

North London Waste Plan Matters, Issues and Questions Main Matter 1

Responses from North London Boroughs

A LEGAL COMPLIANCE

Main Matter 1 – Duty to Co-operate and Legal Issues

Duty to Co-operate

1 Have the Boroughs engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan’s preparation, as required by the Duty to Co-operate (under s 20(5)(c) and 33A)? On which issues has co-operation taken place? How was co-operation carried out and with what results? Has this been documented? Are there any outstanding issues?

1.1 Yes, the Boroughs have engaged constructively, actively and on an on-going basis as required by the Duty to Co-operate under s. 20 (5) c and 33 A. The Duty to Co-operate process that has taken place throughout the preparation of the NLWP (CD1/1) is outlined in Sections 1-6 of the Duty to Cooperate Report August 2019 (CD1/12).

1.2 In January 2014 the North London Boroughs wrote to all waste planning authorities who received waste exports from North London; a total of 121 WPAs. This was to ensure that all relevant cross-boundary and spatial issues with implications for the North London Waste Plan were considered during the plan preparation. The Duty to Co-operate: Consultation with waste planning authorities on waste movements January-April 2014 report (CD1/20) analyses all of the responses received and was made available on the NLWP website.

1.3 The North London Boroughs have a Duty to Cooperate with the bodies representing the planning areas to which “significant” quantities of waste are exported. In order to identify which of these 121 WPAs is significantly affected by the North London Waste Plan, the boroughs proposed and asked for feedback on a guideline threshold of 1,000 tonnes per annum (tpa) for non-hazardous waste and 100 tpa of hazardous waste as a measure of significance of the exports of their waste to individual Waste Planning Authorities’ areas. The majority of respondents supported these thresholds. The Duty to Co-operate report (June 2014) (CD1/20) provides further details on the methodology behind these thresholds and alternative options considered.

1.4 Since developing these thresholds, WPAs in the wider south east area agreed (in 2014) on higher thresholds of 2,500tpa for LACW/C&I, 5,000tpa for CD&E and 100tpa for hazardous waste. Since the majority of waste exported from North London is received in the

wider south east, it is appropriate for the North London Borough to adopt these thresholds to indicate “significant” exports.

1.5 In October 2014 a draft of the Duty to Co-operate Protocol was sent to all waste planning authorities who expressed a wish to continue a dialogue with the North London Boroughs. Comments were invited on the draft Protocol and suggested changes were incorporated into the final version of the document. The Duty to Co- operate Protocol (CD1/21) sets out how, when and in what way the North London Boroughs will discharge the duty to co-operate for the North London Waste Plan, who will be involved, and the intended outcomes of this process.

1.6 During May 2014-January 2015 the North London Boroughs wrote again to all those WPAs who expressed a wish to continue a dialogue on strategic cross-boundary waste issues. The focus has been on the nine WPAs to which 93% of waste exports are sent and these were prioritised. In addition the North London Boroughs liaised with prescribed public bodies with whom the boroughs must co-operate in line with planning legislation. The Duty to Co-operate Report (July 2015) (CD1/22) summarises this engagement and identifies next steps.

1.7 In July 2015 the North London Boroughs consulted on the Draft NLWP for a period of six weeks. A cross-boundary meeting took place on 10th September 2015 to discuss the Draft NLWP. Attendees included waste planning authorities in the East and South East of England who receive waste from North London, the Greater London Authority and the Environment Agency. The meeting took the form of presentations and discussions about the Draft NLWP, exports and Duty to Co-operate. Attendees were able to ask questions about the proposed strategy of the Draft Plan and how this would affect their areas. WPAs who receive waste from North London were encouraged to submit comments on the Draft Plan.

1.8 An Interim Report on the Draft Plan Consultation was published in January 2016, including a summary of duty to co-operate engagement and notes of the cross-boundary meeting.

1.9 In April 2016 the North London Boroughs wrote to the main recipients of North London’s waste exports to landfill. This was accompanied by a paper setting out how much waste was expected to be exported to landfill over the NLWP plan period. Table 3 of CD1/12 summarises those responses (Table 3) and identifies next steps.

1.10 The North London Boroughs consulted on the Proposed Submission NLWP between 1 March and 12 April 2019. As part of this consultation, draft statements of common ground were sent to waste planning authorities who receive significant amounts of LACW, C&I and CD&E waste from North London. This was accompanied by an updated Exports to Landfill 2020-2035 paper (CD1/13). Revisions included newly released WDI and HWDI figures for 2016 and 2017 and new waste figures in the NLWP Data Study (January 2019) (CD1/6-8).

Indicative figures for waste exports to landfill for each of the WPAs were included in the paper and in draft SoCG.

1.11 The North London Boroughs also wrote to WPAs who receive strategic amounts of hazardous waste exports from North London to ask if the recipient authority considers the issue of waste movements between North London and their area to be a strategic matter and if they wish to prepare a statement of common ground. An alternative to SoCG was suggested of monitoring waste movements and engaging again if these change significantly from the current trend. A follow-up email was sent to non-respondents stating that a lack of response would be taken as indicating agreement to monitor & engage when and if there are any substantial changes.

1.12 An audit of progress on draft Statements of Common Ground (SoCG) on strategic waste exports from North London is set out in section 4 of CD1/12. Of the seven waste planning authorities, or groups of authorities, identified as receiving significant amounts of LACW, C&I and/or CD&E waste exports from North London, all have agreed to sign SoCG. Of the eight WPAs who receive hazardous waste from North London, two have agreed to sign SoCG and have already drafted their own. A further four WPAs have agreed that the North London Boroughs should monitor waste exports and engage when and if there are any substantial changes. There has been no response from the remaining two WPAs which indicates (as per our correspondence) that they also agree to monitor waste exports and engage when and if there are any substantial changes. A summary of the SoCG progress is shown in Table 4.1 of CD1/12.

1.13 Table 5.1 of CD1/12 sets out the engagement that took place at the Proposed Submission consultation stage with those public bodies as prescribed under Section 33A.

1.13 A number of Waste Planning Authorities raised issues related to the figures set out in the document Exports to Landfill 2017-2035 (January 2019) which indicate the proportion of exports which could be exported to each area if current trends continue. These figures are also reflected in the draft SoCG. The Bedfordshire authorities, Essex, Hertfordshire and Thurrock in particular noted that their areas have decreasing void space capacity of landfill remaining in their area. They felt that the indicative figures do not take account of this and that a continuation of current trends is not an appropriate methodology to estimate future waste movements.

1.14 A number of solutions to this issue was suggested by both parties. This included providing clarity in the SoCG that the export figures to each area are indicative only and represent only one possible scenario of future exports from North London. Another option was to remove the figures altogether.

1.15 During consultation on the Proposed Submission NLWP, further suggested changes to the draft new London Plan were proposed by the Mayor which could change the indicative waste export figures. In particular, a new target of 95% of excavation waste put to beneficial

use would affect the amount and management route of excavation waste exported from London. Excavation waste is the main type of waste exported from North London. If the NLWP becomes better aligned with the new draft London Plan, as recommended by the GLA and as included in proposed modifications, the new target would change how outcomes for exports of excavation waste from North London and would therefore impact on the indicative figures to each area.

1.16 Given the potential for changes to the exports figures in the NLWP in light of further suggested changes to the London Plan, and the representations from the Mayor of London, the data in the SoCG may need to be reviewed when the examination is over as part of the next phase of the Duty to Co-operate process.

2 How has the Duty to Co-operate been met with regard to the spatial plans of:

- a) all the relevant prescribed bodies in London, including constituent Greater London Authority, City and London Borough Councils and neighbouring Councils?**
- b) all relevant local authorities and prescribed bodies outside London on strategic and cross boundary matters in the wider South East?**

2.1 At the beginning of the NLWP preparation process, the North London Boroughs, in January 2014, wrote to all 121 waste planning authorities who received waste exports from North London. This is explained in paragraph 2.1 of CD1/12. This gave all those local authorities the opportunity early in the plan making process to raise any relevant cross-boundary and spatial issues that the NLWP may give rise to.

2.2 All the relevant prescribed bodies in London and all those relevant local authorities and bodies outside London have been consistently engaged with throughout the plan-making process, as outlined in CD1/12. This has offered ample opportunity for any Duty-to-Cooperate issues to be considered throughout the plan making process.

2.3 There are no outstanding spatial planning issues raised by any Duty to Cooperate body.

Planning and Compulsory Purchase Act 2004, Section 19 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

3 Has the Plan been prepared in accordance with the Local Development Scheme including content and timescale?

3.1 Yes the Plan been prepared in accordance with the Local Development Scheme (LDS) of the North London Boroughs, including in terms of timing and content. Links to the LDS of each borough is contained in Links to Borough documents (CD1/15). The NLWP has been in successive LDS of each borough since 2007.

4 Has the Plan been prepared in compliance with the adopted Statement of Community Involvement (SCI), allowing for effective engagement of all interested parties and meeting the minimum consultation requirements set out in the regulations

4.1 Yes the Plan has been prepared in compliance with the adopted SCIs of each of the Boroughs. There is a link to each of the SCIs on the NLWP website. In 2014 the Boroughs drew up a NLWP Consultation Protocol (CD1/18) that set out how the Boroughs would consult on the NLWP in line with their SCIs and the Borough have followed the Protocol.

4.2 The NLWP Consultation Statement (August 19) (CD1/3) sets out the details of how the Boroughs have consulted on the NLWP in compliance with Regulations 18 and 19 of the Town and Country Planning (Local Plan)(England) Regulations 2012 as amended.

4.3 Appendix A of CD1/3 includes the Regulation 18 statement detailing;

- the bodies that were invited to make representation
- how they were invited to make representations
- a summary of the representations made
- how these representations were considered during preparation of the proposed submission of the NLWP

5 Have the Boroughs carried out a Sustainability Appraisal (SA) and prepared a report on the findings of the appraisal? Is there clear evidence to indicate why, having considered reasonable alternatives, the strategy in the Plan is an appropriate response? Does the methodology conform to that in the National Planning Policy Framework (NPPF), National Planning Policy for Waste (NPPW) and Planning Policy Guidance (PPG)?

5.1 The North London Boroughs have worked together in the Sustainability Appraisal (SA) of the NLWP. The NLWP covers part of the area of the London Legacy Development Corporation, a Mayoral Development Corporation, which is the planning authority for a small part of Hackney and Waltham Forest.

5.2 Paragraph 22 of the NPPF requires local planning authorities preparing a Development Plan Document (DPD) to undertake a Sustainability Appraisal (SA) throughout its production in order to ensure that it is fully consistent with, and helps to implement, the principles of sustainable development. Paragraph 32 of the NPPF requires local plans to be informed throughout their preparation by a SA that meets the relevant legal requirements including in relation to requirements for a Strategic Environmental Assessment. The relevant legislation for these is set out in:

- The Planning and Compulsory Purchase Act 2004 (as amended);
- The Environmental Assessment of Plans and Programmes Regulations 2004 (as amended); and
- The European Directive 2001/42/EC

Together these require a strategic environmental assessment to assess any significant environmental effects of emerging DPD policies and area allocations. The SA should demonstrate how the policies chosen will contribute to the achievement of sustainable development. This includes an assessment of all reasonable alternative options.

5.3 Earlier SA work includes :

- A SA scoping report - developed at the same time that the LPAs were gathering evidence and developing options for the new NLWP. Published for consultation in June 2014 and subsequently updated to take account of the representations received; and
- An earlier draft of the SA was produced in July 2015, which provided a summary of the SA process undertaken and documents the findings of the SA of the draft NLWP and reasonable alternatives. It was used as a consultation document and issued to statutory bodies and stakeholders for comment alongside the draft NLWP document.

The LPAs have taken into account and complied with all of the relevant legal and policy requirements for SA throughout the development of the NLWP and that this is reflected in the above documents and the current SA (January 2019). The LPAs have also taken into account National Planning Policy Guidance (NPPG) in developing the SA.

5.4 Section 4.2 of the SA clearly sets out an assessment of the reasonable alternatives relating to the strategic approach and the identification of site and area allocations in the NLWP. It considers, in detail, the approaches that were put forward where there was considered to be a range of reasonable alternative approaches to meeting the NLWP objectives. It then identifies for each issue what was considered to be the most sustainable option to take forward and why.

5.5 To determine the strategic approach an Options Appraisal Report (CD1/10) was produced to consider different scenarios around how much waste will be generated over the plan period (economic and population growth assumptions), how much waste can be managed within North London (capacity strategy, and how this waste should be managed (management strategy). The outcome of the report and the reasons for the option selection process is summarised in the SA.

5.6 The approach to identifying and assessing site and area allocations in the SA is also explained.

5.7 For each of the key issues the SA identifies the options considered, provides an assessment of their sustainability implications and sets out in a conclusion for each issue, the rationale for the chosen option.

5.8 Therefore the SA meets the requirement to evaluate all reasonable alternatives and it sets out in a clear and comprehensive manner the reason alternatives have not been selected and the chosen option pursued.

5.9 The SA scoping report identified 14 sustainability objectives, within the SA Framework, to test the NLWP strategic objectives, policies and area allocations as they were developed. The key issues to be addressed within the plan were identified at the issues and options stage of consultation and informed by the scoping assessment. Options for addressing

these, including reasonable alternatives, informed the development of the NLWP and were evaluated as part of the SA process.

5.10 The Spatial Strategy and all policies and area allocations in the NLWP have been assessed against the SA Framework. A full appraisal of the chosen approach for all policies against the 14 sustainability objectives was undertaken alongside the Regulation 18 draft NLWP and the Regulation 19 proposed submission NLWP. This included taking account of their likelihood of effects; the timeframe for impacts; how they might change over time; and the permanence of change.

5.11 The SA illustrates the assessment of the likely significant effects of policies and proposals by presenting a summary of the interaction between the NLWP objectives and policies against the sustainability objectives in a suite of matrix tables (in the appendices). These highlight whether the sustainability impact of the proposal is:

- Major positive
- Positive
- Neutral
- Negative
- Major negative
- Uncertain

The SA also gives consideration to ways of mitigating adverse effects and maximising beneficial effects as well as to propose measures to monitor the significant effects of implementing the NLWP.

5.12 The methodology used for the SA process is therefore appropriate and consistent with the approach taken by authorities in the development of other local plans. The appraisal stages have also shown to be suitably comprehensive. The LPAs have gone beyond the basic requirements by publishing a first draft of the full SA alongside the draft Regulation 18 NLWP. The SA also sets out in a clear and consistent manner a robust assessment of the likely significant effects of the policies and proposals.

6 Is the Plan consistent with national policy, including the NPPF, NPPW and PPG? Are there any significant departures from national policy? If so, have they been justified?

6.1 The Plan is consistent with national policy and guidance. As stated in paragraph 1.6 of the submission NLWP CD1/1 the NLWP has been prepared in line with the requirements of the NPPF, the PPG and the NPPW. There are no significant departures from national policy proposed

7 Does the Plan comply with the 2004 Act and the 2012 Regulations in terms of publishing and making available the prescribed documents?

7.1 Yes, all required documents have been provided in paper form in main planning offices and libraries in all seven Boroughs and electronically via the NLWP website Document Centre.

8 Is it clear how the Plan secures development that contributes to the mitigation of, and adaptation to, climate change?

8.1 Yes, the consideration of climate change throughout the Plan is outlined from paragraph 2.27 to 2.31. It is a requirement of Policy 5 (point (i)) that the development avoids increasing the levels of vulnerability to climate change, makes appropriate adaption and mitigation measures to achieve this and helps reduce greenhouse gas emissions. Further, recognising the critical need to tackle climate change, Policy 6 (Energy Recovery and Decentralised Energy; and see paragraph 9.57) requires that applications for waste management facilities incorporate opportunities for sustainable energy recovery and combined heat and power.

8.2 Climate change is also a major factor of the monitoring of the Plan moving forward with inclusion at point 8 of Table 14: NLWP Monitoring Indicators and also within the monitoring table set out in the SA (Table 19 – specifically points 7-10 incl.).

8.3 This is in addition to the climate change policies set out in the Local Plans of all seven Boroughs.

8.4 The plan secures (via the SFRA, and Sequential test report) the requirement for sites to manage surface water runoff and flood risk at a plot scale for 1% AEP event including an allowance for climate change. By managing and mitigating the developments surface water runoff, including an allowance for climate change, development will be resilient to forecast changes in our client over its lifetime, and not increase flood risk to 3rd parties. By requiring individual applications to be resilient to flood risk, inclusive of an allowance for climate change, the development will be able to integrate adaptation, resistant and resilient to the impact of flooding.

9 How have issues of equality been addressed in the Plan? In particular, how will the Plan will help to advance equality of opportunity between people who share a “protected characteristic” as defined in the Equality Act 2010¹ and those that do not share it and further the other two aims of the Act?

9.1 An Equality Impact Assessment (CD1/17) was undertaken to assess the implications of the emerging NLWP, and the assessment concluded for each of the equality areas the following:

“A wide selection of community groups live within the urban areas, therefore the allocation of waste management sites in the proposed locations does not discriminate against any particular section of the community. The selection of proposed areas for potential waste facilities has taken into account the proximity of sensitive receptors (such as schools and hospitals), thereby helping to minimise the impact on vulnerable sections of the community. Therefore implementation of the policies and proposals should not lead to unacceptable adverse effects on different communities.”

9.2 The screening stage of the EIA concluded that there were no identified negative effects of high significance on any of the assessed equality areas, and therefore a full EIA was not required. It is therefore concluded that the policies in the plan do not discriminate against the protected characteristics.

9.3 New waste management facilities can boost the local economy by creating markets and providing heat from the waste to the local community and local businesses. These new opportunities can benefit all members of society, regardless of whether they fall into one of the protected characteristic groups or not.

Conservation of Habitats and Species Regulations 2017

10 Does the Plan meet the requirements of the Conservation of Habitats and Species Regulations 2017, including any relevant case law [in particular the ruling of 12 April 2018 by the Court of Justice of the European Union (CJEU) *People over Wind, Peter Sweetman v Coillte Teoranta*, Case 323/17] to consider the likely significant effects of projects or plans on European protected sites, individually or in-combination? In particular, have Appropriate Assessments been undertaken under the Habitats Directive? If not, has a screening exercise shown that there is no need for such assessments?

10.1 All relevant case law has been considered when preparing the NLWP HRA. However, due to recent advice received from Natural England, who raised no issue with the HRA during the consultations on the NLWP, it is proposed to add additional text to the HRA to clarify the impact of recent changes.

¹ “Protected characteristics” are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

10.2 The conclusions of the HRA remain the same, but amendments have been made to clarify the distinction between a screening exercise and an Appropriate Assessment. The conclusion of the Appropriate Assessment is that it can be concluded that the proposals of the NLWP will not adversely affect the integrity of any designated European Site.

10.3 The HRA of the NLWP has 'screened in' air pollution effects arising from the implementation of the Plan as having some potential to affect European designated sites. One of the European designated sites which has been 'screened in' to the Assessment (Epping Forest SAC) is known to be susceptible to air pollution.

10.4 To accurately calculate air quality impacts which may arise from a Plan waste operation (an allocation) a level of detail is required about the operational procedures which will apply for the allocation concerned; this level of detail is not available at this strategic plan making stage of the NLWP. However, Policy 5 requires that applications for waste management facilities and related development should demonstrate that they will have no adverse effect on the integrity of an area designated under the Habitats Directive.

10.5 The main potential increases in air pollution which are considered likely to arise from Plan implementation relate not to the actual waste operations but from potential traffic movements to and from sites.

10.6 The Design Manual for Roads and Bridges (DMRB) describes the approach for the assessment of the impact of emissions from schemes on the strategic road network. A quantitative air quality assessment is required if European Sites are within 200 m of affected roads. Within this context, the distance of the affected road from the designated site is an important consideration. Air pollution levels fall sharply within the first few tens of metres from a road before reducing more slowly with distance. The air quality impact of a given change in traffic on a designated site where the relevant habitat/ species is 100 m from a road will be very different to one that abuts the road.

10.7 Only one (new) allocation considered in the HRA is within 200m of a designated site and in the case of this site, habitats within the European site concerned (Lee Valley) are not assessed as being particularly vulnerable to traffic pollution effects. The conclusion of the HRA is that the development of the site concerned as a waste facility will not have any likely significant effects on the special nature conservation interests of the Lee Valley SPA.

10.8 Potential air pollution effects arising from the thermal treatment of waste is considered in the HRA, but it is concluded that the very stringent controls on emissions from any new facility required in addition to the existing policy framework would provide sufficient safeguards such that any harmful impacts on European sites will be avoided.

Flood Risk

11 Is the Strategic Flood Risk Appraisal (SFRA) adequate, up to date and compliant with paragraph 157 of the NPPF?

11.1 An updated Flood Risk Sequential Test report (October 2019) (CD1/19) has been prepared to support the Strategic Flood Risk Appraisal (SFRA).. The updated report includes the following amendments:

- Update of mapping information and tabularised flood risk to reflect latest publicly available flood risk data.
- Updated and extended sections on climate change, including requirements for site specific flood risk assessments needed to accompany individual planning applications .
- Sequential test assessment and conclusions.
- Site layout planning requirements in regard to flood risk.
- Individual sites revised with some being added and some being removed.

11.2 The Flood Risk Sequential Test Report (October 2019) (CD1/19) outlines the applications of a sequential, risk-based approach to the location of development, taking into account the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property.

11.3 The SFRA work is up to date, adequate and meets the requirements of paragraph 157 of the NPPF.