

Public Examination of the Lewisham Development Management Local Plan

Agenda for the hearings sessions

Wednesday 26 and Thursday 27 February 2014, commencing at 10.00

Introduction

My initial queries to the Council, dated 2 December 2013, drew attention to a number of potential soundness issues. The Council's response statements subsequently included a number of suggested potential modifications referred to in agenda items 1-22 below.

Any potential 'major modifications' (MMs), together with any variations and/or additions resulting from these hearings, will need to be gathered together, referenced, and then advertised for public comment. However, in every case consideration would first need to be given to whether or not such change would require testing by further sustainability appraisal.

The Council is also able (under S23(3)(b) of the Planning and Compulsory Purchase Act 2004, as amended) to make minor editorial changes as 'additional (non soundness-related) modifications' (AM). Such AMs do not require recommendation by me under S20(7)(c) of the Act.

Appendix A to this agenda begins to move towards a summary of the likely collected necessary MMs. It distinguishes these from other changes (see Appendix B) which record AMs that the Council has said it wishes to make. The entries in these appendices will need to be checked and either agreed or altered.

1 DM3 Conversions of single dwellings to two or more dwellings

The Council has suggested a number of textual modifications to remove the present confusion of terms between 'dwellings' and 'single family houses'. These are matters of minor clarification. See Appendix B

2 DM5 Sheltered housing and care homes

The Council's suggested modifications clarify some aspects of the issues raised in my note of 2 December. However, some further questions remain:

(A) The revisions to the policy add a third category (care villages). Whereas the terms 'sheltered housing' and 'care homes' are generally reasonably well-defined and understood, 'care villages' may be a more variable concept and are just one of a range of other possible models for providing accommodation for the elderly or those with particular needs. The question arises, why it is necessary to introduce more complexity/specificity to the policy? If the Council's aim is to encourage the provision of appropriate forms of accommodation, would it be more appropriate for

part 1 of the policy to state less prescriptively that ‘The Council will support proposals for sheltered housing, care homes and other appropriate models of accommodation for the elderly and those with particular needs provided that:.....’

(B) The second main area of concern is how far it may be possible to require the provision of an element of ‘affordable housing’ within such schemes. Rather than attempting to tie such provision to particular models of provision, it may be clearer simply to state that in appropriate schemes, where accommodation is provided on a freehold or leasehold basis, an appropriate percentage of affordable housing will be sought in accordance with the other relevant policies of the development plan.

Changes concerning these two matters would make the policy and accompanying text clearer, shorter, more robust, more accessible and less prone to internal inconsistency.

See Appendix A

3 DM6 Houses in multiple occupation

The Council’s suggested modifications appear to me to meet the point made in my note of 2 December. See Appendix A

4 DM7 Affordable rented housing

My initial note of 2 December stated that this policy raised an issue of potential major concern to soundness since the Mayor’s view is that it is not in general conformity with the London Plan in relation to affordable rent.

Signet Planning (for Renewal Group) considers the policy inconsistent with the NPPF, insufficiently flexible, and inappropriate in stipulating that affordable rents should not exceed ‘target rents’ for larger units: it should also have regard to viability.

The Council’s response dated 13 January proposes to strike out parts 2b and 2c of the policy and amend part 2a so that it would read:

1 The Council will require new residential development to provide on-site affordable housing in accordance with Core Strategy Policy 1.

2 If providing affordable rented housing the percentage of dwellings provided for this tenure shall be negotiated with the Council to ensure homes are genuinely affordable for households on low incomes, particularly with regard to family homes (3 or more bedrooms).

It also proposes two new paragraphs of text concerning affordable rent. (.....need to clarify how these fit into current paras 2.73 to 2.77)

The GLA has proposed the following:

‘Within the context of Core Strategy policy 1, when considering the affordable housing mix the Council will take account of a range of issues to ensure that the delivery of affordable housing is maximised and schemes remain viable. When

providing affordable rented housing priority will be given to delivering family housing (3 or more bedrooms) at or around target rent levels.'

It will be necessary to discuss the extent to which the Council's proposed modifications may or may not be in/out of general conformity with the REMA to the London Plan, and how far 'target rents' are a relevant planning consideration. The presence of the GLA will be very helpful in clarifying these matters.

See Appendix A

5 DM8 Student housing

Part 1h of the policy inappropriately incorporates 'ANUK standards' (which are also unexplained) and 'any relevant standards' for HMOs. Such standards can at best be 'material considerations' of uncertain weight in individual planning decisions and cannot be given statutory status in this way. The Council's proposed modifications go part of the way to overcome these defects but deletion of the whole of part 1h would be necessary to complete this. See Appendix A

6 DM9 Mixed Use Employment Locations

The Council's response reasonably explains why it considers that this policy adds value to policies on the same matter in the Core Strategy and Site Allocations Local Plan. The minor additions to the policy and the introductory paragraph (2.85), as set out in the Council's response of 13 January 2014, could be introduced as AMs. See Appendix B

With regard to the requirement in part 3 of the policy for 'internal fit-out to an appropriate level to ensure future flexibility of use by a range of B class businesses', the Council has more fully explained its approach. It may be the case that the policy itself, and its aims, are sound but that (in applying it) due regard will need to be paid to all the relevant circumstances in each case.

7 DM10 Local Employment Locations

The Council's response reasonably explains why it considers that this policy adds value to policies on the same matter in the Core Strategy and Site Allocations Local Plan.

Turning to para 2.97, the comments concerning 'internal fit-out' in relation to DM9 probably also apply here. The Council's suggested editorial changes are likely to be appropriate AMs. See Appendix B

8 DM11 Other employment locations

On the criteria in part 1, the Council suggests introducing words to the policy which are less prescriptive and provide more flexibility.

Concerning para 2.102, it is unclear how the change at SM31 relates to that in para 1.3 of the Council's response of 13 January 2014.

The Council's response statement also suggests a change to para 2.103.

See Appendix A

9 DM12 Hotels

The Council suggests a modification to overcome a lack of clarity in part 2e of this policy. This removes the unclear/undefined phrase 'car free' and replaces it with a sentence explaining the limited types of parking to be provided for at hotel developments in areas of 'high public transport accessibility'. [I assume that this change is intended to replace the earlier SM11.]

However, this change introduces uncertainty about what is an area of 'high transport accessibility'. Should it more clearly correlate with any of the current PTAL descriptions? If so, how?

See Appendix A

10 DM13 Location of main town centre uses

The Council reasonably explains the function of this policy.

11 DM17 Restaurants, cafes and drinking establishments

The Council provides a minor clarification of the way this policy will operate. In my view it would be appropriate to take this forward as an AM. See Appendix B

12 DM18 Hot food take-away shops (A5 uses)

The Council's response paper provides more information about the background to this policy and its view of the justification for DM18 in the context of wider measures to encourage healthier eating. It highlights that the Borough has the 13th highest density of A5 uses as well as comparatively high levels of the types of deprivation often associated with weight and health issues. It also has above-average levels of obesity among primary age children. It refers to the Public Health England report which recognises the lack of empirical evidence for causal links between takeaways and obesity but points to strong theoretical arguments for the value of restricting the growth in fast food outlets, albeit that it is unlikely that any single intervention would make a measurable difference to outcomes on its own.

The Council's paper identifies that all of the Borough's Major and District Centres except Blackheath contain more than the 5% maximum ceiling set in part 2a of the policy. The Local Centres all exceed the 10% ceiling. Consequently the policy would provide no scope for further additions to A5 uses except in Blackheath. Indeed the Council points out that if an A5 unit were to change to another use the policy would provide few opportunities for any subsequent change back to A5, so the numbers of such units could fall over time.

The greater part of the area of the Borough (both within and outside the centres) would also be covered by the embargo imposed by part 1 of the policy within 400m of any school.

Planware (o/b McDonalds) submits that the policy is excessively negative, being based on an over-generic approach to A5 uses and allowing for no exceptions. The Council's approach is said to be contrary to the aims of the NPPF to encourage new enterprise (especially those which comply with the sequential test) and to misinterpret its references to 'health and well-being'. Bearing in mind the number of existing A5 units in the exclusion zones Planware also questions the policy's effectiveness.

In addition, Planware questions whether the evidence base truly supports the policy's approach both as a whole and in regard to the 400m exclusion zones around schools. It queries the way in which the distance would be measured in practice.

Planware points to the failure of South Ribble and Newham Councils to demonstrate the soundness of similar proposed policies on this issue.

[It would be helpful if the Council can provide more information about any other Councils which have had such a policy successfully or unsuccessfully defended at a development plan examination.]

13 DM19 Shopfronts, signs and hoardings

The Council proposes to delete part 2 and para 2.155, which inappropriately prejudice applications for certain types of posters. It would also alter part 1g of the policy to bring it into line with the approach specified in the Advertisement Regulations.

With regard to my question on shop fit-outs (part 1j of the policy), the Council explains its experiences on this matter together with its general objectives, which are similar to those outlined in relation to policies DM9&10. It also proposes changes to parts 1j and 2 which more clearly express what is sought and why.

See Appendix A

14 DM27 Lighting

The Council proposes a change to delete inappropriate reference in the policy to a professional guidance note. See Appendix A

15 DM29 Car Parking

The Council suggests clarifying the policy by indicating that all the criteria at part 2 need to be met and including a new paragraph of text which defines 'car-limited development'.

The Council also introduces other changes as follows:

SM32 changes part 2a of the policy to read ‘PTAL of good or higher’ instead of ‘PTAL level 4 or higher’. Which of these descriptions is the more appropriate (and best corresponds with the London Plan)?

SM6-8 introduce new material bringing the London Plan parking standards into the DMLP. (To clarify what is meant by ‘future provision’ in relation to blue badge parking, as opposed to ‘provision from the outset’. Is there any planning mechanism by which ‘future provision’ can be activated?)

As these are considerable cumulative changes to DM29, it may be best to treat them as a package of MMs. See Appendix A

16 DM30 Urban design and local character

The Council puts forward changes to delete the inappropriate policy reference to SPG, relegating this to the text, and changing the reference to the Borough Wide Character Study, replacing this with references to table 2.1 of the plan which imports these urban typologies into the plan. Since this policy is being changed it would be appropriate at the same time to take in the Council’s suggested changes concerning ‘strategic views’ (see item 20 below). See Appendix A

17 DM32 Housing design, layout and space standards

Concerning the policy, the council’s response statement suggests a revised, more broadly-based opening, deletes the inappropriate references to non-statutory standards in parts 3 and 4, and introduces changes deleting reference to ‘studio flats’ no longer found in the London Plan. See Appendix A

The council also proposes minor changes at SM14-16 which could be taken forward as AMs. See Appendix B

18 DM33 Development on infill sites, backland sites, back gardens and amenity areas

As in the case of DM30, the Council’s suggested change replaces the inappropriate policy references to the Borough Wide Character Study. It also deletes references to Conservation Area Appraisals, substituting this with reference to the special distinctiveness of any Conservation Area. See Appendix A

The Council also suggests AMs, as at SM3, SM12 and SM13. See Appendix B

19 DM36-38 Conservation policies

The Council accepts that a modification is required to bring DM36 into line with the statutory duty. Otherwise, it makes a case for retaining these policies as submitted. See Appendix A

20 Strategic Views

The Council suggests inclusion of reference to ‘..panoramas...including those identified in the London Plan..’ and an explanatory reference (in para 2.242) to the London Plan and relevant SPG.

In my view these should be taken forward as part of those relating to DM30 (see item 16 above).

21 Water

The Council previously proposed a change (SM34) addressing the concerns of Thames Water. However, it does not consider this necessary for soundness and its response statement proposes not to proceed with SM34. Thames Water’s response statement accepts that the development plan as a whole (primarily the London Plan and the Core Strategy) already contains sufficient policy in relation to water supply, waste water capacity, surface water drainage, water conservation and sewer flooding. No further coverage is required in the DMLP.

22 Waste

The GLA considers that there should be a ‘signpost’ to London Plan policy 5.17B. However, the Council considers that the development plan as a whole (the London Plan, Core Strategy and Site Allocations Plan) is sound in regard to waste issues without further reference in the DMLP.

APPENDIX A: Major Modifications

First draft of a collected summary of necessary Major Modifications requiring advertisement, gathered placed in policy order and (b)

Item 2 **DM5** - any changes resulting from discussion at the hearing

Item 3 **DM6** – the changes to the policy and text set out in the Council’s response dated 13 January 2104.

Item 4 **DM7** – any changes resulting from discussion at the hearing, as per LBL, GLA or some variant.

Item 5 **DM8** – delete part 1h of the policy include alterations to paras 2.81-82 as set out in the Council’s response dated 13 January 2104, and take in SM17 re para 2.78.

Item 8 **DM11** – the change to part 1 of the policy (as in the Council’s response statement) plus changes to paras 2.102/103 (clarify these).

Item 9 **DM12** – requires clarification at the hearing.

Item 12 **DM18** – any changes resulting from the hearings

Item 13 **DM19** – the various changes set out in the Council’s response statement. These would subsume or replace the suggested changes at SM5, SM28 and SM33.

Item 14 **DM27** – the changes in the Council’s response statement.

Item 15 **DM29** – the package of changes in the Council’s statement and at SM6-8 and SM32.

Item 16 **DM30** – the various changes set out in the Council’s response statement, plus those put forward by the Council concerning ‘strategic views’.

Item 17 **DM32** – the changes in the Council’s response statement.

Item 18 **DM33** – the changes set out in the Council’s response statement

Item 19 **DM36** – the changes set out in the Council’s response statement.

APPENDIX B: Additional Modifications

These are non soundness-related ‘additional modifications’ which could be made by the Council.

Item 1 **DM3** – the package of changes to the policy and text, as set out in the Council’s response dated 13 January. This will presumably also involve including the change at SM29 (but referring to ‘single family houses’ rather than ‘smaller dwellings’) and disregarding SM30 (superseded).

Item 6 **DM9** – the changes to the policy and para 2.85 set out in the Council’s response dated 13 January 2014, plus the changes at SM1 and SM4.

Item 7 **DM10** – the proposed addition to the glossary

Item 11 **DM17 (para 2.147)** – the changes in the Council’s response statement

Item 17 **DM32** – the changes at SM14-16

Item 18 **DM33** – the changes at SM3 and SM12-13

Other changes (included for the sake of completeness):

DM35 – the change at SM19

DM43 – the change at SM18

Typographic corrections – SM20-27