



Development Management in Birmingham Examination

Birmingham City Council Hearing Statement

Matter 3: Environment and Sustainability Policies

October 2020

Policy DM1 Air Quality

Q21. Is the policy consistent with national policy relating to air quality?

- 21.1 Yes. DMA is consistent with national policy. Paragraph 170 of the National Planning Policy Framework (NPPF) requires planning policies and decisions to contribute to *“preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality...”*
- 2.2 Paragraph 81 of the NPPF requires that *“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas... Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.”*
- 2.3 Policy DM1 Air quality is consistent with national policy in requiring that development proposals contribute to the management of air quality and supports the objectives of Birmingham’s Air Quality Action Plan (AQAP) and the Clean Air Zone (CAZ). It is also consistent with national policy in requiring development to not lead to exceedances in national objectives for pollutants.

Q22. Is the policy wording sufficiently clear and effective for Development Management purposes? Would the modifications proposed by the Council address any shortcomings in this respect?

- 22.1 The Council’s proposed change to the policy and supporting text will address the shortcomings in the clarity and effectiveness of the policy. (CSD4 Schedule of Proposed Minor Changes).

Q23. Does the policy adequately address the use of mitigation measures?

- 23.1 Yes. The policy allows for a wide range of mitigation measures to be provided in order to help reduce and/ or manage air quality impacts. This includes measures such as low and zero carbon energy, green infrastructure and sustainable transport. Paragraphs 2.7 – 2.9 of the supporting text to the policy addresses mitigation measures in further detail.

Policy DM2 Amenity

Q24. Is it clear what is meant by vicinity in 1.h of the policy?

- 24.1 Development proposals in the vicinity’ means those within the urban block and immediately adjoining and directly opposite the application site. This could be made clearer by inserting this explanation in the supporting text.

Q25. Does the policy adequately protect the amenity value of canals?

- 25.1 The scope of policy DM2 is to protect the amenity of residents and occupiers of existing and new development. The amenity value of canals is addressed by policies

TP6 'Water Resources', TP7 'Green Infrastructure' and TP12 'Historic Environment' contained in the adopted Birmingham Development Plan (EBD1).

Q26. Is there any overlap between Policy DM2 and Policy DM10 of the Plan?

- 26.1 Yes, there is overlap. Point 3 of DM10 relates to separation distances, which can help to address some of the considerations in DM2, notably:
- a. Visual privacy and overlooking;
 - b. Sunlight, daylight and overshadowing; and
 - c. Aspect and outlook.

- 26.2 Point 4 of DM10 relates to private useable outdoor amenity space, which is also identified as a consideration in point d. of DM2.

Q27. Are the criteria in the policy flexible enough to enable housing delivery and be consistent with the National Planning Policy Framework?

- 27.1 Yes. DM2 is sufficiently flexible to enable housing delivery. The policy reflects existing local design guidance, Places for Living SPD (EBD18) and Places for All SPD (EBD17) and is consistent with policies in the adopted Birmingham Development Plan and the NPPF. Birmingham's Housing Delivery Test results for 2018 and 2019 have been 108% and 121% respectively, demonstrating successful housing delivery against plan targets.

Policy DM3 Land affected by Contamination, Instability and Hazardous Substances

Q28. Are the requirements of the policy consistent with national policy?

- 28.1 Yes. DM3 is consistent with Paragraph 178 of the NPPF in requiring site investigation and measures to minimise and mitigate any risks or harmful effects arising from land instability and contamination.

Q29. Are the requirements of the policy effective and would the modifications proposed by the Council overcome the shortcomings in this respect?

- 29.1 The Council's proposed change to the policy will increase its effectiveness (CSD4 Schedule of Proposed Minor Changes).

Q30. Has the impact on viability been adequately considered?

- 30.1 Yes. A Financial Viability Assessment (FVA) prepared by BNP Paribas Real Estate (November 2019) (EBD71) was undertaken in line with the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG). The FVA assessed the policy requirements in the DMB Publication version alongside the policy requirements in the adopted Birmingham Development Plan. Page 95 of the FVA summarises the cost implications of DM3. Overall, DM3 reflects existing policy requirements that are built into base development costs or have a modest upwards impact on costs only.

Policy DM4 Landscaping and Trees

Q31. Is the Policy consistent with national policy? Do the proposed amendments by the Council address the shortcomings in this respect?

- 31.1 Yes. DM4 is consistent with national policy. See Trees Background Note (EBD31). Paragraph 170 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognise the benefit of trees and woodland. (Paraphrased).
- 31.2 Paragraph 175 also states that *“development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.”*
- 31.3 Policy DM4 is consistent with the NPPF in encouraging development to take opportunities to provide high quality landscapes that enhance the landscape character and green infrastructure network of the city.
- 31.4 Policy DM4 supports the objectives of the NPPF by requiring development proposals to *“seek to avoid the loss of, and minimise the risk of harm to, existing trees of quality, woodland, and/or hedgerows of visual or nature conservation value, including but not limited to trees or woodland which are subject to a Tree Preservation Order, or which are designated as Ancient Woodland or Ancient/ Veteran Trees.”* Where development would result in the loss of any trees, woodland or hedgerows, adequate replacement planting will be required.
- 31.5 The Council has proposed changes to the policy and supporting text (CSD4 Schedule of Proposed Minor Changes) but would like to propose additional changes to Part 3 of the policy to ensure complete consistency with the NPPF as below.
- 31.6 Further proposed change to Part 3 of DM4:
- “Development proposals must seek to avoid the loss of, and minimise the risk of harm to, existing trees, woodland, and/or hedgerows of visual or nature conservation value, including but not limited to trees or woodland which are subject to a Tree Preservation Order ~~or which are designated as~~ **Development resulting in the loss or deterioration of Ancient Woodland or Ancient/ Veteran Trees will be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.** Where trees and/or woodlands are proposed to be lost as a part of development, this loss must be justified as a part of an Arboricultural Impact Assessment (AIA) submitted with the application.”

Q32. Is point 1 of the Policy on landscaping schemes justified and effective?

- 32.1 Yes. Paragraph 170 of the NPPF says that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the benefit of trees and woodland. (Paraphrased).
- 32.2 Policy DM4 is consistent with the NPPF in encouraging development to take opportunities to provide high quality landscapes that enhance the landscape character and green infrastructure network of the city.

Q33. Is point 2 of the Policy clear and effective?

33.1 Yes. Point 2 provides clear policy on what is expected in terms of landscaping. Where a landscape plan is required, reference has been made to the local validation criteria (EBD86 Local Validation Requirements for Planning Applications). Further guidance on landscaping will also be provided in the Birmingham Design Guide which will be published for consultation in November 2020.

Q34. Is point 3 of the Policy wording effective? Would the Council's suggested amendments address the shortcomings in this regard?

34.1 The Council's proposed change to the policy will increase its effectiveness and address the policy's shortcomings. (CSD4 Schedule of Proposed Minor Changes).

Q35. Are points 3 and 4 of the Policy positively prepared and justified?

35.1 Yes. Points 3 and 4 are positively prepared and consistent with Paragraphs 170 and 175 of the NPPF. Therefore, the Council considers them to be justified.

Q36. Is point 5 of the Policy clear and effective? Would the Council's suggested amendments address the shortcomings in this regard?

36.1 The Council's proposed change to the policy will increase its clarity and effectiveness and address the shortcomings. (CSD4 Schedule of Proposed Minor Changes).

Q37. Is paragraph 2.39 of the supporting text effective? Would the Council's suggested amendments address the shortcomings in this regard?

37.1 The Council's proposed change to paragraph 2.39 of the supporting text will address the shortcomings of the policy and make it more effective. (CSD4 Schedule of Proposed Minor Changes).

Q38. Is the use of the Capital Asset Value for Amenity Trees methodology justified, including consideration of the impact on viability and is it clear which method will be used in the policy (full method or quick method)?

38.1 Yes. The reasons for selecting the Capital Asset Value for Amenity Trees methodology is set out in the Trees Background Note (EBD31).

38.2 A Financial Viability Assessment (FVA) prepared by BNP Paribas Real Estate (November 2019) (EBD71) was undertaken in line with the NPPF. The FVA assessed the policy requirements in the DMB Publication version alongside the policy requirements in the adopted Birmingham Development Plan. The FVA takes account of CAVAT by adding an "extra-over cost for enhanced quality of landscaping." The base costs been increased from 10% to 15% to allow for the additional landscaping requirements in DM4. Page 96 of the FVA summarises the cost implications of DM4 and Section 4.11 of the FVA concludes that the appraisal *"indicates that in most cases, this additional cost can be absorbed. Where residual land values are higher than benchmark land values before policy costs are applied, they remain so after the additional cost for landscaping has been applied."*

38.3 The quick method is generally utilised as a strategic tool for management of the tree stock as a whole. The full method is recommended for use in decisions concerning individual trees or groups, when precision is required. It is the full method that would be utilised in calculating the value of replacement provision. It is recognised this is

not clear in the policy, so the Council is amenable to clarifying this in the supporting text by adding to proposed change 7 in CSD4, the word “full” before the “methodology”.

Q39. Should the Policy recognise and give value to the ecological and landscape value of lost trees?

39.1 The CAVAT methodology takes into account the landscape value of a tree, thus the policy recognises and give value to the landscape value of lost trees. It does not, however, calculate the biodiversity value. However, Policy TP8 ‘Biodiversity and Geodiversity’ of the adopted BDP already contains provisions relating to protection and enhancement of ecological networks in Birmingham and states that *“All development should, where relevant, support the enhancement of Birmingham’s natural environment, having regard to strategic objectives for the maintenance, restoration and creation of ecological and geological assets...”* TP8 therefore provides for the ecological value of trees to be considered.

Q40. Should the Policy identify where off site s106 contributions for replacement tree planting will be located?

40.1 It is not possible to indicate within the policy all the possible locations for s106 off-site contributions. This will depend on the location of the proposed development and any deficits in tree coverage near the application site at the time of the application.

40.2 Further detail relating to S106 spend will be in the forthcoming Tree Strategy. It is proposed that new replacement tree planting funded through S106 will occur within the ward of the development site. However, if this is not physically possible, the approach will be to spend the s106 contributions in neighbouring wards which are particularly deficient against the city’s target of 25% canopy cover per ward. A Tree Board will be set up and this body will agree planting sites and report recommendations for expenditure to the appropriate cabinet member on an annual basis.

40.3 The Council has an up to date tree canopy cover assessment for the city which goes down to the ward level. This will be used to identify where there are deficits in tree coverage and GIS spatial data will be used to identify plantable space.

Q41. Should part 5 of the Policy refer to the Council’s Tree Strategy? Would the amendment proposed by the Council address the shortcomings in this regard?

41.1 Yes. The Council has proposed a change to the policy to reference the forthcoming Tree Strategy. (CSD4 Schedule of Proposed Minor Changes).

Q42. Is the Policy effective in enabling the long-term management of landscaping schemes?

42.1 Paragraph 2.40 of the supporting text to DM4 states that “where appropriate, the maintenance of a Landscape Management Plan will be required through a planning condition.”

42.2 Policy PG3 ‘Place-making’ of the Birmingham Development Plan (BDP) requires new development to “Ensure that private external spaces, streets and public spaces are attractive, functional, inclusive and able to be managed for the long term.”

- 42.3 Policy TP27 'Sustainable neighbourhoods' of the BDP also requires all new residential development to provide *"Effective long-term management of buildings, public spaces, waste facilities and other infrastructure, with opportunities for community stewardship where appropriate."*

Policy DM5 Light Pollution

Q43. Is the wording in the Policy consistent with national policy?

- 43.1 Yes. DM5 is consistent with national policy. Paragraph 180 of the NPPF requires planning policies and decisions to ensure that new development is *"appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development."* Point c. requires development to *"limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation."*
- 43.2 Paragraph 153 of the NPPF also expects new development to minimise energy consumption and the National Design Guide encourages well designed places and buildings which are energy efficient.
- 43.3 Section 16 of the NPPF focuses on conserving and enhancing the historic environment. Paragraph 184 says that *"heritage assets should be conserved in a manner appropriate to their significance."*
- 43.4 Policy DM5 is therefore consistent with the NPPF in requiring development to meet criteria a – e.
- 43.5 Paragraph 180 (e) of the NPPF uses the wording 'limit the impact' of light pollution. The word 'limit' means to restrict, curtail, reduce or confine. Policy DM5 uses the wording 'seek to avoid or mitigate' which is in line with the meaning of the NPPF.

Q44. Should the Policy make reference to the safety and security benefits of lighting dark places?

- 44.1 There are numerous benefits of lighting but the scope of DM5 is concerned with the control of light pollution. Notwithstanding this, the benefits of lighting to safety and security is already referenced in the supporting text (2.41 and 2.42).

Policy DM6 Noise and Vibration

Q45. Is the wording in the Policy consistent with national policy?

- 45.1 Paragraph 170 of the NPPF requires *"planning policies and decisions should contribute to and enhance the natural and local environment by... e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being **adversely affected** by, unacceptable levels of soil, air, water or noise pollution or land instability."*
- 45.2 Policy DM6 states that *"Development should be designed, managed and operated to reduce exposure to noise and vibration."* And *"Where potential adverse impact is identified, the development proposal shall include details on how the adverse impact will be reduced and/or mitigated."*

45.3 The use of the words 'adverse impact' in DM6 is consistent with paragraph 170 of the NPPF.

Q46. Is point 1 of the Policy effective? Would the Council's suggested amendments address the shortcomings in this regard?

46.1 Yes. Point 1 of the policy is considered to be effective. The Council has not proposed any amendments to Point 1 of policy DM6.

Q47. What is the status of the Noise and Vibration Guidance Note referred to in paragraph 2.52 of the supporting text and is greater clarity required on the weight it should be given in the determination of planning applications?

47.1 The Noise and Vibration Guidance Note referred to in paragraph 2.52 has no planning status and no weight in the determination of planning applications. As stated on page 4 of the document, it is intended to provide *"guidance to Birmingham City Council Environmental Protection Officers when reviewing planning applications and making recommendations to the Planning Management service, on matters relating to noise and vibration. The document may also assist those seeking planning permission, and their advisors, by drawing to their attention the noise and vibration issues that may need to be addressed. However, the document is for guidance only and is based on addressing the large number of more straightforward proposals."*

Policy Omissions

Q48. Should the Plan contain a Policy on Listed Buildings and Conservation Areas?

48.1 Policy on Listed Buildings and Conservation Areas is contained in the adopted Birmingham Development Plan under Policy TP12 'Historic Environment'.