

Our ref: NW/Q210322
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Email: neil.wells@quod.com
Date: 17th March 2023



Planning Policy
Environment and Community Service
Wandsworth Council
The Town Hall
Wandsworth
London
SW18 2PU

Dear Sir or Madam,

Consultation on the Wandsworth Local Plan Main Modifications and Policy Map Changes Representations made on behalf of SGN Mitheridge Ltd The Town and Country Planning (Local Planning) (England) Regulations 2012

Quod is instructed by SGN Mitheridge Limited to submit representations to the Wandsworth Publication Local Plan Proposed Main Modifications document (hereby the “Proposed Main Modifications”). These representations are submitted within the consultation period that runs from 3rd February 2023 to 17th March 2023.

SGN Mitheridge Limited are the site owner and developer of the Wandsworth Gasworks and Calor site. Common Projects are managing the project on their behalf. Where reference is made to Common Projects within these representations, Common Projects is acting on behalf of SGN Mitheridge Limited.

1 Engagement by SGN Mitheridge Limited

Mitheridge and Scotia Gas Network (SGN) have formed a Joint Venture Partnership called SGN Mitheridge Ltd to bring forward the redevelopment of the Wandsworth Gasworks site on the Wandle Delta. It is an exciting opportunity and one that will help complete the transformation of the River Wandle between the Ram Brewery and the River Thames. Common Projects is managing the project on their behalf.

SGN first engaged with Wandsworth Council in 2013 to create an appropriate policy framework for decommissioning the gas works and the realisation of a new residential quarter for Wandsworth Town. SGN has subsequently taken part in Wandsworth’s Local Plan review at each stage of consultation to inform the current adopted development plan policy for the site which promotes residential led mixed-use development.

SGN has also worked alongside National Grid to inform policies of the London Plan. Policy H1 of the adopted London Plan allocates gasworks sites as strategic sources of housing as a result of the engagement undertaken by the utility companies at the London Plan EIP.

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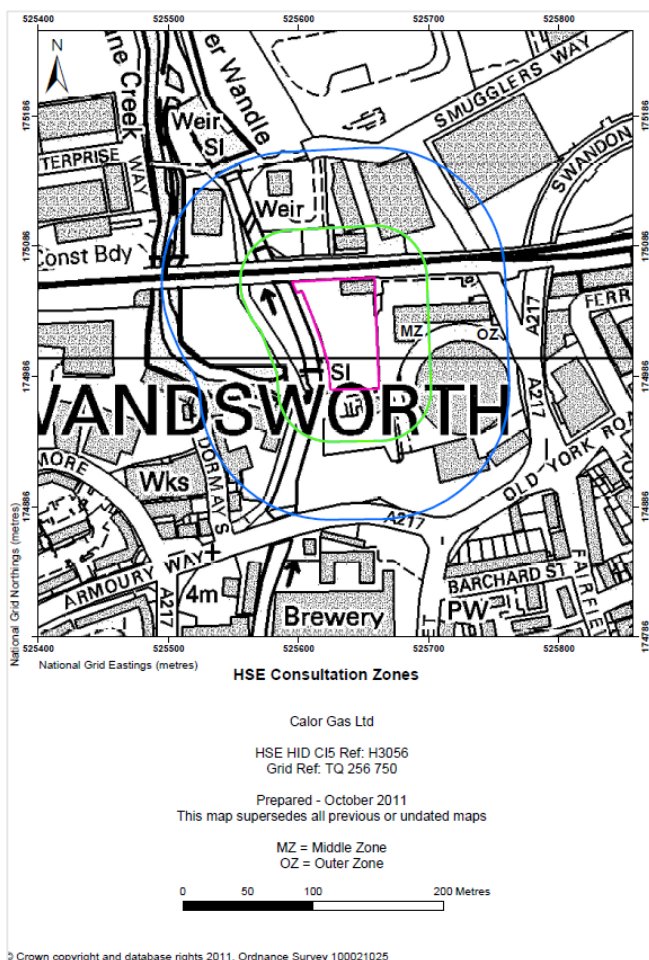
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SGN demonstrated its desire to assist Wandsworth Council in the delivery of the Wandle Delta local plan objectives by revoking its Hazardous Substances Consent in 2019. The Calor site, which is now owned by SGN Mitheridge, still benefits from a Hazardous Substances Consent (Figure 1), which impacts the development capacity of the Wandle Delta, but can be revoked with a successful grant of planning permission for redevelopment of the site; and will subsequently unlock the development capacity for this area of Wandsworth.

Figure 1 – The Calor Gas Hazardous Substances Consent (Consultation Zones)



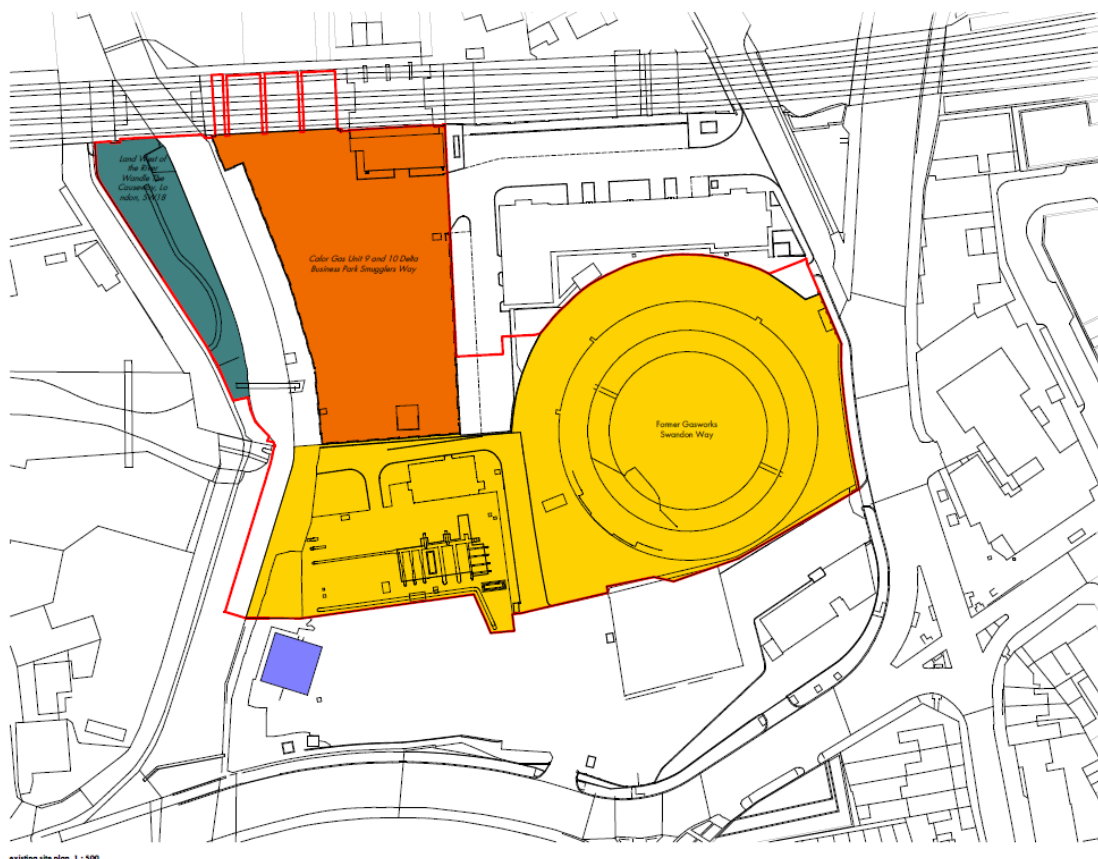
Through the joint venture with Mitheridge, a partnership now exists to realise the policy requirements of the Wandsworth & London Plan for this site.

The partnership initially engaged in pre-application discussions with the Council, Greater London Authority and Council's Design Review Panel in 2020, through its appointed partner Common Projects, in relation to the submission of a hybrid planning application to redevelop the Wandsworth Gasworks site and land occupied by Calor.



The hybrid planning application was subsequently submitted to the Council in December 2022 (ref. 2022/3954). The land subject to this planning application is identified in Figure 2 below, and we refer to this site as “the Gasworks site” within our representations.

Figure 2 – The Gasworks Site



Common Projects will continue lead the exciting journey to finally transform this strategic, but underused, brownfield site which sits centrally within the Wandle Delta. It forms an integral link between the Ram Brewery development and the River Thames and has the potential to deliver many public benefits for Wandsworth Town. The Gasworks site will contribute towards the borough's housing and employment targets and deliver significant benefits including community uses and extensive open space and public realm.

Common Projects have engaged with the emerging Local Plan throughout its preparation stage. **Representations were made to the Regulation 18 and 19 consultations, which remain valid, and to which this representation should be read alongside;** and most recently appearing at the Examination in Public Hearing held in November 2022.



2 Context of the Representations

To assist with the consideration of our representations, we have benchmarked the policies within the Main Modifications version of the Wandsworth Local Plan against the requirements of National Planning Policy Framework 2021 (“The Framework”).

Paragraph 11 is most relevant, namely the presumption in favour of sustainable development. It requires that “plans and decisions should apply a presumption in favour of sustainable development”.

For plan making this means the following:

All plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects

We have also considered the Main Modifications policies against paragraph 35 of the NPPF, and whether they can be considered ‘sound’. The NPPF considers plans to be ‘sound’ if they meet the following tests.

- a) *Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*
- b) *Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
- c) *Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*
- d) *Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.*

We trust that the representations provide a constructive commentary and request that this submission is considered as part of the consultation exercise. We would welcome the opportunity to meet with the Council to discuss our submission.



3 Representations to the Main Modifications version of the Wandsworth Local Plan

Common Projects broadly welcomes the approach taken by Wandsworth Council to renew its local plan and add further guidance on how it seeks to transform its town centres into major assets for the Borough; however, we set out our formal representations to the Main Modifications to the Wandsworth Local Plan below.

Main Modification 12: Gasholder Cluster (WT4)

Common Projects **SUPPORT** the amended wording proposed within MM12 following the representations submitted by Common Projects to the Reg 19 Local Plan consultation (February 2022).

The applicant has undertaken extensive discussion with officers at the Council and the Environment Agency have demonstrated that there are a number of options which can deliver biodiversity improvements to the site, and the revised wording reflects this.

Detailed analysis of ecological effects of tall buildings along the River Wandle has been undertaken as part of the submitted planning application to robustly consider the existing ecological value, specific effects of development and proposed mitigation.

Biodiversity and ecology enhancements are to be implemented across the site through the provision of landscaped areas, play space and additional tree and shrub planting. The proposals submitted as part of the planning application will result in an Urban Greening Factor score of 0.5 (above the 0.4 requirement of the London Plan), and a Net Biodiversity Gain of 34.83%, which is significantly more than the minimum 10% required by the Environment Act 2021.

Table 1.1 – Main Modification 12, as proposed by LB Wandsworth within Main Modifications document (2023)

Policy Reference	Gasholder Cluster (WT4)
MM12: Gasholder Cluster (WT4)	<p>Amend paragraph 4.50 as follows:</p> <p><i>'Works to the banks of along the River Wandle will be expected to contribute to the biodiversity of the area. Consideration should be given to the special ecological and wildlife habitats and allowance for the sensitivity of these should be made in the siting, height and design of the buildings and the riverside walk dimensions. <u>Consideration should be given to historic contamination to ensure that any works undertaken to the river edge do not inadvertently create new routes for contamination to migrate to sensitive receptors.</u>'</i></p>



Justification	<i>To improve the biodiversity of the area, it may not just be works to the riverbanks that is required and that historic contamination would need to be taken into account when proposing works to the river edge.</i>
Reason for change	<i>As a result of Reg 19 Repls.</i>

Main Modification 13: Gasholder Custer (WT4)

Common Projects **OBJECT** to the proposed amendment. Please see **Appendix 1** which was previously submitted to the Council jointly in December 2022. To summarise some of the key points are below.

We note the Council has proposed to replace the word ‘*must*’ with ‘*should*’ in the wording of the Draft Site Allocations, including the Gasholder Cluster Allocation (WT4). This amendment provides no added flexibility to the Draft Site Allocations (or Draft Policy LP4 (MM146)).

There is a general recognition that there is little, if any difference, between the two words, given that both words indicate the fact that something is mandatory and should be carried out as a duty (emphasis added).

In simple terms, the online Oxford English Dictionary defines ‘must’ and ‘should’ interchangeably:

- “**must**” - “Had to, was obliged to, it was necessary that (I, etc.) should” (emphasis added) and “Expressing necessity: am (is, are) obliged or required to; have (has) to; it is necessary that (I, you, he, it, etc.) should” (emphasis added);
- “**should**” - “in stating a necessary condition: = ‘will have to’, ‘must’ (if something else is to happen)” (emphasis added).

Further, it should be noted that:

- A Westlaw search identifies over 200 cases in which the Courts in England & Wales have, in many different contexts (including in relation to planning policy, e.g. *Sisson Cox Homes v Secretary of State for the Environment* [1997] J.P.L. 670), used the words ‘must’ and ‘should’ with the same meaning, e.g. where the Court has used the phrase ‘must or should’ or ‘should or must’; and
- In *Lampton & Holt Lines Limited v Coubro & Scrutton (11 & I) Limited v Coubro & Scrutton (Riggers and Shipwrights) Limited* [1982] 2 Lloyd’s Rep. 42, the word ‘must’ was read as meaning ‘should usually’.

Given the above, we are of the view that, should the wording within the Draft Site Allocations (including Gasholder Cluster (WT4)) and Draft Policy LP4 be amended as LBW have proposed, then any buildings proposed in tall or mid-rise zones which exceed the building heights set out in Appendix 2



of the Draft Plan will be regarded as being in conflict with Draft Policy LP4, irrespective of whether the policy cites the word ‘must’ or ‘should’. This policy conflict gives rise to a range of issues, many of which were discussed at the Matter 13 Hearing Session in November 2022, including:

1. Disincentivising planning applications on many sites, including Site Allocations
2. Sterilising the development potential of many sites, including Site Allocations, including where the Council through discussions at planning application stage are supportive of buildings taller than the heights now proposed (such as the Gasworks site); and
3. The issues that arise from the fact that, under the new Levelling Up and Regeneration Bill, any conflict with the Development Plan will be required not just to be outweighed by other material considerations, but “strongly” outweighed. This will further disincentivise development and prevent the optimisation of available and deliverable sites.

We therefore invite LBW to reconsider their proposed amendments to Draft Policy LP4, in line with the suggested wording submitted within our Reg 19 representations, as set out below, and in conformity with the Joint Statement submitted to the Council in December 2022.

Table 1.2 – Main Modification 13, as proposed by LB Wandsworth within Main Modifications document (2023)

Policy Reference	Gasholder Cluster (WT4)
MM13: Gasholder Cluster (WT4)	<p><i>Amend paragraph 4.51 as follows:</i></p> <p><i>‘In accordance with the tall building maps in Appendix 2, part of the site is located in tall building zone TB-G1d-02. The maximum appropriate height range for the zone is 7 to 10 storeys, and the appropriate height range for the site must should be in accordance with the tall building maps in Appendix 2. The height of developments within that zone should not exceed the heights of, and should be in accordance with, the tall building maps in Appendix 2, which set out the identified maximum appropriate heights in line with Policy LP4. Development proposals for tall buildings or mid-rise buildings will only be appropriate within the identified zone where they address the requirements of Policy LP4 (Tall and Mid-rise Buildings).</i></p> <p><i>In accordance with the mid-rise building maps in Appendix 2, part of the site is located in mid-rise building zone MB-G1d-03 (which acts as a transition zone to tall building zone TB-G1d-02), and the maximum appropriate height for the zone is 6 storeys. The height of developments within that zone should not exceed the heights of, and should be in accordance with, the mid-rise building maps in Appendix 2, which set out the identified maximum appropriate heights in line with Policy LP4. Development proposals for midrise buildings will only be appropriate</i></p>



	<i>within the identified zone where they address the requirements of Policy LP4 (Tall and Mid-rise Buildings).’</i>
Justification	<i>To align with the wording of Policy LP4 D and H to provide greater clarity.</i>
Reason for change	<i>As a result of Hearing discussion.</i>
Quod Comments on behalf of Common Projects	
Proposed Modification	<p>In accordance with the tall building maps in Appendix 2, part of the site is located in the Wandsworth tall building zone TB-G1d-02 and should be developed in broad accordance with LP4. The maximum appropriate height range for the zone is 7 to 10 storeys, and the appropriate height range for the site must be in accordance with the tall building maps in Appendix 2. The height of developments within that zone should not exceed the heights of, and be in accordance with, the tall building maps in Appendix 2, which set out the identified maximum appropriate heights in line with Policy LP4. Development proposals for tall buildings or mid-rise buildings will only be appropriate within the identified zone where they address the requirements of Policy LP4 (Tall and Mid-rise Buildings).</p> <p>In accordance with the mid-rise building maps in Appendix 2, part of the site is located in mid-rise building zone MB-G1d-03 (which acts as a transition zone to tall building zone TB-G1d-02), and the maximum appropriate height for the zone is 6 storeys. The height of developments within that zone should not exceed the heights of, and be in accordance with, the mid-rise building maps in Appendix 2, which set out the identified maximum appropriate heights in line with Policy LP4. Development proposals for mid-rise buildings will only be appropriate within the identified zone where they address the requirements of Policy LP4 (Tall and Mid-rise Buildings).</p>
Justification	<p>As per our Reg 19 Representations, the whole of Site Allocation WT4 should fall within the Tall Building Zone TB-G1d-02. There is no evidence to support the allocation of mid-rise building zone MB-G1d-03, in particular the Wandle Delta Masterplan SPD which is cited as the justification for the allocation. The Regulation 18 Local Plan WT4 site allocation specifically referred to the “potential for towers marking prominent/ gateway locations in north-west and south-east corners of site”. This has now been removed from the Regulation 19 plan without any justification or updated evidence base. The proposed revisions are necessary to make the policy succinct, avoid duplication and sound.</p>

Main Modification 146: LP4 Tall and Mid-rise Buildings

Common Projects **OBJECT** to the proposed amendment.

Whilst we welcome LBW’s acknowledgment that Draft Policy LP4 is over-prescriptive and requires revision, we do not consider that the proposed amendments are remotely sufficient to address the fundamental concerns with the soundness of the policy.

This Main Modification 146 adds very little flexibility and does not reflect the level of change that is required if Draft Policy LP4 is to be considered sound and compliant with London Plan Policy D9 (Tall



buildings). It also fails to provide supporting text explaining the strategic nature of the evidence base and the requirement in all cases for further analysis to determine actual proposals for individual sites.

In seeking to ‘restrict’ the development of tall buildings outside of tall building zones, Draft Policy LP4 is in conflict with LP Policy D9 which allows for a judgement to be made on tall building proposals outside of tall building zones where they result in public benefit and are in accordance with the Development Plan as a whole.

Further, and notwithstanding the inadequacy of the proposed amendments to parts C and G, LBW has not proposed an amendment to Part B of Draft Policy LP4 which states:

“B. Proposals for tall buildings will only be appropriate in tall building zones identified on tall building maps included at Appendix 2 to this Plan...”

As such, not only are the proposed amendments to parts C and G of Draft Policy LP4 insufficient in adding the level of flexibility that is required if the policy is to be considered sound, but such amendments are also not reflected within part B of Draft Policy LP4 which continues to place a blanket prohibition of tall buildings outside of identified zones.

In addition, no changes are proposed in relation to criterion D (*“Proposals for tall buildings should not exceed the appropriate height range identified for each of the tall building zones as set out at Appendix 2 to this Plan”*) and criterion H (*“Proposals for mid-rise buildings should not exceed the appropriate height identified within the relevant mid-rise building zones as identified at Appendix 2 of this Plan”*).

We therefore invite LBW to reconsider their proposed amendments to Draft Policy LP4, in line with the suggested wording set out in full in **Appendix 1**.

Table 1.3 – Main Modification 146, as proposed by LB Wandsworth within Main Modifications document (2023)

Policy Reference	LP4 Tall and Mid-rise Buildings
MM146: LP4 Tall and Mid-rise Buildings	Amend parts C and G of LP4 as follows: C. <i>‘The Council will seek to restrict P</i> proposals for tall buildings will not be permitted outside the identified tall building zones.’ G. <i>‘The Council will seek to restrict P</i> proposals for mid-rise buildings will not be permitted outside the identified tall and mid-rise building zones.’
Justification	<i>To enable more flexibility in recognition that there may be instances where tall or mid-rise buildings may be appropriate outside these zones based on a more detailed assessment at planning application stage. The Council wishes to maintain the thrust of its position by seeking to restrict proposals for tall and mid-rise buildings outside these zones. However, the proposed wording is considered more flexible than stating that proposal will not be permitted, to potentially allow for such proposals.</i>



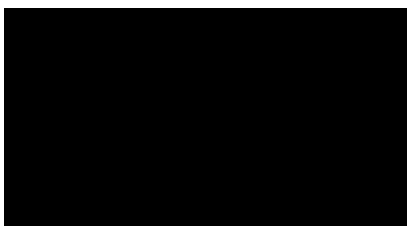
Reason for change	<i>As a result of Hearing discussion.</i>
Quod Comments on behalf of Common Projects	
Proposed Modification	<i>See Appendix 1</i>
Justification	<i>See Appendix 1</i>

4 Conclusion

On behalf of Common Projects, Quod reserves the right to add to or amend their representations. This may be required where the Council issues new guidance or there is a change in policy at a local, regional or national level.

We trust that the representations provide a constructive commentary and request that this submission is considered as part of the Wandsworth Local Plan Main Modifications consultation exercise. We would welcome the opportunity to meet with the Council to discuss our submission in further detail.

Yours sincerely



Neil Wells
Associate

Enc. **Appendix 1:** *Joint Response to the London Borough of Wandsworth's proposed amendments to Draft Local Plan Policy LP4 – Tall Buildings. Prepared by Savills, Montagu Evans, Rolfe Judd & Quod & submitted to LB Wandsworth in December 2022.*



APPENDIX 1

Joint Response to the London Borough of Wandsworth's proposed amendments to Draft Local Plan Policy LP4 – Tall Buildings. *Prepared by Savills, Montagu Evans, Rolfe Judd & Quod – submitted to LB Wandsworth in December 2022*

Response to the London Borough of Wandsworth's proposed amendments to Draft Local Plan Policy LP4 – Tall Buildings.

December 2022

1. Introduction

- 1.1. On Wednesday 16th November, Matter 13 - Achieving High Quality Places (Policy LP1 - LP9) was discussed at the London Borough of Wandsworth (LBW) Draft Local Plan Examination.
- 1.2. Given the significance of Draft Policy LP4, LBW confirmed that the policy would be classified as strategic and would therefore be subject to the full weight of paragraph 35 of the NPPF which sets out the tests of soundness.
- 1.3. There was a very strong consensus amongst participants at the Hearing Session that Draft Policy LP4 (Tall and Mid-rise Buildings) is overly restrictive and curtails the development potential of available and deliverable sites, rendering many sites, including allocated sites relied upon to deliver the Draft Plan's housing target, unviable. This is particularly relevant as paragraph 11 of the NPPF requires strategic polices 'as a minimum' to provide for objectively assessed needs for housing and other uses. The Council's recent Statement of Common Ground with the Home Builders Federation (HBF) acknowledges a shortfall¹ in housing delivery against London Plan targets where actual completion data is available; and relies upon forecast completions nearly double historic rates to offset this deficit in the coming years. This existing housing deficit will increase if Draft Policy LP4 stymies the delivery of the Boroughs strategic sites.
- 1.4. The policy approach taken is also in conflict with pre-application advice provided by the Council in respect to specific planning application proposals where a range of planning judgements are required to bring sites forward for development.
- 1.5. There are two principal issues with Draft Policy LP4: (i) in seeking to prohibit tall buildings outside the tall building zone; and (ii) in setting absolute limits, or caps, for the heights of buildings in both tall building zones and mid-rise building zones.
- 1.6. In acknowledgement of the collective concern amongst participants at the Hearing Session, LBW agreed to consider how the wording of Draft Policy LP4 could be revised to embed a greater degree of flexibility.
- 1.7. LBW have now proposed the following amendments to parts C and G of Draft Policy LP4:
 - C. **The Council will seek to restrict** P proposals for tall buildings **will not be permitted** outside the identified tall building zones.

¹ 2019/20; 2020/21

G. **The Council will seek to restrict** P proposals for mid-rise buildings **will not be permitted** outside the identified tall and mid-rise building zones.

- 1.8. LBW has also proposed that throughout the ‘building heights’ paragraphs within the Draft Site Allocations, that it replaces the word ~~‘must’~~ with **‘should’**.
- 1.9. LBW has not proposed amendments to part D and G of the policy which seek to control building heights.
- 1.10. LBW has invited those present at the Matter 13 Hearing Session to provide comments on the proposed amendments to Draft Policy LP4. Given the shared concern amongst participants, the comments in this note are submitted to LBW and the Inspectors as a collective representation, on behalf of the following parties:
 - Savills obo PBL;
 - Savills obo Safestore LTD;
 - Savills obo Charities Property Fund;
 - Montagu Evans obo DTZ Investment Management Ltd;
 - Montagu Evans obo South West London & St Georges Mental Health NHS Trust;
 - Quod obo SGN Mitheridge Ltd; and
 - Rolfe Judd obo Downing.

2. National Planning Policy Framework

- 2.1. As currently drafted, the Draft Local Plan is not consistent with the NPPF and therefore **unsound** for the following reasons;
 - The Draft Local Plan does not align with paragraph 8 of the NPPF in planning to deliver economically, socially and environmentally sustainable development;
 - The Draft Local Plan does not align with paragraph 16 of the NPPF which states that plans should be positively prepared in a way that is aspirational but deliverable and should be shaped by early, proportionate and effective engagement;
 - The Draft Local Plan is underpinned by a contradictory policy framework that fails to support the delivery of the strategic objectives of the Draft Local Plan and the NPPF.
 - The Draft Local Plan is neither justified nor effective and does not align with paragraph 35 of the NPPF.
 - The Draft Local Plan does not support development that makes efficient use of land contrary to paragraph 124 of the NPPF.
- 2.2. Specifically, the overly prescriptive approach proposed by Draft Policy LP4 is not supported by an appropriate and proportionately robust evidence base and is not consistent with Policy D9 of the London Plan.

3. MM13 Hearing Session Discussion

3.1. For context, we set out below the key concerns with Draft Policy LP4 which were raised by participants at the Matter 13 Hearing Session:

- **LBW have attributed too much weight to the Urban Design Study (UDS, 2021)**
 - Whilst the methodology which underpins the UDS reflects a logical starting point for undertaking a borough-wide townscape character assessment, the level of detail within the UDS does not support the drafting of such a prescriptive, onerous and strict tall buildings policy which, as currently drafted, places a blanket prohibition on the delivery of tall buildings outside tall building zones and sets fixed building height limits for buildings delivered within tall and mid-rise zones. Appendix A of the UDS - ‘tall building scenarios’, paragraph 2 - acknowledges that the limited scope of the UDS, stating that, *“In all cases, further analysis will be required to determine actual proposals for individual sites on the basis of detailed review and analysis of the specific local context which is not part of the scope of this borough-wide study.”* The limitations of the UDS have been further explored in the Representation on behalf of Promontoria Battersea Limited by the Tavernor Consultancy: Townscape and Built Heritage 28 February 2022 (see Appendix 2 to Promontoria’s Matter 13 Hearing Statement; and (ii) Dr Chris Miele at the Matter 13 Hearing Session.
- **Draft Policy LP4 is not consistent with London Plan Policy D9** - London Plan Policy D9 does not direct Local Plans to restrict development up to a pre-set maximum tall building height. Rather, it allows for a Local Plan to cite heights which may be ‘appropriate’, leaving a degree of flexibility for a judgement to be made by the decision maker with regards to what an ‘appropriate’ height may be, having due regard to the criteria set out in Part C of London Plan Policy D9:
 - **Policy D9 (B) (1)** – “Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting the other requirements of the Plan.”
 - **Supporting text paragraph 3.9.2** – “Boroughs should determine and identify locations where tall buildings may be an appropriate form of development...”

Draft Policy LP4 conflicts with this by setting strict building height limits for tall and mid-rise zones which proposals ‘should not exceed’. As cited by James Maurici KC at the Matter 13 Hearing Session, the recent Master Brewer Judgement in the High Court (*Master Brewer Judgement 15 December 2021: [2021] EWHC 3387 (Admin); Case No: CO/1683/2021*) concluded that, read straightforwardly and objectively and as a whole, London Plan Policy D9:

1. requires London Boroughs to define tall buildings within their Local Plans, subject to certain specified guidance (Part A);
2. requires London Boroughs to identify suitable locations for tall buildings within their Local Plans (Part B);
3. identifies criteria against which the impacts of tall buildings should be assessed against (Part C); and

4. makes provision for public access (Part D).
- 3.2. In considering whether to grant planning permission for a tall building not identified in the Development Plan, the High Court concluded that the proposal should be assessed against the potential impacts listed in Part C, in accordance with the objectives of Policy D9. Crucially, there is no wording which indicates that Part A and/or Part B of Policy D9 are gateways, or pre-conditions, to Part C. As such, LBW's interpretation of London Plan Policy D9 is considered to be incorrect, which in turn, renders Draft Policy LP4 overly restrictive, not effective and not in general conformity with the London Plan.
- 3.3. Given the above, there was significant concern amongst participants at the Matter 13 Hearing Session regarding the soundness of Draft Policy LP4.

4. LBW's Proposed Amendments

- 4.1. Whilst we welcome LBW's acknowledgment that Draft Policy LP4 is over-prescriptive and requires revision, we do not consider that the proposed amendments are remotely sufficient to address the fundamental concerns with the soundness of the policy outlined above.
- 4.2. LBW have proposed to amend the wording of parts C and G of Draft Policy LP4 as follows:
 - C. *The Council will seek to restrict* P proposals for tall buildings ~~will not be permitted~~ outside the identified tall building zones.
 - G. *The Council will seek to restrict* P proposals for mid-rise buildings ~~will not be permitted~~ outside the identified tall and mid-rise building zones.
- 4.3. This amendment adds very little flexibility and does not reflect the level of change that is required if Draft Policy LP4 is to be considered sound and compliant with London Plan Policy D9. It also fails to provide supporting text explaining the strategic nature of the evidence base and the requirement in all cases for further analysis to determine actual proposals for individual sites.
- 4.4. In seeking to 'restrict' the development of tall buildings outside of tall building zones, Draft Policy LP4 remains in conflict with London Plan Policy D9 which, as clearly demonstrated by the *Master Brewer* case, allows for a judgement to be made on tall building proposals outside of tall building zones where they result in public benefit and are in accordance with the Development Plan as a whole.
- 4.5. Further, and notwithstanding the inadequacy of the proposed amendments to parts C and G, LBW has not proposed an amendment to Part B of Draft Policy LP4 which states:

"B. Proposals for tall buildings will only be appropriate in tall building zones identified on tall building maps included at Appendix 2 to this Plan..."
- 4.6. The council has also not proposed revisions to Part D and G of Draft Policy LP4.
- 4.7. As such, not only are the proposed amendments to parts C and G of Draft Policy LP4 insufficient in adding the level of flexibility that is required if the policy is to be considered sound, but such amendments are also not reflected within part B of Draft Policy LP4 which continues to place a blanket prohibition of tall buildings outside of identified zones.

4.8. LBW has proposed to replace the word ‘must’ with ‘should’ in the wording of the Draft Site Allocations. This amendment provides no added flexibility to Draft Policy LP4. There is a general recognition that there is little, if any difference, between the two words, given that “Both of them indicate the fact that something is mandatory and should be carried out as a duty².” (Emphasis added). In simple terms, the online Oxford English Dictionary defines ‘must’ and ‘should’ interchangeably:

- **“must”** - “Had to, was obliged to, it was necessary that (I, etc.) should” (emphasis added) and “Expressing necessity: am (is, are) obliged or required to; have (has) to; it is necessary that (I, you, he, it, etc.) should” (emphasis added);
- **“should”** - “in stating a necessary condition: = ‘will have to’ , ‘must’ (if something else is to happen)” (emphasis added).

4.9. Further, it should be noted that:

- A Westlaw search identifies over 200 cases in which the Courts in England & Wales have, in many different contexts (including in relation to planning policy, e.g. *Sisson Cox Homes v Secretary of State for the Environment* [1997] J.P.L. 670), used the words ‘must’ and ‘should’ with the same meaning, e.g. where the Court has used the phrase ‘must or should’ or ‘should or must’ ; and
- In *Lamport & Holt Lines Limited v Coubro & Scrutton (11 & 1) Limited v Coubro & Scrutton (Riggers and Shipwrights) Limited* [1982] 2 Lloyd's Rep. 42, the word ‘must’ was read as meaning ‘should usually’ .

4.10. Given the above, we are of the view that, should Draft Policy LP4 be amended as LBW have proposed, then any buildings proposed in tall or mid-rise zones which exceed the building heights set out in Appendix 2 of the Draft Plan will be regarded as being in conflict with Draft Policy LP4, irrespective of whether the policy cites the word ‘must’ or ‘should’ . This policy conflict gives rise to a range of issues, many of which were discussed at the Matter 13 Hearing Session, including:

1. Disincentivising planning applications on many sites, including Site Allocations;
2. Sterilising the development potential of many sites, including Site Allocations, including where the Council through discussions at planning application stage are supportive of buildings taller than the heights now proposed ; and
3. The issues that arise from the fact that, under the new Levelling Up and Regeneration Bill, any conflict with the Development Plan will be required not just to be outweighed by other material considerations, but “strongly” outweighed. This will further disincentivise development and prevent the optimisation of available and deliverable sites.

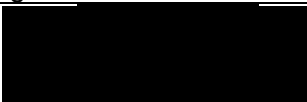
4.11. In addition no changes are proposed in relation to criterion D (“Proposals for tall buildings should not exceed the appropriate height range identified for each of the tall building zones as set out at Appendix 2 to this Plan”) and criterion H (“Proposals for mid-rise buildings


² Source: <https://www.differencebetween.com/difference-between-must-and-vs-shall/>

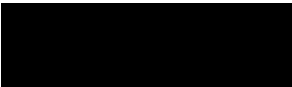
should not exceed the appropriate height identified within the relevant mid-rise building zones as identified at Appendix 2 of this Plan”). Thus the position for any proposals on non-allocated sites in these zones remains wholly unchanged. This again includes sites where the Council through discussions at planning application stage are supportive of buildings of taller than the heights now proposed.


4.12. We therefore invite LBW to reconsider their proposed amendments to Draft Policy LP4, in line with our suggested wording set out in Appendix 1.

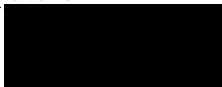
4.13. Notwithstanding the collective objection set out in this note, individual parties are also submitting individual representations to the proposed amendments to Draft Policy LP4 having regard to specific site allocations in the Draft Plan.


Signed by Savills on behalf of Promontoria Battersea Ltd and Safestore		
Name	Signature	Date
Iain Buzza		14 December 2022

Signed by Savills on behalf of Charities Property Fund		
Name	Signature	Date
Tim Price		13 December 2022

Signed by Montagu Evans on behalf of DTZ Investment Management Ltd		
Name	Signature	Date
Jeremy Evershed		13 December 2022

Signed by Montagu Evans on behalf of South West London & St Georges Mental Health NHS Trust		
Name	Signature	Date
Anna Russell-Smith		13 December 2022

Signed by Quod on behalf of SGN Mitheridge Ltd		
Name	Signature	Date
Ben Ford		14 December 2022

Signed by Rolfe Judd on behalf of Downing		
Name	Signature	Date
Jan Donovan		13 December 2022

Appendix 1

Draft Policy	Draft Wording	Proposed Wording
LP4 (B)	Proposals for tall buildings will only be appropriate in tall building zones identified on tall building maps included at Appendix 2 to this Plan, where the development would not result in any adverse visual, functional, environmental and cumulative impacts. Planning applications for tall buildings will be assessed against the criteria set out in Parts C and D of the London Plan Policy D9 and those set out below as follows:	Proposals for tall buildings will only be appropriate in tall building zones Tall buildings should be developed in tall building zones identified on tall building maps included at Appendix 2 to this Plan, or where the development is otherwise adjudged to be acceptable having regard to any adverse visual, functional, environmental and cumulative impacts. Planning applications for tall buildings will be assessed against the criteria set out in Parts C and D of the London Plan Policy D9 and those set out below as follows:
LP4 (C)	Proposals for tall buildings will not be permitted outside the identified tall building zones.	Proposals for tall buildings will not be permitted outside the identified tall building zones, except where the development is adjudged to be acceptable having regard to any adverse visual, functional, environmental and cumulative impacts in accordance with London Plan policy D9(c).
LP4 (D)	Proposals for tall buildings should not exceed the appropriate height range identified for each of the tall building zones as set out at Appendix 2 to this Plan. The height of tall buildings will be required to step down towards the edges of the zone as indicated on the relevant tall building map unless it can be clearly demonstrated that this would not result in any adverse impacts including on the character and appearance of the local area.	Proposals for tall buildings should not exceed the appropriate height range identified for each of the tall building zones as set out at Appendix 2 to this Plan. Where proposals for tall buildings exceed the height of the relevant definition established in Appendix 2, they will only be permitted where the development is adjudged to be acceptable having regard to adverse visual, functional, environmental and cumulative impacts in accordance with London Plan policy D9(c). The height of tall buildings may be required to step down towards the edges of the zone as indicated on the relevant tall building map unless it can be clearly demonstrated that this would not result in any adverse impacts

		including on the character and appearance of the local area.
LP4(G)	Proposals for mid-rise buildings will not be permitted outside the identified tall and mid-rise building zones.	Proposals for mid-rise buildings will not be permitted outside the identified tall and mid-rise building zones, except where they are otherwise adjudged to be acceptable having regard to any adverse visual, functional, environmental and cumulative impacts in accordance with London Plan policy D9(c).
LP4(H)	Proposals for mid-rise buildings should not exceed the appropriate height identified within the relevant mid-rise building zones as identified at Appendix 2 of this Plan.	Proposals for mid-rise buildings should not exceed the appropriate height identified within the relevant mid-rise building zones as identified at Appendix 2 of this Plan. Proposals within mid-rise building zones may exceed the height of the relevant definition established in Appendix 2 where they are adjudged to be acceptable having regard to any adverse visual, functional, environmental and cumulative impacts in accordance with London Plan policy D9(c).
Supporting Text		Appendix 2 refers to appropriate building heights based upon the strategic design analysis undertaken in the Urban Design Study 2021. In all cases, further analysis will be required to determine actual proposals for individual sites based on detailed review and analysis of the specific local context which is not part of the scope of this borough-wide study. Proposals will need to be assessed in the context of other policies of the plan to ensure that proposals are deliverable when the plan is read as a whole.