

Examination of the Lewisham Development Management Local Plan (LDMLP)

Inspector's introductory note

As you know I have been appointed to hold an independent examination of this local plan and assess it in accordance with Section 20(5) of the Planning and Compulsory Purchase Act 2004 as amended.

This note concerns (1) the future procedures for the examination and (2) my initial concerns and queries about the soundness of the plan.

In this note the abbreviation 'MM' relates to potential 'Major Modifications' which would be of the type required to be recommended by me to make the plan 'sound' in accordance with paragraph 182 of the National Planning Policy Framework and/or compliant with legal requirements. 'OM' refers to potential non-soundness related 'Other Modifications' which the Council would make to correct errors or omissions or improve clarity on certain matters.

1 Future procedures for the examination

The hearings sessions for the LDMLP are currently programmed for 26-27 February 2014, albeit that few representors have expressed a clear wish to take part in them. I shall therefore not be holding a pre-hearings meeting.

The points set out below in part 2 include all the soundness-related matters which I have identified so far on a reasonably thorough reading of the plan and after studying all the representations and the Council's responses to them. These points therefore cover most, if not necessarily all, of the issues which will need to be covered at the hearing.

I invite the Council to respond fully to all the points in part 2 below by 13 January 2014. The Council should place its response on the examination website. At that point the Programme Officer will alert respondents to its existence by email (or by post if there are any respondents for which she has no email address) and invite respondents to submit any written comments that they may wish to make about the points raised both in this note and the Council's response. Such comments should be submitted by 3 February 2014. Any such comments will also be placed on the website.

After receipt of any comments I shall prepare an agenda of issues for discussion at the hearings. This will also be placed on the website or posted to any respondents without email addresses.

2 Initial concerns and queries about the soundness of the plan.

The points set out below follow the sequence of the plan, not in order of importance. However, the matter raised concerning DM7 is particularly significant as it raises the question of conformity with the London Plan.

DM3

If I understand this policy correctly, it addresses only the loss of family ‘houses’ through conversion to flats. However, the policy’s use of the two terms ‘dwelling’ and ‘house’ has caused some confusion. Would it be better to make an OM using ‘house’, or ‘single family house’ throughout rather than proceeding with the Council’s suggested potential changes SM29 and 30?

DM5

Much of this policy (and its accompanying text) is difficult to understand, especially (but not only) in terms of their references to affordable housing and tenure. Another problem could well be that the term ‘care home’ is used too loosely. Questions that arise are:

Part 1a Does this imply an inappropriate degree of planning involvement in issues of operational detail?

Part 1b Occupiers of care homes will rarely be using such facilities, so how far are these criteria relevant (although they may be to sheltered housing)?

Part 2 Occupiers of ‘care homes’ are generally licensees or tenants so what is meant by encouraging a ‘mix of tenures’ in that context? Owner occupation is unlikely to fit with the care home model. Major parts of paragraphs 2.62 and 2.63 are also unclear in this context.

Part 3 Does this relate to the wider concept of ‘care communities or villages’ rather than ‘care homes’ as such where residents are not generally capable of much independent living?

DM6

Part 1e Environmental health standards for HMOs constitute a different regulatory regime from planning policies. Should not this clause be deleted, even if a general descriptive reference to environmental standards is retained in the accompanying text?

DM7

Plainly this policy raises *an issue of potential major concern* to soundness since the Mayor states that the wording of DM7 (in relation to affordable rent) takes it out of conformity with the London Plan. Signet raises concern about the same matter. The Council states that a meeting is to be held with the Mayor. When is this planned to take place and is the matter likely to be resolved before the hearings?

DM8

Part 1h refers to ANUK standards which are not explained. Any reference to this guidance should be confined to the accompanying text. 1h also refers to ‘any relevant standards for HMOs’. If retained, this reference should be confined to a cross-reference to policy DM6.

The Council proposes an editorial change (SM17) to make para 2.78 consistent with the London Plan. This could be an appropriate OM.

DM9

MELs receive extensive policy guidance in Core Strategy policy 4 and the Site Allocations LP. What actual policy value is added by policy DM9? Does the additional policy content impose a burden by making it necessary to seek for policy on MELs over 3 plans, as well as introducing the risk of over-complication and potential for inconsistency?

Do the requirements of DM9(3) concerning standards of internal fit-out go beyond what is necessary when future occupiers are unknown?

Are the forthright terms of DM9(4) consistent with the overall thrust of MEL policy, which is predicated on redevelopment of industrial areas to achieve mixed use development with at least 20% B use? Could part 4 unnecessarily delay or prevent outworn areas from being re-used?

DM10

LELs receive extensive policy guidance in Core Strategy policies 3 & 5 and the Site Allocations LP. What actual policy value is added by policy DM10? Does the additional policy content outweigh the burden imposed by making it necessary to seek for policy on LELs over 3 plans as well as introducing the risk of over-complication and potential for inconsistency?

Why is it the case (para 2.97) that a non-fully fitted unit would ‘not be considered deliverable or sustainable (and would be) unattractive to potential occupiers’? Is this a matter of estate management rather than planning? Would it not be equally advantageous and possibly more efficient/economic for an occupying company to be able to install internal fittings to its own specification?

The Council proposes an editorial change (SM1/SM4) to make DM10 consistent with CS3 concerning sui generis uses. This could be an appropriate OM.

DM11

Do the criteria in part 1 all have to be satisfied or only some of them? If it is all, is this too prescriptive?

Are the requirements set out in paras 2.102 (2-5 years) and 2.103 (penultimate sentence) likely to be too restrictive? The Council suggests some compromise in relation to 2.102 (SM31) but not 2.103.

DM12

The Council proposes an editorial change (SM11) to achieve more clarity, although it seems to me that the Blackheath Society's suggested wording would be a clearer potential OM.

DM13

Does this policy add any material value to what is already said on the subject in NPPF part 2, the Core Strategy, and the Town Centre plans?

DM17

Is it sound for para 2.147 to require applicants to set out how 'they' are intending to trade, since applicants will not always be the future operators of the premises? In practice, consideration of an application for an A3/A4 use has to involve a robust assessment of the likely effects of any occupier within those uses, bearing in mind that actual occupiers and their individual operating procedures can vary widely within a given Use Class. If necessary, conditions can be imposed to cover any essential matters.

DM18

Is the embargo imposed by part 1 of the policy justified by particular sources of evidence identifying such outlets as a significant threat to health, as opposed to all the other many factors identified in the Foresight Report as bearing upon obesity?

What is significant about a 400m exclusion zone, rather than any other distance?

Concerning the exclusion zone around primary schools, how far is it likely that unaccompanied primary school children would be able to patronise A5 units?

Is there any evidence about the proportion of the turnover of A5 units gained from schoolchildren, as opposed to adults?

Bearing in mind the proportion of the Borough covered by the exclusion zones (figure 2.1), does the policy strike an appropriate balance between the NPPF's support for economic development and the extent of health threats stemming from A5 uses?

Concerning part 2 of the policy, what are the current numbers and percentages of A5 units in each of the Major, District Centres and Local Centres? [A table presenting this information would permit an understanding of the scope, or otherwise, for new units in the various centres.]

I note that part 3.4.3 of the Foresight Report states:

'Further work is required to examine how aspects of the built environment or building design influences people's food habits e.g. the proximity of shops to schools or the location of vending machines. Studies using postcode

mapping and global positioning systems or other technologies to track movements of individuals in their locality within buildings will provide a wealth of additional detail in relation to the impact of the environment, access to and availability of food and drink, and the risk of obesity.'

The key points of part 3 of the report are stated as:

- The causes of obesity are complex and multifaceted, pointing to a range of different solutions.
- At the heart of this issue lies a homeostatic biological system that struggles to maintain an appropriate energy balance and therefore body weight. This system is not well adapted to a changing world, where the pace of technological progress and lifestyle change has outstripped that of human evolution.
- Human biology, growth and development early in life, eating and physical activity behaviours, people's beliefs and attitudes and broader economic and social drivers all have a role to play in determining obesity.

DM19

It is likely to be unsound for part 2 of the policy to prejudge every application for posters in this way. Moreover, it is questionable whether poster hoardings, as opposed to any other form of advertisement, should be referred to as a separate category since the only relevant considerations in respect of all advertisements are so clearly set out in the Advertisement Regulations. Consequently there is no point in an LP attempting to add further gloss. The reference to temporary hoardings is equally unnecessary, as well as unclear in its meaning. The Council's suggested potential modification (SM28) does not overcome these points and, on the face of it, may be better replaced with an MM deleting part 2 of the policy and para 2.155.

The Council suggests a further potential change (SM5) concerning part 1g of the policy. However, it is unclear why it is necessary to add to the statutory consideration of 'public safety' specified in Advertisement Regulations by specifying 'highway safety and operations including adverse impacts on pedestrians, cyclist and public transport operations'. Public safety embraces all safety concerns from whatever quarter.

The Council also suggests a potential change (SM33) to insert an additional part to the policy requiring an appropriate level of fit-out to new shop fronts below residential accommodation. Why is this an appropriate/reasonable requirement when the requirements of a future occupier may be unknown?

DM24

Is this policy really intended to apply to 'all' new development? If so, it places a heavy evidential burden on many small sites and schemes where such considerations may not arise. An approach targeted at relevant developments, such as that used in DM25, would be less burdensome.

The Biodiversity Action Plans should not be referred to in the policy itself since this would import and elevate non-statutory guidance into statutory policy. On the other hand the accompanying text could draw attention to them as matters to be treated as material considerations.

DM27

The Guidance Notes should not be referred to in the policy itself since this would import and elevate non-statutory guidance into statutory policy. On the other hand the

accompanying text could draw attention to them as matters to be treated as material considerations.

DM29

It is not at all clear precisely what is meant by ‘car-limited’ development (and whether and to what extent it may differ from ‘car-free’ development mentioned in CS policy 14). Part 2 of DM29 states criteria (all of which are presumably intended to apply??) for judging where ‘car-limited’ development may be considered. However, it does not say what this is. This policy needs major clarification. The Council’s suggested change (SM32) does not achieve this.

The Council suggests a presentational change (SM6) concerning reference to the London Plan parking standards, which are to be applied in Lewisham, and the inclusion of an appendix (SM7) setting them out. These are matters of clarity rather than soundness but could be the subject of OMs.

The Council suggests (SM8) a further potential change to DM29(5) concerning charging points. This would be an appropriate OM.

Does part 1 of the policy mean ‘The Council will *impose* (or *operate*) parking standards in accordance.....’?

DM30

Part 1 The final sentence, referring to the SPDs, should be in the supporting text, not the policy.

Part 2 Since the typologies and design issues have been fully imported into the plan in table 2.1 (which has been taken through the full statutory consultation/SEA process) the reference should be to that table and not to the non-statutory Character Study from which they originated.

Part 5b The point raised in relation to part 2 also applies here.

The Council puts forward a potential modification (SM3) concerning DM30 (5)(c). This could appropriately be an editorial ‘OM’ change.

DM32

Taking on board the Council’s responses to DMrep6 and its proposed potential modification (SM2), could the policy commence (via an appropriate MM):

The Council expects all new residential development to (a) be attractive and neighbourly, (b) provide a satisfactory level of privacy, outlook and natural lighting both for its future residents and its neighbours and (c) meet the functional requirements of future residents.

As explained in relation to DM27, part 3 of the policy should not attempt to import non-statutory guidance into the policy in this way. However, these documents can be

referred to in the text as non-statutory guidance. The same applies to the London Plan SPD referred to twice in part 4.

Does DM32 4e conflict with the London Plan? The two plan use different words: is their meaning materially different? If they have materially the same meaning why not use the same words in the interests of clarity? Do SM9&10 achieve this?

The Council also accepts the need for a change in wording (SM13) from 'may' to 'will' in para 2.267. This could be an appropriate editorial OM change.

The Council also accepts the need for a change in wording (SM14) to correct a drafting error in para 2.258. This could be an appropriate editorial OM change.

The Council also accepts the need for a change in wording in para 2.259 concerning direct sunlight (SM15). This could be an appropriate OM change.

The Council also accepts the need for an insertion in the glossary of a definition of the term 'north-facing' (SM16). This could be an appropriate OM change.

DM33

As previously indicated in relation to other policies the references to the Lewisham Character Study (parts 5b and 8) should be to table 2.1. Conservation Area Appraisals (as non-statutorily adopted guidance) should be referred to in the supporting text, while the policy itself could refer (eg) to 'the special distinctiveness of any relevant conservation area'.

The Council also accepts the need for a change in wording concerning gated developments (SM12). This could be an appropriate editorial OM change.

DM36-38

Since these policies are all of general applicability, do they add anything of significant value the principles clearly set out in the NPPF part 12?

In any case, part (4) needs rewording to reflect the statutory duty of 'preserving or (not 'and') enhancing their character or (not 'and') appearance'.

Omissions issues

(DMrep 11.13)

Waste issues are dealt with by CS policy 13 and by the safeguarding of sites in the SALP, as well as by the London Plan. Does soundness require further coverage of these topics as sought by the GLA?

(DMrep 11.14)

Strategic views are dealt with in CS policy 17. Does soundness require further coverage of these topics as sought by the GLA?

(DMrep 18.1, 18.2, 18.3)

Are changes along the lines suggested by the Council (SM34) and/or Thames Water necessary to make the plan sound? To what extent are such matters either

(a) already adequately dealt with in the Development Plan, including the London Plan and the Core Strategy, and/or

(b) outside the scope of the planning system and covered by other regulatory regimes or the statutory responsibilities of Thames Water?

Note: Other suggested modifications put forward by the Council (SM18-27) are unrelated to soundness but could form OMs.

Roy Foster
Inspector

12 December 2013