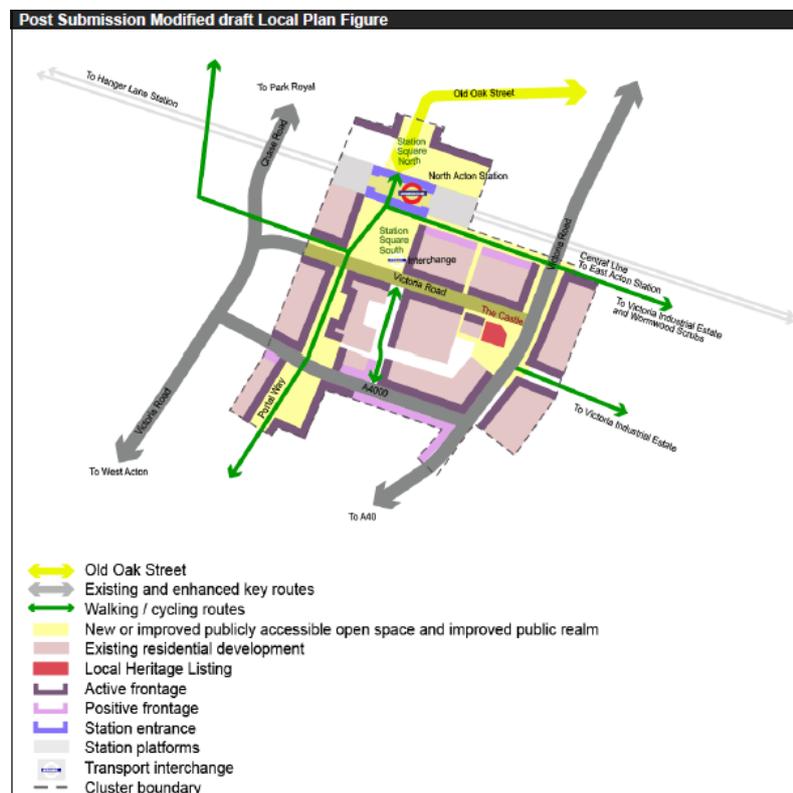
Paragraphs 6.3 onwards of the Iceni planning statement on the **Principle of Comprehensive Redevelopment of The Site** make out a case for 'optimisation' of the site and argues conformity with London Plan D3. The claim that *it is intended that the Proposed Development will enhance the local area to become a 'heart' for the wider North Acton community, being the largest and most central site* does not convince local people.

We do not see this section of the planning statement as overcoming the obstacles to achieving compliance with London Plan Policy D9.

Figure 4.71 from OPDC Modified Draft Local Plan



Figure 4.73 from Modified Draft Local Plan



The Design and Access Statement (prepared by Pilbrow and Partners) at page 84 includes information on matters relevant to Part C of London Plan D9 (the part which covers Impacts). A brief '*Design Response*' is provided on Location, Views (long-range, mid-range, immediate), Heritage impact, functional impact, access routes, micro-climate, servicing, and height impact.

While these very brief responses, along with other supporting documents submitted with the application, may address the criteria for 'suitability' of locations in Part C of London Plan D9, **they do not remedy the basic deficiency of both the LBE 2012/3 development plan and the emerging OPDC Local Plan in failing to comply with Part B.**

Nowhere in the OPDC Draft Local Plan are 'appropriate heights' defined for the North Acton/Acton Wells Place. Buildings above 50 storeys remain a rarity in any English cities. Anyone reading the OPDC Draft Local Plan (however thorough his or her scrutiny might be) would have no idea that this document, or any of its supporting studies, was a policy framework that supports developments at the extreme heights and densities of 21/0181/OUTOPDC, at North Acton.

The July 2021 pre-application advice from the GLA includes a paragraph 49 stating *However, considering the urban morphology of the trio of towers, the spatial relationship between each and the repeated floorplate / articulation on each tower, care must be taken to ensure that when viewed from greater distances and keyvistas, where only the tallest extents of the building are visible, a great emphasis is placed on the form, quality and presentation of tall towers to ensure the legibility of the individual buildings (and skyline) is not lost. This, if managed correctly, can have a positive outcome for the branding of the local centre - a statement of intent that indicates the desired future character.*

This text sums up the gulf between planning officers and developers, as compared with the general public. Firstly what is meant by the '*urban morphology of the trio of towers*' and when were the public consulted on whether they wish to see such a 'morphology' (a term which normally relates to biology or linguistics). Secondly who considers such a trio of towers as a *positive outcome for the branding of the local centre - a statement of intent that indicates the desired future character?*

Does the new leadership of Ealing Council sign up to this '*statement of intent*' or '*branding*' of North Acton? We see nil evidence of such a '*desired future character*' amongst local people. The reports on this application from the Community Review Group make clear that what has already been built at North Acton has gone in the wrong direction, from the public's perspective.

CONCLUSION

In this representation we have identified and detailed four grounds of objection for application 21/0181/OUTOPDC.

We have also pointed out that under LB Ealing planning policies an outline application for tall buildings at North Acton would not be considered.

We ask the OPDC Planning Committee to refuse the application for the reasons detailed in this representation.

Old Oak Neighbourhood Forum

January 2022