



Examination into London Borough of Barnet Local Plan

Stage 1 (Matters 1 – 7)

Matter 1 – Legal Compliance and the Duty to Co-Operate

Representations on behalf of
DTZ Investors UK Ltd (on behalf of Strathclyde Pension Fund)

(Respondent reference number 41)

MATTER 1: LEGAL COMPLIANCE AND THE DUTY TO CO-OPERATE

MATTER STATEMENT – MATTER 1

1. These Representations are made on behalf of our client, “DTZ Investors UK Ltd” (“DTZ”), in response to the Inspectors’ Matters, Issues and Questions published on 12 July 2022. DTZ submitted written representations to the Regulation 19 Consultation of the Barnet Draft Local Plan in August 2021, in relation to the Plans spatial strategy approach.

MIQ 1.19 To what extent has the production of the Plan followed the LDS and is it in compliance with it? If not, would it be reasonable for the LDS to be updated to reflect the up-to-date position of the Plan and any associated SPDs to which it refers and take account of the Council’s related proposed modifications?

What particular part of the Plan is not legally compliant and/or unsound?

2. The absence of an SPD or a Strategic Policy to enable the New Southgate Opportunity Area (NSOA) to deliver the jobs and homes it is expected to provide under London Plan Policy SD1 is unsound. As OAs are a strategic designation that provide the greatest potential for achieving sustainable development¹, the absence of any distinct policy mechanism to allow the NSOA to deliver its quota of objectively assessed needs is unsound.

What legal compliance issue or soundness test(s) does it fail, and why?

3. The Draft Plan is not positively prepared as there is no reference to an NSOA SPD in the LDS. This means that there is a risk that objectively assessed needs will not be met from one of the key strategic and sustainable locations for development in the Borough.
4. The lack of any timetable to bring the NSOA SPD forward makes the anticipated London Plan Policy SD1 development yields less likely to be delivered. This is further compounded by the cross-boundary responsibility to bring the NSOA forward. The lack of any reference to the required SPD means that cross-boundary strategic matters have been deferred rather than dealt with by the LPA now and for this reason the Plan is likely to be ineffective and so unsound.
5. New Southgate is a designated OA within the London Plan. OAs present significant growth and regeneration potential, and the London Plan intends for these areas to unlock substantial homes and jobs growth². They typically contain capacity for at least 5,000 net additional jobs and/or 2,500 net additional homes. For New Southgate, the London Plan indicates capacity (i.e. it could be more) for 2,500 new homes and 3,000 jobs³.
6. Furthermore, the London Plan stipulates that Boroughs, through Development Plans⁴, should clearly set out how they will encourage and deliver the growth potential of OAs. Barnet’s Draft Local Plan does not

¹ Draft Local Plan Policy BSS01 and Chapter 3.4

² OAs are the “principle opportunity for accommodating large scale development to provide substantial numbers of new employment and housing”(Annex 3 Glossary, the London Plan 2021)

³ London Plan Policy SD1 Opportunity Areas, Table 2.1 – Opportunity Area indicative capacity for new homes and jobs

⁴ London Plan Policy SD1 Opportunity Areas, Paragraph B 1)

conform with this requirement, as it stipulates that the Council will seek to prepare detailed policy frameworks for areas including New Southgate, primarily through an SPD⁵.

7. There are three problems with this situation. First, it means the Local Plan will not be produced in accordance with the LDS, because in the case of the NSOA, the LDS does not show that a NSOA SPD is due to be produced. This conflicts with Draft Local Plan Policy GSS09 which stipulates the Council will seek to prepare more detailed policy frameworks for areas including the NSOA through an SPD. Notwithstanding this, the SPD will be required to provide detailed guidance for envisaged development within the NSOA, for a 15-year period, whilst taking account of the need for the framework to remain effective across this period.
8. Second, the quantum of development envisaged by the Council seems to fall significantly short of the London Plan assessment of what it is expected to deliver. Draft Local Plan Policy GSS09 indicates capacity for only 250 homes within the NSOA, when seems to be a significant under provision. On even the roughest of assumptions, the capacity should be in the order of 830-1,000 homes given that the OA falls into three Boroughs. The relationship with the London Plan's strategic target appears so loose that the Draft Plan is not in general conformity with the London Plan objectives.
9. Third, the approach taken to the NSOA is inconsistent with that taken for other OAs by the LPA. The LPA's approach is to provide a strategic Local Plan Policy for Growth Areas, and further supplement these policies with future SPDs. This occurs, for instance, in the case of the Brent Cross Cricklewood Growth Area, and the LDS refers the Brent Cross Cricklewood SPD being produced.
10. However, this dual approach has not been repeated for the NSOA, which has not been provided with its own strategic policy. This results in a situation where there is no strategic policy and no SPD identified in the LDS for this designated OA. This is likely to result in the under delivery of homes identified above without the ability to make any corrections because both Strategic policy and the SPD will be missing.
11. In the absence of a strategic policy for the NSOA, there is a strong risk that the SPD will become the strategic plan making document for the OA. This would be a significant problem because policies in an SPD must be supplementary to those in a Development Plan Document, and SPDs cannot introduce new planning policies into the Development Plan⁶. This fundamental principle would be breached in the case of the NSOA if an SPD came forward, because the Local Plan does not contain a targeted strategic policy for this designation.
12. It is a fundamental feature of the system that all strategic policies must be contained in the Development Plan⁷, that policies which form part of the Development Plan are subjected to proper scrutiny, including independent scrutiny, and that Development Plan documents are also subjected to Sustainability Appraisal. Therefore, all strategic policies must be incorporated within the Local Plan document, in accordance with Regulations 5 and 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
13. SPDs are subjected to a consultation requirement only (i.e. no independent examination or sustainability appraisal) which is why they cannot promote strategic policies. This means the NSOA lacks a proper strategic policy that will ensure it delivers the London Plan quantum of development, the delivery of which will be devolved to an SPD which cannot bear that level of responsibility.

⁵ As per Draft Policy GSS09

⁶ Planning Policy Guidance – Plan Making, Reference ID: 61-008-20190315

⁷ William Davis Limited & Others v Charnwood Borough Council and R (Skipton Properties Limited) v Craven District Council

How could the Plan be made legally compliant or sound?

14. The Plan could be made sound by the introduction of a new Strategic Policy that deals specifically with the NSOA and treats it with the same importance and priority as other OAs in Barnet.
15. In addition to this, the LDS requires amending to provide a timetable by which the urgently needed NSOA SPD can be produced.

What is the precise change that is sought?

16. Two changes are sought.
17. First, the LDS should be amended to include a timetable for the urgent production and adoption of the NSOA SPD.
18. Second, to provide the structure and context for the production of the SPD, a new Strategic policy is required which deals with, and promotes the NSOA. A draft proposed policy is enclosed below:

POLICY GSS0X New Southgate Opportunity Area

The New Southgate Opportunity Areas is designated within the London Plan as one of the capital's principal opportunities for accommodating large scale development. The New Southgate Opportunity Area provides an opportunity for regeneration and intensification, supported by high existing PTALs and potential future transport infrastructure improvements, along with the availability of substantial underused sites. The Council will support planning proposals that optimise residential and employment density, including co-location, on suitable sites while delivering improvements to the amenity of the area.

To deliver growth and regeneration at New Southgate, the Council will seek the following from development within the part of the Opportunity Area which lies within LB Barnet:

- ***Up to 1,000*** new homes throughout the Plan period, with the potential to increase further upon delivery of public transit infrastructure improvements;
- ***Up to 1,000*** new jobs throughout the Plan period, across a range of employment uses including distribution and logistics, and retail; and
- ***Appropriate levels of floorspace for community, leisure, and commercial uses.***

The Council will seek to prepare a more detailed planning framework for this area, such as through an Area Action Plan or Supplementary Planning Document, working with LB Haringey and LB Enfield to achieve a comprehensive approach.

MIQ 1.23 In overall terms, is the Plan in general conformity with the spatial development strategy for London (i.e. the London Plan)?

19. It is not clear if the Draft Plan is in general conformity with the framework provided by the London Plan, due to the absence of a strategic policy aimed at promoting the optimisation of the NSOA, which is a designation of key strategic importance. These matters have been dealt with in detail in response to Question MIQ 1.19 above and apply equally in response to this question and so are not repeated here.