

The London Plan Examination In Public 2018 – 2019

Participant Written Statement

Brethren's Gospel Trusts

Reference ID: 2787

Matter M2 – Equality of Opportunity

Equality of Opportunity

M2. Does the *Integrated Impact Assessment* and Addendum Report (NLP/CD/04 & 05) indicate that the Plan will help to advance equality of opportunity between people who share a "protected characteristic" as defined in the *Equality Act 2010* and those that do not share it and further the other two aims of the Act? In particular, which policies of the Plan will achieve this?

Introduction

1. Brethren's Gospel Trusts (BGT) welcomes the opportunity to participate in Matter M2 in this Examination. BGT represent ecclesiastical charitable trusts responsible for the provision and maintenance of Gospel Halls (Places of Worship) throughout England and Wales including several London Boroughs.
2. BGT objectives are to focus on:
 - the role of the voluntary sector in general and faith communities in particular in supporting the quality of life in London, in tackling social exclusion and inequalities, including crime and the fear of crime;
 - the need for a clear marker for Local Plan preparation in London of the need to promote truly sustainable communities and to encourage diversity and equality in planning;
 - the need to ensure provision at the London Plan level for the voluntary sector including faith communities and their need for space to operate and specifically to ensure the recognition of Places of Worship as part of the infrastructure for sustainable communities throughout London.
3. BGT bring a non-sectarian faith perspective to the examination, recognising that there is a wide diversity of faith based communities within London.
4. The LGA have published guidance for local authorities¹ (NLP/AD/05) which includes a chapter 'Working with Faith Communities'. This includes the following advice at paragraph 8.2:

¹ Community Cohesion – an action guide: Local Government Association: 2004
<https://www.interfaith.org.uk/uploads/communitycohesionactionguide.pdf>

Faith is a key area for community cohesion for a number of reasons:

- *the traditions of all the major faiths contain teachings commending the fundamental values of equality and respect which are so important to community cohesion;*
- *the presence of communities of different faiths and cultures enriches an area;*
- *members of particular faith groups may have particular service needs;*
- *discrimination and prejudice on the basis of faith corrodes community cohesion and must be addressed;*
- *faith communities have much to offer their area as providers of services and as contributors to community cohesion projects; and*
- *harmonious co-existence of people of different faiths and beliefs is vital to community cohesion.*

Background

5. BGT offer two appeal decisions as examples which illustrate the breadth of material considerations and the practical workings of the planning system in London in relation to the needs of faith communities, and the Public Sector Equality Duty, as follows:
 1. Appeal by Kingsway International Christian Centre and the London Development Agency: Plots 10-12 Off Consul Avenue and Manor Way, Beam Reach 5, Rainham RM13 8GJ²;
 2. Appeals by Satmar Ltd and others at 57 Bethune Road London N16 5EE³.
6. In the Rainham decision the Secretary of State commented:

However, the Secretary of State does recognise that KICC has the right to express religious belief through acts of worship and that it has a growing membership and vision for future expansion. Consequently he does not accept that an auditorium smaller than that now sought would necessarily be adequate to meet KICC's future needs for collective worship. Rather, he agrees with KICC's view that it is not for other parties to suggest how the church should organise itself and that the London Plan and SPG do not suggest that planning authorities know best as to how congregational forms of worship should be catered for (IR115). He accepts that one reason for the size of the proposed auditorium is to accommodate at one time all those who might in the future want to attend the main Sunday service (IR321). The Secretary of State therefore disagrees with the Inspector's remark at IR346 that collective worship does not necessarily require a venue of the very large size which KICC now seeks.

² APP/G1630/A/08/2082331 2 September 2009 – Secretary of State decision.

³ APP/U5362/C/11/2159648 and others - Redetermination 7 May 2015.

7. The Bethune Road appeals were in respect of an enforcement notice against the unauthorised change of use of a dwellinghouse to use as a synagogue and a rear extension of the property. The original decision on 2012 was challenged and remitted for re-hearing and determination by consent order of the High Court. The consent order stated that the Inspector failed to demonstrate in the original decision notice that she had due regard to the Public Sector Equality Duty (PSED) as required by section 149 of the Equality Act 2010. In the final decision the Inspector observed:

In my assessment and decision taking I must exercise the PSED contained in the Equality Act 2010. In summary, the three aims of the equality duty are to eliminate discrimination, advance equality of opportunity and foster good relations (s149(1)). Religion or belief is the protected characteristic of particular relevance to these appeals. Therefore having due regard to the need to advance equality will involve examining the obligation to remove or minimise disadvantages suffered by the appellants and the Satmar community, to advance equality of opportunity between them and those who do not share their protected characteristic and to take steps to meet their different needs (s149(3)).

8. The House of Commons Library has published a Briefing Note: *The Public Sector Equality Duty and Equality Impact Assessments* (NLP/AD/06). The summary states:

This note outlines the Public Sector Equality Duty contained in section 149 of the *Equality Act 2010*, which requires public authorities to have due regard to a number of equality considerations when exercising their functions.

Section 149 replaced pre-existing duties concerning race, disability and sex. It extended coverage to the additional "protected characteristics" of age, gender reassignment, religion or belief, pregnancy and maternity, sexual orientation and, in certain circumstances, marriage and civil partnership.

The note also provides an overview of Equality Impact Assessments. These are assessments that public authorities often carry out prior to implementing a policy, with a view to ascertaining its potential impact on equality. They are not required by law, although are a way of facilitating and evidencing compliance with the Public Sector Equality Duty

The Briefing Note sets out a helpful overview of caselaw examining the duties which arise from section 149 and the law and practice in respect of Equality Impact Assessments.

9. We would draw the attention of the Panel to the following judicial guidance on equality duties⁴:

(1) equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of antidiscrimination legislation.

(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be "rigorous in both enquiring and reporting to them ": R (Domb) v Hammersmith & Fulham LBC [2009] EWCA Civ 941 at 79 per Sedley LJ."

(9) "[T]he duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available,

⁴ Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345

there will be a duty to acquire it and this will frequently mean that some further consideration with appropriate groups is required" (R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin), per Elias LJ @ [89]).

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10. The IIA incorporates the EqIA, with an explanation at 1.1.2 which appears to accurately summarise the equality duties on the Mayor. The IIA Scoping Report (NLP/CD/02) acknowledges the need to address issues in respect of 'faith' and 'religion'. Examples include:

- *....diversity of faiths, languages and immigration status*⁵
- *....discrimination ... on the basis of race and religion across England; especially Muslims, Sikh and Gypsy Traveller and Roma communities (citing EHRC (2016) research)*⁶.

11. The only respondents to the Scoping Report appear to have been Historic England, the Environment Agency and Just Space. Understandably, the first two respondents focussed on their statutory areas of interest. Just Space made wider based representations including concerns regarding engagement, the IIA objectives, the process and methodology. They also made a general comment including:

The IIA Scoping Report gives an insight into the perceived issues and likely strategies for London but does not provide adequate analysis and is insufficiently detailed to capture the complexities and specific issues/needs of diverse groups.

We concur with that comment.

12. The IIA Consultation Document (NLP/CD/04) then develops the analysis of the emerging plan and includes a wide variety of references to faith, religion and religious institutions, religious buildings and religious groups. The topics where this is touched on include, for example:

- Policy S1 – Developing London's Social Infrastructure⁷
- Policy S3 - Education and Children's Facilities⁸
- Policy S7 – Burial Space⁹
- Policy D10 – Safety, Security and Resilience¹⁰

13. Whilst we are grateful for the acknowledgement of these considerations, there is no evidence that the authors of the IIA and the GLA responses were properly informed before taking their decisions. In particular, there is no evidence of any relevant background document review at section 4.2 or awareness of the diversity of needs and status of the wide variety of faith communities such as that set out in the AHRC Faith and Place Network Policy Briefing (NLP/AD/07) or other documents including the CAG Consultants report: *Responding to the needs of faith communities: places of worship* (NLP/AD/08) which was prepared for a previous Mayor of London.

⁵ Scoping Report (NLP/CD/02) paragraph 5.3.12

⁶ *Ibid*: paragraph 5.3.14

⁷ (NLP/CD/04) paragraph 9.4.1 page 173

⁸ *Ibid*: paragraph 9.4.3 page 177

⁹ *Ibid*: paragraph 9.4.7 page 185

¹⁰ *Ibid*: paragraph 9.2.10 page 129

Conclusion

14. For all these reasons, we respectfully submit that the IIA and Addendum Report (NLP/CD/04 & 05) fail to meet the duty of due regard set out in the *Equality Act 2010* and therefore fail to indicate that the Plan will help to advance equality of opportunity between people who share a “protected characteristic” and those who do not share it, and further the other two aims of the Act.

J R Shephard
5 December 2018