

JD/AC/BR/P7120
17 March 2023

London Borough of Wandsworth
C/O Banks Solutions
80 Lavinia Way
East Preston
West Sussex
BN16 1DD

Via Email: planningpolicy@wandsworth.gov.uk
CC: bankssolutionsuk@gmail.com

Dear Sir/Madam,

**Examination of the Wandsworth Local Plan (March 2023)
Representations submitted on behalf of Downing
Main Modification MM13**

This representation letter has been prepared by Rolfe Judd Planning on behalf of Downing in reference to the proposed Main Modifications to the Wandsworth Publication Local Plan (“WPLP”), following the Hearing Sessions which commenced during November 2022.

The letter principally responds to the following matters set out within the Proposed Main Modifications (“PMMs”), published by the Planning Inspectors on 3rd February 2023:

- **MM13:** Gasholder Cluster (WT4)
- **MM146:** Tall and Mid-rise Buildings (LP4)

This letter builds on the previous representations submitted on behalf of Downing to the earlier rounds of public consultation on the emerging Wandsworth Local Plan. Downing have a significant interest in the Site Allocation WT4: Gasholder Cluster, in particular the land at 2 Armoury Way, SW18 1SH (“the site”) at the southern end of the site allocation. These representations principally focused on the following matters in relation to the site:

- **Policy LP4:** Tall and Mid-rise buildings
- **Site Allocation WT4:** Gasholder Cluster
- **Policy LP28:** Purpose Built Student Accommodation

The Local Plan Publication version will directly influence and impact the future development of this site and as such are keen to discuss the impact of the policies with the Council to ensure these are appropriate to the area. Downing are currently exploring development options for the site, and have been in pre-application discussions with the London Borough of Wandsworth (LBW).

It is recognized that the proposed alterations to Policy LP28 suggested during the November 2022 Hearing Sessions, have since been incorporated. Namely, this involved the removal of criteria A.2 from the Policy. Downing acknowledges the recognition of their concerns on this point.

Architecture Planning Interiors

Old Church Court, Claylands Road, The Oval, London SW8 1NZ

T 020 7556 1500

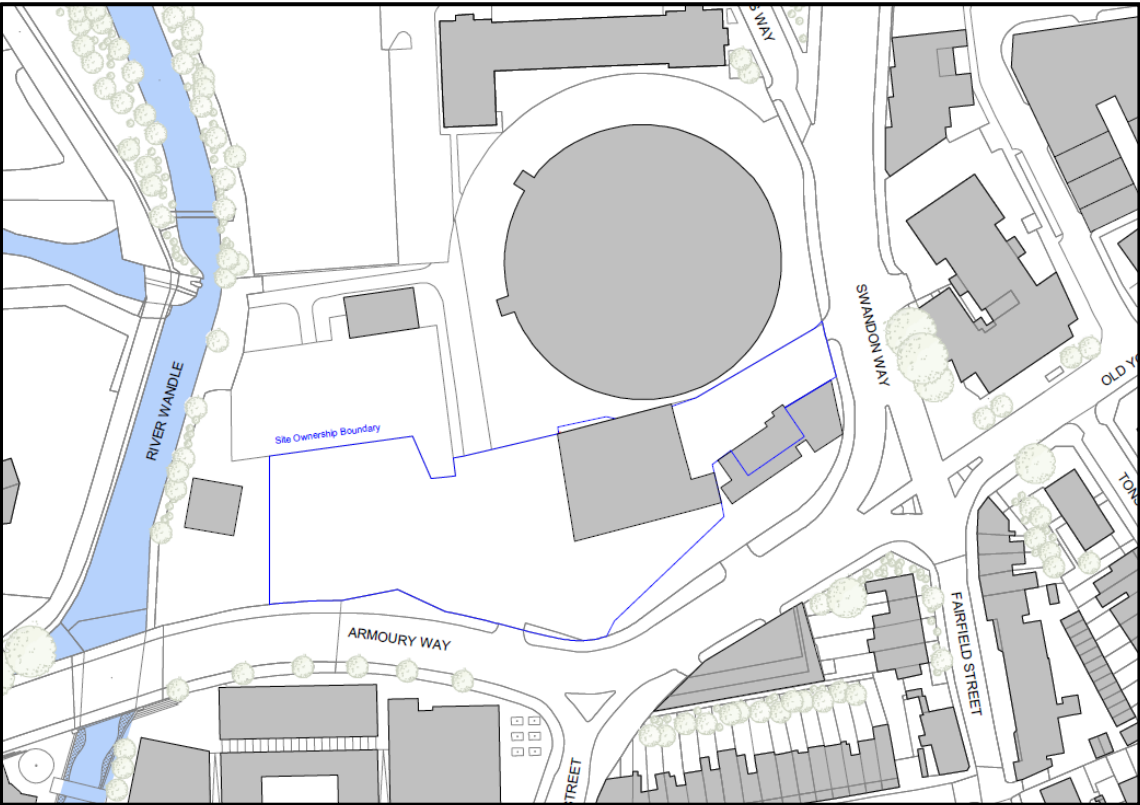
www.rolfe-judd.co.uk

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It is also noted that the wording of Policy LP4 remains unchanged following the Hearing Sessions, during which amendments were sought from Downing. This is frustrating given the open discussions held with officers (at the request of the Inspectors) after the hearing session and the LP4 document subsequently submitted in December 2022 to the Council and Inspectorate.

These concerns remain.

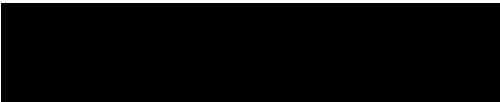
For ease, the site (known as 2 Armoury Way) within the ownership of Downing is outlined below in blue:



Appended to this letter are the further responses to the Main Modifications. In addition, Downing ask the Inspectors to consider the previous representations by Downing, given the modifications have not addressed the fundamental concerns of the policy and causes the Local Plan to remain unsound.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours faithfully



For and on behalf of
Rolfe Judd Planning Limited

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Main Modification MM13: Gasholder Cluster (WT4)

Following the Hearing Sessions, the proposed Main Modifications, in particular MM13, to Policy WT4 are minor in scope and do not appear to have taken into account concerns raised by Downing and other landowners.

MM13 proposes only to replace one instance of the word ‘must’ with ‘should’, and to insert ‘should’ a further two times within paragraph 4.51, in relation to ensuring accordance with the tall and mid-rise building maps at Appendix 2 of the Plan. While it is recognised that these alterations aim to improve flexibility in the application of the policy, it is not considered at a level sufficient enough to overcome the substantial concerns regarding the ability of the site to be delivered and viability arising from overly restrictive height limitations.

Despite Policy WT4 locating the site within a ‘tall building zone’ per Appendix 2 – and therefore suitable for tall buildings, subject to addressing the requirements of Policy LP4 – the allocation sets a maximum height range of 7 to 10 storeys. This is despite other developments in the vicinity extending considerably higher, including the 36-storey tower immediately south of the site within the Ram Brewery and the current planning application for the northern part of the Site Allocation proposing taller buildings. Whilst it is appropriate for policy to establish locations for tall buildings for each area within the tall building zone, this should not be an absolute maximum as this allows very little flexibility for a design-led contextual response to site development, and buildings higher than the draft ‘appropriate height range’ should not automatically be considered inappropriate. It therefore remains Downing’s view that this limit is unduly restrictive and unfounded.

The proposed maximum heights are grossly underestimating the potential of this site allocation and the investment required to remediate these contaminated industrial sites for redevelopment whilst delivering the significant number of benefits the Council require for the wider site allocation, including public open space, pedestrian routes, river frontage improvements, gyratory realignment- all of which will reduce the developable land to fund and or facilitate these site benefits. The aspirations for this site allocation coupled with the maximum appropriate height range places a significant financial burden on the proposed developments and there is no evidence to state this has been subject to financial viability testing. It is considered that these sites will not come forward for redevelopment and deliver the aspirations of the allocation and deliver affordable housing for the Borough, unless higher densities than currently suggested can be supported. The policies set out in this plan should be applied flexibly to ensure that the site is financially viable and deliverable in the context of the significant site constraints, decontamination, enabling and remediation costs associated with bringing the site forward. These constraints are recognised within the Wandle Masterplan SPD and should therefore be referenced in the Allocation WT4 for soundness.

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

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- In *Lamport & 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, Downing are of the view that, should Draft Policy WT4 be amended as LBW have proposed, then any buildings proposed 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 Main Matter 13 Hearing Session, including:

1. Disincentivising planning applications on 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.

It is also noted within Policy PM2: Wandsworth Town that developments in the area of the Wandsworth Gyratory will be required to provide funding, land or complementary measures to support its implementation. Map 4.1 outlines the area for 'potential land required for the realignment of the Wandsworth one-way system'. This area would potentially take away a significant portion of the southern element of Downing's site (2 Armoury Way). Downing do not consider that it is viable to deliver the significant public benefits the site allocation requires (notwithstanding the significant remedial work to bring this industrial site forward) without increasing the height and density of this site.

It should be reiterated that paragraph 125 of the NPPF states that plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate.

Overall, it remains Downing's view that the Site Allocation fails to provide proper justification for the building heights specified and fails to optimise a large brownfield site which is capable of bringing forward residential development in a highly accessible location, contrary to national policy.

Further, whilst Downing support the Site Allocation requiring a mix of residential uses on the site, further confirmation within the Local Plan is required to ensure all types of residential can be provided. The London Plan recognises that Purpose Built Student Accommodation (PBSA), build to rent, and large-scale purpose-built housing/co-living and specialist older housing all contribute to the Boroughs and wider London to deliver a variety of accommodation to meet local and strategic needs. The completion of new PBSA therefore contributes to London's overall housing need and is not in addition to this need (Paragraph 4.15.1 of the London Plan). It is therefore considered that the Site Allocation should explicitly state that all types of residential would be supported.'

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Recommendation

Amendments sought remain as follows:

1. Amend section 4.46 “Context” of Allocation WT4 to recognise the significant financial constraints the redevelopment of this former industrial site will incur, which will result in significant densities for the site allocation area to come forward and deliver the public benefits.
2. Amend section 4.5.1 “Building Heights” of Allocation WT4 to remove reference to *maximum* building heights and instead acknowledge that heights should be developed in broad accordance with Policy LP4.
3. Amend the wording to reference the opportunity for increased site capacities to deliver higher density residential development.
4. Ensure the Local Plan recognises that all types of residential accommodation including PBSA, Build to Rent, Older Living and Large-Scale Purpose Built Accommodation/Co-living falls within the general definition of residential as set out in the site allocation – which was confirmed in the EIP discussions.

Main Modification MM146: Tall and Mid-rise Buildings (LP4)

On Wednesday 16th November, Main Matter 13 - Achieving High Quality Places (Policy LP1 – LP9), was discussed at the LBW Draft Local Plan Examination.

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.

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 shortfall 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.

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.

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.

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.

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Following those sessions, LBW 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.

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.'

LBW has not proposed amendments to part D and G of the policy which seek to control building heights.

A letter was sent to LBW following these proposed amendments, signed on behalf of six interested parties, including by Rolfe Judd for Downing. In this letter, the parties welcomed LBW's acknowledgment that Draft Policy LP4 was over-prescriptive and required revision, but added that:

'We do not consider that the proposed amendments are remotely sufficient to address the fundamental concerns with the soundness of the policy outlined above.'

The Inspectorate have subsequently included these amendments, unchanged, as MM146 in their Proposed Main Modifications. Their justification for doing so is as follows:

'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.'

Given the Inspectorate have not sought to further amend the wording of Policy LP4, it remains Downing's view that the amendment, as it stands, 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.

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.

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...'

The council has also not proposed revisions to Part D and G of Draft Policy LP4.

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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*). 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.

Downing therefore invite LBW to reconsider their proposed amendments to Draft Policy LP4, in line with the suggested wording set out in Table 1 below.

Table 1: Draft vs Proposed Wording of Policy LP4

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	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

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	including on the character and appearance of the local area.	<p>cumulative impacts in accordance with London Plan policy D9(c).</p> <p>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</p>
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).4
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.	<p>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.</p> <p>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).</p>
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.