

Further Statement

Our ref 06620/12/NT/JL
Date 8 September 2017

Issue 5 Does the Plan take a justified and suitably evidenced based approach towards design, Green Infrastructure and climate change? Is the Plan consistent with national policy in such regards and will it be effective in implementation?

1.0 Introduction

1.1 This Further Statement has been prepared by Lichfields on behalf of St Pauls School (SPS or 'the School') to respond to the questions raised by the Inspector in relation to Issue 5 in so far as they are pertinent to the School's objection to the Publication Version of the Local Plan. This Statement responds to questions 8 and 9.

2.0 Response to question 8

Is the evidence base supporting Policies LP12, LP13 and Local Green Space (LGS) robust?

- 2.1 We have no comments on the evidence base in relation to policy LP12 or Local Green Space.
- 2.2 The evidence base supporting policy LP13, specifically the extent of the Metropolitan Open Land (MOL) designation, is not robust.
- 2.3 The Council's evidence base has not, in our view, adequately or robustly considered the exceptional circumstances case put forward at SPS in the context of,
- 1 The Local Plan Review being the only time when the MOL boundary can be reviewed and this has not happened at the School for over 20 years
 - 2 National and emerging local policy (NPPF 72/ LP 29) that supports the expansion/ alteration of schools on existing sites and the vision for exceptional education facilities. This was not a factor when the MOL boundary was defined or last reviewed and the need has been supported and accepted through the grant of planning permission in the case of SPS.
 - 3 Changes to the environment at the School as a result of the grant of planning permission and historic anomalies which mean that the MOL boundaries are illogical on the ground have not been adequately considered in the evidence base even though this was recognised by the GLA in considering the hybrid planning permission for the phased redevelopment of the School (see comment ID 331).
- 2.4 Whilst the Council has commented (in response to comment ID 87) that a wider review of MOL boundaries is not required to meet housing need, this should not preclude a review of existing school sites that support the achievement of the vision for exceptional education facilities, particularly where anomalies/ exceptional circumstances have been shown to exist. A targeted approach such as this, which includes SPS, would be proportionate and appropriate (should the lack of need for a wider MOL boundary review be accepted).

- 2.5 The school has prepared its own review of the MOL boundary and exceptional circumstances to support the modification sought to the Policies Map.
- 2.6 The exceptional circumstances case at SPS includes the following main points:
- 1 There is a need for the phased rebuilding of St Paul's School, which was originally constructed in the 1960s and has prefabricated CLASP buildings that are reaching the end of their functional life and require replacement/expansion to provide new school buildings together with ancillary facilities including on-site staff housing/ boarding accommodation. That need has been accepted and (and very special circumstances agreed) through the grant of a hybrid planning permission.
 - 2 The land that we consider should be removed from MOL is largely developed with buildings, parking areas and other hard surfacing – see photographs 4, 6, 7, 9-12 in Appendix 2). The land is also visually discrete or seen in conjunction with existing school buildings (see photos 1-4).
 - 3 There would be no harm to the wider MOL function as the land does not meet any of the strategic designation criteria for MOL (London Plan 7.17). The land in question:
 - i is not distinguishable from adjacent developed parts of the site,
 - ii does not contain strategically important recreation or leisure facilities
 - iii and does not contain important landscapes (being largely built on)
 - 4 The land that we consider to be unnecessarily or erroneously designated MOL is clearly visually distinguishable from the remaining MOL at the School (which largely comprises playing fields). Existing features within the School such as driveway/ roads and embankments would provide a clear and permanent boundary to the playing fields retained in MOL. This well-defined edge can be seen on photos 6, 8 and 11.
- 2.7 To support the alteration and expansion of schools (as required by policies LP29/ NPPF 72), and in light of the specific issues raised through consultation on the Local Plan about the illogical nature of the MOL boundary at SPS, we consider that a targeted review of the MOL boundary at SPS should be undertaken as part of this Local Plan Review to ensure the evidence base is robust and up to date and that policy designations are justified, worthwhile and in the public interest.

**Are Policies LP12 and 13 clear in their intention/wording and means of delivery?
 How is the approach to LGS designed to work in practice? What evidence underpins the policy formulation in this regard?**

- 2.8 We do not consider that policy LP13 is clear in its wording in relation to the effect of development beyond the boundary of MOL.
- 2.9 There is a clear distinction between effects on openness and effects on visual amenity of Green Belt (and therefore MOL) as confirmed by the Timmins vs Gedling case¹ (see extract in Appendix 1, paras 67-78). Development sited outside the boundary of the MOL cannot affect the openness of MOL because it would not be within its boundary. Any effect would be solely a visual one.
- 2.10 The consideration of visual amenity in relation to development 'conspicuous from Green Belt' was historically a requirement of national policy (PPG2, para 3.15), but this is no longer the

¹ Timmins v Gedling Borough Council [2014] EWHC 654 (Admin)

case. This requirement is not repeated in NPPF section 9. Visual effects of development are also adequately covered by design policies.

- 2.11 We consider that either the sentence should either be deleted or the following change should be made to policy LP12 in order for it to be consistent with national policy.

“When considering development on sites outside Green Belt or Metropolitan Open Land, any possible visual impacts on the character ~~and openness~~ of the Green Belt or Metropolitan Open Land will be taken into account.”

3.0 Response to question 9

Is the Local Plan's approach to Green Belt and MoL justified, consistent with national policy and in conformity with the London Plan?

- 3.1 We have no comments on the Local Plan's approach to Green Belt.
- 3.2 The Local Plan's approach to MOL is not justified because it is not based on available, up to date evidence in relation to MOL and is not consistent with national policy (NPPF 83/ Section 9).
- 3.3 As set out in relation to Question 8, the wording of Policy LP13 needs to be changed in relation to development beyond the MOL so that it is consistent with national policy.
- 3.4 In relation to the extent of the MOL designation, we consider that a targeted review should have been undertaken consistent with NPPF para 83 given that:
- 1 exceptional circumstances exist at SPS and the Council has been made aware of those circumstances through consultation responses to the Local Plan including the need for the expansion/ alteration of existing schools (including SPS) to achieve the vision of exceptional education facilities (Local Plan, p14 and policy LP 29) , and
 - 2 great weight should be given to the need to expand/alter schools (NPPF 72)
- 3.5 The London Plan, whilst strongly supporting the current extent of MOL (7.17), also acknowledges (para 7.56) that NPPF paras 79-92 apply to MOL. This confirms that boundaries should only be altered in exceptional circumstances through a local plan review (NPPF 83).
- 3.6 As exceptional circumstances for altering MOL boundaries exist at St Pauls have been put forward this should have informed the approach in the Local Plan in order to be justified and consistent with NPPF para 83.
- 3.7 We consider that this could be addressed by a review of the exceptional circumstances that support removing land to the west of SPS from the MOL designation.

Appendix 1: Extract from Timmins v Gedling Judgement

submitted, it therefore cannot hence be argued that the advice given on ‘Openness’ was intended to be more compendious and somehow incorporated (separate) advice on ‘Visual impact’. In respect of the Westerleigh proposal the notes say: “*Proposal uses contours and layout, including the footprint of the [building] and its location within the site to minimise impact*”. The advice is accordingly that the impact on openness is minimised or mitigated because of the way that the development will be seen visually. Equally there is a reference to the development not being “*unduly prominent on ridgeline*” which treats an effect upon openness as being reduced by visual perception. There is then a reference to “local” impact which, for the reasons already referred to, reflects the basic error in approach.

(iii) Analysis: The relationship between openness and visual impact

67. I start the analysis of this issue by considering two questions of principle. First, is the visual impact of a development a relevant factor to be taken into account in considering its openness? Secondly, what are the correct questions for a planning authority to ask itself in relation to the connection between a building and its visual impact?
68. The point of departure is to define “openness” which is an important question since the essence of the Green Belt is its openness. This is plain from the NPPF paragraph 79 which provides:
- “The Government attaches great importance to the Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green belts are their openness and their p-permanence”.
69. There is however no specific definition of “openness” in the NPPF.
70. The issue was considered, albeit in a somewhat different context, in *Heath & Hampsted Society v London Borough of Camden* [2007] EWHC 977 (Admin) (3rd April 2007). There Sullivan J (as he then was) was concerned with a challenge to the grant of permission for the demolition of a 2 story building and with its replacement by a 3 story building in the Vale of Health, Hampstead, London. Under the existing guidance (paragraph 3.6 of PPG2) a replacement dwelling was not necessarily inappropriate provided the new dwelling “*is not materially larger than the dwelling it replaces*”. The dispute before the Court was whether the Officers’ report correctly identified and applied the test of materiality and whether, if it did, the decision of the planning committee was one that was reasonably open to them to take: See Judgment paragraphs [9] and [10]. If the conclusion was that the new building was not materially larger than the original building then there was no need to consider the merits of the application (which included its visual impact); but if the conclusion was that the new building did materially outstrip the dimensions of the original building then the merits of the development would need to be considered. These considerations would include:

“its visual impact and, in the circumstances of the present case, whether the new dwelling would preserve or enhance the character or appearance of the conservation area...”.

71. In paragraph 21 the Judge explained the difference between openness and visual impact in the context of paragraph 3.6 PPG2:

“21. Paragraph 3.6 is concerned with the size of the replacement dwelling, not with its visual impact. There are good reasons why the relevant test for replacement dwellings in the Green Belt and Metropolitan Open Land is one of size rather than visual impact. The essential characteristic of Green Belts and Metropolitan Open Land is their openness (see paragraph 7 above). The extent to which that openness is, or is not, visible from public vantage points and the extent to which a new building in the Green Belt would be visually intrusive are a separate issue. Paragraph 3.15 of PPG 2 deals with "visual amenity" in the Green Belt in those terms:

“The visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design”.

The fact that a materially larger (in terms in footprint, floor space or building volume) replacement dwelling is more concealed from public view than a smaller but more prominent existing dwelling does not mean that the replacement dwelling is appropriate development in the Green Belt or Metropolitan Open Land”.

72. In paragraph 22 the Judge explained that openness was a concept which related to the absence of building; it is land that is not built upon. Openness is hence epitomised by the lack of buildings but not by buildings that are unobtrusive or camouflaged or screened in some way:

“22. The loss of openness (i.e. unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective. If the replacement dwelling is more visually intrusive there will be further harm in addition to the harm by reason of inappropriateness, which will have to be outweighed by those special circumstances if planning permission is to be granted (paragraph 3.15 of PPG 2, above). *If the materially larger replacement dwelling is less visually intrusive than the existing dwelling then that would be a factor which could be taken into consideration when deciding whether the harm by reason of inappropriateness was outweighed by very special circumstances*”.

73. It is clear from the (added) italicised part of this quote that measures taken to limit the intrusiveness of the development whilst not affecting the assessment of openness may nonetheless be relevant to the “very special circumstance” weighing exercising.

Hence openness and visual impact are different concepts; yet they can nonetheless relate to each other. The distinction is subtle but important.

74. Any construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities. A beautiful building is still an affront to openness, simply because it exists. The same applies to a building this is camouflaged or rendered unobtrusive by felicitous landscaping.
75. In *Heath & Hampsted* (ibid) the Judge found that the Officers report, which had been adopted by the planning committee, was significantly flawed because he came to a conclusion about the materiality of the difference between the old 2 story building and the new 3 story building by reference to visual perception. This was wrong said the Judge because were it to be correct it would subject the Green Belt to “*death by a thousand cuts*”. I have referred to this above (at paragraph [30]) but the quotation from the judgment is worth setting out in full:

“37. The planning officer's approach can be paraphrased as follows:

“The footprint of the replacement dwelling will be twice as large as that of the existing dwelling, but the public will not be able to see very much of the increase”.

It was the difficulty of establishing in many cases that a particular proposed development within the Green Belt would of itself cause "demonstrable harm" that led to the clear statement of policy in paragraph 3.2 of PPG 2 that inappropriate development is, by definition, harmful to the Green Belt. The approach adopted in the officer's report runs the risk that Green Belt or Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual - possibly very modest - proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land.

38. Turning to paragraph 6.8.5, the question was not whether the "loss" of Metropolitan Open Land as a result of this particular development was "significant". Again it would be extremely difficult in many cases to demonstrate that a "loss" of Metropolitan Open Land or Green Belt as a result of a particular proposal would be "significant". It is precisely this danger that the policy approach in paragraph 3.2 of PPG 6 is intended to avoid. The question was whether the replacement dwelling was materially larger, not whether it was no more visually intrusive from the Heath. The report simply failed to grapple with that key question”.

76. The key question therefore in my view is whether visual impact can properly be taken into account in assessing very special circumstances. As to this I can see no reason

why in logic that it cannot be and the quotation from Sullivan J in *Heath & Hampstead* (set out at in paragraph [72] above) supports this conclusion.

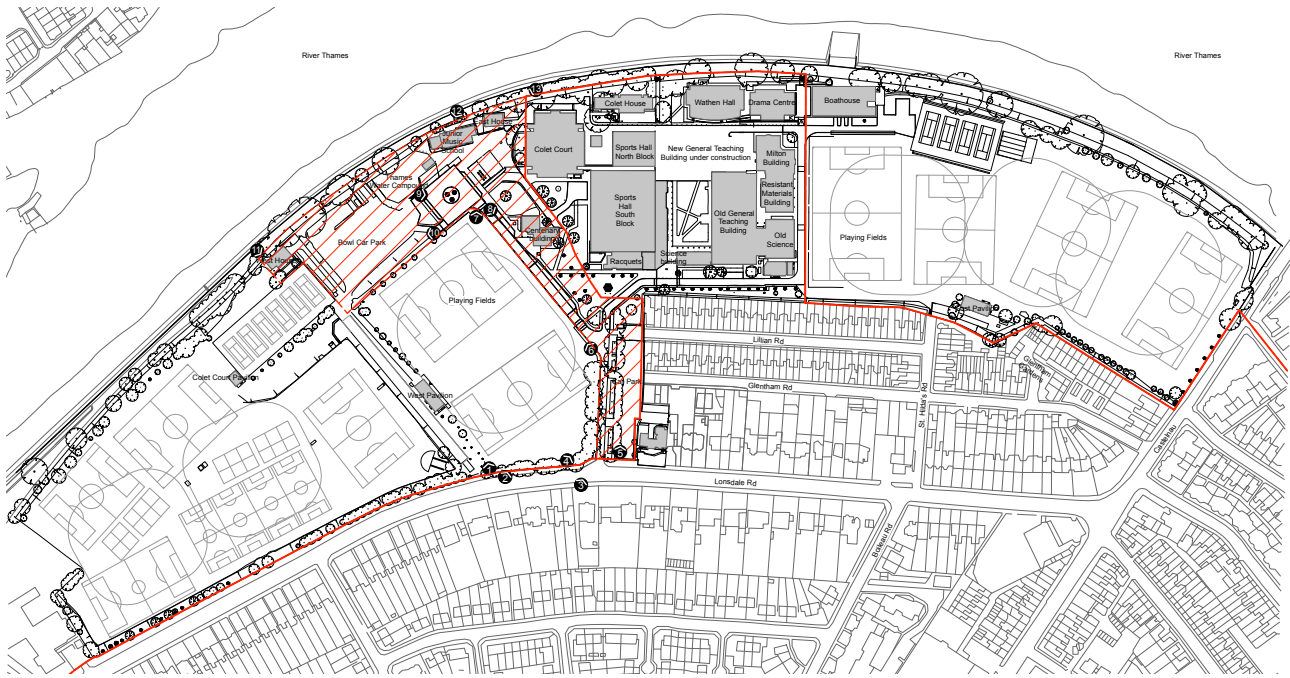
77. In terms of the policy underlying chapter 9 of the NPPF any development in the Green Belt is by definition harmful and offends against “openness”. In order to justify that development it follows that the countervailing (“very special”) benefits relied upon to justify the grant of permission must not only get the development back to par (i.e. be neutral in the balancing exercise) but it must go well beyond par. This is clear from paragraph 88 of the NPPF which provides that the harm must be “*clearly outweighed*” by countervailing considerations. To be “*clearly outweighed*” it is not enough simply to show that the harm and the countervailing considerations are in balance – this is neutralising but not outweighing and certainly not “clearly” outweighing. When a planning authority is conducting this balancing exercise I can see no reason why visual impact cannot be taken into account. Since measures to reduce or mitigate visual impact are, as their name suggests, mitigating measures, they can only bear a modest weight in the scales. They reduce to some degree the harm caused by the adverse effect of the development and to this extent they can begin to redress the scales. But as measures in mitigation they can never completely remove the harm since a development that is wholly invisible to the eye remains, by definition, adverse to openness. But, in principle, it is not wrong to place visual impact onto the scales of very special circumstances. In practice (and certainly in this case) the very special circumstances will invariably be much more affected by issues of “need” and the availability of alternative sites than visual impact.
78. In short it seems to me that there are three points which arise from the above analysis. First, there is a clear conceptual distinction between openness and visual impact. Secondly, it is therefore wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact. Thirdly, when considering however whether a development in the Green Belt which adversely impacts upon openness can be justified by very special circumstances it is not wrong to take account of the visual impact of a development as one, inter alia, of the considerations that form part of the overall weighing exercise.

(iv) How to construe the Officers Reports

79. An issue in this case concerns the manner in which the Officers Report should be interpreted.
80. The law relating to the approach to be adopted towards the interpretation of Officers’ reports and the decisions of planning authorities or inspectors reports is settled. In *Heath & Hampstead* (ibid) Sullivan J stated:

“32. I am mindful of the fact that the report is not to be construed as though it was a statutory instrument. The dicta of Lord Justice Hoffmann (as he then was) in South Somerset District Council v Secretary of State for Environment [1993] 1 PLR 80 apply with even greater force to an officer's report to a planning committee. Lord Justice Hoffman was dealing with an inspector's decision letter:

Appendix 2: Photographs of the existing MOL at St Paul's School



Site Plan, 1.2000




Aerial Image, NTS

KEY

- Existing Metropolitan Open Land (MOL) boundary
- - - Proposed Metropolitan Open Land (MOL) boundary
- /// Denotes land proposed to be removed from MOL status

for consultation

Notes	Rev Date 00 17.08.2016	Amendment Issued for first consultation on the draft Local Plan		WALTERS & COHEN ARCHITECTS St Paul's School, Masterplan	2 Wilton Street London W1C 3NL Telephone 020 7428 9751 mail@waltersandcohen.com		
					1604-PR-1002 MOL boundary	Job No. 1004	Drawing No. 1604-PR-1002
			Checked by MAC	Scale 1:2000@A1	Date Drawn 17.08.2016	© This drawing is copyright. Do not scale. Check dimensions on site.	

Viewpoint 1



Viewpoint 2



Viewpoint 3



Viewpoint 4



Viewpoint 5



Viewpoint 6



Viewpoint 7



Viewpoint 8



Viewpoint 9



Viewpoint 10



Viewpoint 11



Viewpoint 12



Viewpoint 13

