



Development Management in Birmingham Examination

Birmingham City Council Hearing Statement

Matter 1: Legal Compliance, including the Duty to Co-operate

October 2020

Q1. Is the Duty to Cooperate, which covers strategic matters, applicable to the Plan? If so has the Council adequately discharged the Duty to Cooperate in preparing the Plan under sections 22(5)(c) and 33A of the 2004 Act and Regulation 4 of the 2012 Regulations and with regard to the advice contained in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)?

1.1 The Duty to Do-operate places a legal requirement on local planning authorities, county councils and public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation in the context of strategic cross boundary matters.

1.2 While the Development Management in Birmingham Document (DMB for short) only contains development management policies¹, Duty to Cooperate bodies were consulted on the preparation of the plan in order to identify any potential strategic matters arising from the DMB policies.

1.3 The Council has adequately discharged the Duty to Cooperate in preparing the DMB as evidenced in Statement of Compliance with the Duty to Cooperate (CSD15).

Q2. Does the Council's Statement of Compliance with the Duty to Cooperate (CSD15) demonstrate that the Duty to Co-operate has been met?

2.1 Yes. The Council's Statement of Compliance with the Duty to Cooperate (CSD15) demonstrates that the Council has engaged constructively and actively with the Duty to Cooperate bodies throughout the preparation of the DMB.

Q3. Does the content and timescale for preparation of the Plan accord with the latest version of the Local Development Scheme (LDS) (CSD16).

3.1 Yes. The content and timescale for preparation of the Plan accords with the latest version of the Local Development Scheme (LDS) (CSD16).

3.2 Paragraph 4.2 of the LDS (CSD16) states that the "*Development Management in Birmingham DPD will, when adopted, replace the saved policies of the UDP (Unitary Development Plan). It will provide detailed policies to guide decision making on planning applications and support the delivery of the BDP*". Appendix 1 states that it will provide "*detailed policies on a range of planning matters to ensure development in the City happens in the right place, deliver the best design, and enhances infrastructure.*" The content of the DMB, therefore accords with the LDS.

3.3 The timescale for the preparation of the DMB also accords with the latest version of the LDS. See Appendix 1 of the LDS (CSD16).

Q4. What is the scope of the Plan?

4.1 The scope of the DMB is the provision of detailed development management policies to replace the saved policies of the Birmingham Unitary Development Plan 2005 and support the delivery of the adopted Birmingham Development Plan (EBD1).

¹ Paragraph 28 of the National Planning Policy Framework considers development management policies to be non-strategic policies.

- Q5. Having regard to the Plan and the Council's intentions, as set out in the LDS, are there any obvious policy omissions from the submitted plan?**
- 5.1 It is the Council's view that there are no obvious policy omissions in the submitted plan. The DMB aligns with, and supports, the adopted Birmingham Development Plan by providing up to date development management policies to replace the saved policies of the Unitary Development Plan 2005.
- Q6. Has the Plan been prepared and publicised in accordance with the statutory procedures of the 2004 Act (as amended) and the consultation requirements in the Regulations?**
- 6.1 Yes. The DMB has been prepared and publicised in accordance with the Planning and Compulsory Purchase Act 2004 (as amended and the Town and Country Planning (Local Planning) (England) Regulations 2012, as summarised in the Consultation Statement (Regulation 22)(1)(c) (CSD7).
- Q7. Has the Plan been produced in compliance with the Council's Statement of Community Involvement (CSD13 and CSD14)?**
- 7.1 The DMB has been produced in compliance with the Council's Statement of Community Involvement (CSD13 and CSD14), as evidenced in the Consultation Statement (Regulation 22)(1)(c) (CSD7).
- Q8. Has the Plan followed a sound process of Sustainability Appraisal?**
- 8.1 Yes. The Plan followed a sound process of Sustainability Appraisal (SA). Wood Environment and Infrastructure Solutions Ltd. (Wood) was commissioned by Birmingham City Council to undertake a Sustainability Appraisal (SA) of the DMB. The SA identifies, describes and appraises the environmental, social and economic performance of the DMB and reasonable alternatives. It uses a qualitative appraisal methodology, informed by evidence and consultation. Paragraphs 1.5.1 – 1.5.6 of the SA report (CSD9) summarise the stages of the sustainability appraisal process followed in preparing the DMB.
- 8.2 The SA has been prepared in line with both Sections 19(5) and 39 of the Planning & Compulsory Purchase Act 2004, and the Environmental Assessment of Plans & Programmes Regulations 2004 (EAPP Regulations) and the judgements arising from relevant case law. It is also consistent with the National Planning Practice Guidance on 'Strategic environmental assessment and sustainability appraisal' (last updated July 2020).
- Q9. Has the Sustainability Appraisal been undertaken at each stage of the Plan's preparation to clearly justify the Council's policy choices in line with Section 19(5) of the 2004 Act?**
- 9.1 Yes. SA has been undertaken at each stage of the DMB's preparation to help inform and justify the policy choices made. The sequential stages of the SA process are summarised in a paragraphs 1.5.1 – 1.5.6 of the SA Report (CSD9).
- 9.2 The first stage (Stage A) led to the production of a SA Scoping Report (December 2014) (PSD2) and an updated SA Scoping Report (May 2018) (PSD3).
- 9.3 Stage B of the SA process was iterative and involved the development and refinement of the DMB by testing the sustainability strengths and weaknesses of the

emerging policy options. A SA of the Preferred Options Document (Regulation 18) was completed and subject to consultation in conjunction with the Preferred Options Document in February to March 2019.

9.4 At Stage C, a final SA Report was prepared to accompany the Publication version of the DMB.

Q10. Have the likely environmental, social and economic effects of the Plan been adequately assessed in the Sustainability Appraisal?

10.1 Yes. The SA Framework uses a SA Framework comprising of qualitative appraisal objectives, developed following an analysis of contextual information and consultation to identify, describe and evaluate for the likely significant environmental, social and economic effects of the DMB. It provides a comprehensive appraisal of the significant positive and negative effects (including the topics identified in the EAPP regulations).

Q11. Has the Sustainability Appraisal tested against reasonable alternative policies?

11.1 Yes. The SA has tested alternative approaches and policies. Table 4.2 in the SA Report (CSD9) summarises the results of the appraisal and their reasonable alternatives of policies drawn from the analysis in Appendix A of the SA Report which appraises the proposed policies against reasonable alternatives.

Q12. Has the Sustainability Appraisal been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative?

12.1 Yes. The SA has assessed each reasonable alternative in a systematic, objective and comparative manner using the SA Framework set out in the SA Scoping Report. The comparative assessment of alternatives is contained in Appendix A of the SA Report (CSD9).

Q13. Are the reasonable alternatives sufficiently distinct such that meaningful comparisons can be made of different sustainability implications?

13.1 Yes. The alternatives are distinct from each other. They range from having no policy; reliance on national policy (i.e. the NPPF); using the existing UDP policy; and a variation on the proposed policy.

Q14. Does it represent an appropriate strategy in the circumstances?

14.1 Yes. The proposed policies in the DMB are considered to provide an “appropriate strategy” taking into account the sustainability objectives, reasonable alternatives, and based on proportionate evidence. The proposed policies will help to ensure that the strategic policies of the Birmingham Development Plan are delivered on-the-ground in a consistent fashion.

Q15. Does the final report set out the reasons for rejecting earlier options?

15.1 Yes. Section 4.3 of the final SA Report (CSD9) summarises the reasons for selecting the proposed policies and rejecting the alternatives.

Q16. Are the likely effects of the Plan adequately and accurately assessed in the Habitats Regulations Assessment and any requirement for Appropriate Assessment?

16.1 Yes. The DMB has been reviewed against the requirements of Regulation 105 of the Habitats Regulations. A summary of the Habitats Regulations Assessment (HRA) is set out on Section 4.4. of the SA Report (CSD9).

Q17. Does the Plan as a whole include policies designed to ensure that the development and use of land contributes to the mitigation of, and adaptation to, climate change in accordance with Section 19(1A) of the Planning and Compulsory Purchase Act (as amended)?

17.1 Yes. The DMB includes policies that ensure the development and use of land contributes to the mitigation of, and adaptation to, climate change. This includes the indirect positive effects of policy DM1 'Air quality' which seeks mitigation measures such as low and zero carbon energy, green infrastructure and sustainable transport to help reduce and/ or manage air quality impacts; policy DM4 'Landscaping and trees' which seeks to maintain and enhance green infrastructure in Birmingham which is important in helping to reduce the impact of climate change; and DM14 'Highway safety and access' and DM15 'Parking and servicing' which promotes sustainable travel and seeks to reduce congestion.

Q18. Has the preparation of the Plan complied with the Planning and Compulsory Purchase Act 2004 Part 2 and the Town and Country Planning (Local Plan) (England) Regulations 2012 in all other respects?

18.1 Yes. The preparation of the DMB has complied with the Planning and Compulsory Purchase Act 2004 Part 2 and the Town and Country Planning (Local Plan) (England) Regulations 2012 as summarised in the Consultation Statement (Regulation 22)(1)(c) (CSD7).