

**PINKHAM WAY ALLIANCE**

**SUBMISSIONS TO THE  
EXAMINATION IN PUBLIC  
OF THE  
NORTH LONDON WASTE PLAN**

**MAY 10<sup>TH</sup> 2012**

**MAIN MATTER 1**

**Re North London Waste Plan**  
**Proposed Submission Version (May 2011)**  
**MAIN MATTER 1 – LEGAL ISSUES**

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**FURTHER SUBMISSIONS OF PINKHAM WAY ALLIANCE AND ITS MEMBERS**

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**Introduction**

1. These submissions are made by the Pinkham Way Alliance (“PWA”), its members and supporters collectively, in advance of the Examination in Public (“EiP”) of the North London Waste Plan (“NLWP”) scheduled to commence on 12 June 2012. These submissions and the appendices develop, and should be read in conjunction with, PWA’s original submission, dated 8 July 2011.
  
2. PWA confirms that it has complied with Appendix B of the guidance notes issued by the Inspectorate. These submissions respond to the main matters and issues identified by the Inspector for discussion at the hearings, as expanded upon at the Pre-Hearing Meeting.
  
3. For the reasons set out in the original submission and elaborated upon below, PWA objects strongly to the NLWP and in particular to the proposed allocation of the Pinkham Way site (“the PW site”) for waste management facilities under NLWP Schedule C.

**Main Matter 1 – Legal Issues**

On this matter we focus on Inspector’s question D (with regard to national planning policy), and question F (whether the NLWP takes account of other plans and strategies). Taken with our original representations, which also cover other questions raised by the Inspector, we submit that the NLWP is deficient in a number of fundamental respects and should be found to be unsound.

Non-conformity with the policies of the NPPF

4. While specific waste policies are not included in the NPPF, the plan is nonetheless required to conform to its policies insofar as material. Those policies include the following:

- ***Planning should be genuinely plan-led (Core Planning Principle (1))***

5. The PWA is extremely concerned that the NLWA's parallel procurement process is driving the proposed allocation of the Pinkham Way site. At the very least, it gives rise to a suspicion (substantiated, in PWA's view, by the manifold and obvious errors in the site selection exercise) that it is this process which has led to the PW site being identified in the NLWP, rather than the other way round, contrary to the principle that the process should be plan led. These concerns are shared by Environ, who were commissioned by PWA to produce an opinion on the soundness of the NLWP's approach.<sup>1</sup>

6. The concern that the NLWP has sought to allocate the PW site without any proper consideration of its suitability for a substantial waste management facility is substantiated by the NLWA's efforts to obtain planning permission *in advance* of the NLWP examination<sup>2</sup>:

6.1. On 31 May 2011 the NLWA and the London Borough of Barnet submitted a joint outline planning application to Haringey Council for a waste facility on the PW site. The application was preceded by a newsletter on NLWA's website, which stated that "we are applying for outline planning permission because we want *to establish the use of the site for waste development* and define the restrictions within which the companies bidding for the waste contract have to work" [our emphasis]. The newsletter made no reference to the NLWP process.

6.2. Following pressure from PWA, on 19 July 2011 Haringey published a statement on its website that "the submission of a plan to build a waste processing plant in

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<sup>1</sup> Appendix 1 Environ Report 2012

<sup>2</sup> Appendix 2 Correspondence referred to in paras. 6.1-6.8

Pinkham Way has been put on hold following intervention by Haringey Council... The NLWA has agreed to the council's demands, which will see them now submit a detailed planning application for consultation with residents and consideration by the council's planning committee after the inspector reports in April 2012".

- 6.3. On 19 July 2011 Knights solicitors, acting on behalf of PWA, wrote to Haringey asking it to confirm what was meant by "on hold". No response to this letter was received until 7 November 2011 (see below).
- 6.4. However in early October 2011, it became apparent that, despite these assurances, the Council was progressing an application for a "hybrid" planning application for the site, to be submitted by the NLWA/ Barnet.
- 6.5. PWA therefore wrote to Haringey's CEO on 14 October 2011, seeking further information about the content and status of the application pursuant to section 8 Freedom of Information Act 2000. No response was received. On 13 October 2011, in a separate letter Ms Evelyn Ryan, a Local Resident, wrote to the Council's monitoring officer, challenging the lawfulness of the authorities' approach. On 20 October 2011, confirmation was received by Ms Ryan from Marc Dorfman,—Assistant Head of Planning and Regeneration at Haringey Council, that the application was invalid.(add appendix ref)
- 6.6. On 7 November 2011, the Council's Head of Place and Sustainability, Lyn Garner, finally replied to the original PWA letter of 18 July 2011. She confirmed that "on the basis that the Inspector's report on the forthcoming North London Waste Plan (NLWP) is expected by June next year, the parties have agreed that it is not appropriate to proceed with the planning application at this time".
- 6.7. On 20 April 2012, Ms Ryan wrote again to LBH, seeking confirmation that the application would not be progressed until the Inspector's report has been published, albeit that this was not now likely to be in June as anticipated.

- 6.8. Ms Ryan received a response from Mr Allan Ledden, Principal Planning Lawyer in Haringey's legal services on 27 April 2012, which stated that "The application cannot be determined by LBH until the information necessary to validate the application has been received, at which point the consultation process on that application will commence. The necessary information to validate the application remains outstanding at the date of this reply and it is *likely* that the Inspectors' decisions on both of these matters will be known before LBH determines the planning application." [emphasis added]
7. It is extremely worrying that, even at this late stage, Haringey Council which is the body responsible for determining the planning application and, as a member of the NLWA, is part owner of the Pinkham Way site is not prepared to confirm that the application will be delayed until after the publication of the reports into the Core Strategy and the NLWP. This approach is plainly contrary to the principle that plans should provide the "practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency".
8. Given that the realisation of the NLWA's outline business case is contingent on the PW site coming forward for development, and given the conflict of interest inherent in Haringey Council's dual role, PWA is very concerned that if the site is allocated in Schedule C, any application for planning permission will simply be "rubber stamped". Once Pinkham Way is identified in the NLWP (and in the event that the NLWP is approved with Schedule C intact) it will have been designated as waste use and any planning application for a waste facility on PW will have to be granted because of the presumption in favour of development. At that stage it will only be about mitigation, not about the substantive question of whether the site is suitable for any waste plant let alone the proposed 300,000 MBT plant.
9. PWA considers that the allocation of the site should have been subjected to the tests in the Plan, i.e. the test for non-allocated sites, the proper application of the full PPS10 criteria and the sequential test set out in the London Plan. And it should have been assessed against these criteria, not as a brownfield industrial site but as an open green space (see below).

10. Instead the site has been slipped into the Plan under NLWP1, as if it was an existing waste site. And because it is now in NLWP1 it has bypassed the need to comply with any of the other policies applicable to new sites in the plan.

- ***Conservation and enhancement of the natural environment (Core Planning Principle (7) and paragraphs 109-125)***

11. For an explanation of the environmental and biodiversity value of the site, the Inspector is respectfully referred to the “background” section of PWA’s original submission (paragraphs 6-9).

12. In short, it is plain that the allocation of this valuable Grade 1 SINC for a substantial waste management facility fails to conserve or enhance the natural environment. Of particular significance to the PW site are paragraphs 109, 110 (plans should allocate land with the least environmental or amenity value, where consistent with other policies in the NPPF), 111 (reuse of brownfield land, discussed in more detail below), 119 (presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Habitats Directive is being considered, planned or determined), and 123 (identify and protect areas of tranquillity which are prized for their recreational and amenity value for this reason). The Inspector’s attention is also drawn to the recent Village Green application for the Pinkham Way site which has been registered by Haringey Council.

13. The protection and enhancement of the environment also constitutes one of the three dimensions which make up the definition of sustainability, as set out at paragraph 7 of the NPPF.

- ***Encourage the effective use of land by reusing brownfield land (Core Planning Principle 7 and paragraph 111)***

14. As highlighted in paragraphs 2.1-2.3 of PWA’s submissions for the EiP into Haringey’s Core Strategy<sup>3</sup>, it is contended that the PW site is no longer brownfield because it falls

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<sup>3</sup> Appendix 3 PWA Submission to Haringey Core Strategy EiP 3 November 2011

within the exception to the definition of brownfield or previously developed land, as “land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time” (see Annex 2 to the NPPF). According to the Jacobs map, only a small part of the PW site was ever used as a sewage treatment works and even that part has not been in use since 1963.<sup>4</sup> As aerial images of the site demonstrate, the site is heavily wooded and the remains of those works are no longer identifiable<sup>5</sup>.

15. The NLWA’s assessment of the site as brownfield apparently derives from the “National Land Use Database – Previously Developed Land 2006” (“NLUD”)<sup>6</sup>. Not only is this data plainly out-of-date, but the NLUD also relies on information provided by local authorities. Thus, if Haringey Council’s assessment was incorrect, that error will simply have been carried forward into the NLUD. By contrast, PWA produced evidence to Haringey Council’s Core Strategy Examination in Public on 22 February 2012 that the site was excluded from the London Plan’s definition of brownfield land because it has gone back to nature.

16. The NLUD is described in paragraph 3.6 of the Technical Report 2012 as “the *main source* for preparation of the long list of sites in north London which was assessed during the Plan’s production”. As this implicitly acknowledges, the designation of the PW site as brownfield or greenfield is *fundamental* not only to its conformity with the NPPF and with the site hierarchy established by paragraph 5.83 of the London Plan but *also*, in line with this hierarchy, to its inclusion on the list of potential new sites for Schedule C. The requirement to prioritise brownfield land is also reflected in the sustainability appraisal (“SA”), which identifies a preference for development on brownfield rather than greenfield land as one of nine “key assumptions” underpinning the report.

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<sup>4</sup> Appendix 4 PWA Submission to Haringey Core Strategy EiP 8 February 2012

<sup>5</sup> Appendix 5 Bundle of Aerial photographs

<sup>6</sup> Technical Report 2012, paragraph 3.6

- ***Preservation of Open Space (paragraphs 73 & 74)***

17. Paragraph 74 of the NPPF provides that existing open space should not be built on, unless an assessment has been undertaken which clearly shows the open space to be surplus to requirements, or that the loss resulting from proposed development would be replaced by “equivalent or better provision in terms of quantity and quality in a suitable location”. “Open Space” is defined in Annex 2 as “all open space of public value including not just land but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity”. The PW site plainly satisfies this definition.
18. This prohibition on the loss of *any* open space which is not surplus to requirement or which cannot be replaced by equivalent or better provision is also reflected in the SA, which identifies SA objective number 7 as being “to maintain, create, restore, enhance the quality and access of open spaces in the North London Waste Plan area”, with a target of “no permanent loss (any loss compensated for by an equal or greater space) and safeguard additional areas for open space”. The SA also identifies as one of its nine “key assumptions” that “open space will be protected”.
19. Despite this, the allocation of the PW site envisages the loss of more than 6 hectares of valuable open space, in a built up urban location, where there is an acknowledged *deficit* of open space<sup>7</sup>. It is inconceivable that equivalent provision could be provided for the loss of a site of this size. The proposed allocation is therefore contrary to paragraphs 73 and 74 of the NPPF, and contrary to the objectives and assumptions which underpin the SA.
20. Haringey Council gave evidence at their EiP hearing on 22 February that no assessment of the site had been undertaken since the Atkins Report in 2003, which confirms its designation as open space (see further below, under the heading “the draft Haringey Core Strategy”). Haringey’s UDP also states that a Borough site in an ecologically rich area like Haringey may be intrinsically better than one in a less rich area like

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<sup>7</sup> Appendix 3 PWA Submission to Haringey Core Strategy EiP 3 November 2011

Hammersmith & Fulham. (Paragraph headed Sites of Borough Importance p203 in Schedule 11 UDP 2006).

#### Non-conformity with PPS10 and the Companion Guide

21. The numerous inconsistencies between the NLWP and PPS10 are highlighted elsewhere in PWA's submissions. However it should be noted at the outset that the NLWP fails to comply with PPS10 in two *fundamental* respects:

21.1. The methodology for determining the capacity gap fails to comply with the Annex D to the Companion Guide to PPS10. As such, it is unsound.

21.2. The criteria adopted to assess sites for inclusion in Schedule C are incomplete, and omit a number of the locational criteria included in Annex E to PPS10, in particular (g) air emissions, including dust, (h) odours, and (j) noise and vibration.

#### London Plan 2011 and the Mayor's Biodiversity Action Strategy

22. The London Plan 2011 identifies the need to protect biodiversity and to provide opportunities for access to nature. To this end, Policy 7.19F states that "in their LDFs Boroughs should use the procedures in the Mayor's Biodiversity Strategy to identify and *secure* the appropriate management of sites of borough and local importance for nature conservation in consultation with the London Wildlife Sites Board."

23. Appendix 1 of the Biodiversity Strategy sets out the criteria and procedures for identifying land of importance for London's biodiversity *for protection* in LDFs<sup>8</sup>.

24. The proposed allocation of this Grade 1 SINC for a substantial waste management facility is fundamentally at odds with the requirement to protect land which is of importance for London's biodiversity.

#### The draft Haringey Core Strategy

25. Due to the publication of the NPPF and the need for a further period of consultation into its implications for the Core Strategy, the Inspector's report will not be available at

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<sup>8</sup> London Plan, para. 7.60

the time of the examination into the NLWP. However the NLWP Inspector will need to be satisfied that the NLWP is in general conformity with the CS before any decision can be taken as to its soundness: see Figure 1 of the Companion Guide to PPS10.

26. Moreover as explained in more detail in respect of Main Matter 4, there are a number of potential consequences of the Core Strategy process, which are specific to the PW site and which would serve to undermine the soundness of its proposed allocation in the NLWP. These include:

26.1. That the Inspector accepts PWA's submission that the site is not brownfield land.

26.2. That the Inspector recommends that any development of the site for an industrial/ employment use should be subject to no adverse impact on biodiversity.

26.3. That the Inspector accepts PWA's submission that the site should be designated as Metropolitan Open Land instead of as a locally significant industrial site.

27. While PWA recognises the need to progress the NLWP examination, it is also strongly of the view that the soundness of the NLWP and, in particular, the proposed allocation of the PW site, cannot be determined without first having regard to the recommendations of the Core Strategy Inspector. This may also necessitate a further period of consultation and/or further representations, following publication of the Inspector's report.

28. Moreover even if the Core Strategy is adopted in its current form, the allocation of the PW site for a waste management facility would *still* be contrary to Policy SP13 as currently drafted<sup>9</sup>.

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<sup>9</sup> See paragraph 6.3.3 of the Haringey draft Core Strategy: "The Council will protect the borough's designated open spaces as well as other suitable land with the potential to be used as open space. Development will not be permitted on these open spaces, unless it is for limited small scale development ancillary to an existing use on the land and for which there is a demonstrable need."

29. Policy SP13 incorporates the Council's "Open Space and Recreational Standards Supplementary Planning Document". At the Core Strategy EiP, Haringey Council also confirmed that until a new Open Space study is carried out, the current Open Spaces SPD will remain in force. That SPD is based on a 2003 study ("the Atkins report") which clearly identifies the PW site as open space<sup>10</sup>.
30. Absent any realistic prospect that the loss of this area of open space could be compensated for elsewhere, the *only* way of ensuring that the NLWP is in general conformity with the Core Strategy (as currently worded) is therefore to exclude the PW site altogether, in recognition of its open space and nature conservation status.

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<sup>10</sup> Appendix 6 Haringey Open Space and Sport Assessment (Atkins) Volume 1 2003