

North London Waste Plan to 2035

Hearing Statement Main Matter 1 – Legal Issues

Question 6



Female Oedemeridae Nobilis foraging on Pinkham Way

**The Pinkham Way Alliance
Representor No 36**

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Introduction

This Hearing Statement is submitted on behalf of the Pinkham Way Alliance (PWA).

Pinkham Way Alliance is a community campaign group which came together in early 2011 when residents living in the surrounding area of the Pinkham Way site became concerned about plans by the North London Waste Authority (NLWA) to develop the site for a large scale MBT waste facility.

Since then, PWA has taken an active interest in and has participated in the preparation of the original Submission version of the North London Waste Plan, the Haringey Local Plan: Strategic Policies document and the Haringey Site Allocations DPD, having made representations to and appeared at the examinations in public of all those plans.

PWA has approximately 3000 supporters

1. Question 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?

NPPF and NPPW (including Appendix B) and Planning Practice Guidance

- 1.1 PWA considers that the Plan is not consistent with the NPPF, NPPW and PPG and that it has significantly departed from those policies by including the Pinkham Way site in the Plan.
- 1.2 The NPPF sets out a number of core policies which should underpin plan-making and decision-taking:
- 1.3 Plans must be positively prepared, justified, effective and consistent with national policy¹. There is some doubt about whether the Plan has been positively prepared, particularly in relation to the Pinkham Way site and this will be discussed in MM5 Q 63.

Conservation and Enhancement of the Natural Environment

- 1.4 NPPF requires decisions and plans to contribute to and enhance the natural and local environment² and requires that to protect and enhance biodiversity and geodiversity, plans should ...”promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity³.”
- 1.5 That presumption is not unconditional. The NPPF makes it clear that when plan making, the other policies in the NPPF must be taken into account, especially where there are likely to be adverse impacts from proposals and policies that demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 1.6 Preparation of plans and policies need to be underpinned by relevant and up to date evidence⁴. The lack of acknowledgement of the true planning status of Pinkham Way SINC, its open space nature and the fact that it’s a brownfield site with environmental value, and its long history of contributing to nature conservation is an example of failing/refusing to take into account relevant evidence. See also comments at MM5 Q63.

¹ Paragraph 30, NPPF, February 2019

² Paragraph 170, NPPF, February 2019

³ Paragraph 174-177, NPPF, February 2019

⁴ Paragraph 31, NPPF, February 2019

- 1.7 The Framework Para 118 b) requires that policies should recognize that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production.
- 1.8 With the exception of the last one, Pinkham Way SINC has been performing all those functions for many years and continues to do so. The NLWP offers no evidence that this has been given this any consideration in the preparation of the plan.
- 1.9 Para 171 advises that Plans should allocate land with the least environmental or amenity value and should take account of the hierarchy of designations and take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure.
- 1.10 PWA asserts that the area allocation of Pinkham Way in the NLWP conflicts with this principle because the site is allocated as a site of Grade 1 Borough Importance for nature conservation. The designation for potential waste management uses is incompatible with that nature conservation designation, and its development would never result in achieving a net gain in biodiversity.
- 1.11 The NPPF requires Plan makers to ensure when selecting sites that the land is suitable for its proposed use taking account of ground conditions and risks arising from land instability and contamination.⁵
- 1.12 Pinkham Way is a contaminated former landfill site with uneven ground.⁶
- 1.13 The NLWP has not given sufficient consideration to the above policies when allocating the site for inclusion in this Plan for waste management use, and that therefore its allocation is contrary to NPPF and Planning Guidance⁷ and would not constitute sustainable development.
- 1.14 The NPPW requires Waste Planning Authorities (WPAs) to consider a broad range of sites, including industrial sites and sites identified for employment uses, co-location opportunities and to give priority to the re-use of PDL.⁸ However, it also requires that identified sites should be assessed against the locational criteria in Appendix B which advises that locations should be avoided where there is land instability, nature conservation, traffic and access issues and where it would be likely to have a detrimental impact on sensitive receptors⁹.
- 1.15 The Pinkham Way SINC is currently an undisturbed natural habitat surrounded by a network of MOL and open space. There are no lights on the site. Notwithstanding the incompatibility on nature conservation and biodiversity grounds, the introduction of a waste facility on the site is likely to cause harm through noise, light, vibration, traffic disturbance, air emissions and dust to the ecology of the site.

⁵ NPPF para 178 – and see also MM1 Q 6 Appendix 13A – Pinkham Way Strategic Risk Assessment, October 2019

⁶ Arup Scoping Report 2011 pp19 and 20

⁷ Paragraph: 001 Reference ID: 66-001-20190722

⁸ NPPW para 4

⁹ NPPW Annex B paras b), d), f), g), j), l)

- 1.16 Planning guidance advises that when considering an allocation of a site, consideration should be given to whether there is a realistic prospect of it being developed for its intended use, taking into account the length of time its current allocation has been in place.¹⁰
- 1.17 The NPPF clearly seeks to encourage the effective use of land that has been previously developed (brownfield land), except where it has biodiversity value.
- 1.18 The NPPW advises waste planning authorities to give priority to the re-use of previously developed land¹¹. Whilst there is no qualification in the NPPW about avoiding environmentally valuable brownfield land, the NPPW should be read in conjunction with the NPPF and account must be taken of the relevant policies in that Framework.¹² The NPPF gives priority to brownfield land except where would cause harm to sites of biodiversity importance.¹³
- 1.19 In all its past decisions about the designation of the Pinkham Way SINC, the NLWP appears to have proceeded on the basis that the site's status should be regarded as having been previously developed (brownfield) because of its historic use as a sewage works . The PWA believes that such an assumption and approach is erroneous and is an unsound basis on which decisions within the plan-making process should be taken.
- 1.20 The use of the site as a sewage works ceased in 1963 and the buildings and surface plant associated with the former use were subsequently demolished and removed. The vestigial foundations in the north east corner, which are hidden by vegetation for all but a few months of the year, occupy approximately 1% of the site. The historic lawful use has, therefore, been abandoned. The site has been in use as a SINC for almost 40 years. Since the designation of part of the site as Employment Land in 1999, there has been no employment use on the site.
- 1.21 The Plan's criteria for assessment of sites were heavily based on the NPPW and its guidance. There was plenty of reference to the NPPW in the NLWLP Sites and Areas document 2015 which set out the basis on which the site assessment criteria were developed but little evidence that guidance was sought from Annex B for from the NPPF. The rare reference to the NPPF was in relation to the requirements for achieving a sound Plan rather than selecting suitable sites.
- 1.22 The NPPF definition of "previously developed land" sets out the basis on which certain categories of land should be excluded from this definition. The PWA considers that the site falls squarely within the exclusions to that definition. The Sustainability Appraisal evidence supports this view, see references at 3.13 and onwards.

¹⁰ Paragraph: 001 Reference ID: 66-001-20190722

¹¹ NPPW para 4 last bullet point

¹² NPPF 2019 para 4 When preparing plans for waste regard should be had to the policies in the Framework where relevant.

¹³ NPPF 2019 para 117

1.23 However, Haringey Council continues to refuse to clarify its position about whether it considers the site brownfield/PDL and suitable for redevelopment, or accepts that it is excluded from that definition on the basis of its high environmental value and the signs of previous use have been absorbed into the landscape over the process of time.

PINKHAM WAY						ISSUE 02
STRATEGIC RISK ASSESSMENT						25th October 2019
Objective:		To identify the probable, relative, high-level Planning Risks, Physical Risks and Cost Risks attached to any development of the site				
Context / Basis of Reference:		<p>This Risk Assessment for the site has been prepared to help assess the feasibility and viability of developing some (or all) of this land. It highlights the physical, economic and policy obstacles that would impact any development.</p> <p>Consultants acting for NLWA, LBH and LBB have stated that the site is highly constrained. Their material is included in this Risk Assessment.</p> <p>PWA have commissioned independent investigations by experts to assess Biodiversity issues.</p> <p>PWA has carefully considered the impact of all the available evidence and has concluded that any development of the site would have significant, negative impact with high cost attached.</p> <p>It would appear that, because of the constraints on the site, its development would be unrealistic and an ineffective use of land.</p> <p>Having taken all relevant factors into account, PWA conclude that the site is unsuitable for development and unlikely to be economically viable.</p> <p>Planning Applications that have heretofore been made for the development of the site have been refused or withdrawn.</p> <p>This Risk Assessment calibrates the risk stemming from the above studies and incorporates material prepared for, and by the NLWA, LBH, LBB and PWA which is referenced in this matrix.</p> <p>No comment has been received from NLWA, LBH and LBB since the first issue of this Risk Assessment in March 2015.</p>				
		RISK LEVEL	RISK LEVEL	RISK LEVEL		
Item No	Subject	High	Medium	Low	Key References/Comments	
1	Impact on SINC Grade 1 Nature Conservation Value				<p>ref: NPPF Section 15, "Conserving and enhancing the natural environment"; paras 174-177 incl, "Habitats and biodiversity"</p> <p>Brownfield Sites of High Environmental Value</p> <p>GLA Biodiversity Strategy and LBH Biodiversity Plan</p> <p>Special Criteria apply to land as part of an Ecological Green Corridor Network linked to Metropolitan Land</p> <p>Western half of site is shown on Natural England UK Priority Habitat maps</p> <p>ref: NPPF Section 11, "Making Effective Use of Land" excludes any development that would cause harm to designated sites of importance for biodiversity</p> <p>para 118 b states, "Planning Policies and decisions should recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production"</p>	

2	Ecological Impact					<p>ref: NPPF Section 15, "Conserving and enhancing the natural environment; paras 174-177 incl, "Habitats and biodiversity" ref: Preliminary Ecological Appraisal prepared by Huma Pearce & Denis Vickers for PWA, date October 2013; Reference No: 2013_012 Preliminary Invertebrate Survey 2014-2015 by Edward Milner identifies rich "Open Mosaic" Area ref: LUC Report, Oct 2014 for LBH, Appendix 7 ref: NPPF Section 11, "Making Effective Use of Land" excludes any development that would cause harm to designated sites of importance for biodiversity</p>
3	Environmental Corridor & Metropolitan Open Land					<p>ref: NPPF Section 15, "Conserving and enhancing the natural environment" ref: Mayor's Biodiversity Strategy, Appendix 1, items, A1.2.17; A1.2.18 and A1.2.19:- sites of importance are included in (green) corridors, but these deserve protection in their own right Site is demarcated as Green Space in the ALGG and LBH maps as well as the LBH Green Grid map MOL land abuts site and forms part of site containing features of nature conservation and habitat interest and forms part of an ecological corridor All London Green Grid (ALGG): Mayor's Policy to promote the design and delivery of green infrastructure across London</p>
4	Existing Culvert					<p>ref: Jacobs Development Constraints Report, April 2008 - para 2.4 and 2.9 - condition of culvert unknown and its vulnerability to contamination; risks associated with flooding ref: Arup Scoping Report, 07/03/11, para 3.8 ref: Environment Agency letter to LBH, date 20/03/14 Deculverting watercourses are to include a set back to</p>

7	Contaminated Land								<p>ref: NPPF Section 15, Conserving and enhancing the natural environment; paras 178-183, "Ground Conditions and pollution"</p> <p>ref: Jacobs Development Constraints Report, April 2008 - para 2.2, Lead at concentrations above CLEA Guidelines para 2.3, Microbiological Risk para 2.4, Groundwater Contamination para 2.5, Gas Protection Measures</p> <p>Extent of Contaminated Land is approx 80% of site area ref: Arup Scoping Report, 07/03/11, para 3.2 - confirm the following:- Elevated concentrations of lead; Elevated concentrations of microbial contaminants in soils and groundwater; Further gas monitoring required</p>
8	Historic Landfill								<p>ref: Jacobs Development Constraints Report, April 2008, para 2.7 - The volume of buried concrete waste is difficult to quantify. Extensive waste has been deposited throughout the site</p> <p>Land Instability:- ref: Arup Scoping Report 2011, p20 "former landfill site"</p>
9	Geotechnical Ground Conditions								<p>ref: NPPF Section 15, paras 178-183 "Ground Conditions and pollution"</p> <p>ref: Jacobs Development Constraints Report, April 2008, para 2.8 Settlement & Foundation Design - The loose and variable nature of the Made Ground poses a risk of excessive settlement for foundations located within it. This risk is compounded by potential infiltration of water which can lead to localised ground collapse in poorly consolidated areas.</p> <p>A thin covering of Made Ground provides a pathway to weathered London Clay, the surface properties of which sensitive to variations in moisture content.</p>
10	Existing Roads Infrastructure								<p>ref: Arup WIDP 27/10/2009: High Risk Residential Roads to west of site unable to accommodate any increase in traffic movements</p>

					A406, North Circular Road is often heavily congested
11	Access to and Egress from Site				<p>ref: Arup WIDP 27/10/2009: High Risk</p> <p>ref: Arup Scoping Report, 07/03/11, para 3.6</p> <p>Access from Orion Way not possible without destroying land rich in invertebrates</p> <p>Direct access / egress to and from the North Circular Road (A406) is not feasible</p>
12	Public Transport Links				<p>ref: NPPF Section 9, "Promoting Sustainable Transport"</p> <p>ref: PTLA rated 1a (LBH lowest rating)</p> <p>The site is isolated and there is a lack of transport accessibility</p> <p>The site is inaccessible to people with walking difficulties using public transport</p> <p>ref: Atkins ELS, Feb 2015, para 5.41 - site contaminated and not close to public transport</p>
13	Flood Risk				<p>ref: NPPF Section 14, "Meeting the challenge of climate change flooding and coastal change"; paras 155-165 incl</p> <p>ref: Ove Arup & Partners Ltd, WIDP, RevB, 27/10/09</p> <p>Figure 2. Pinkham Way Flood Risk</p> <p>ref: Environment Agency letter to LBH, date 20/03/14</p> <p>Strategic Flood Risk Assessment required</p> <p>Environment Agency require a thorough evidence base in the form of a sequential test supported by SFRA's</p> <p>Sites with potentially contaminated land will be expected to submit a preliminary risk assessment in line with para 007 of the National Planning Practice Guide. Any sites with former contaminative uses would be subject to land quality conditions</p>
14	Conflict of Ownership				<p>Landlocked part of site is owned by LB Barnet therefore Access would be required across MOL or "Open Mosaic"</p> <p>LBB area equates to approx 30% of total PW site area</p>
15	Tree Preservation Orders				Protected by legislation

									Town & Country Planning Act 1990 Town & Country Planning (Trees) Regulations 1999
16	Existing Topography								ref: Jacobs Development Constraints Report, April 2008, Figure 4, Topographical Survey Figure 6, Areas of Significant Gradient ref: Arup Scoping Report, 07/03/11, para 3.4.1 - the topography of the site is very uneven due to former landfill and sewage works; the level difference is approx 15metres between the highest southernmost point of the site and the lowest level adjacent to Pinkham Way/NCR
17	Utilities Infrastructure								ref: Jacobs Development Constraints Report, April 2008, para 4.3 and para 4.4 and Figure 3 EDF Electricity buried cables in an East-West central location across the site
18	Network Rail								British Transport Commission Act 1949 NR Guidelines to be followed in conjunction with building works in proximity to NR Property - ie structural stability of NR property, drainage and flood risk implications, foundations, electromagnetic interference, fire risk, etc
19	Cost Risk (VFM)								This Strategic Assessment indicates that there is a significantly high level of cost risk attached to development of this site. Decontamination Costs for Pinkham Way by Meera Bedi (Head of Development) OpenDoor Homes, 11/04/2017 Additionally, it must be noted that there is considerable potential for heightened Cost Risks attached due to the cumulative impact arising from the synergy of elements that comprise this Site of Importance for Nature Conservation (SINC) - Borough Grade 1 Importance. Consequently, the site is not likely to provide VFM for any developer, let alone a public body.

