



The Planning
Inspectorate

Report to the Councils of the London Boroughs of Croydon, Kingston-upon- Thames, Merton & Sutton

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an Inspector appointed by the Secretary of State for Communities and Local Government

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PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 20

REPORT ON THE EXAMINATION INTO SOUTH LONDON WASTE PLAN DEVELOPMENT PLAN DOCUMENT

Document submitted for examination on 21 April 2011

Examination hearings held between 12 July and 19 July 2011

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Abbreviations Used in this Report

| | |
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| AA | Appropriate Assessment |
| C+IW | Commercial and Industrial Waste |
| CS | Core Strategy |
| DPD | Development Plan Document |
| GLA | Greater London Authority |
| LDS | Local Development Scheme |
| LP | Local Plan |
| LSIL | Locally Significant Industrial Location |
| MSW | Municipal Solid Waste |
| NPPF | National Planning Policy Framework |
| PPS | Planning Policy Statement |
| PPS10 | Planning Policy Statement 10: <i>Planning for Sustainable Waste Management</i> |
| SA | Sustainability Appraisal |
| SC | Change relating to Soundness |
| SCI | Statement of Community Involvement |
| SCS | Sustainable Community Strategy |
| SDS | Spatial Development Strategy |
| SIL | Strategic Industrial Location |
| SLWP | South London Waste Plan |
| TPA | Tonnes per annum |

Non-Technical Summary

This report concludes that the South London Waste Plan Development Plan Document provides an appropriate basis for the planning of the area of the four boroughs over the next 10 years. The Councils have sufficient evidence to support the strategy and the sites and areas identified and can show that it has a reasonable chance of being delivered.

A number of changes are needed to meet legal and statutory requirements. The main changes can be summarised as follows:

- Comprehensive review and replacement of Tables 3.1 and 3.2 with consequential amendments to policy WP1 to reflect more up-to-date information on waste arisings, waste apportionments and existing waste management capacity derived mainly but not solely from work for the London Plan made available after pre-submission publication of the South London Waste Plan to ensure that the Plan is founded on a robust evidence base;
- Amendments to policy WP2 and the supporting text to remove any uncertainty as to the wastes addressed by the policy and ensure consistency of interpretation with the London Plan regarding waste management;
- Amendments to the wording of policy WP3 and the associated Schedule to widen the scope of the sites safeguarded to ensure general conformity with the London Plan;
- Significant alteration to policy WP5 to acknowledge that it is the policy through which the flexibility of the South London Waste Plan to provide capacity on a contingency basis for municipal, commercial and industrial waste requirements and facilities for other wastes. Changes to clarify its scope, bring various of the criteria into accordance with national policy and make it less restrictive. These changes are required to ensure that the South London Waste Plan is effective in delivery;
- The deletion of Site 651-Plough Lane which was included as a result of a flawed application of an otherwise robust scoring framework thus ensuring that the identified sites and areas are justified by the evidence base; and
- The introduction of an entirely new monitoring framework which identifies targets and trajectories, how performance against them will be measured, the management actions that will be considered and the triggers for that consideration. These changes are required to ensure that the South London Waste Plan is effective in delivery

All of the changes recommended in this report are based on proposals put forward by the Partnership Councils in response to points raised and suggestions discussed during the public examination. The changes do not alter the thrust of the Partnership Councils' overall strategy.

Introduction

1. This report contains my assessment of the South London Waste Plan Development Plan Document (DPD) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004. It considers whether the DPD is compliant in legal terms and whether it is sound. Planning Policy Statement (PPS) 12 (paragraphs 4.51-4.52) makes clear that to be sound, a DPD should be justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the Partnership Councils have submitted what they consider to be a sound plan. Included with the submission documents was a Schedule of Proposed Minor Changes following the Publication Period¹ and a version of the DPD marked with track changes to highlight those proposed changes². Both documents were helpful to the examination but following an exchange of correspondence³ the Partnership Councils confirmed which documents were formally submitted for examination. The basis for my examination therefore is the submitted draft South London Waste Plan (SLWP) (April 2011)⁴ which is the same as the document published for consultation in January 2011.
3. My report deals with the changes that are needed to make the SLWP sound and they are identified in bold in the report (**SC**). All of these changes have been proposed by the Partnership Councils and are presented in Appendix A. The distinction between a change required for soundness and one that could be considered 'minor' is often not clear cut and the Partnership Councils have taken a cautious approach. In the body of my report I identify and endorse the substantive changes necessary to make the SLWP sound before listing and endorsing the much larger number which are in the main consequential upon those substantive changes.
4. Some of the changes put forward by the Partnership Councils are factual updates, corrections of minor errors or other minor amendments in the interests of clarity. As these changes do not relate to soundness they are generally not referred to in this report although I endorse the Partnership Councils' view that they improve the plan. These are shown in Appendix B. I am content for the Partnership Councils to make any additional minor changes to page, figure, paragraph numbering and to correct any spelling errors prior to adoption. Specifically, I am content that amendments should be made where a referenced document has been superseded by an adopted version but the content is not materially changed. This is particularly pertinent in respect of the 2010 Consolidated Draft Replacement London Plan⁵ following publication of the 2011 London Plan (see para 6 below)
5. Where the Partnership Councils have proposed changes that go to soundness they have been subject to public consultation and I have taken the consultation responses into account in writing this report. Although what

¹ SLWP1.11

² SLWP1.12

³ ED1 & ED2

⁴ SLWP1.1 & SLWP1.2

⁵ SLWP14.21

could be commented upon at this stage was made absolutely clear by the Partnership Councils, some respondents nevertheless raised matters in relation to the SLWP as a whole. However, all of these have already been subject to discussion at an appropriate hearing session of the examination and no new matters have been raised.

6. After I closed the hearing sessions two further documents were published which are material to the examination. First, on 22 July 2011 the Mayor of London published the London Plan. Second, on 25 July 2011 the government published for consultation the draft National Planning Policy Framework (NPPF).
7. Unsurprisingly given that the London Plan was published only nine working days after the hearing sessions opened the views expressed on behalf of the Mayor at those sessions are reflected in the published document. Indeed, in responding to the consultation on the proposed changes that go to soundness the Deputy Mayor of London has confirmed that, with those changes, the SLWP would now be in general conformity with the London Plan and that all outstanding matters between the Mayor and the Partnership Councils have been appropriately resolved⁶. Unless clearly stated in this report I have reflected the discussion that took place rather than amend it in the light of the published London Plan. Those parts of the published London Plan that are material to this examination are in any event substantially unchanged from the version current at the date when the hearings took place. The issues revealed in the discussion of SLWP policy WP3 therefore remain.
8. Among other things the draft NPPF proposes to abolish PPS12 and therefore the guidance as to 'soundness' in paras 4.51 and 4.52 of that document. This is proposed to be replaced by para 48 of the draft NPPF which adds a further test and revises the wording of the existing three. However, the courts have made very clear statements regarding the weight that should be given to proposed changes to legislation and guidance and confirmed that it is a matter for the decision maker. In addition, s20(5)(b) of the 2004 Act remains in force and states that a purpose of the independent examination is to determine whether a DPD is sound. Furthermore, Planning Policy Statement 10, *Planning for Sustainable Waste Management*⁷ (PPS10) is not affected by the draft NPPF and remains in force until revised and annexed to the National Waste Management Plan. Finally, the London Plan is unaffected by the proposals in the Localism Bill to abolish regional strategies. In all these circumstances and taking account of the stages which both the draft NPPF and the SLWP have reached in their respective progress to completion, I have given very limited weight to the draft NPPF.
9. The Partnership Councils also sought views on the implications of the NPPF for the SLWP during the post-hearing consultation referred to above. Notwithstanding the weight that I attach to the NPPF I have nevertheless taken those views into account in finalising this report.

⁶ ED7, Rep No FC8

⁷ SLWP13.27 & SLWP13.28

Assessment of Soundness

Preamble

10. The four Partnership Councils resolved in 2007 to prepare a joint waste DPD as advocated by the companion guide to PPS10. The same Councils have also formed the South London Waste Partnership to jointly procure waste treatment and disposal contracts for municipal solid waste (MSW). When the hearing sessions took place that procurement process had reached the stage where two companies were preparing their final submissions to the Councils who would then select the preferred bidder with whom to negotiate a contract.
11. The contract tender documentation is technology neutral with all four boroughs saying only that they are firmly against what they regard as poor performing, outdated technologies such as old fashioned mass-burn incineration which they view as being poorly designed, visually intrusive and likely to release high levels of noxious emissions. Similarly, in accordance with national waste policy⁸ the SLWP does not specify any particular technology as being either suitable or unsuitable for any of the sites or areas identified. The reasons are twofold. First, the Partnership Councils do not wish to stifle innovation and, second, they cannot anticipate the mitigation measures that may be proposed by any applicant in association with a particular technology or development on a specific site.
12. Any proposals brought forward by the successful bidder are likely to be within the Partnership Councils' area and therefore considered against the policies in the SLWP. Not knowing either the technology to be used or the site(s) to be considered has caused a degree of frustration among some participants who have therefore found it difficult to engage effectively with the process. It is evident also that some of the representations focus upon the MSW contract process rather than the SLWP proposals. That is not within my remit, something I emphasised in my Guidance Notes⁹.
13. The SLWP sets out:
 - the Partnership Councils' vision and objectives in relation to waste planning in the area;
 - two essentially strategic policies (WP1 and WP2);
 - two site identification policies (WP3 and WP4); and
 - four development management policies (WP6 to WP9).
14. A further policy, WP5, performs a dual function and provides flexibility for the delivery of the required waste management capacity. The SLWP is therefore an all-purpose plan although the Partnership Councils made it clear that it sits below each borough's core strategy document all of which do now, or will when adopted, contain a strategic waste policy. In essence, each of those policies sets out the same approach to establish a common framework for the

⁸ SLWP13.40 (Chapter 5, paragraph 27) & SLWP13.27 (paragraph 18)

⁹ ED4 paragraph 6.4

SLWP. The SLWP is also part of the development plan framework of each Partnership Council which, in addition to its own development plans, also includes the London Plan as the spatial development strategy (SDS) for the area. I therefore endorse proposed change **SC1** which clarifies the relationship between the various documents in the boroughs' local development frameworks and gives clearer guidance about the development plan to potential developers.

15. Following publication of the Proposed Submission Plan in accordance with Regulation 27 of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended) two matters arose that are material to the examination.
16. First, on 23 March 2011 a ministerial statement outlining the key role of the planning system in the government's plans for the British economy (set out in Planning for Growth¹⁰) was issued. Second, on 31 March 2011 the government's Chief Planner wrote to all chief planning officers advising them of changes to PPS10 and, in particular, a revision to the waste hierarchy¹¹. The Partnership Councils' consideration of the implications of both these matters and the changes they propose to make as a consequence are set out in the Topic Paper relating to Main Matter 1¹². Where any proposed waste development sits within the waste hierarchy will be determined by the way the terms used for each level are defined and interpreted in accordance with statute and guidance current when that proposal comes forward. The flexibility and deliverability of the SLWP would be undermined if it was overly prescriptive at this stage and I therefore believe the Partnership Councils' decision to propose no further changes in this regard in response to emerging European waste policy and guidance to be correct.

Main Issues

17. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified four main issues upon which the soundness of the plan depends.

Issue 1 – Whether the tonnage of waste planned for is justified by the evidence base and consistent with national policy and the London Plan

MSW and Commercial and Industrial Waste (C+IW)

18. In simple terms, the Partnership Councils need to establish both the target to be achieved at points during the plan period and the progress already made towards those targets from waste management capacity both existing and in the pipeline in order to assess the further provision that needs to be made by the SLWP. Although slightly more complicated in the presentation, this is the essence of Tables 3.1 (to meet the apportionment) and 3.2 (to meet arisings) in the submitted SLWP. Both have a bottom line requirement expressed in terms of additional land take to be identified.

¹⁰ SLWP20.4

¹¹ SLWP20.5

¹² SLWP/Matter 1 Topic Paper

19. Dealing first with the target, in accordance with national policy in PPS10, the London Plan sets out the waste to be managed in London, apportioned by borough. It then requires the boroughs in their DPDs to identify sufficient land to provide capacity to manage that apportionment. Collaboration by boroughs pooling their individual apportionments is clearly envisaged by the London Plan. Early in the preparation of the SLWP the local community decided that it should seek to exceed the apportionment target and strive to attain self-sufficiency in managing the waste generated by the four Partnership Councils. Policy WP1 of the submitted SLWP reflects this approach which has not caused the Mayor to raise any issue of general conformity in this regard.
20. The apportionment included in the submitted SLWP is that set out in the London Plan (2008)¹³. Although the Partnership Councils argued against the revised apportionment in the draft replacement London Plan of 2009¹⁴ the Panel that examined that Plan endorsed the apportionment proposed as the only evidence based figures before it¹⁵. During the SLWP examination hearing session officers of the Greater London Authority (GLA) indicated the Mayor's intention to accept the Panel's recommendation. He did so and this is therefore the basis on which waste planning in London will proceed for the next period and reflects the most up-to-date information available. Similarly, the GLA provided more up-to-date information on MSW and C+IW arisings which the Partnership Councils also consider should now be taken forward¹⁶.
21. In order that the SLWP is justified by the most robust evidence base available the Partnership Councils therefore propose to change the target figures for the MSW and C+IW apportionments and arisings in the submitted SLWP.
22. Looking at MSW and C+IW management capacity existing and in the pipeline the Partnership Councils have considered only those facilities that do, or will, use treatment methods considered to contribute towards meeting self-sufficiency within London. The GLA confirmed that the definition of waste management given in the SLWP for this purpose¹⁷ correctly interpreted that given in the London Plan¹⁸. The GLA also confirmed that 'self-sufficiency' in paragraph 5.73 was aimed principally at the MSW, C+IW and construction, demolition and excavation waste streams.
23. On this basis the Partnership Councils propose to change the SLWP figures for existing waste management capacity to reflect more recent Environment Agency data and discussions with site operators¹⁹. The Partnership Councils argue that this gives a realistic assessment of current capacity, particularly as it excludes those sites that are subject of 'pipeline' proposals and thus avoids any danger of double counting. In this regard, the Partnership Councils have taken a cautious assessment of the new capacity likely to come forward on existing waste sites. They have included the waste management element only of two proposals (amounting to some 180,000 tonnes per annum (tpa)

¹³ SLWP14.1

¹⁴ SLWP14.3 later replaced by the Mayor for the purposes of the EiP by SLWP14.21

¹⁵ SLWP14.22, paragraph 5.84

¹⁶ SLWP2.9

¹⁷ SLWP1.1 paragraph 3.32

¹⁸ SLWP14.21 paragraph 5.73

¹⁹ SLWP2.9 Table 3.1

capacity) and have assumed that some 200,000 tpa capacity will be provided through the MSW contract in order to divert that tonnage from the existing landfill disposal route.

24. These assumptions were discussed at length during the hearing session and ultimately not seriously challenged by any representor. Once again, in order that the SLWP is justified by the most robust evidence base available the Partnership Councils therefore propose to change these figures in the submitted SLWP.
25. Taking the sum of the existing waste management capacity and that in the pipeline from the two target figures discussed above gives the capacity gap for which provision must be made in the SLWP. In the submitted version this is expressed as land required and that figure is derived by applying an average throughput per hectare for the particular development required. I understand this figure to include not just the footprint for any building but also the area required for any circulation and storage areas, landscaping and other associated site infrastructure.
26. The assumptions underlying the average figures used (although not the approach itself) were challenged. However, in response to other representations made, particularly by the Mayor, the Partnership Councils now propose to express the capacity gap in both tonnages and hectares required. It is though the tonnage which is of importance for the monitoring framework now proposed with the land requirement being little more than a broad guideline for the site allocation policies. The capacity gap expressed as the Partnership Councils now propose represents a robust basis on which to plan for the MSW and C+IW capacity needed.
27. The changes proposed by the Partnership Councils to give effect to the results of using a more up-to-date and therefore robust evidence base to justify the SLWP are **SC33 and SC34** which introduce replacement Tables 3.1 and 3.2 and **SC62, SC63 and SC64** which change policy WP1 to reflect the new provision and the aim of achieving net self sufficiency (**SC63**). I endorse these changes as necessary to make the SLWP sound.
28. The outcome of these changes is that the capacity gap at 2021 is some 185,000 tpa when measured against the apportionment and about 261,000 tpa against arisings. At the hearing session where this was debated the consensus view was that these figures were of the right order. The Partnership Councils estimate that further waste management capacity in the pipeline and not already taken into account in the revised Tables 3.1 and 3.2 amounts to some 169,000 tpa²⁰. Even if none of this were to come on stream within the Plan period the capacity gap is relatively modest and capable in certain circumstances of being provided by a single waste management facility. This is the context for my consideration of Issues 2 and 3 below.

Other wastes

29. There is no apportionment set in the London Plan for other wastes and the SLWP evidence base recognises the paucity of data at sub-regional and/or

²⁰ SLWP/Matter 2 Topic Paper, Table 17

borough level for any waste other than MSW and C+IW²¹. Policy WP2 addresses this by, in effect, stating that proposals will be assessed as windfall applications against the policies of the development plan but principally against SLWP policy WP5 to which I turn later.

30. In the absence of comprehensive and robust data on waste arisings the approach taken by the Partnership Councils is justified. Although not leading to any change to policy WP2 itself, the proposed changes to paragraphs 4.23 and 4.24 of the SLWP (**SC66**) derive from the more up-to-date analysis of construction, demolition and excavation waste set out²² and provide a more robust evidence base; I therefore endorse this change. Similarly in order for the SLWP to be effective and consistent with the implied definition of waste management in the London Plan changes **SC65 to SC72** which I endorse, are necessary and will also remove any ambiguity in the way that the SLWP should be interpreted.

Issue 2 – Whether the policies amount to a delivery mechanism that is effective and consistent with national policy and the London Plan

Introduction

31. Policies WP3 to WP9 provide the mechanism through which provision will be made to fill the capacity gap. Policies WP3 and WP4 are essentially site identification policies while the other five are development management policies although WP5 has a dual role. The relationship between them is therefore critical to any consideration of the effectiveness of the SLWP.
32. Although not the Partnership Councils' position at the outset of the hearing sessions, their stance now is that all waste facility applications will be considered against the policies of the SLWP, including those that will not contribute to the capacity gap. For example, any landfill proposals would be assessed against policy WP1, particularly the penultimate paragraph which refers both to 'need' and the requirement to manage wastes as high up the waste hierarchy as possible.
33. Change **SC24** gives textual confirmation that the SLWP is applicable to all waste facilities and change **SC174** defines this term in the Glossary. These welcome changes which I endorse are necessary to make the SLWP effective across the Partnership Councils and should minimise the risk of any inconsistency of interpretation if reliance for the assessment of some applications (for example, those for waste transfer stations) was to be placed solely on the boroughs' core strategies and other DPDs as they come forward.
34. The Partnership Councils explained that policies WP3 and WP4 were not sequential in the sense that developers should look to existing sites first before exploring opportunities within the larger areas. However, success under policy WP5 does require an applicant to show that the proposed facility could not be delivered on a site within policies WP3 or WP4. I believe that this interpretation is clear from the policy wording in the SLWP.

²¹ SLWP2.9

²² SLWP/Matter 2 Topic Paper

Policy WP3

35. This policy seeks to give effect to that part of the London Plan policy 5.17 which deals with LDF preparation. However, during the discussion the GLA explained that the term 'existing waste sites' in clause G (a) was far wider in scope than simply waste management sites. Given the stated purpose of clause G (to bring forward land to manage borough waste apportionments) it is not clear how protecting existing waste sites, particularly waste transfer facilities and landfill sites neither of which are waste management sites as defined in the London Plan, assists this policy purpose. Furthermore, the GLA confirmed that the word 'management' in clause H of the policy was erroneously included. It also emerged that the GLA's interpretation of the term 'compensatory site provision' in clause H was different to that of the Partnership Councils. They understood it to mean additional or alternative site provision whereas the GLA explained that it meant compensatory capacity provision which could, of course, be at another existing facility. This is the context for my consideration of the extent to which policy WP3 is consistent with the London Plan and effective in delivering its policy objectives.
36. The Mayor wishes to increase and by implication maintain waste processing capacity in London. He therefore wishes to see, as was explained by the GLA during the hearing sessions, all existing waste sites protected. Submitted policy WP3 does not do that since it only safeguards those with a site area of 0.2ha or more. The Partnership Councils' rationale for this is that many of the smaller sites are where they are for historical reasons and would not be permitted under today's environmental policies. Any proposal for enhanced waste management use would be judged against the policies of the SLWP. However, the Partnership Councils would not wish to place any unnecessary obstacles in the way of the current occupants vacating unsuitable premises and achieving a non-waste use redevelopment more compatible with the, often residential, local area. The Partnership Councils' understanding of 'compensatory site provision' was felt by them to be such an obstacle and therefore it would be contrary to the wider planning objectives of the local community to include such sites within the policy.
37. Having considered the points made during the hearing sessions the Partnership Councils propose a number of changes to policy WP3 and the text supporting it. The key elements are:
- all existing waste sites within Strategic Industrial Locations (SILs) and Locally Significant Industrial Locations (LSILs) will come within the scope of the policy and be protected irrespective of their size (**SC74**);
 - if planning permission is granted for any site such that it becomes a waste site as defined in the SLWP it would be included within Schedule 1 as part of the annual update following monitoring and thus subject to policy WP3 (**SC75 and SC76**);
 - the issue of compensatory provision is clarified (**SC78**);
 - the position regarding the protection of the one active landfill in the plan area is clarified (**SC80**);

- the wording of the policy itself is amended to reflect these changes (**SC83**); and
- amendments to Schedule 1 of the SLWP and the footnote to it and Figure 4.1 (**SC84 to SC87**).

38. I endorse these changes which are necessary to bring the SLWP into general conformity with the London Plan and to achieve effective delivery of the required waste management capacity. While some existing waste sites of less than 0.2ha remain unprotected by the policy this is justified by the local circumstances in the Partnership Councils' area and does not undermine the strategic objectives of the London Plan or the general conformity of the SLWP with it. Although I appreciate the reason for proposed change **SC41** which is consequential upon the widening of the scope of policy WP3, it simply re-states the statutory position and is thus not necessary to make the SLWP sound. **I therefore do not endorse proposed change SC41.**

Policy WP4

39. While policy 5.17 G (b) and (c) of the London Plan²³ suggests that boroughs should identify specific sites within the SILs and LSILs respectively, the Partnership Councils have selected particular SILs and LSILs as a whole for inclusion in the SLWP through the process set out in the evidence²⁴. The Mayor has not raised any issue of general conformity in this regard and the only substantive change to the policy proposed by the Partnership Councils is **SC96**. This flows from the decision to explicitly bring all waste facility proposals within the ambit of the SLWP and as such I endorse this change.

Policy WP5

40. This is an important policy in the SLWP. It provides the basis on which the Partnership Councils will determine all applications for waste development on sites other than those identified in policies WP3 and WP4. It therefore builds flexibility into the SLWP as it allows other proposals to come forward to meet the capacity gap if that is not being met on the identified sites and areas. Following proposed changes SC83 and SC96 it also represents the primary criteria policy against which applications for the management and treatment of all non-MSW and non-C+IW and those for proposals not contributing to the capacity gap will be assessed. As the Mayor has stated in his representations it is important therefore that the policy is not unjustifiably restrictive as this would undermine the effectiveness of the SLWP. As a result of the Partnership Councils' consideration of the representations made and the discussion during the hearing sessions a number of changes are proposed as follows:

- The policy now clearly applies to all other wastes that are the subject of policy WP2. Additional text proposed by change **SC107** and a change to the policy (**SC111**) gives effect to this;
- **SC112** makes a minor but nevertheless vital change within clause (d), the Partnership Councils having confirmed that all four clauses

²³ SLWP14.21

²⁴ SLWP1.3, SLWP2.4, SLWP2.9, SLWP5.2 & Main Matter 4: Councils' note for the Inspector

must be met by any proposal;

- **SC113** proposes the replacement of the word 'priority' by 'particular regard'. This will allow the Partnership Councils more discretion when considering proposals especially as the linking 'and' at the end of the penultimate bullet, which meant that all had to be met for a proposal to be approved, will be deleted by virtue of change **SC118**; and
- Changes **SC114 to SC118 inclusive** bring the policy in accordance with national policy and remove unnecessary duplication with other SLWP policies.

41. In the responses to the post hearing sessions consultation on the proposed changes that go to soundness some have expressed concern that SC107 widens the scope of the wastes to be addressed by the SLWP and introduces policy by stealth. This is not the case. Submitted policy WP2 made clear, and indeed listed, the other wastes to which it related and this list has not been altered by the proposed changes that go to soundness. However, throughout the supporting text to that policy there are many references to these wastes being accommodated through the flexibility built into the SLWP through allowing for the provision of windfall sites. Although policy WP5 is the only one providing that flexibility, as submitted, it did not clearly encompass all wastes. The criteria against which proposals for the other wastes that policy WP2 addresses would be judged were not therefore clear. The changes proposed by the Partnership Councils address this ambiguity. All are necessary to make the SLWP effective in the delivery of facilities for all waste arising in the Partnership Councils' area and I therefore endorse these changes.

Policies WP6, WP7, WP8 and WP9

42. These four policies set out guidance for developers about the way the Partnership Councils will discharge their development management roles with respect to waste proposals.
43. The Partnership Councils wish to see all waste operations take place within enclosed buildings wherever possible as this gives the regulatory authorities the opportunity to achieve the necessary environmental controls. To be in general conformity with the London Plan the Partnership Councils require all such buildings to achieve a rating of 'excellent' under a bespoke BREEAM scheme. The wording of submitted policy WP6 is such that the Partnership Councils can interpret this requirement with flexibility to ensure that the objectives of the government's Planning For Growth initiative are met. No substantive changes to policy WP6 are proposed or required for soundness.
44. Policy WP7 and the associated Schedule 3 set out the factors that the Partnership Councils will have regard to when assessing waste planning applications. Prior to submission of the SLWP for examination this policy was strengthened in response to concerns raised by the local community. Two further changes (**SC129a and SC130**) are now proposed to ensure that the policy correctly reflects national policy with regard to both development in relation to Green Belt and other designated land and the protection of regional

and local nature conservation areas and for that reason I endorse these changes.

45. Paragraph 4.77 of the submitted SLWP may not accurately paraphrase the totality of the Mayor's policy as expressed in the London Plan²⁵. In any event, it does not reflect national policy²⁶, nor is it wholly consistent with the 'technology neutral' stance taken by the Partnership Councils in the SLWP. I endorse therefore changes **SC134 and SC140** which make both the text and policy WP8 consistent with national policy. I also endorse change **SC139** which brings a wider range of factors into the assessment required under criterion (a) and thus makes the policy effective in the delivery of the required facilities. Changes **SC131, SC132, SC135, SC136, SC137 and SC138** are necessary for effective policy implementation and the removal of any ambiguity about the developments to which policy WP8 applies.
46. Policy WP9 which sets out the Partnership Councils' approach to the use of planning obligations is not contentious and no changes to it or the supporting text are proposed.

Issue 3 – Whether the identified sites are justified, effective and consistent with national policy and the London Plan and whether the additional sites put forward are necessary to make the DPD sound

47. I have referred above to the process that the Partnership Councils undertook to identify the sites and areas put forward in the SLWP [paragraph 39]. The factors taken into account in preparing the list of potential sites derive from national policy and the London Plan and are those which are particularly pertinent to proposals for the development of waste facilities. While any scoring and weighting system is open to debate, the one developed has been consistently and objectively applied to the sites being investigated. The outcome, a ranking of the sites according to their suitability against the criteria, is therefore robust.
48. The Partnership Councils nevertheless accept that a mistake was made in the scoring of site 651-Plough Lane and propose to delete this from the submitted SLWP. Including this site would not be justified by the methodology as it should have been applied and I therefore endorse changes **SC167 to SC171 inclusive** which give effect to this deletion. No such errors were made in respect of the other two areas identified in this particular locality (641 and 642) and there is no reason for soundness to recommend their deletion from the SLWP. Any concerns regarding the effect of development on the local area and the recreation plans for it can be addressed through the policies of the SLWP, especially policy WP7, and the development plan as a whole.
49. The Partnership Councils explained that with one exception, sites scoring above 85 were taken forward through the various stages of consultation²⁷. This gave a manageable number for the local community to consider and avoided an over-supply of sites thus striking the balance necessary between the need to identify land for the purpose of the SLWP while maintaining a

²⁵ SLWP14.21 Chapter 5 London's Response to Climate Change

²⁶ SLWP13.40

²⁷ SLWP/ Main Matter 4: Councils' note for the Inspector

robust and diverse employment base within the four boroughs.

50. None of the sites or areas identified however are greenfield sites and thus immediately available for development. All are occupied by buildings or uses and, in the case of the areas identified in Schedule 2 and the subject of policy WP4, most of the plots are occupied by non-waste businesses. The Partnership Councils have taken what they consider to be realistic and well researched view about the deliverability of the required waste management capacity on these sites.
51. The most recent assessment included in the evidence base²⁸ was reported in April 2011. This is in two parts. One comprises a report dated October 2010 by commercial agents commissioned by the Partnership Councils while the second looks at this in more depth following further enquiries of site owners and operators, the waste sector and discussions with the Partnership Councils' own property managers since the boroughs themselves are substantial freehold owners in some of the Schedule 2 areas.
52. To a degree, all of these surveys are snap-shot views as is the further post-hearing view of Schedule 2 areas within Croydon given by a representor in response to the consultation on the proposed changes that go to soundness although the evidential base for that view, while offered, was not provided. While some representors, particularly those promoting additional sites, sought to cast doubt on the deliverability of the land included in the SLWP the evidence for this view was principally that the same areas had been available for the same kind of waste uses for a long period and, despite the policy framework at the London level being largely the same throughout, none had come forward.
53. I have no reason to doubt that this analysis is historically correct. However, that is not to say that this situation will continue over the next 10 years or so. There is a greater imperative now to provide the waste facilities necessary to divert waste from landfill and the Partnership Councils' MSW contract procurement process will ensure that these are forthcoming for that waste stream at least. I have also noted [paragraph 28] that few sites may, in fact, be required to come forward in order to meet the fairly modest capacity gap that was accepted by those participating in the hearing sessions.
54. On the evidence before me therefore I consider that even allowing for the proposed deletion of site 651, the sites and areas identified in the SLWP have the potential to meet the capacity gap identified. I do not therefore consider it necessary at this stage for either of the omission sites put forward (site 57, land west of Beddington Lane and site 111 (part), Ullswater Business Park) to be added to the SLWP in order for it be found sound. However, the realisation of that potential depends upon the robustness of the assessments made by the Partnership Councils regarding deliverability. That will only be shown over time as the SLWP is implemented and the robustness of the monitoring framework, which is the subject of Issue 4, is thus of critical importance.
55. Before turning to that, there is one other potential omission to be considered. The case made by Lichen Renewal only became totally clear during the hearing

²⁸ SLWP2.8

sessions. I deal with the part of the representation arguing that the Partnership Councils have not complied with their legal obligations below. The essence of the other part of the case is that there will be old landfill sites within the Partnership Councils' area that may still be releasing landfill gas to atmosphere and leachate to groundwater. Where these have been poorly restored they should be capped as set out in the submission²⁹ and the captured gas used either to dry green waste prior to it then being utilised as feedstock in a gasification/pyrolysis plant or potentially used directly in such plants. It is argued that the SLWP is unsound unless a stronger commitment to pollution reduction and the improvement of environmentally damaged land due to past waste management practice is included within it together with support for the use of former landfill sites for the purpose. As submitted, policy WP5 specifically precludes this.

56. The Partnership Councils have provided details about all the former landfill sites in their areas³⁰. All are restored to a use, many to wholly built developments such as schools, residential or sports stadia. No evidence was given regarding the specific restoration status of any of the sites listed and there is no evidence therefore that any are a cause for concern. There is no evidence either regarding the date when any were restored or indeed filled so the suggestion that 1994, when modern pollution control standards were introduced and 'dilute and disperse' was brought to an end, could be used as a benchmark in policy is not justified.
57. Changes proposed by the Partnership Councils to widen the scope of the SLWP to encompass all wastes, to include all waste developments and to enable policy WP5 to be applied with more flexibility, all of which I have endorsed, will allow the Partnership Councils to consider the type of development outlined should the company's further detailed investigations of the former landfills suggest it to be justified. On this basis I do not consider the SLWP to be unsound and do not consider any changes beyond those already proposed by the Partnership Councils to be required.

Issue 4 - Whether the DPD provides a robust basis to enable measurement to take place and the need for remedial action to be identified

58. For the SLWP to be effective in achieving the required waste management capacity the Partnership Councils are heavily reliant on the owners and occupiers of the sites and areas identified through policies WP3 and WP4 bringing land forward for development. Policy WP5 is the contingency mechanism through which other, unidentified, sites may come forward. To be approved, criteria (a) and (b) must be met. The Partnership Councils have made it clear that 'need' for the purpose of criterion (b) is synonymous with the capacity gap at any point which they will determine annually³¹. To interpret criterion (a) both the Partnership Councils and the potential developers need an understanding of the deliverability of land identified in policies WP3 and WP4 at any point in time.

²⁹ Main Matters 2&3/504604

³⁰ SLWP/Matter 3 Topic Paper, Table 3

³¹ SLWP/Matter 5 Topic Paper paragraphs 5.7 & 5.8

59. To be effective therefore the SLWP needs to establish the monitoring indicators and the monitoring targets and identify delivery against those targets and the management actions that will be taken if that delivery has not occurred. The submitted SLWP includes the first set of these requirements (indicators and targets) but fails to address the second set (measurement of delivery and management actions). It is therefore unsound.
60. The Partnership Councils propose to address this by the insertion of an entirely new monitoring framework for the SLWP³². As a result of the discussion during the hearing session this was further refined and now includes an indication of the capacity gap to be met at 2016 and 2021 and detailed management actions that will be taken depending on the cause identified for any shortfall in provision against the required trajectory. The introduction of the framework and the consequential deletions from the submitted SLWP is achieved by **SC142** which I endorse as necessary for the SLWP to be found sound.

Other changes

61. As indicated above [paragraph 3] a large number of the changes proposed in Appendix A by the Partnership Councils are consequent upon those substantive changes that I have already referred to and endorsed. While they are minor in themselves they remain necessary for soundness and I endorse them all. They are **SC2 to SC23 inclusive, SC25 to SC32 inclusive, SC35 to SC40 and SC42 to SC61 inclusive, SC73, SC77, SC79, SC81, SC82, SC88 to SC95 inclusive, SC97 to SC106 inclusive, SC108 to SC110 inclusive, SC119 to SC129 inclusive, SC133, SC141, SC143 to SC166 inclusive and SC172 to SC177 inclusive.**

Legal Requirements

62. My examination of the compliance of the SLWP with the legal requirements is summarised in the table below. I conclude that the SLWP meets them all. However, I comment below on two matters in a little more detail.
63. Some representors consider the Partnership Councils have failed to consult the local community adequately. Full details of the consultation carried out are given by the Partnership Councils³³. While it will always be possible to develop different ways of engaging with the local community the Partnership Councils have confirmed that they have more than met the requirements of the 2004 Regulations. They confirm also that the SLWP and its associated documents have been prepared in accordance with the most stringent requirements of the Partnership Councils' individual Statements of Community Involvement³⁴. The evidence is therefore that the legal requirements have been met in this regard.
64. I have referred above to the concern that in one particular respect the SLWP may not be legally compliant [paragraph 55]. My understanding is that the representor considers the Partnership Councils to have not had the proper

³² SLWP/Matter 5 Topic Paper, Appendix 1

³³ SLWP 1.4 & SLWP1.5

³⁴ SLWP/Matter 1 Topic Paper

regard to either the Waste Framework Directive (Directive 2008/98/EC) or The Waste (England and Wales) Regulations 2011 (SI 2011 No. 988). The Partnership Councils dispute this view but neither party has referred me to any judicial authority for their respective positions.

65. The matters to which the Partnership Councils must have regard in preparing the SLWP are set out in s19(2) of the 2004 Act. Sub clause (j) (such other matters as the Secretary of State prescribes) is developed in Regulation 15 of the 2004 Regulations. Neither refers to the Waste Framework Directive specifically although Regulation 15 (f) does specify the national waste strategy³⁵. On page 6 of this document is set out the application of the strategy and how it is part, along with PPS10 and regional and local level plans, of the implementation for England of the Directive requirement to produce waste management plans.
66. The 2011 Waste Regulations came into force on 28 March 2011, after consultation on the submission draft of the SLWP had taken place but before formal submission. The terms 'appropriate authority' (in England, the Secretary of State) and 'waste management plan' are defined as are the duties of planning authorities. A planning authority has no explicit duty for a waste management plan as defined.
67. Although not entirely clear a waste DPD may be considered as part of the tiered system of waste planning referred to in Waste Strategy 2007. As such there is a link to the Waste Framework Directive and it would be reasonable for a local planning authority preparing a waste DPD to have regard to it.
68. Directive 2008/98/EC is not the one listed in the SLWP as the Directive used in the preparation of the DPD³⁶. However, the Partnership Councils have considered how the SLWP is compliant with the Directive 2008/98/EC and specifically with Article 28. This deals with waste management plans and in paragraph 3 sets out what they shall contain and, in paragraph 4, what they may contain. The particular issue of concern to Lichen Renewal is in the discretionary part of Article 28. **SC178** introduces Appendix 4 into the SLWP which sets all this out. I endorse this proposed change as helpful explanation as to how Directive 2008/98/EC has been addressed and confirmation that the legal requirements have been met in this regard.

| LEGAL REQUIREMENTS | |
|---|--|
| Local Development Scheme (LDS) | The SLWP is identified within the approved LDSs of the four Partnership Borough Councils which set out varying submission dates. However, a revised timetable has been placed on the web site of each of the four Partnership Borough Councils. The SLWP content and timing are compliant with this. |
| Statement of Community Involvement (SCI) and relevant regulations | The four Partnership Borough Councils have each adopted a SCI and consultation has been compliant with the requirements therein, including the |

³⁵ SLWP13.40

³⁶ SLWP1.1 Appendix 2

| | |
|---------------------------------------|--|
| | consultation on the changes proposed in the Appendices to this report. |
| Sustainability Appraisal (SA) | SA has been carried out and is adequate. |
| Appropriate Assessment (AA) | The Habitats Regulations AA Screening Report (December 2010) ³⁷ sets out why AA is not necessary and Natural England endorsed this approach and conclusion. |
| National Policy | The SLWP complies with national policy except where indicated and changes are recommended. |
| Spatial Development Strategy (SDS) | The SLWP is in general conformity with the London Plan except where indicated and changes are recommended. |
| Sustainable Community Strategy (SCS) | Satisfactory regard has been paid to the SCS of the four Partnership Borough Councils. |
| 2004 Act and Regulations (as amended) | The SLWP complies with the Act and the Regulations. |

Overall Conclusion and Recommendation

69. I conclude that with the changes proposed by the Partnership Councils, set out in Appendix A, the South London Waste Plan DPD satisfies the requirements of s20(5) of the 2004 Act and meets the criteria for soundness in PPS12. Therefore I recommend that the DPD be changed accordingly. And for the avoidance of doubt, I endorse the Partnership Councils' proposed minor changes, set out in Appendix B.

Brian Cook

Inspector

This report is accompanied by:

Appendix A (separate document) Council Changes that go to soundness

Appendix B (separate document) Council's Minor Changes

³⁷ SLWP1.7