

Our Ref: MAW/AAT  
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5 July 2012

Planning Applications Committee  
London Borough of Hammersmith and Fulham  
Planning Division  
Environment Services Department  
Town Hall Extension  
King Street  
London W6 9JU

**BY FIRST CLASS POST & E-MAIL: [plancomments@lbhf.gov.uk](mailto:plancomments@lbhf.gov.uk)**

Dear Sirs

### **Imperial West Phase 2 Planning Application: PAC Meeting 10 July 2012**

We act on behalf of St Helen's Residents Association (SHRA) in respect of the above matter.

We note that the Planning Applications Committee (PAC) are scheduled to meet on 10 July 2012 to determine the planning application (ref:2011/04016/COMB), relating to the Imperial College development within the White City Opportunity Area. Please note that the contents of this letter are to be read together with other comments made by SHRA; more particularly in their letter of 3 July 2012 and the letter dated 8 March 2012. This letter does not seek to repeat the arguments made in the above letters but attempts to make additional points that PAC should consider before making its final decision.

#### **1. Weight applied to the emerging draft White City Opportunity Area Planning Framework**

The draft White City Opportunity Area Planning Framework (WCOAPF) has been developed by the Council as a Supplementary Development Plan (SPD). The Council appears to have an ongoing practice of utilising the SDP procedure for large scale developments or developments of significant change (for example, the Earls Court development and the regeneration of the Shepherd's Bush Market).

In May 2012 the SPD for Shepherd's Bush Market was quashed by the administrative Court in *R (on the Application of Wakil (trading as Orya Textiles) –v- Hammersmith and Fulham LBC [2012] EWHC1 1411 (QB)* as being procedurally flawed. Permission to appeal was refused and no further application permission has been renewed by the Local Authority. The policy of the Local Authority to utilise the SPD procedure is subject to two further challenges (by the

Goldhawk Road Shopkeepers in relation to planning application (ref:2011/029320/out) in relation to the Shepherd's Bush Market Regeneration Scheme and the residents and tenants of the Gibbs Green and West Kensington Estates in relation to the West Kensington and Earls Court scheme). The failure of the planning officer to make any reference whatsoever to the Wakil case or the other legal challenges to the SPD procedure is, plainly, a significant omission to the planning officer's report.

In the Wakil case, Mr Justice Wilkie held that if a document is within the description of Regulation 6(2)(a) and 6(4) of the Town and Country Planning Regulations (Local Development) (England) Regulations (the 2004 Regulations) the document is an Area Action Plan (AAP) and pursuant to Regulation 7, must be categorised as a Development Plan Document. (DPD).

The draft WCOAPF satisfies each of the three conditions as set out in Regulation 6(2)(a) which characterises it as an AAP. Specifically:

- (i) The document relates to a part of the area of the local planning authority, namely the White City Opportunity Area.
- (ii) The document contains the authority's policy in relation to the White City area.
- (iii) The document identifies the White City development as an area of significant change.

In short, the Council is seeking to utilise the draft WCOAPF as an emerging policy for an SPD when in fact it should be developed as an AAP. The significance of the difference between a SPD and an AAP cannot be understated. In particular, Section 20 of the Planning and Compulsory Purchase Act 2004 requires that the Local Planning Authority must submit every development planning document to the Secretary of State for independent examination in accordance with the detailed procedure. The examination will ordinarily be undertaken by a planning inspector. The purpose of an independent examination is to determine whether the DPD is sound and complies with the relevant regulations (section 20(5)). The public examination also allows members of the public to make representations on the planning policy. The inspector will then recommend whether the plan ought to be adopted and provide reasons for that recommendation. By contrast the procedure for an SPD does not require an independent assessment by a planning inspector or approval by the Secretary of State.

Whilst it is accepted that the draft SPD is an emerging policy document, the planning officer's report clearly places significant weight in respect of ill conceived and unlawful emerging policy. In this regard we refer to paragraphs 3.10 through to 3.13 of the planning officer's report which provides clear evidence that the emerging policy document is a material consideration.

By contrast, very little weight appears to be given to the 2004 White City Opportunity Area Planning Framework (2004 White City OAPF) that was formally adopted by the Council in July 2004 with the support of the Greater London Authority. For example, and without wishing to repeat in detail the points raised by SHRA and others in previous submissions, the proposed redevelopment is contrary to the restrictions of building height and massing (building density) as referred to in the adopted 2004 White City OAPF.

## **2. Prematurity**

For the reasons outlined above it is clear that the draft WCOAPF should be abandoned as an emerging policy as it adopts the wrong procedure for a development planning document which is, in substance, an AAP. The emerging policy document has been undermined and discredited by the decision of Mr Justice Willkie in the Wakil case referred to above and therefore no weight or consideration should be given to that document for planning guidance. The Council is left in the invidious position of having no policy document other than the 2004 White City OAPF as a local framework planning document. Consequently, the planning application before the PAC must be premature as the emerging policy is clearly unlawful and will require the Council to adopt the planning procedures relevant to the development of an Area Action Plan.

In our respectful submission the PAC should reject the application for planning permission as either being contrary to the current policies relating to the site (and in particular having regard to the 2004 White City OAPF) and/or upon the ground of prematurity.

Yours faithfully,

*Webster Dixon*

**WEBSTER DIXON LLP**

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