

ED09 - Statement of Common Ground between Westminster City Council (WCC) and Knightsbridge Neighbourhood Forum (KNF)

Introduction

This Statement of Common Ground has been prepared jointly between Westminster City Council ('WCC') and Knightsbridge Neighbourhood Forum ('KNF'). Its purpose is to assist the Examination of the Knightsbridge Neighbourhood Plan ('the Plan'), by informing the Examiner of areas of agreement and disagreement between both parties.

Background

In response to Regulation 16 consultation, WCC raised a number of concerns with the Knightsbridge Neighbourhood Plan. KNF was given the opportunity by the Examiner to provide its response to comments made in response to the Regulation 16 consultation (document ED04 - Schedule of KNF responses to regulation 16 representations). As part of this response, KNF proposed a number of modifications to the Plan, shown as tracked changes to the submission document (document ED05 - KNF proposed modifications to Knightsbridge Neighbourhood Plan).

During the Regulation 16 consultation, KNF identified a number of 'minor errata' which are listed in KNF's 'Submission documents – Minor errata as at 12 February 2018' (representation KNP58).

The Examiner has subsequently asked both parties to meet to produce a Statement of Common Ground, based on the contents of document ED05. This request is set out in document ED08 (Examiners letter 18.04.18). The meeting took place on 01.05.18.

Proposed modifications

Several of the modifications proposed by KNF in document ED05 and within its minor errata are accepted by WCC. In the interests of reaching a consensus, WCC has proposed a number of additional modifications to the Plan that it considers necessary to meet the Basic Conditions, and incorporated the errata identified by KNF alongside these (where these have not been superseded by subsequent modifications). The latest modifications to the Plan also include those considered necessary by KNF and WCC to address the point raised by the Examiner in document ED08 that she considers "that it is misleading to readers to infer that the Neighbourhood Plan comprises three parts. In reality, the submitted Neighbourhood Plan is a stand-alone document; the Management Plan and Evidence Base are supporting, evidential documents and must be treated separately".

WCC's further proposed modifications to the Plan (inclusive of KNF's minor errata where not superseded) are shown as track changes to document ED05 within document ED10 – WCC proposed modifications to Knightsbridge Neighbourhood Plan. These modifications are also highlighted in yellow to make clear where they alter from modifications put forward by KNF in document ED05 that are supported by WCC.

Outstanding issues

WCC and KNF have discussed WCC's further proposed modifications to the Plan. Productive dialogue between both parties means agreement has now been reached on a number of the matters that were in dispute. These remain highlighted in yellow.

However, there remain some areas of disagreement. The schedule below:

- i. identifies modifications proposed by WCC included in the attached version of the Plan with which KNF continues to be in dispute (by entry number used in document ED04 and Policy/Paragraph Number). WCC's proposed wording that is not agreed by KNF is highlighted in green not yellow in document ED10; and
- ii. explains the remaining grounds of disagreement.

Two further documents are submitted with the Statement of Common Ground by the KNF to support its alternative approach to defining 'Selected important views in Knightsbridge' from the LUC report in KBR14. These include a new Figure (ED11 – KNF proposed views map) and new Appendix C (ED12 – KNF proposed new Appendix C). WCC's opinion on this approach is included within the schedule below.

Entry	Policy/ Paragraph Number	Area of Disagreement
1	0.24	<p>KNF's position is that the reference to UDP saved policies should be deleted because they are not strategic policies and therefore general conformity is not required with them i.e. "and some elements of the UDP saved policies". KNF's position is that general conformity is limited to the 'S' policies in Westminster's City Plan. This is consistent with WCC's website (updated 9 March 2018) which, in its guidance for neighbourhood forums, states: "<i>General conformity is limited to the 'S' policies in Westminster's City Plan</i>". See: https://www.westminster.gov.uk/neighbourhood-planning-resources</p> <p>KNF also wrote to WCC in letters dated 11 July and 28 July 2017 confirming its understanding. Furthermore, WCC's proposed change risks introducing considerable ambiguity and confusion locally and across the City of Westminster.</p> <p>Please note that KNF has made appropriate other references to UDP saved policies in the KNP.</p> <p>WCC's position is that website text is misleading and cannot be definitive about the position – whether a policy is "strategic" has to be considered in each case on its merits. Some saved UDP policies clearly contain strategic elements that neighbourhood plans should conform to – for example TRANS16 which defines the road hierarchy. To avoid confusion, WCC will amend its website.</p>
11	Policy KBR5 (View north along Montpelier Street)	<p>KNF's position is that this is a view of local importance equivalent to those in the Conservation Area Audit (CAA) (which identifies local views that WCC considers to be of importance). The CAA was published in 2009 so pre-dates the NPPF e.g. its paragraph 58. KNF has provided considerable supporting information in its Knightsbridge Evidence Base Document which was consulted upon at Reg 14 and 16.</p> <p>In order to address WCC's position, KNF suggests presenting already published information in the following manner:</p>

- i. Insert new Figure (document ref ED11) titled 'Selected important views in Knightsbridge' (see KBR14 below).
- ii. Insert new Appendix C titled 'Selected important views in Knightsbridge' (document ref ED12).
- iii. Amending the first line of Policy KBR5: "Proposals are expected to protect the local character and heritage of the view north along Montpelier Street from intrusive or insensitive development."
- iv. Replacing the second and third last sentence from para 1.13 in the submission version of the KNP with two new paragraphs taking the essence of paras 1.31 and 1.32 from the Knightsbridge Evidence Base Document namely:

~~"This is the view north along Montpelier Street which offers an unusually long vista and intact streetscape of elegant late Georgian and early Victorian period residential and commercial properties with an award winning Local Green Space in the distance. In many ways, this view best characterises the residential character of the Neighbourhood Area."~~

"The view north along Montpelier Street is an iconic street view of Knightsbridge's residential areas. It offers an unusually, long vista and intact streetscape of elegant late Georgian and early Victorian properties leading towards an award winning Local Green Space, Montpelier Square, at the northern end.

"Montpelier Street itself is a long, wide street and, in this respect, it captures one of the longest views in Knightsbridge. It is notable for the variety of different character buildings including the Grade II listed former Tea Clipper public house and culminating with the grand residential properties around Montpelier Square and the trees of the square itself. In this respect, it captures the high quality residential 'essence' of Knightsbridge better than anywhere."
- v. Replacing the final sentence of para 1.13 in the submission version of the KNP with a new final paragraph "Further details are provided in Part Three of the Plan (Knightsbridge Evidence Base). Appendix C provides further information about the view north along Montpelier Street to assist with the assessment of any impacts of proposed development on the identified important view."

Please note that any new building on the Hyde Park Barracks land would have to be very high to be seen from this view.

Please note that all subsequent policies would need to be renumbered if KBR5 is deleted.

WCC's position is that the features of the view identified for protection already benefit from sufficient protection from existing design and conservation policies, which provide a more effective means of protecting the existing streetscape. Furthermore, the view is poorly defined in that the role of the Peninsular Tower in its background is not acknowledged. Such an omission means that the

		<p>view has not been designated in accordance with the principles of the London View Management Framework as set out in the London Plan. For these reasons WCC maintains that the view does not merit designation.</p> <p>WCC also questions whether the features of the view that merit protection are identified sufficiently for the policy to be effectively applied in advising potential applicants or assessing planning applications. Unless this is done it is questionable whether this policy is deliverable, as required by the National Planning Practice Guidance on neighbourhood planning.</p>
13	Policy KBR7 (Tall buildings)	<p>KNF's position is that a restrictive rather than permissive approach by WCC in KBR7 B appears to conflict with advice to KNF from Historic England and the general approach to tall buildings in Part A which WCC appears to agree with. Please consider also:</p> <ol style="list-style-type: none"> i. Historic England's letter to the Forum dated 21 September 2017 (attached) in connection with the SEA screening on the August 2017 final pre-submission draft of the Neighbourhood Plan and an updated opinion in a letter dated 6 October 2017 which was submitted by KNF at Reg 16 stage. <p>Historic England published relevant practice advice in a document titled "The Setting of Heritage Assets" on 22 December 2017: https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/. A further report titled 'Heritage in Planning Decisions: the NPPF and Designated Heritage Assets' (dated February 2018) was published recently: https://content.historicengland.org.uk/content/docs/planning/7559-heritage-in-planning-decisions-green-balance.pdf and https://historicengland.org.uk/advice/planning/consents/.</p> <ol style="list-style-type: none"> ii. WCC's proposed approach includes no firm definition of what a public benefit is. It is often argued that a wide range of benefits are "public benefits". For example, the loss of a building (66 Oxford Street - Evelyn House development) was objected to by Historic England. However, KNF understands that WCC decided that the harm was outweighed by the public benefits of the scheme while objectors felt that a lot of the purported public benefits could not be fairly characterised as public benefits as they were either private benefits or too vague e.g. 'ongoing regeneration' of Oxford Street; provision towards a Council's affordable housing fund; Crossrail payment; employment and training strategy; improved loading bay facilities etc. KNF understand that a similar approach was also taken by WCC with the Paddington Cube. In the KNF's considered opinion, such approaches risk removing any real or practical protections. <p>WCC's position is that its proposed revisions to KBR7 ensure policy is positively worded, and conforms with NPPF requirements that any adverse impacts on heritage assets are balanced against the public benefit of proposals, which will be a matter to judge on a case by</p>

		<p>case basis. It also addresses Historic England's concerns that there should not be a presumption in favour of development that has adverse, but not significantly adverse impacts.</p> <p>It is simply not possible to give a definitive list of criteria against which judgements can be made about what constitutes "substantial public benefits" in each case, and a neighbourhood plan cannot override the basic legal requirement that a local planning authority considers all relevant material planning considerations.</p>
19	KBR14 (Hyde Park Barracks land)	<p>KNF's position is that:</p> <ol style="list-style-type: none"> 1. WCC's proposed replacement of a sentence in KBR14 D(a) with another sentence conflicts with KBR7 and KBR13 D(d). These state that the MOL in the Knightsbridge Neighbourhood Area is <u>not</u> an appropriate location for new tall buildings. Furthermore, WCC's proposed replacement wording would conflict with para 3.26 which seeks to improve existing views from local streets and may significantly restrict possible design proposals. 2. WCC's proposed deletion of para 3.28 on 'views' (and its separate deletion of the footnote 11 to KBR14D (a) referring to relevant important views) would reduce significantly the clarity of KBR14 generally and specifically. The LUC report was commissioned by local residents to address constructively the impacts of possible development on the Hyde Park Barracks land. KNF's board unanimously accepted the LUC report on 14 April 2016 and referred to it in considerable detail in the Knightsbridge Neighbourhood Plan and Knightsbridge Evidence Base Document during the Regulation 14 and 16 consultations. It has been posted on the KNF's website as important evidence for more than two years. In order to respond to WCC's request for further clarity, KNF has extracted relevant points from the LUC report into a proposed new Appendix C (see below). As an alternative approach, to address WCC's issues, KNF proposes: <ol style="list-style-type: none"> i Amending the second sentence in KBR14D(a) to read "...in consideration of identified <u>important</u> views (including those from Hyde Park and Kensington Gardens)." ii Inserting a new map titled "<u>Figure XX. Selected important views in Knightsbridge</u>" (document ref ED11) with the section titled 'Permeability, views and environmental improvement'. iii Inserting of a new Appendix C titled "<u>Selected important Knightsbridge views</u>" (document ref ED12). iv Replacing para 3.28 with: "<u>Appendix C contains extracts from the LUC report and describes the key characteristics, values and issues of 11 selected important views in the Neighbourhood Area together with the opportunities to improve them. Regard should be had to these when assessing the impact of any proposal for the redevelopment of the Hyde Park Barracks site on identified important views.</u>" 3. WCC's proposed insertion of a new sentence in para 3.18 (a) lacks evidence and (b) is pre-determining the impacts of development. It should not be included when the scale of any

		<p>proposed redevelopment is unknown i.e. "Whilst residential redevelopment may increase movement to and from the site by occupiers, this in itself is unlikely to materially impact on the tranquillity of adjacent Hyde Park."</p> <p>4. The words 'and tranquillity' in para 3.21 are important to the meaning and scope of the section on 'Tranquillity and amenity' that has been widely consulted upon and supported by the community. They should therefore be kept.</p> <p>WCC's position is that as the site is identified as a strategic housing site, policy should not simultaneously restrict increases in both building height and footprint. Some increase in building heights across the site is different to proposals for tall buildings, and policy should not be overly restrictive of potential design solutions informed by a thorough assessment of site surroundings.</p> <p>The identified views appear to overly restrict development options for the site, which could undermine its development capacity despite already being identified as a strategic housing site.</p> <p>Most of the identified views (numbers 1, 2, 3, 4, 6, 8, 9 and 10 in the map helpfully provided by KNF) are from points outside the neighbourhood area (e.g. from Serpentine Bridge, Serpentine Lane east, and view across the Serpentine Lake). They therefore cannot be put in place through this neighbourhood plan (see section 38B(1)(c) of the Planning and Compulsory Purchase Act 2004 (as amended)).</p> <p>They also includes views with little merit in designating when considered against the principles of the London View Management Framework, or existing levels of protection offered by design and conservation policies (e.g. Trevor Square, and view north along Montpellier Street).</p> <p>For all these reasons, WCC maintains that the identified views do not justify designation in the neighbourhood plan.</p>
37	KBR35 (Healthy air)	<p>KNF's position is that the last sentence in 10.8 (i.e. "For the purposes of this policy, a predicted increase in <u>concentration</u> at a receptor of 0.1 microgram per cubic metre in any calendar year during construction or operation is considered 'significant'") should not be replaced by the new sentence proposed by WCC that refers to IAQM guidance (i.e. "Any worsening of air quality should be assessed in accordance with IAQM's 'Land Use Planning and Development Control – Planning for Air Quality'").</p> <p>First, the definition proposed by KNF has been consulted on widely at Reg 14 and 16 stages with no specific adverse comments about that definition.</p> <p>Second, WCC's replacement wording is incorrect for the reason given in para 10.4 and conflicts with it (i.e. "Where [the KNF] has departed from IAQM/EPUK guidance this is on the basis of expert legal advice").</p>

For example, IAQM/EPUK's approach to 'significance' in its current guidance (Table 6.3) (January 2017 v1.2) is the same as it was in its earlier guidance (Table 6.3) (May 2015 v1.1) which was commented upon specifically by Robert McCracken QC (6 October 2015) (submitted by Clean Air in London at reg 16 stage as KNP52):

- i. IAQM/EPUK's approach is that a new breach of a limit value is permitted at an individual receptor i.e. between 95-102% of the long term average concentration at receptor in assessment year and in 'Explanation 4' which states: "Descriptors for individual receptors only; the overall significance is determined using professional judgement (see Chapter 7). For example, a 'moderate' adverse impact at one receptor may not mean that the overall impact has a significant effect. Other factors need to be considered."
- ii. Robert McCracken QC highlighted that this approach is unlawful in October 2015 (see his paras 35 – 50 inclusive and 65 – 68). In his conclusion (paragraph 66) he states: "Where a development would cause a breach in the locality of the development [planning authorities] must refuse permission." [Subject to his paras 49 and 50.]

See:

<http://www.environmental-protection.org.uk/wp-content/uploads/2016/02/air-quality-planning-guidance-v1.1-May15.pdf>

<http://www.iaqm.co.uk/text/guidance/air-quality-planning-guidance.pdf>

http://www.knightsbridgeforum.org/media/documents/knf_robert_mccracken_qc_opinion_air_quality_directive_and_planning_signed_061015.pdf

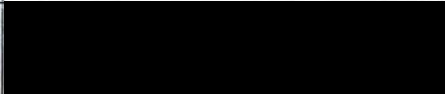
KNF's approach to KBR35 was supported in reg 16 by the Mayor of London, nine of 10 major business organisations (i.e. BESA, Camfil, Cundall, EIC, FETA, Knightsbridge Business Group, MSP, Pegasi and the LTDA) and many others including Clean Air in London, Friends of Hyde Park and Kensington Gardens, Knightsbridge Association, Knightsbridge Residents Management Company and The Royal Parks.

KNF considered position is that:

- KNF is aware there is disagreement about the legal accuracy of the IAQM guidance for assessing air quality and it was not consulted on so reference to it should be omitted; and
- KNF's final sentence should be amended to read: "For the purposes of this policy, a predicted increase in concentration at a receptor of 0.1 microgram per cubic metre in any calendar year during construction or operation is not 'insignificant'; or

		<ul style="list-style-type: none"> • Alternatively, KNF proposes that the final sentences proposed by WCC and KNF should both be deleted i.e. after 'A legal opinion by Robert McCracken QC supports this interpretation'. <p>WCC's position is that while efforts to address this important issue are in principle supported, some simplification is necessary in order for the policy to be effective and in conformity with strategic and national policy. Support for the policy from other parties does not necessarily mean that it satisfies the Basic Conditions.</p> <p>KNFs proposals seek to go beyond what can be achieved at a neighbourhood level, and includes too narrow a reading of matters such as how sustainable development should be interpreted, or what constitutes a significant increase in air pollution. This removes the ability for balanced planning judgements of a range of competing issues to be made, and could effectively result in a ban on any new development in the area, regardless of the merits of a proposal. It is therefore contrary to paragraph 16 of the NPPF that neighbourhood plans should "plan positively to support local development."</p> <p>Mr McCracken's opinion is only a statement of his view of the legal position. Neighbourhood plan policy is not an appropriate means to advance a particular view of the legal position (which can, of course, only be resolved authoritatively by the courts). It cannot bind the local planning authority to accept a particular legal view or to apply particular legal principles in deciding planning applications.</p> <p>WCC's proposed wording seeks to meet KNF's overarching objectives of improving local air quality, without bringing in considerations beyond the proper scope of the policy or being unduly restrictive of new development.</p>
41	KBR39 (Trees)	<p>KNF's position is that the environmental risks of climate change, pests and diseases have been authoritatively evidenced by the Royal Parks including in an article in the Knightsbridge Association's annual report 2017 i.e. as KNF submitted to the Examiner on 4 April 2018. See: http://www.knightsbridgeforum.org/media/documents/trp_in_ka_2017.pdf. They have also been evidenced in the Knightsbridge Evidence Base Document at Reg 14 and 16 stages.</p> <p>Furthermore, trees have been confirmed repeatedly as one of the most important aspects of the Knightsbridge Neighbourhood Area and KNF's approach to them was described as a 'best practice example, by the Woodland Trust in its Reg 16 reply. With many local trees aged over 150 years old, it is important to plan their regeneration over the next 20 years and beyond. KNF's position therefore is that the approach to regeneration must consider environmental factors alongside other factors (i.e. as KBR39 currently does) and would become unbalanced by the amendments that WCC proposes in KBR39A that relate solely to non-environmental factors. Therefore, if WCC's proposed wording about 'character and heritage' is added in KBR39A then they should exclude 'existing' and balance those criteria against 'environmental</p>

	<p>factors' by referring explicitly to risks from climate change, pests and diseases' to read: "It should be regenerated with healthy and diverse species with a balanced age structure <u>that addresses risks from climate change, pests and diseases and respects existing local character and heritage</u> to maximise its landscape and amenity benefits to the Knightsbridge Neighbourhood Area over the long term."</p> <p>On balance, KNF recommends including the additional wording proposed by WCC <u>and</u> KNF for KBR39 A (i.e. <u>excluding 'existing'</u>) or neither.</p> <p>WCC's position is that London Planes are a defining feature of the existing character of the area, while plane wilt is not present in the UK (confirmed by surveys by the Forestry Commission) – and is the subject of protective legislation to ensure it remains a protected zone. In the context of what is currently only a speculative threat, existing character should be given prominence when considering planting proposals, to accord with paragraph 58 of the NPPF.</p> <p>Should plane wilt arrive in the UK, there are a number of control measures available that suggests successful management is a practical possibility. Existing reference within criterion A to 'good arboricultural practice' and the use of a 'healthy and diverse species' is considered sufficient to ensure a proportionate approach to any risk that respects existing character.</p>
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Signed on behalf of Westminster City Council		
Name and position	Signature	Date
Andrew Barry-Purcell Place and Investment Policy Manager		11-5-18

Signed on behalf of Knightsbridge Neighbourhood Forum		
Name and position	Signature	Date
Simon Birkett Chair of Knightsbridge Neighbourhood Forum		11 May 2018