

Item No. 7.2	Classification: Open	Date: March 28 2007	Meeting Name: Council Assembly
Report title:		Proposed responses to directions to amend the final draft of the Southwark Unitary Development Plan (The Southwark Plan) (Policy Framework)	
Ward(s) or groups affected:		Borough-wide	
From:		Strategic Director (Regeneration and Neighbourhoods)	

RECOMMENDATIONS

1. That Council Assembly adopt the following recommendations from Executive:
 - i. That the council accepts the Secretary of State's direction on policy 4.4(iii) (*affordable housing payments in lieu*).
 - ii. That the council instructs the Executive and officers to negotiate on policies 4.1 (*density*) and 4.2(ii) (*Lifetime homes*) as a basis for the Secretary of State withdrawing her direction or modifying it in ways that are acceptable to the Council Assembly
 - iii. That the alternative proposals should be as follows:
 - To negotiate on the density range for the urban zone to agree an amended range for the emerging Unitary Development Plan (Southwark Plan) to reflect the densities set out in table 4B.1 of the London Plan.
 - To negotiate on the Lifetime Homes standards to suggest that the policy is amended to say that Southwark should 'seek to ensure that all new homes are built to Lifetime Homes standards' in line with policy 3A.4 of the London Plan.
 - iv. That the council agrees that judicial review proceedings are brought in the High Court challenging the Secretary of State's direction letter on policies 4.1 and 4.2 (ii).
2. That to give effect to those recommendations:
 - i. The council agrees to modify *Policy 4.4 (iii) to remove the specific reference to a payments in lieu for affordable housing for developments of 10 – 14 units.*
 - ii. The council agrees to convene a special meeting to take any further decisions relating to the plan and the process of the judicial review proceedings in the light of further discussions with the Secretary of State and to determine the formal response to the Secretary of State's direction.

KEY ISSUES FOR CONSIDERATION

Intervention by the Secretary of State

3. The Secretary of State has directed the council to make changes to the Southwark Plan. Members must decide the council's response to the Secretary of State's direction.
4. The council is precluded from adopting the Southwark Plan unless the Secretary of State is satisfied that the council has modified the Southwark Plan to conform to the direction or the direction is withdrawn. The council cannot adopt the Southwark Plan until the Secretary of State gives her notification.
5. The council needs an adopted Unitary Development Plan (UDP) to be able to make

robust development control decisions pending the adoption of a core strategy. Without an adopted plan, the statutory development plan would consist of only the London Plan. Although the emerging unadopted Southwark Plan policies could continue to be given significant weight by the council in determining planning applications and exercising other planning function this would be a very unsatisfactory situation. The council would not have an adopted local element of the development plan and therefore the London Plan could take precedent. The policies would not be part of an adopted development plan and therefore the council may find it difficult to defend decisions about planning applications at appeals. It is likely that the policies which are subject to the Secretary of State's direction will be given far less weight on appeal or call in. The council will not be able to adopt Supplementary Planning Documents for around three years until a new core strategy is adopted.

6. Preparation of the core strategy has begun and will take around 3 years requiring an examination in public.
7. The transitional period for changing from the UDP to the Local Development Framework system runs out on September 27 2007. Therefore this is the final date for adoption of emerging UDPs. If the Southwark Plan is not adopted before the end of the transitional period set out in the 2004 Act, it is considered unlikely that it may ever be adopted.
8. Theoretically adopted policies such as those in the 1995 UDP can be saved for 3 years from September 28. However the criteria for adoption, such as reflecting the principles of the local development framework, being consistent with government policy, having regard to the community strategy and being in conformity with the London Plan, are not met by the majority of the 1995 policies. The emerging unadopted Southwark Plan policies cannot be "saved" under the transitional arrangements.
9. Supplementary planning documents such as planning obligations and residential design standards and accessibility which have been prepared in accordance with the emerging Southwark Plan cannot be adopted unless the Southwark Plan is an adopted development plan.

Options for responding to the Secretary of State

10. Officers have discussed the issues arising from the direction with the Secretary of State's officials and with the Greater London Authority officers. Further discussions are needed to establish whether there is scope for any agreement to amend the direction. The closed report considers the legal basis of the Secretary of State's direction. However any further action needs to be concluded quickly to allow time for the council to complete the required processes to ensure that a plan can be adopted by September 27.

Policy considerations

11. **Policy 4.1 and appendix 3 Density of Residential Development** sets out the suggested density levels for residential development. The direction from the Secretary of State requires the council to amend the policy, proposals map and key diagram to rezone the 'suburban north zone' as part of the urban zone. Consequential amendments to all other areas of the Southwark Plan to remove reference to the suburban north zone would also be required.
12. The council zoned the suburban north area as 200 to 350 habitable rooms per hectare (up to 3 storeys) based on the standards set out in table 4B.1 of the London Plan. The aim was to provide planning guidance to require developments to preserve the character of the local area in line with the public transport accessibility levels. The

inspector has supported the council's approach to density and the density levels in paragraph 2.4.53 of his report.

13. The Greater London Authority would prefer the suburban north zone (Rotherhithe, Herne Hill, Nunhead and East Dulwich) which has a density range of 200 to 350 habitable rooms per hectare (up to 3 storeys) to be reclassified as urban which is 300 to 700 habitable rooms per hectare (3 to 6 storeys).
14. The Mayor considered the council's approach at the public inquiry to be contrary to the overriding objectives of the London Plan to maximise the efficient use of land, provide 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.
15. Since the Planning Committee and Executive met to consider this issue on March 20 2007, the Mayor of London has written to Councillor Stanton on March 21 2007 on this issue. He advises that it was never his intention that an urban classification would mean that all new development coming forward in these locations would be required to be built to the highest densities associated with such a classification. He states that the density location and parking matrix in the London Plan (Table 4B.1) is intended to be applied flexibly, taking into account a number of factors such as public transport accessibility, local character and conservation issues. All development proposals that come forward should be assessed on a case-by-case basis, taking into account local characteristics, and appropriate densities determined accordingly. He also suggests that there may be some scope for reducing confusion by revising the definitions in the UDP in order better to align them with the London Plan.
16. The Secretary of State recognises that she made no objection to the suburban north zones. However she may direct on matters that have not been raised particularly if they are conformity issues that have been raised by the Mayor at any stage of the Southwark Plan adoption process. She has cited the national policy guidance used to make this decision to make this decision. Planning Policy Statement 1 and Planning Policy Statement 3 require more efficient use of land. She considers this to be of particular importance in London where there is considerable housing need and limited land available as reflected in the provisions of the London Plan.
17. In this instance, the Secretary of State disagrees with the inspector that the suburban north areas are predominantly suburban within the definition set out in paragraph 4.47 of the London Plan. She considers this to be particularly true when the draft-revised definition in the further alterations to the London Plan is taken into consideration. Moreover, the Secretary of State disagrees that policy 3.11 which deals with character and context issues is sufficient to provide for appropriate densities in the suburban north areas.
18. The Secretary of State says that table 4B.1 provides a basis for consideration of densities across London. She sets out that whilst the implementation of the London Plan through borough UDPs is primarily the responsibility for the London Mayor through the inquiry process, there will be times when the Secretary of State considers it necessary to intervene to ensure regional matters consistent with national policies are implemented.
19. The Secretary of State considers that the evidence prepared by Southwark council in relation to density (January 2005) indicates that the suburban north zones do not share the suburban characteristics of the more southern suburban zone centred around Dulwich. Unlike the suburban south zone the Secretary of State does not consider the suburban north zones to be predominantly detached and semi-detached housing. She considers the housing to be typically in terraces or flats and the majority of

developments to be at least two storeys in height (Rotherhithe in particular has significant developments of around 6 storeys along much of the riverside). She considers accessibility to be adequate in much of these areas to support denser development, and the lower density range (which overlaps with that of suburban) is appropriate for less accessible sites.

20. The Secretary of State considers that a presumption in favour of lower densities in this area does not accord with national policy to maximise the efficient use of land, or the London Plan. She considers that it is also very likely to compromise the ability of the borough to meet its housing targets and meet housing need.
21. The council may accept the changes to modify the emerging Southwark Plan in accordance with the Secretary of State's wishes to amend the suburban north density zone to urban.
22. Changing the suburban north density to urban will mean that residential developments proposing up to 700 habitable rooms per hectare (6 storeys) would prima facie be acceptable on density grounds instead of up to 350 habitable rooms per hectare (3 storeys). However other policies would need to be taken into account to consider the character of the area and prevailing height of the buildings particularly policy 3.11 Efficient use of land, policy 3.13 Urban design and policy 4.2 Quality of residential accommodation.
23. The council may wish to persuade the Secretary of State to withdraw her current direction and reissue an amended direction. Officers consider the approach taken to designate the suburban north zone as 200 to 350 habitable rooms per hectare to be the most appropriate. This provides planning guidance for applications for development that is within the character and context of the area. However the consequences of no adopted Southwark Plan are very significant therefore officers recommend that the council seek to negotiate the form and content of a reissued direction for the density range. This needs to take into account the character and public transport accessibility levels of a new element of the urban zone based on table 4B.1 of the London Plan.
24. The legal implications of not accepting the direction are set out in the closed report.
25. **Policy 4.2 (ii) Lifetime Homes element of Quality of Residential Accommodation**
The Secretary of State has directed the council to modify policy 4.2 so that it does not make specific reference to Lifetime Homes standards. The council's emerging policy requires homes to be built to these standards so that they can be adapted to occupier's needs over a long period of time.
26. The requirement was introduced into the emerging Southwark Plan at second deposit stage as the result of an objection by the GLA. This required Southwark council to include a requirement for Lifetime Homes in the Southwark Plan. Since the direction the Mayor has written to the government on March 6 2007 saying that Lifetime Homes should be a policy in the Southwark Plan and that the deletion is contrary to the London Plan.
27. 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 compulsory Southwark Plan 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 this is a requirement of the London Plan Policy 3A.4.' Therefore he recognises that this is a requirement of policy 3A.4 thus supporting the council's construction of the new 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.

28. The Secretary of State agrees with the inspector that the reference to Lifetime Homes should be removed from the policy. She does not consider the reference in the London Plan policy 'should seek to ensure' to constitute a binding requirement. Rather, the Secretary of State considers that Lifetime Homes are a desirable aim and one that could be encouraged but not required. She considers the code for sustainable homes and the government's draft planning policy statement on climate change to clarify the relationship between planning policies, which regulate the siting and design of development, and accessibility. She considers it to be clear from these documents that the role of planning policies is not to duplicate requirements of other acts or regulations, such as standards that are addressed through the building regulations.
29. The council may accept the changes directed by the Secretary of State to modify the emerging Southwark plan in accordance with her wishes.
30. Alternatively the council may wish to persuade the Secretary of State to withdraw her direction. The Mayor has written to the Secretary of State, on March 6 2007 stating that the building regulations do not duplicate the Lifetime Homes standards and requesting withdrawal of the direction. To bring the policy in line with the London Plan, officers suggest that the council negotiate on the lifetime homes standards and amend the policy to 'seek to ensure that all new homes are built to Lifetime Homes standards' in line with policy 3A.4 of the London Plan.
31. The legal implications of not accepting the direction are set out in the closed report.
32. **Policy 4.4 in lieu provision for 10 – 14 units of Affordable Housing** It will be difficult for most housing schemes of 10 to 14 units to provide on-site affordable housing. This is because providing a small number of social rented units is expensive and management is challenging. The council policy allows payments to be made rather than requiring developers to demonstrate in a financial appraisal that the housing can not be built on-site, then off-site as a second option and if this is not possible a payment in lieu will be permitted.
33. The Secretary of State has directed the council to modify policy 4.4 so that it does not include specific reference to a payment in lieu for affordable housing for developments of 10-14 units. The council's emerging policy sets out when developments should provide affordable housing and the amount that should be provided.
34. In the case of proposals for sites of 10 – 14 units Southwark's preferred policy enables developers to make lump sum payments for the provision of affordable housing on alternative sites as opposed to requiring provision within the development site. The inspector and Government Office for London would like a requirement for only 'on-site' provision with no 'payment in lieu' option available for affordable housing for such sites. They consider Southwark's approach to be contrary to national policy and no local case being established to vary from national policy.
35. There are a number of reasons why in lieu payments should be preferred within the policy rather than being addressed as exceptions to the policy on a site-by-site basis (the likely result of the Secretary of State's approach). 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 rarely a realistic option.
36. 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 proceed without on site provision and accept a payment in lieu as an exception to policy.

37. The likely consequence of 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.
38. The Secretary of State agrees with the inspector in that the circumstances under which a financial contribution may be made in lieu of on-site affordable housing provision are exceptional. As such she considers it to be contrary to national policy for a UDP policy to provide for a payment in lieu as a matter of course.
39. She considers this to be supported by the provisions in the London Plan. She states that a number of other London boroughs have the lower threshold of 10 units, and accommodate affordable housing on site, and considers it to be unclear why this appears to be an isolated case in Southwark. She considers that whilst it may be that some smaller sites cannot support on-site affordable housing, likewise some may be able to. She considers that to adopt a blanket policy provision for a payment in lieu on these sites fails to meet national policy, which presumes on-site provision unless exceptional circumstances demonstrate otherwise.
40. Officers consider the policy allowing in lieu payments to be the most appropriate for Southwark. Removing the allowance for in lieu payments will require a site-by-site appraisal of the case for on-site provision. The Secretary of State does not consider that Southwark should be allowed an exception to national policy set out in Planning Policy Statement 3 requiring on-site and off site provision of affordable housing before in-lieu payments are considered acceptable.
41. The council may wish to persuade the Secretary of State to withdraw her direction. However there is a weak case for this as she is within her jurisdiction to direct Southwark to be consistent with national policy. The legal implications of not accepting the direction are set out in the closed report. Officers recommend that the direction is accepted unless the direction is withdrawn.

Community Impact Statement

42. 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.
43. The proposed changes to the UDP are considered not so significant as to require a further sustainability appraisal and therefore a further sustainability appraisal is not required at this stage.
44. The UDP has positive implications in relation to equal opportunities for both policy setting and inclusion in consultation processes. The expressed aim of proposed modifications is to ensure that the Southwark Plan is compliant with national planning policy. A change in relation to Lifetimes Homes requirements may have potential implications for equalities and diversity target groups, specifically the council's response in respect of the Lifetime Homes policy 4.2 may impact upon the likely supply of housing available to those with disabilities or mobility impairment with specific access requirements.

Resource/Financial Implications

45. Any additional costs that may be incurred in adopting the proposed changes to the Southwark UDP will need to be contained within the existing 2007/8 revenue budgets

for the planning and transport division. However, any cost implications arising from these changes will be reviewed and incorporated into the council's annual business and budget planning process for future years.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal and Democratic Services

46. The Southwark Plan has been prepared in accordance with the transitional provisions of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). 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 has now been prevented from adopting by a direction of the Secretary of State. The substance of the direction is summarised within this report.
47. 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 regulations require that the proposed modifications be the subject of a six-week consultation period. If there are no objections, the council can proceed to adopt at the end of that six-week period. If objections are received then the consultation responses must be considered and brought back to members for decision. Members must also decide whether a further inquiry is necessary.
48. The Southwark UDP adopted July 1995 is the current statutory adopted development plan for Southwark together with the London Plan, which is the Mayor's spatial development strategy. Section 38(5) of the 2004 Act provides that the most recent adopted development plan document prevails where there is a conflict between different development plan documents.
49. 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.
50. 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.
51. Legal advice on the council's options following the direction is contained within the closed section of this report.
52. 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.

53. Members are reminded that in considering the council's response to the direction, 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:

- i. To eliminate discrimination
- ii. To promote equality of opportunity
- iii. To promote good community relations

54. To meet its equalities 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.

55. The decision making body is council assembly as the outcome of the direction and response process will determine the final content of the UDP. Decisions on the plans and strategies comprising the UDP are reserved to council assembly under paragraph 5 of Part 3A of the constitution.

56. 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. Executive also has responsibility for formulation of the council's overall policy objectives, recommending them to council assembly for approval where appropriate under paragraph 2 part 3B.

57. The planning committee's non-executive advisory role under paragraph 8 part 3F of the constitution of providing comments to the Executive on successive drafts of the UDP would be engaged were a decision made to accept the direction of the Secretary of State in relation to any of the three policies as this would result in a change in policy, which would therefore be another draft of the UDP. Planning committee's advice was sought prior to this matter being considered by Executive.

REASONS FOR URGENCY

58. The reason for urgency is to ensure that the Southwark Plan can be adopted prior to September 27 2007 and therefore "saved" under the 2004 Act pending the adoption of a core strategy. The effect of the direction is to amend the UDP and therefore the decision maker is the council assembly, following receipt of a recommendation from the Executive, taking into account the views of the planning committee. An urgent meeting of planning committee was called prior to the Executive meeting on March 20 2007 to consider the impact of the direction and comment on the council's options in relation to the UDP policies. A meeting of the Executive was scheduled for March 20 2007 and this matter was brought to that meeting as a late and urgent item in order that the Executive could make a recommendation for Council Assembly to consider full council at its meeting on March 28 2007. This matter has been brought to Council Assembly as quickly as possible in order to progress the response to the Secretary of State's direction within the very short timescale available to comply with the necessary statutory process to deal with the Secretary of State's direction and still adopt the Southwark Plan prior to September 27 2007. The council needs to consider the action that it wishes to take in response to the Secretary of State's direction in order that any further exchanges with the Secretary of State can be handled within the timescale.

REASONS FOR LATENESS

59. This report has been prepared in a very short timescale following the direction of the Secretary of State by letter dated February 22 2007 to modify the Southwark Plan before adoption. This report incorporates very recent relevant information, as well as the recommendations of Executive from its meeting on March 20 2007. The council sought legal advice on the implications of the direction and this was received on March 16 2007 with further guidance provided on March 19 2007. Additional guidance has been sought and will be included in the closed report. The implications of responding to the direction within the timescales available under the transitional provisions of the Planning and Compulsory Purchase Act 2004 have had to be very carefully assessed in order to ensure that the Southwark Plan can be adopted before the end of the transitional period.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Southwark Plan	Planning Policy Team Chiltern House	Sarah Beuden 020 7525 5471
Secretary of State Direction on the Southwark Plan	Planning Policy Team Chiltern House	Sarah Beuden 020 7525 5471
Mayor letter on the direction by the Secretary of State to the Southwark Plan	Planning Policy Team Chiltern House	Sarah Beuden 020 7525 5471

LIST OF APPENDICES

No.	Title
Appendix A	The Secretary of State's Direction
Appendix B	Mayor of London's letters to Government Office for London - February 14 and March 6 2007
Appendix C	Mayor of London's letter to Councillor Nick Stanton - March 21 2007

AUDIT TRAIL

Lead Officer	Paul Evans, Strategic Director (Regeneration and Neighbourhoods)	
Report Author	Julie Seymour, Planning Policy Manager	
Version	Final Version	
Dated	March 22 2007	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal & Democratic Services	Yes	Yes
Departmental Finance Manager	Yes	Yes
Executive Member	Yes	No
Date final report sent to Constitutional Support Services	March 22 2007	