



...

Date: 15/01/2020

www.havering.gov.uk

Dear Ms Heywood

RE: Havering Local Plan General Conformity with the Publication London Plan

Thank you for your email of 6 January 2021 concerning the general conformity of the Havering Local Plan (“the Plan”) with the Publication London Plan (“the London Plan”). LBH sets out its comments below.

It should be noted firstly, the legal duty to be in “general conformity” relates to the London Plan which is adopted at the time of the adoption of the Havering Local Plan. In the event that the Havering Local Plan is adopted before the London Plan, the issue of general conformity will relate only to the existing London Plan. The Inspector will no doubt already have given extensive consideration to the issue of general conformity with that Plan.

We now turn to the situation in the event that the London Plan is adopted ahead of the Plan.

Legal Principles

It may be useful briefly to consider the legal principles underlying the requirement of “general conformity”. There is no statutory definition of the term. Accordingly, assistance must be sought from caselaw. As set out most conveniently in *R (DLA Delivery Ltd) v Lewes DC* [2017] EWCA Civ 58, per Lindblom LJ at [23]:

“The degree of conformity required is “general” conformity with “strategic” policies. Whether there is or is not sufficient conformity to satisfy that requirement will be a matter of fact and planning judgment.”

As to the degree of conformity required, further assistance can be derived from *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* [2005] EWCA Civ 1365 per Laws LJ:

“24 The term is nowhere defined in the legislation. The court must therefore apply its ordinary meaning as a matter of language, taking into account, however, the practicalities of planning control which are inherent in the statutory scheme. The question of

Cleaner, Safer, Prouder Together

construction is, essentially, as to the flexibility of the requirement of general conformity: is it relatively tight, or relatively loose?...

...

26. ...*The adjective “general” is there ...to introduce a degree of flexibility.*

...

29. *the right interpretation of “general conformity” is ... a balanced one, it will ... allow what may be a considerable degree of movement within the local plan to meet the various and changing contingencies that can arise. In that case the question whether the local plan is in general conformity with the structure plan is likely to admit of more than one reasonable answer, all of them consistent with the proper construction of the statute and of the relevant documents. In those circumstances the answer at length arrived at will be a matter of planning judgment and not of legal reasoning.”*

Accordingly:

- (1) This matter is one for the Inspector’s planning judgement, a judgement which could only be challenged on *Wednesbury* principles.
- (2) The requirement is only that there be “general conformity” with relevant London Plan policies; there does not need to be exact compliance with every requirement of the London Plan but instead a compliance with the overall strategic aims and objectives of the London Plan, combined with an absence of any policy which would obstruct those objectives.
- (3) In coming to the planning judgement as to whether the Plan is in general conformity with the London Plan, all relevant circumstances must be considered. In the current context, the fact that there is a stated firm intention on the part of LBH (now recorded in Local Plan Main Modifications) to begin an update of the Plan immediately upon its adoption is a relevant planning consideration which must be taken into account in the determination of the issue of general conformity. This may well be relevant when general conformity with some of the detailed requirements of the London Plan is considered, and will allow the Inspector lawfully to come to the conclusion that there is general conformity on the basis that those particular requirements will be attended to in detail during the review process which is a stated intention of the Plan.
- (4) Although not a directly relevant consideration for a judgment about conformity, it is still pertinent to note that the review following adoption of the Plan will allow for an orderly and timely consideration of all areas in which an even closer alignment of Havering’s development plan policies with the London Plan is capable of being achieved.

Assessment

General

In response to the Inspector’s email, LBH has considered the issue of general conformity with the London Plan and has concluded that the Plan is indeed in general conformity with it. No further Modifications are required and the adoption of the London Plan would present no obstacle to the adoption of the Plan as now drafted.

Issues of housing, small sites and parking are considered in detail below. For remaining relevant policies, the table attached at Annex 1 to this letter reveals that those policies are

Cleaner, Safer, Prouder Together

in general conformity, together with brief commentary where needed. This table illustrates that the Plan is in general conformity.

Housing

Housing matters within London Plan policy H1 may be considered in two parts, namely Table 4.1 which deals with housing numbers, and the remaining sections of policy which deal with the means by which those numbers are delivered.

With respect to the latter, LBH assesses that policy 3 within the Plan provides sufficient mechanisms in line with London Plan policy H1 for the delivery of housing from all sources to enable a conclusion of general conformity safely to be drawn. Moreover, it can be said with certainty that no provision of Plan policy 3 would provide any impediment to the delivery of housing as envisaged by London Plan policy H1. Further, the Inspector, as noted above, is entitled to rely upon the fact that the forthcoming review will provide a proper opportunity for the incorporation into local development plan policy of all the mechanisms explicitly referred to within London Plan policy H1.

The details of LBH's assessment are attached as Annex 2.

With regard to those elements of H1 relating to housing numbers, LBH makes the following points:

- (1) As before, the fact of the immediate review, which is a central part of the Council's overall approach is an important factor in enabling the Inspector safely to conclude that the Plan is in general conformity.
- (2) The strategy previously adopted by LBH is to provide for a "stepped approach" in which lower levels of delivery in the earlier years of the (Havering) Plan period are offset by much increased delivery in later years. The acceptance of this concept of delivery across the Plan period can and should be carried forward into the consideration of the general conformity of the Plan with the London Plan; in essence, once the concept of differing rates of delivery across the plan period is accepted, it can be maintained when considering general conformity.

In that context, a careful consideration of the London Plan housing requirements indicates that the Plan is in general conformity:

Annex 3 to this letter is a Table comparing the Local Plan phased target, the current London Plan target, the Publication London Plan target and the current Housing Trajectory target. This shows that the Publication London Plan sets a ten year target of **12,850 from 2019/20 – 2028/29**. The Table shows that over the same period the Local Plan commits to delivering **13,111 homes** (Local Plan Phased Target) and the housing trajectory identifies a total of **14,012 units** over the same period. That figure exceeds the London Plan target for the London Plan 10 year period by some 1162 units (14012-12850 = 1162). (Accordingly, it can readily be concluded that there is general conformity on the central issue of housing supply.

Small Sites

The policy of the Plan with respect to small sites is in general conformity. It encourages the development of small sites and identifies a *minimum* target only; it does nothing to prevent the achievement of the larger expressed target in the London Plan. See Annex 2.

Cleaner, Safer, Prouder Together

Parking

It is accepted that the revision of parking standards in the London Plan creates some limited conflict with the Plan. However, such matters are confined to limited differences of position in respect of areas with lower PTALs where the Council has already set out its position in detail in the Examination. The extent of any conflict is so insignificant that it cannot undermine the overall general conformity of the Plan with the London Plan.

Conclusion

This represents the initial assessment of the council that the Plan is in general conformity with the London Plan.

In accordance with the Inspector's expressed wish, LBH will be seeking the GLAs view on general conformity. LBH stands ready to provide any further information the Inspector may require. Given the importance of these issues, LBH would be grateful if the Inspector could provide her response to this letter as soon as reasonably practicable.

Yours sincerely

Helen Oakerbee
Assistant Director of Planning