

Call in of Issues and Options Consultation for the Local Plan

The Issues and Options draft consultation document (the "I&O") is deeply and fundamentally flawed and I ask that the Scrutiny Panel requisition the document to Full Council to consider whether it is legally sound and to assess the adequacy and soundness of the document

Some Key Points of Legality and good practice

1. The Strategic Growth Board that negotiated the Direction of Travel with the Greater London Authority (the "GLA") which forms the basis of growth proposals for Kingston as well as for the proposed "Opportunity Area" may be unconstitutional as it was not sanctioned by Full Council. It therefore had no right to enter in to discussions in the first place with the GLA to influence development in Kingston, nor to determine the size and form of that growth
2. Even had the Strategic Growth Board been sanctioned by Full Council, it acted beyond its remit in negotiating a document with the GLA that is being used as the basis of multiple Opportunity Areas across Kingston Borough in the new London Plan
3. Kevin Davis was chair of the Strategic Growth Board that negotiated the Direction of Travel with the GLA. In other fields of decision-making, good practice insists that nobody involved at a prior stage of decision-making should be involved in future scrutiny or appeal
4. I believe that the "consultation" that took place for the Direction of Travel, a critically important strategic document that has established a policy hook for The Royal Borough of Kingston upon Thames to become an Opportunity Area in the London Plan failed several legal tests relating to consultation. Consultation on the I&O at this point in time would similarly breach such tests

Let me move on to the Call-In in full.

I have grouped comments together so they can be considered more easily.

They are:

1. **The I&O document lacks context and detail that would undermine its legitimacy**
2. **The Direction of Travel which in effect creates the basis for plans for multiple Opportunity Areas across the Borough by creating a policy hook in the London Plan is flawed, unconstitutional and should not be binding**
3. **The I&O is a closed document and is inadequate for consultation**
4. **The time of night at which the vote took place undermines its potential soundness**
5. **Timescale, Resource Implications and Policy Implications should not be reasons to rush a bad decision through**

1. **The I&O document lacks context and detail that would undermine its legitimacy**

There is what seems to be a purposeful lack of clarity: It is implied through the way the I&O is written that Opportunity Area status for Kingston Borough is a done deal. The I&O says that:

"The draft new London Plan designates part of the Borough as an Opportunity Area "

Note 7 further says: "The Opportunity Area designation follows on from our Direction of Travel 2016 that we jointly prepared with the Mayor"

The statements made are misleading and should make clear that both the GLA and Kingston Council are currently recommending that Kingston Borough should become an Opportunity Area in the London Plan and that they approved the Direction of Travel in order to help achieve this strategic policy goal.

- *A full context for the I&O consultation would show that Kingston's approach to its Local Plan breaches government guidelines*

The council should explain clearly that the existing council Core Strategy and Kingston Town Area Action Plan did not support the creation of Opportunity Areas across the Borough.

The Council needs to come clean about how the Direction of Travel was created in order to allow a Kingston Opportunity Area across the Borough to have a policy hook in the new London Plan, and that their already agreed plans for massive growth and opportunity areas across our borough mean that **any "issues and options" consultation has really become redundant**. This of course is against government guidance for the creation of Local Plans so it is not surprising that the I&O is so vague and lacking in detail.

Most people will not know about Opportunity Areas or the planning process that needs to be undertaken to support their creation. The council needs to explain clearly in writing in the I&O why the Direction of Travel was created ie as a policy hook in the London Plan for cross-Borough Opportunity Areas. The council has failed consistently to make clear the true purpose of the Direction of Travel.

Given that the I&O mentions explicitly the Kingston Opportunity Area, it needed to explain how the development of an Opportunity Area Planning Framework for each of the Opportunity Areas being put forward for the Borough in the London Plan, and which is needed to support the creation of each Opportunity Area, will take place. It appears from FOI Act requests that Kingston has agreed with the GLA that the Council intends to merge the creation of Opportunity Area Planning Frameworks with the Local Plan process. If this is the case, the fact should have been made clear to residents and the implications of doing so explained. This fact gives further evidence that the council has predetermined that the Borough will

The council needs to explain that the Direction of Travel is a supplementary planning advice to the London Policy A1.4 54 (FALP 2016) which says that

"The Mayor is working with boroughs and other partners to identify, assess and realise the POTENTIAL for new Opportunity and Intensification Areas in terms of policy 2.13 including in...The Royal Borough of Kingston upon Thames (Kingston Town Centre)"

This policy does not in any sense say that any Opportunity Area within the Royal Borough is a foregone conclusion. Residents should be told this and given the ability to influence whether OA status happens or not.

The council needs to give a clear definition of an Opportunity Area, explain how many there will be and how big each one would be and the impact on development of such status. It should make clear whether such status would be awarded with no CrossRail2.

2. The Direction of Travel (the “DofT”) which in effect creates the basis for plans for multiple Opportunity Areas across the Borough by creating a policy hook in the London Plan is flawed, unconstitutional and should not be binding

Issues & Options states that “The Opportunity Area designation follows on from our Direction of Travel document”

Unconstitutional

Firstly, the body that negotiated the DofT was not properly established according to the constitution and therefore it could be argued that it acted unconstitutionally in negotiating a development plan for the Borough with the GLA and TfL. It was established by the Infrastructure, Projects and Contracts Committee rather than the Full Council. Article 4.02 of the Constitution states that :
“Only Full Council will point d. : agree or amend the terms of reference for panels, committees etc, deciding on their composition and making appointments to them”

Behind closed doors

Secondly, the DofT was negotiated *behind closed doors* with the GLA and TfL by a Strategic Growth Board on which only two members of the council sat – Mr Kevin Davis, who acted as chair of the meetings and Mr David Cunningham. The discussions and decisions made at meetings never went through proper council channels and were never presented to council committee for debate or approval. Ex councillor Bill Brisbane confirmed to me in writing that he, as lead opposition member on the IPCC that set up the SGB and approved its remit, never saw or heard anything about plans for the DofT until shortly before the document was presented for consultation

Acted beyond remit and without going through committee channels

Thirdly, the Strategic Growth Board – even had it been legally constituted – acted beyond its remit in negotiating for cross-Borough Opportunity Areas to become part of the Direction of Travel. The SGB was only given authority by the IPCC on 24/3/15 to explore the POSSIBILITY of an Opportunity Area in Kingston Town Centre. This was never discussed again at any council committee.

On 28/1/16 the Kingston Opportunity Area Strategic Board which I understand is the GLA’s slightly more meaningful name for the Strategic Growth Board agreed to “broaden the scope of the document to look at opportunities for growth across the Borough” and on a map of “Kingston CrossRail OAPF” it is mentioned that the Council acting through the SGB intended to “broaden the scope of the document to look at opportunities for growth across the Borough”

No consultation at formative stages

Fourth, no public consultation on the Strategic Growth Board’s expanding plans for the Borough ever occurred at any formative stage between January 22 2015 and June 2016 when the draft Direction of Travel was presented to the Growth Committee to go out for consultation

Not fit for purpose to establish policy hook for Opportunity Areas in the London Plan

Fifth, The Direction of Travel does not in any way establish Opportunity Areas across the Borough as defined in the London Plan. It uses vague and confusing terminology to describe areas of potential growth, such as “areas of opportunity” and “opportunities for growth” and the “added opportunity of CR” . It does not define what an Opportunity Area is or clearly define specific “Opportunity Areas” that are being planned.

No decision making body can legitimately claim that the DofT provides sufficient justification for cross-Borough sites in Kingston to be designated as Opportunity Areas in the new London Plan

Concealment of true purpose

Sixth, the council hid the true purpose of the DofT from residents. At both committee meetings at which the DofT was presented and then approved officers and councillors gave confused statements about the council's growth plans, the status of the Direction of Travel and its purpose and even of the definition of an Opportunity Area as defined by the GLA.

Obfuscation and intentional lack of clarity

The document is so vague and unclear that there is no way that most residents would understand its importance. It came out of the blue, and its title gave no indication of the fact that its purpose was to provide the basis for Kingston Borough to become an Opportunity Area. It is to be questioned why throughout meeting notes of meetings with the GLA, the document is referred to as some kind of "Opportunity Area" document, and that it was proposed on 15/4/16 that the document should be called the "Direction of Travel for the Kingston Opportunity Area". Somehow nearly all references to "Opportunity Area" were taken out in the final document and the title for Kingston residents became merely the "Direction of Travel" which is meaningless. I remember Mr Cunningham repeating over and over again that the document is merely a Direction of Travel as though that made everything okay.

Failure to meet procedural requirements or requirements for consultation

Seventh, the DofT fails legal test on procedural requirements and consultation

The Dof T was not properly or adequately reasoned and failed to deal with substantive issues raised by consultees. The decision to approve the DofT breached the Wednesbury principle in that it was sufficiently out of proportion with the requirement of the situation to make a sound and informed and transparent decision, based on comprehensive and complete information that it should be considered to have been unreasonable. It also failed the Cabinet Consultation Principle in that a large part of consultation took place over the summer and no allowance was made for this fact. In addition, the DofT was being negotiated between January 2015 and June 2016. During this period, plans for the Borough changed significantly. There was absolutely no consultation at any formative stage of these plans, thus breaching the Gunning and Sedley consultation principles. Reasons given to justify the proposal were so muddled and unclear that intelligent challenge and response difficult. There is absolutely no evidence that the "product of the consultation was taken into account when finalising proposals." There was never any evidence that the council "had views that were open to change and which could therefore be influenced by responses received". None of the many substantive responses to consultation received resulted in any changes to the document

3. The Issues & Options document is a closed document and is inadequate for consultation

The I&O gives data as though they are a given: "The number of people in Kingston Borough is set to increase by 23000" and "Our housing target is 1364 homes a year"

The document also takes the methods of delivery as a given by presenting two options that have been handed down from the DRAFT new London Plan. *Any questions asked within this context are meaningless because the basis of what will happen has already agreed*

The I&O document should never have been approved and should be withdrawn in its current form. Please note that the officer in the reply on this point says in Point C that "It is noted that the text agreed at Committee forms the basis for what will be used to engage with the public."

The document is vague, incomplete, confusing and uninformative. It does not provide sufficient information for *intelligent or meaningful consideration* and fails all the tests for consultation in common law discussed above. It does not mention CrossRail2 or explain what growth might look like with or without an Opportunity Area.

Please note that Grant Thornton has already criticised the council in its Value for Money report September 2017 for “lack of clarity” , the need for “greater clarity over strategic thinking” and that “in your reporting to members, there is limited analysis”.

The information on sites needs to link in to an explanation on how planned growth on different scales might take place. Within a closed context of given growth this becomes meaningless as the council will surely have to redevelop large swathes of the Borough to achieve development on such a large scale.

4. Time of decision undermines its potential soundness

This decision was too important to be made at 00.14 on the morning following the day of the committee meeting and following 4 hours 32 minutes and 40 seconds of debate. I have also been made aware that a briefing meeting for members took place immediately before the committee and lasted 90 minutes. This means that decision makers spent 6 hours in committee without a proper break and late in to the evening before being asked to decide on this important recommendation. I note that other meetings of this committee have been considerably shorter and question whether putting important items for decision at the end of a long agenda is a tactic for getting them approved. It is highly likely that the document would have been discussed in more detail had the hour not been so late

5. Timescale, Resource Implication and Policy Implications should not be reasons to rush a bad decision through

A decision can not be made to push through the I&O consultation because of a desire to meet a pre-determined timetable. If the consultation is inadequate or flawed it should not go ahead as this will be maladministration.

The same argument holds for resource implications. You can not, in a desire to save officer time, put a deeply flawed document out to consultation.

Lastly, the I&O document is the first stage in a massive policy change for the Borough that will see Vauxhall and Battersea size developments rearing up throughout the Borough. This type and scale of change can not be rushed through whatever the policy implications in terms of planning decisions being made in the interim period.

In summary, The Issues an Options draft consultation document is deeply and fundamentally flawed and we ask that the Scrutiny Panel requisitions the document to Full Council to consider whether it is legally sound and to assess the adequacy and soundness of the whole document, including the Direction of Travel on which it is based, and the possibility that it should be abandoned.

Thank you for listening to the very serious reasons for the call-in of this decision.

