

<b>Item No.</b> 7.1	<b>Classification:</b> Open	<b>Date:</b> June 27 2007	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Proposed final draft of the Southwark Unitary Development Plan (The Southwark Plan) (Policy Framework)	
<b>Ward(s) or groups affected:</b>		Borough-wide	
<b>From:</b>		Strategic Director of Regeneration and Neighbourhoods	

### **RECOMMENDATION FOR COUNCIL ASSEMBLY**

That council assembly considers the recommendations of the executive in relation to the Proposed final draft of the Southwark Unitary Development Plan.

**Note:** This issue is on the Executive's agenda for June 19 2007. Appendix A has been circulated separately to all members in Council Assembly Supplemental Agenda 1 due to its size.

### **RECOMMENDATIONS FOR EXECUTIVE**

1. That Executive, taking account of officers comments on the representations appended as appendix B (attached), recommend that a modifications inquiry is not necessary.
2. That Executive recommend the final draft Southwark Unitary Development Plan (the Southwark Plan) including the proposed modifications in Appendix A to Council Assembly for agreement.

### **Summary**

3. This is the final stage in the process of adopting the Unitary Development Plan (UDP) called the Southwark Plan. The UDP is included in the council's policy framework and as such the final decision is reserved to council assembly.
4. The adoption process only allows comments directly related to the changes made in the final modifications to be considered. It does not allow new issues to be raised or previous issues where decisions have been made to be reconsidered.
5. The process at this stage is for members to consider the officer recommendations set out in appendix B to the representations on the further modifications. Members need to decide whether to reject all representations and to adopt the plan as presented in appendix A or whether there is a new issue raised at this stage by the objectors that are not considered in the officer recommendations that require discussion.
6. **Members are being asked to agree that a modifications inquiry is not necessary into the further objections received and to adopt the final plan** that is appended as appendix A and officer comments to all of the representations setting out whether they have been accepted or rejected (appendix B). Officer comments also consider whether it is necessary to hold a further inquiry into the modifications.

## Unitary Development Plan

7. The UDP guides the use and development of land in the borough. All planning decisions should be in accordance with this plan unless, in the terminology of the planning acts, 'material considerations indicate otherwise.'
8. The current UDP was adopted in July 1995 and was intended to operate for a period of ten years. Preparing or reviewing a development plan is a long process which seeks to establish as much support and agreement as possible in the community. The current review was started in 2000 with an environmental appraisal of the 1995 plan.
9. In 2001 there was extensive public consultation on the initial stages as follows:
  - i. **Key issues paper** (Issued June 2001, consultation completed August 2001) focused on the future directions for the use and development of land in Southwark to find out what people thought the big issues were and stimulated a discussion involving as many people as possible from the community, businesses and other interest groups; and
  - ii. **Local issues papers** (Issued September 2001, consultation completed November 2001) reflected back all of the comments received on the Key Issues Paper and considered how they related to each of six areas. Forums were also set up in each of the areas to facilitate future consultation.
  - iii. **First Draft for Deposit Unitary Development Plan** was placed on deposit (starting a formal consultation phase according to legal requirements) in November 2002 and at the same time consultation started on 27 draft supplementary planning guidance documents. Placing the plan on deposit allowed residents, community groups, developers, landowners, businesses and others to make representations. Throughout 2003 there were negotiations with objectors to the plan to explore ways in which their objections could be overcome.
  - iv. **Revised Deposit Unitary Development Plan** was placed on deposit in March 2004. This overcame many of the objections to the first deposit but inevitably gave rise to new issues. Although not part of the formal process set down in planning law, the council produced further drafts of the plan and consulted on them in advance of the public inquiry to ensure as far as possible that any further adjustments to overcome the objections (which included those from the Mayor of London and the Government Office for London) were made.
  - v. **A public inquiry** was held between April and July 2005 where a government appointed inspector examined the plan and took evidence from the council and from objectors both in person at the inquiry sessions held at the Town Hall and in writing.
  - vi. **The inspector's report** on the public inquiry was issued to the council in March 2006. This contains recommendations for further changes to the plan before it is formally adopted. The report is not binding on the council but if the council chooses not to follow the recommendations it must state the reasons for this to the Secretary of State. The Secretary of State has the final say and has the power to direct the council not to adopt the plan if she is not satisfied with the reasons given.
  - vii. **Modifications** The plan has been revised to take into account the inspector's recommendations. In many cases the inspector has recommended changes to the wording of parts of the plan and these may be fully accepted. In some cases

the inspector has recommended changes and officers have interpreted his intentions to produce improved wording which still maintains the spirit of what the inspector intended. In some cases the plan has been modified, or not modified, contrary to the recommendation of the inspector. These proposed modifications were adopted in June 2006 and consulted upon until October 13 2006.

- viii. **Direction** The Secretary of State directed Southwark council to make changes to three policies. These were policy 4.1 the suburban element of the density zone, policy 4.2 the lifetime homes element and the in lieu element of the affordable housing policy 4.4. The issues have been resolved through the modifications. The Secretary of State contacted Southwark Council to say that she is content with the new wording for the Southwark Plan agreed by Council Assembly on Wednesday March 28 2007.
  - ix. **Formal notification of the final Southwark Plan (Unitary Development Plan)** is the next stage. The final plan and a statement of decisions in respect of all the objections and their reasons is made available for public inspection for six weeks. The council must advertise this and notify the objectors for each decision. In response to the consultation responses the council may choose whether or not to hold a further inquiry into the objections to the Modifications. If it is considered that the objections are the same as were made to the revised deposit draft UDP, they have been considered by the Inspector and a further inquiry would not be considered necessary. If the council chooses not to hold a further inquiry, as is recommended in this instance, the council is required to prepare a statement of its decisions in respect of all objections and the reasons for each decision. As the council is both proposer and decision-maker in these circumstances, there is an enhanced obligation to deal thoroughly, and conscientiously and fairly with any objection. On agreeing the final plan and statement of decisions and reasons, the council will then give formal notification of the intention to adopt. At that stage the Secretary of State may give notice of their intention to give a direction. It is unlikely that the Secretary of State will call in the plan. However she has 28 days until July 25 2007 to do this. The council can then adopt the plan.
  - x. **The council must advertise the adoption for 2 weeks.** Any person aggrieved by a plan and who challenges its validity can apply (on certain grounds) to the High Court under Section 287 of the Town and Country Planning Act 1990 to have the plan or parts of the plan quashed. An application must be made within six weeks from the date of the first advertisement of the notice that the plan has been adopted. This date is August 8 2007.
10. It should be noted that the Planning and Compulsory Purchase Act 2004 introduced a new type of plan with new preparation procedures meant to streamline this process and make the system much more responsive. The Southwark Unitary Development Plan, when adopted, will be one of the last prepared under the old system. It has, however, been prepared taking into account many of the features of the new system and upon adoption it will be saved for three years. During the three year period the council shall bring forward local development documents to replace saved policies in accordance with the local development scheme. It is considered unlikely that it will need substantial replacement for at least 3 years however the approval of the Secretary of State is required to extend this period and the council must show that it is not feasible or desirable to replace them. This should be undertaken as part of the review of the local development scheme.

## THE DRAFT PLAN

- 11. Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs) are prepared by the government to explain statutory provisions and provide guidance to

local authorities and others on planning policy and the operation of the planning system. Planning Policy Statement no.1 (PPS 1) 'Delivering Sustainable Development,' published February 2005, sets out the government's overarching planning policies on the delivery of sustainable development through the planning system. This states:

*'Planning is a tool for local authorities to use in establishing and taking forward the vision for their areas as set out in their community strategies. The planning process already offers local communities real opportunities to influence how they want their areas to develop. More effective community involvement is a key element of the Government's planning reforms. This is best achieved where there is early engagement of all the stakeholders in the process of plan making and bringing forward development proposals. This helps to identify issues and problems at an early stage and allows dialogue and discussion of the options to take place before proposals are too far advanced.'* (PPS 1, para. 11)

12. The draft plan is based on the community strategy. Part one provides strategic guidance on the key issues facing land use planning in Southwark. Underpinning the plan are twenty strategic priorities that inform different policies which are categorised into seven chapters (with the addition of the final two chapters as part of these modifications) within Part Two. The seven chapters are:
  - Tackling Poverty and Wealth Creation;
  - Life Chances;
  - Clean and Green;
  - Housing; and
  - Transport.
  - Opportunity Areas
  - Local Policy Areas
13. The new Southwark Plan has undergone a sustainability appraisal. This was initially undertaken independently by Forum for the Future, a national charity that has sustainability expertise and CRISP a local community group. The aim of the sustainability appraisal is to evaluate how well the Southwark Plan supports relevant sustainable development objectives and will contribute to the achievement of sustainable development through individual policies, sections and as a whole.

## **KEY ISSUES FOR CONSIDERATION**

14. The council received 14 representations comprising 12 objections, 2 withdrawal of objections and 1 supporting statements. All comments are duly made. Officers recommend in appendix B that no objections are accepted, no objections are accepted in part and 12 objections are rejected. Where a representation has been rejected, officers disagree with the substance of the representation and reasons are provided. This may be due to a difference in interpretation of national or regional guidance or due to the approach taken in Southwark to meet the needs of the community.
15. **The main representations** that officers are recommending members reject are set out below:

### **Part 1, Section 10.5.3 and Policy 4.1 The issue of density of residential development in the former suburban north zone.**

- i. The East Dulwich Society and residents suggest that the council should redesignate part of the urban area (Rotherhithe, Herne Hill, East Dulwich, Nunhead) as suburban urban as this would be more suitable based on the current character. This is contrary the requirement of the Secretary of State direction and the Mayor's interpretation of the London Plan and statutory general conformity requirements.

- ii. GCA Grimley request that the density zones should not be restricted as this does not conform with table 4B.1 in the London Plan. This is contrary to the Mayor's withdrawal of objections and statement that the emerging Southwark Plan is now in conformity with the London Plan.
- iii. There is a request for a further public inquiry. There is no requirement for a modifications inquiry as the changes were all considered by the Inspector during the Inquiry into the emerging Southwark Plan between April and July 2005.
- iv. There is a request for a further impact study. There is no need for a further impact study as impacts have been taken into consideration at earlier stages of the plan making process. The changes proposed in the further modifications do not have further significant impacts.

#### **Policy 4.4 Affordable Housing in lieu payment**

- 16. Berkley Homes contend that the 'in lieu' payment should remain, contrary to the further modifications. This is not possible as the further modification was a requirement of the Secretary of State direction. She considered this to be necessary to make the emerging plan in line with national guidance set out in the planning policy statement 3.

#### **Conformity with the London Plan**

- 17. Members are asked to note the **withdrawal of the Mayor's objections**. There is a duty under the 1990 Act that the plan must be in general conformity with the London Plan. The 2004 Act reinforces this duty by insisting that a UDP shall not be adopted by a London borough council unless Parts I and II of the plan are in general conformity with the London Plan. The Mayor is now satisfied that the emerging Southwark Plan is in general conformity with the London Plan.

#### **Planning Committee recommendations**

- 18. On 5 June 2007 Planning Committee resolved to recommend the Unitary Development Plan as modified to the Executive for final agreement and agreed the recommendation that it is not necessary to hold a modifications inquiry.

#### **Community Impact Statement**

- 19. The UDP will have impacts over a very wide range of policy areas including tackling poverty, community cohesion, education, provision of housing and access to services including transport. In doing this it is structured around and takes forward the vision of the Community Strategy.
- 20. Sustainability appraisals have been carried out at key stages to ensure that the plan is consistent with the objectives of the Community Strategy and other higher level policies and that the policies contained in it are consistent with one another.
- 21. The sustainability appraisals incorporated equalities impact assessments to assess whether and how the plan may impact on particular communities or groups differently. The last such assessment was carried out in February 2005 when the final changes to the Southwark Plan were being agreed in advance of the public inquiry.
- 22. The public inquiry into the plan held between April and July 2005 included an in-depth examination of the impact of the plan on equalities and diversity. The question whether the plan had fully considered the requirements of the Race Relations Act and the methods of assessing its impact were the subject of objections heard at the inquiry. The inspector has reported that he is satisfied that the Council has correctly and adequately carried out all its responsibilities under the Race Relations legislation. He noted that an equalities impact assessment had been undertaken with the advice of an external expert in equalities who has done extensive work for the Commission for Racial Equality and that it was discussed at the Equalities and Diversity Panel.

23. There are no significant changes to the plan and therefore a further sustainability appraisal is not required at this stage.
24. The UDP has positive implications in relation to equal opportunities for both policy setting and inclusion in consultation processes. The proposed final modifications generally involve minor changes to the wording of plans to ensure that they are fully effective and compliant with national planning policy. A change has not been made at this final stage that may have potential implications for equalities and diversity target groups.

### **Resource/Financial Implications**

25. This report does not bring any further resource or financial implications.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Strategic Director of Legal and Democratic Services**

26. The Southwark Unitary Development Plan Adopted July 1995 is the adopted development plan for Southwark together with the London Plan, which is the Mayor's spatial development strategy. Section 38(5) of the Planning and Compulsory Purchase Act 2004 provides that the most recent adopted development plan document prevails where there is a conflict between development plan documents. The draft final Southwark Unitary Development Plan (the Southwark Plan) has been prepared in accordance with the transitional provisions of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) and so that it is in general conformity with the London Plan.
27. The Southwark Plan has completed most of its statutory processes and is, procedurally, close to adoption. Once adopted it will be saved for three years or until replaced by a development plan document (whichever is sooner) in accordance with the 2004 Act. The council was recently prevented from adopting by a direction of the Secretary of State. The substance of the direction is summarised within this report. Regulations require that following receipt of a direction from the Secretary of State, the council must publish both the direction and the council's response to it with reasons. No timetable is prescribed but good practice dictates that this be done promptly. Following members' decision on the direction, the proposed modifications were subject to a six-week consultation period as required.
28. Officers have been advised by the Government Office for London that the current modifications to the Southwark Plan which have just been consulted upon are considered acceptable to the Secretary of State and that she will withdraw her direction.
29. As objections have been received the consultation responses must be considered and brought back to members for decision as to whether to hold a further inquiry.
30. The council has discretion to hold a further inquiry into objections to the modifications. The council must decide whether new issues are raised by objections to modifications that were not covered at the public inquiry into the plan. The council is in a special situation as both proposer and decision-maker in these circumstances and accordingly under an enhanced obligation to deal thoroughly, conscientiously and fairly with any objection by giving full reasons for the response to it.
31. Case law sets out the considerations to be taken into account in deciding whether to hold a modifications inquiry. In *Drexfine Holdings Ltd v Cherwell DC* [1998] JPL 361 the Queens Bench Division set out considerations that should be taken into account in deciding whether to hold a modifications inquiry:

- (1) Whether or not the issue raised had been previously subject to independent scrutiny by an inspector so as to provide independent evaluation of the opposing contentions, this is a highly material consideration;
  - (2) Advice in PPG12;
  - (3) The practical implications of a second inquiry and, in particular, whether it would potentially be of material benefit to the decision making process;
  - (4) Delay and the desirability of securing an up to date adopted development plan; and
  - (5) Fairness to the objector and to other parties.
32. In *Warren v Uttlesford DC* [1997] JPL 730 the Court of Appeal refused to interfere when an authority modified a plan so as to alter a policy it had promoted but to which there had been objections and which the Inspector had recommended in favour of the objectors. Regard must be had to these factors in considering whether to hold a modifications inquiry.
  33. There is a distinction between whether to hold a modifications inquiry and whether to consult upon proposed modifications. If as a result of consultation on the current round of proposed modifications the Council decide to make different modifications, these need to be the subject of a further consultation pursuant to regulation 29(1) of the Regulations "unless [the Council] are satisfied that the modifications they intend to make will not materially affect the content of the plan or proposals." This issue must be looked at broadly but by reference to the change between the revised deposit plan and the modification, because the 'modification' is a change to the revised deposit plan.
  34. The current recommendation not to hold a modifications inquiry must be considered in light of the objection received and in light of the considerations set out above. In particular due to the imminent end of the transitional arrangements. In particular due regard should be had to the imminent end of the transitional arrangements and the council's inability to adopt the UDP post September 27 2007".
  35. The 1995 Plan has been "saved" for three years expiring in September 27 2007. Unless the Southwark Plan is adopted by then, the council will be left without a statutorily adopted UDP. The London Plan would remain the only statutorily adopted development plan for the purposes of the council's planning functions, hence the need to address these issues promptly. Those parts of the unadopted Southwark Plan which are not the subject of the direction can still be given substantial weight for development control purposes, however little weight will be accorded to those policies which are the subject of the direction.
  36. If the Southwark Plan is not adopted then any supplementary planning document prepared in accordance with its emerging policies also cannot be adopted. This would mean that supplementary planning documents which are nearing adoption could not go forward in advance of the core strategy being adopted.
  37. The Southwark Plan was prepared before the latest Government guidance, however sustainability appraisal has been carried out at all stages of its preparation, save for the Modifications and Further Modifications stages.
  38. The Environmental Assessment of Plans and Programmes Regulations 2004 were introduced by the Office of the Deputy Prime Minister to implement the requirements of the EU Directive 2001/42/EC within the UK. These came into force on 20 July 2004. Regulation 6 (1) requires a responsible authority to carry out a strategic environmental assessment (SEA) of a plan of which the first formal preparatory act is before 21 July 2004 and which is not adopted or submitted to legislative procedures for adoption before 22<sup>nd</sup> July 2006. It was not certain whether the Southwark Plan would have been formally adopted by 21 July 2006. For this reason it was decided that the Executive make a decision under regulation 6(2) whether it is feasible to make an SEA

assessment.

Reg. 6(2): "Nothing in paragraph (1) shall require the environmental assessment of a particular plan or programme if the responsible authority –

- a. Decides that such assessment is not feasible; and
- b. Informs the public of its decision."

39. The Executive resolved on April 5 2005 that the sustainability appraisal of the Emerging Southwark Plan which has been carried out at all stages of its preparation, has ensured that the principles of sustainable development have been thoroughly incorporated into the Plan, and that it was not feasible at that time to carry out an SEA on the Southwark Plan. This decision was made publicly available and made available to the Government Office for London in fulfillment of the requirements of the regulations and the resolution of the Executive.
40. The Human Rights Act 1998 imposes a duty on the council as a public authority to apply the European Convention on Human Rights and the council must not act in a way which is incompatible with these rights. The most important rights for planning purposes are article 8 the right to respect for home and article 1 of the First Protocol, the right to peaceful enjoyment of property. Article 6 is also engaged in relation to the principles of natural justice. In general, these principles are inherent in domestic law, *Lough v First Secretary of State* [2004] 1 WLR 2557. As this UDP has been prepared in accordance with the statutory process, it is likely that it is in conformity with the Human Rights Act 1998. Any Human Rights implications will be considered throughout the application of policy in the development control process.
41. Members are reminded that in considering their decisions regarding a further inquiry and the adoption of the modified emerging Southwark Plan, the Race Relations (Amendment) Act 2000 places a duty on local authorities to promote race equality in their policy-making, service delivery, regulation, enforcement and employment. This includes three overlapping areas of responsibility:
  - To eliminate discrimination
  - To promote equality of opportunity
  - To promote good community relations
42. To meet these responsibilities, Southwark has published its Equality Scheme 2005-2008 approved by the Executive in October 2005. This sets out our overall policy for addressing equality, diversity and social cohesion in the borough. This policy recognises that people may face discrimination, or experience adverse impact on their lives as a result of age, disability, ethnicity, faith, gender or sexuality.
43. The preparation of the UDP has been carried out in accordance with an Equalities Impact Assessment.
44. The role of providing comments to the Executive on the UDP is a matter that has specifically been reserved to Planning Committee under paragraph 8 part 3F of the constitution. Any comment provided by members is provided exercising a non-executive planning function in its consultative/non-decision making capacity. Those comments have been provided to the Executive in this report.
45. The role of approval for recommendation to Council Assembly of those proposals and plans contained in the council's budget and policy framework is a matter that has specifically been reserved to the Executive under paragraph 3 part 3C of the Constitution.



## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Southwark Plan	Planning Policy Team Chiltern House	Sarah Beuden 020 7525 5471

## APPENDICES

No.	Title
Appendix A	The final draft of the Southwark Unitary Development Plan (The Southwark Plan) – circulated separately in Supplemental Agenda 1 and available on the council's web site
Appendix B	Officer comments on the representations (attached in main agenda)

## AUDIT TRAIL

<b>Lead Officer</b>	Paul Evans, Strategic Director of Regeneration and Neighbourhoods	
<b>Report Author</b>	Julie Seymour, Planning Policy Manager	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Legal and Democratic Services	Yes	Yes
Executive Member	No	No
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