

<b>Item No.</b> 6.1	<b>Classification:</b> Open	<b>Date:</b> January 24 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	

## RECOMMENDATIONS

### **Note:**

*This report is a revised and updated version of the report previously circulated on 22 November 2006. The recommendations take into account the following:*

- *Comments of the Planning Committee on 5 December; and,*
- *Recommendations of the Executive on 12 December.*

*This revised report has additional appendices – Appendix F – requested by the Executive, which provides a brief summary of the sustainability appraisal and the equalities impact assessment of the plan and Appendix G – requested by the Planning Committee giving further explanation of policy 1.4 and Appendix H – setting out the updated wording of policies 3.20 and 5.4.*

*Members should refer to the draft Unitary Development Plan set out in Appendix A to the 22 November report previously distributed.*

That council assembly consider the recommendations of the executive in conjunction with the proposed final draft of the Southwark unitary development plan (the Southwark plan).

1. That the draft Unitary Development plan set out in Appendix A (circulated previously) be approved, subject to the amendments set out below:
  - 1.1 That policy 1.7 part c (paragraph 365 on page 53) be modified by removing the words ‘at ground floor level’ so that it reads “The site is located within a town or local centre, which case is in accordance with policy 1.7, suitable class A or other town centre uses will be permitted in place of class B uses.”
  - 1.2 That in policy 1.5 (paragraph 376 on page 53) a drafting error is corrected and the reference is made to policies 1.2, 1.3 and 1.4 instead of 1.3, 1.4 and 1.5.
  - 1.3 That in Part 1 section 10.3.1 (paragraph 237 on page 39), in part II Section 3 the backgrounds to the strategic policies (paragraph 541 on page 66) and in Policy 3.3 (paragraph 551 on page 67) where the term ‘sustainability appraisal’ occurs it is replaced with ‘sustainability assessment.’
  - 1.4 That the final version of policies 3.20 and 5.4 should be revised to reflect the changes agreed at the modifications stage, the changes to the numbering of proposals sites and to correct an error in the use of “of” instead of “or” in the last line. The full revised versions of these policies on tall buildings and public transport improvements are set out in Appendix H.

2. That no further amendments to policy 5.4 or proposals site 71P relating to the safeguarding of a site in Peckham for the proposed Cross River Tram depot are made. *(Note: At the request of the planning committee the executive agreed to write to Transport for London urging that consultation on proposed depot sites is fair and transparent be agreed).*
3. That the provision of a summary of equality and sustainability appraisals to the meeting and further explanation of policy 1.4 Employment Sites as set out in appendices F and G be noted.
4. That the Council Assembly determines that it is not necessary to hold a modifications inquiry as substantive amendments have not been made to the second deposit/ revised Southwark Plan (UDP).
5. That council assembly notes that the executive agreed that the executive member for regeneration consider the need to give a higher priority to the preparation of a local development document for the Old Kent Road when revising the Local Development Scheme. The executive further confirmed that the purposes of the local development document will be to consider the urban design, environmental and other regeneration issues.

#### **Additional Officer Recommendations**

6. That policy 4.4 relating to affordable housing is amended in section iii to re-order the sentence so that it reads 'For all schemes capable of providing 10, 11, 12, 13 and 14 dwellings on-site provision calculated in the proportions outlined in table 4.4 or a payment in lieu contribution towards affordable housing.' See paragraph 43)
7. That references to Public Transport Accessibility Zones in policy 4.1 and in the glossary should refer to 'Bermondsey' and not 'Bermondsey Spa.' See paragraph 58)

#### **SUMMARY**

8. This is the final stage in the process of adopting the Unitary Development Plan called the Southwark Plan. The Unitary Development Plan is included in the council's policy framework and as such the final decision is reserved to council assembly.
9. **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 subject to further amendments identified above. To do this members need to also consider the final plan (appendix A), a number of final modifications that have been proposed in response to the last round of consultation (appendix A Part 4) 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.
10. The main representations that officers are recommending members reject are set out below:
11. **The Government Office for London and the Inspector** contend that the council is placing a too onerous a burden on developers by requiring section 106 for employment, training and childcare, sustainability assessments, energy efficiency measures, protection of local views and lifetime homes standards. They also contend that the council should require all housing provision of affordable housing to be on site for applications for 10 – 14 units. The Greater London Authority does not object to any of these matters and they are in conformity with the London Plan.

12. **The Greater London Authority** suggests that the council should designate the suburban north area (Rotherhithe, Herne Hill, East Dulwich, Nunhead) as urban as this would be more suitable based on the current character. This is contrary to the inspector's recommendation and the Government Office for London has not objected. They also suggest that all waste sites must be protected in situ. The Government Office agrees with officers that the policy should protect capacity for waste management rather than protection of specific sites.
13. A number of representations have been received to the proposal for the tram site. The Inspector recommended that the tram site be allocated as a split site depot. It is proposed that the inspector's recommendation is implemented.

### **Unitary Development Plan**

14. The Unitary Development Plan (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.'
15. The current unitary development plan 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.
16. In 2001 there was extensive public consultation on the initial stages as follows.
17. **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
18. **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.
19. **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.
20. **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.
21. 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.
22. **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.
23. **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.

24. **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<sup>th</sup> 2006.
25. **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 are 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 as this would normally happen at an earlier stage. Finally, the Council can adopt the plan.
26. 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. If the Mayor of London considers the plan is not in general conformity with the London Plan, then the Mayor may invite the Secretary of State to make a direction to modify the plan, or the Mayor may chose to challenge the plan under the 1990 Act on the grounds that it is not within the powers of that Act.
27. 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

28. 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:
29. '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)
30. 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
31. 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

32. The council received 417 representations comprising 303 objections and 114 supporting statements. 14 comments are not duly made. Officers recommend in appendix B that 12 are accepted, 12 are accepted in part and 265 are rejected. If a representation is accepted the exact objector's change or wording has been made. If the representation is accepted in part the meaning of the objector's change or wording has been made, however the wording is not exactly as the objector suggested. This is usually to provide further clarity and/or to achieve consistency through the document or with the London Plan. If 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.
33. Of those recommendations rejected, the key issues that need to be decided by members are set out below with officer recommendations.
34. The first set of issues set out where officers are making recommendations to the representations by the Government Office for London on behalf of the Secretary of State.

35. **Intervention by the Secretary of State** the Secretary of State may intervene if she considers the plan to be inconsistent with strategic national guidance. If this is the case she may direct the council to change a particular policy.
36. **Policy 1.1 Access to employment opportunities** This policy asks for planning obligations for training and employment, childcare facilities and people with disabilities. The Inspector and the Government Office for London would like this policy deleted as they think that this is too onerous. This policy has no objection from the Mayor/GLA and the Mayor's economic team at the London Development Agency strongly support this policy. There are circumstances in which seeking employment contributions is necessary and has a planning purpose and they have already negotiated payments for this in many schemes. Officers recommend that the policy should be retained.
37. **Policy 1.4 Employment sites outside the preferred industrial locations and preferred office locations** This policy allows all employment sites to change to housing unless they are in the Central Activities Zone, in a Public Transport Accessibility Zone, on a main road or in an Action Area. If they are in one of these areas current employment space must be retained. If the development is larger than the current site generally the new space can be any other use such as housing, retail etc. Modifications were made based on the Inspector's recommendations. The Government Office for London is concerned that the policy is confusing and that the changes made to meet the inspector's suggestions are overly restrictive and therefore contrary to national guidance. The GLA do not object to this policy and therefore consider this approach to be in general conformity with the London Plan. The wording of the policy has been amended to provide further clarity however the policy is not too restrictive. The tests set out in the policy reflect the guidance in the Mayor's draft Industrial Capacity SPG, as well as national best practice guidance on allocating land for employment uses. The policy will allow redundant employment sites to be recycled for residential and mixed use schemes and officers do not consider that the tests should be altered at this stage. Officers recommend that this policy should be retained with the amendments suggested.
38. **Policy 3.3 Sustainability Appraisal** This policy asks for an assessment of economic, social and environmental impacts of major applications. These should be provided in a table to demonstrate whether the application is addressing these impacts. The Inspector and the Government Office for London consider this to be too onerous. The GLA have not objected to this policy and therefore consider this approach to be in general conformity with the London Plan. National, regional and local guidance all put sustainability at the heart of planning. The policy has been simplified to meet many of the Inspector's concerns at the modifications stage. The policy provides consistency of approach to decision making, clearer advice to developers and essential information for decision makers on whether environmental, economic and social impacts have been considered by applicants for all major applications. Proposed modifications to meet the concerns raised by the Government Office are to amend the name to assessment to be clear that an assessment rather than the same type of appraisal that applies to policy documents are required. Another useful addition would be a link to the Sustainability SPD that is being prepared. This will set out the framework that will need to be completed by planning applicants for major developments. Officers recommend that the policy should be retained with the amendments suggested.
39. **Policy 3.4 Energy Efficiency** This policy requires applicants to demonstrate how the development will be energy efficient. The Inspector and the Government Office for London consider that the word 'must' must be replaced with the word 'should'. The GLA support the council requiring this with the word 'must'. In the council's response to the Inspector's report, the council rejected the suggestion of 'should' as the council's approach is consistent with policy 4A.9 of the London

Plan and energy efficiency is an important consideration in the determination of planning applications. Officers recommend that the policy should be retained.

40. **Policy 3.22 Protection of Local Views** The Inspector and the Government Office for London recommend deletion of the local views policy as they would like local views to be designated on the proposals map. They suggest that a policy is prepared as part of the local development framework. The GLA do not object to this policy and the council considers this approach to be in general conformity with the London Plan. New development plan documents such as the Peckham Area Action Plan will designate local views as suggested by the Inspector and the Government Office. Therefore the local views policy is needed in the emerging Southwark Plan to provide consistency with the new local development framework documents to designate local views. It should not be deleted and then reinstated once views are designated, instead it should remain as the policy does not relate to all views only those designated through the local development framework process. Officers recommend that the policy should be retained.
41. **Policy 4.2 (iii) Quality of Residential Accommodation** The policy requires homes to be built so that they can be adapted to occupiers needs over a long time period. The GLA do not object to this policy and therefore consider this approach to be in general conformity with the London Plan. The Inspector and the Government Office for London consider that, whilst the Lifetime homes standards are a desirable aim and should be encouraged this should not be a requirement. However in paragraph 2.4.57 of his report the Inspector says *“I am concerned about the elevation of relevant Lifetime Homes standards to the status of a policy even though that is a requirement of the London Plan Policy 3A.4.”* Therefore he recognises that it **is** a **requirement** of policy 3A.4, thus supporting the Council’s construction of the policy. Why he is concerned about elevating the requirement to a status of policy in the Southwark Plan when it already has such status in the London Plan is not explained. The policy should be retained and the Government Office for London’s representation should be rejected as they have not adequately considered the issue of conformity with the London Plan. Officers recommend that the policy should be retained.
42. **Policy 4.4 Affordable Housing** This policy sets out when developments should provide affordable housing and the amount that should be provided. The Inspector and the Government Office for London would like a requirement for only on site provision with no payment in lieu option available for affordable housing on sites of 10 – 14 units as they consider this to be contrary to national policy. The GLA do not object to this policy. There are a number of reasons that in lieu payments should be included within the policy rather than being an exception to the policy. In practice applicants need to work with Registered Social Landlords who usually become the managers of social housing developments. The management of small numbers of affordable units on site by Registered Social Landlords is not always a realistic option. It is more transparent and open to accept this fact rather than to have a policy that requires all affordable housing to be on site but in practice to allow virtually all developments of 10 to 14 units to be an exception to policy. National policy guidance relates to developments of over 15 dwellings for which the council requires on site affordable housing except for in exceptional circumstances. Neither the Inspector in his report nor the Government Office for London in their response to the modifications has given adequate consideration to these issues. The likely consequence trying to implement a policy of on-site provision of such small numbers of affordable units is that less affordable housing of the types for which there is a demonstrated need in the borough will be provided than is possible with a more flexible policy. Officers recommend that the policy should be retained.
43. **Following recent discussions with the Government Office for London a minor word change has been suggested and is recommended in the**

**additional officer recommendation 6 above.** It is understood that this will go some way to overcome the objection from GOL.

44. The second set of issues set out where officers are making recommendations to the representations by the Mayor of London:
45. **Conformity with the London Plan and Intervention by the Secretary of State**  
The UDP may only be adopted if it is in general conformity with the London Plan. The Mayor’s objections to the Southwark Plan include matters that he considers to be ones that relate to general conformity as set out below. The council considers that these policies are in general conformity and the reasons for this are set out below. The inspector has considered these objections and issued recommendations according to his findings including some instances where he disagrees with the Mayor and concludes that matters are in general conformity. The final say on whether the plan is in general conformity with the London Plan will, in effect, be decided by the Secretary of State when she decides whether to issue such a direction, or by the High Court if the Mayor challenges the plan under s287 of the 1990 Act.
46. **Policy 4.1 and appendix 3** sets out the suggested density levels for residential development. The Inspector has supported the council’s approach to density and the density levels in paragraph 2.4.53 of his report and the Government Office for London have not objected to this approach or any of the designations. The Greater London Authority would like the suburban north zone (Rotherhithe, Herne Hill, Nunhead and East Dulwich) which has a density of 200 to 350 habitable rooms per hectare to be reclassified as urban which is 300 to 700 habitable rooms per hectare. The Mayor considers the council’s approach to be contrary to the overriding objectives of the London Plan to maximise the efficient use of land, provision of affordable housing and to achieve sustainable development within London. However the inspector found the area to be suburban in character and the council has demonstrated that it can meet the Mayor’s housing targets. Officers recommend that the policy should be retained and consider that the policies are in general conformity with the London Plan policy 4B.3 given the local context, design principles and public transport capacity.
47. Appendix 3 also describes heights for the density ranges to assist understanding of technical specifications of habitable rooms per hectare as does the London Plan. These storey heights are not planning policy requirements, there are no objections from the GLA or GOL and they are not used in decision-making. However discussions have been taking place concerning the discrepancy between the suggested heights as set out in the table below:

	London Plan	Emerging Southwark Plan
Central Activities Zone	4- 6 storeys	6-8 storeys
Urban Zone	3-4 storeys	4-6 storeys
Suburban Zone	2-3 storeys	Typically houses.

48. A survey of the most recent 20 permissions in each zone has been undertaken. This found that there can be a wide range of building heights for developments of central, urban and suburban densities and therefore these should only be used to assist understanding of density. The local character is more important than the suggested storey heights within the zones, with the storey heights providing a general guide. However on balance the Southwark storey heights are a more realistic description of the storey heights that are being built in the density zones than the London Plan and so they should be retained. This is probably because the London Plan storey heights describe the character of the zones throughout London whereas Southwark describes the local character of the borough.



49. To ensure that the plan is clearly setting out the storey height as an explanatory tool rather than policy an amendment should be made to the text as set out below:
50. *Central Activities Zone: Development ~~will~~ could typically be 6 to 8 storeys however there will be sites where taller buildings are appropriate. Urban Zone: Development within the urban zone ~~should~~could typically be 4 to 6 storeys.*
51. **Waste management Policy 3.8 and Appendix 4, Site 50P Manor Place depot.** This is the policy protecting waste management facilities and the allocation of Manor Place for housing once the site on the Old Kent Road is completed. There were objections from the Greater London Authority and the Government Office for London. Amendments have been made to meet the GLA and GOL's objections. The policy amendments provide an overall commitment to strategic safeguarding for waste management sites subject to appropriate compensatory provision. Policy 4A.2 of the London Plan states that Councils should safeguard all existing waste management sites, unless compensatory provision is made. The approach of the Council to retain Manor Place until compensatory operational provision is available at the Old Kent Road Gas works site is, in principle, consistent with this policy.
52. **Potters Field Site 3P** This site is allocated for a comprehensive mixed use scheme including large arts and/or cultural uses of London or nationwide importance and maximization of residential development compatible with such arts and/or cultural uses. Although this is a representation and is not an issue of conformity it is important for the Council to comply with the requirements of the legislation. The Government Office for London has not objected nor have Berkeley Homes the owner of part of the site. The nature of the Mayor's objection is that the reference 'to a large arts and/or cultural use of London-wide or nationwide importance' in proposals site 3P is too prescriptive, may not be realistic and will therefore blight development of the site. As paragraph 14 of the GLA report dated 22<sup>nd</sup> May 2006 makes clear, this is the same objection that was made to the original wording of 3P. The Inspector dealt with this objection and recommended in favour of the revised wording agreed between the Council and Berkeley Homes, which embodies a balance between housing and arts/cultural use. In dealing with this objection to the Modifications, the Council can therefore rely on the Inspector's recommendation, those parts of the Council's case at the inquiry that he accepted, in particular his endorsement in paragraph 1.8.3.7 of the site's potential for tourism and the statement that "Any scheme should therefore include a large arts and/or cultural use(s) of London or nation-wide importance." In addition, the extract from the appeal Inspector's report quoted at paragraph 19 of the GLA report dated 4<sup>th</sup> October suggest that he did not disagree with the Council's aspirations for the site, only whether the appeal scheme would achieve them. It is for the UDP to set out the aspirations in policy terms and therefore officers recommend that the policy should be retained and consider that it is not necessary to hold a further inquiry as the objection has already been addressed at the public inquiry and determined by the inspector.
53. The third set of set of issues set out where officers are making recommendations to representations by the public:
54. **Appendix 4, Site 32P Mulberry Business Centre, Canada Water.** There have been a number of representations suggesting that the site allocation should be amended to require D 'community' use on the site rather than including it as a use that is allowed but not required. Although there are currently D uses on the site this objection has only been made at this stage which is after the public inquiry. The Inspector considered all of the objections at the public inquiry stage to this site. The main objection was that the required use 'B' employment should be replaced by residential. There was no objection that D uses should be a

required use. The Inspector concluded that residential use should be required in addition to B use class. The inspector did not consider that D use must be provided on this site only that this should be a possibility. A change in use would reduce the provision of housing and employment and there is no reasoning from the Inspector or the council to require D uses on this site. It is too late to consider this issue as this would require a modifications inquiry if the change was made which would unacceptably delay the plan. Even if this issue was considered there is no evidence that officers are aware of that would warrant a requirement for a D use based on need on this site. Officers recommend that the policy should be retained.

55. **Elephant and Castle Early Housing Sites** The reference to the sites as Early Housing Sites should be removed as the sites are allocated for housing and if housing came forward that was not for an Early Housing Site this could be built. Officers recommend that the objections should be accepted where they refer to the modification and the wording should be removed.
56. **Policy 5.4 and appendix 4, site 63P** A large number of objections have been received to policy 5.4 on public transport improvements that, together with the proposals map and appendix 4 site 63P safeguard a site in the centre of Peckham for use as a split-site tram depot. Some objections refer to the fact that the designation does not make it clear that it should seek to protect the majority of jobs on the site and protect the amenity of neighbouring residents. They call for a full public review of the alternative locations compared with Peckham and an assessment of the effects on Peckham town centre. Other objections are put more strongly and suggest the removal of the designation entirely. Public consultation on the depot site based on detailed comparisons with other potential split-site locations is to take place in 2007 and the whole proposal will be assessed in accordance with the Transport and Works Act 1992. The plan has been modified in accordance with the inspector's recommendation based on the view that a split-site tram depot may achieve advantages such as the retention of jobs and the site has been accordingly safeguarded. At this stage it is not possible to confirm the detailed boundaries of the split-site depot but the issue of retaining existing employment will be a consideration in the forthcoming public consultation. The plan should be read as a whole and policy 3.2 on protection of amenity will apply to this proposal site as it does to all proposals sites. The Plan should not be changed and the tram site should be retained.

#### **Additional change noted by officers**

57. A further minor drafting error has been noted and it is recommended that this is corrected in additional officer recommendation 7 above. This is to change the name of one of the Public Transport Accessibility Zones from 'Bermondsey Spa' to 'Bermondsey.'

#### **Community Impact Statement**

58. The Unitary Development Plan 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.
59. 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.
60. 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.

61. 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.
62. A sustainability appraisal of the modifications has been carried out and is appended as appendix D. There are no significant changes to the plan and therefore a further sustainability appraisal is not required at this stage.
63. The Unitary Development Plan 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.
64. One decision to reject a number of representations made by faith groups as set out in paragraph 49 has equalities implications as a community use is being allowed rather than required on the Mulberry Business Centre site 32P. This decision would have implications if a planning application is submitted that does not include a D 'community' use as the current faith groups on the site would have to move.
65. The Community Involvement and Development Unit is carrying out a programme to assist faith groups in Southwark with managing the process of accommodation. Officers are also looking at the wider issues of reconciling the demand for premises from faith groups with other pressures on land in the borough.

### **Resource/Financial Implications**

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

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

#### **Acting Borough Solicitor**

67. The transitional provisions of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) provide that where a development plan is on deposit prior to the commencement of that Act on 28 September 2004, it shall continue to proceed to adoption under the provisions of the Town and Country Planning Act 1990 and the Town and Country Planning (Development Plan) (England) Regulations 1999 (the 1999 Regulations). The process for the adoption of the Southwark Plan is in conformity with the earlier legislation. The Southwark Plan will be adopted as a Unitary Development Plan and once adopted will be saved for three years or until replaced by a local development document. It cannot act as the core strategy required under the local development framework established by the 2004 Act.
68. 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 so that it is in general conformity with the London Plan.

69. 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. There is no further guidance as to what general conformity means in the legislation and only limited consideration in case law.
70. The issue of general conformity was looked at by the Court of Appeal in *Persimmon Homes (Thames Valley) Ltd v Stevenage BC* [2005] EWCA 1365 Civ. The Court of Appeal emphasised the supervisory nature of the court's role in reviewing any challenge to a plan under s 287 of the 1990 Act. The Court indicated that the interpretation of 'general conformity' is a matter of planning judgment and not of legal interpretation and upheld the Administrative Court's approach, which was to consider whether the words actually used in a local plan are objectively capable of falling within the scope that the words "general conformity" leave open to the local planning authority. The council cannot adopt a UDP it believes is not in general conformity with the London Plan.
71. In addition to the duty of general conformity, the council must comply with the procedures in the 1999 Regulations. The council is required to prepare a statement of decisions reached in the light of the inspector's report and the reasons for those decisions under Regulation 27(1). The council must prepare a list of modifications to be made to the UDP with reasons under Regulation 29(1)(a) which must be consulted upon for 6 weeks.
72. 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.
73. Case law sets out the considerations to be taken into account in deciding whether to hold a modifications inquiry. In *Drexline 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.
74. 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.
75. 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.

76. Section 39 of the 2004 Act requires local development documents to be prepared with a view to contributing to the achievement of sustainable development. The 2004 Act requires regard to be had to national policies and guidance on sustainable development. The Government's four aims for sustainable development are set out in PPS1 *Creating Sustainable Communities* paragraph 1.13. These are:
- Maintenance of high and stable levels of economic growth and employment.
  - Social progress which recognises the needs of everyone.
  - Effective protection of the environment.
  - The prudent use of natural resources.
77. Government guidance was published in November 2005 for 'Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents' which requires the carrying out of a sustainability appraisal. The main purpose of sustainability appraisal is to appraise the social, environmental and economic effects of plan strategies and policies, from the outset of the preparation process, so that decisions can be made that accord with the objectives of sustainable development. Local planning authorities, in preparing local development documents must fulfil the minimum requirements of sustainability appraisal.
78. To be effective, sustainability appraisal should be fully integrated into the plan-making process. It should be started as soon as a new or revised local development document is first considered, and should provide input at each stage when decisions are taken. Sustainability appraisal should be used in developing the arrangements for monitoring the implementation of the plan, which should lead to the identification of issues to inform the need for action or the revision/replacement of a local development document.
79. In carrying out the appraisal, local planning authorities should have regard to the specific objectives and principles of sustainable development as outlined in PPS1. The potential direct, indirect and cumulative impacts of different policy options need to be identified and appraised in order to integrate sustainable development objectives in the formulation of policy and to inform decisions on which options should be promoted in local development documents.
80. 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 stage and the Sustainability Appraisal is at Appendix D.
81. 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 is not certain whether the Southwark Plan will 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."
82. The Executive resolved on 5 April 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.

83. 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.
84. 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
85. 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.
86. The preparation of Equality Impact Assessments are part of Southwark's wider commitment to equalities, which is set out on the Corporate Equalities Action Plan 2003-2006. They are required in order to examine the aims, implementation and effects of policies, practices and services to check that no groups are receiving or are likely to receive differential treatment or outcomes that are discriminatory or unfair in nature. There are three stages to the preparation of an EQIA. There are three stages to an Equality Impact Assessment:
  - Stage 1 – Scoping
  - Stage 2 - Assessment of impacts
  - Stage 3 - Making recommendations, taking decisions and formulation and implementation of an action plan
87. The carrying out of an EQIA is intended to improve the work of Southwark by making sure it does not discriminate and that, where possible, it promotes equality. Preparation of an EQIA will ensure that individuals and teams think carefully about the likely impact of their work on the residents of Southwark and take action to improve the policies, practices or services being delivered. The Equalities Scheme provides that an EQIA must be signed off by the relevant portfolio Executive member following Stage 3. An Equalities Impact Assessment (EQIA) is attached at Appendix E. The process followed has been set out in the report above and Planning Committee and Executive are asked to comment on the EQIA.
88. 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.

89. 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

## LIST OF APPENDICES

No.	Title
<b>Appendices previously distributed on November 22 2006</b>	
Appendix A	Proposed final modifications as: <ul style="list-style-type: none"> <li>• A table of changes;</li> <li>• The draft Final Southwark Plan November 2006 (Unitary Development Plan)</li> </ul>
Appendix B	Officer comments on the representations
Appendix C	Consultation Report
Appendix D	Sustainability Appraisal – available on request and on the website at <a href="http://www.southwark.gov.uk/udp">www.southwark.gov.uk/udp</a>
Appendix E	Equalities Impact Assessment
<b>Additional appendices attached to this revised report</b>	
Appendix F	Summary of Sustainability Appraisal and Equalities Impact Assessment
Appendix G	Further explanation of policy 1.4
Appendix H	Updated wording of policies 3.20 and 5.4.

## AUDIT TRAIL

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