



The Planning Inspectorate

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# **Report to Birmingham City Council**

by K Ford MSc MRTPI

Inspector appointed by the Secretary of State

Date: 30 September 2021

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Development Management in Birmingham Development Plan Document**

The Plan was submitted for examination on 17 July 2020

The examination hearings were held between 10 and 12 November 2020

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## Abbreviations used in this Report

AONB	Area of Outstanding Natural Beauty
BDP	Birmingham Development Plan
The Council	Birmingham City Council
MM	Main Modification
NDSS	National Described Space Standard
NPPF	National Planning Policy Framework
The Plan	Development Management in Birmingham Development Plan Document
SRDTP	Standards for Residential Development Topic Paper (EBD40)
SPD	Supplementary Planning Document

## Non-Technical Summary

This report concludes that the Development Management in Birmingham Development Plan Document (the Plan) provides an appropriate basis for the planning of the City, provided that a number of main modifications (MMs) are made to it. Birmingham City Council has specifically requested that I recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Council has prepared schedules of the proposed modifications. The MMs were subject to public consultation over a 6 week period. In some cases I have amended their detailed wording where necessary. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Deletion of part of Policy DM15 on parking standards.
- Changes to the monitoring framework.
- A number of other modifications to ensure the plan is positively prepared, justified, effective and consistent with national policy.

## Introduction

1. This report contains my assessment of the Development Management in Birmingham Development Plan Document (the Plan) in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is compliant with the legal requirements and whether it is sound. The National Planning Policy Framework 2021 (paragraph 35) (NPPF) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the Council has submitted what it considers to be a sound plan. The Plan, submitted in July 2020 is the basis for my examination. It is the same document as was published for consultation in January 2020.

### Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modification (MMs) necessary to rectify matters that make the Plan unsound and not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs. The MM schedule was subject to public consultation for 6 weeks. I have taken into account the consultation responses in coming to my conclusions in this report and reflecting this I have made some amendments to the detailed wording of the main modifications where necessary for consistency and clarity. None of the amendments significantly alters the content of the modification as published for consultation or undermines the participatory process. Where necessary I have highlighted these amendments in the report.

### Policies Map

5. The Council must maintain an adopted Policies Map which illustrates geographically the application of the policies in the adopted development Plan. When submitting a local plan for examination, the Council is required to provide a submission Policies Map that would result from the proposals in the submitted local plan. In this case, there are no changes proposed to the Policies Map.

### Context of the Plan

6. The Plan is proposed to replace the saved policies in the Birmingham Unitary Plan, adopted in 2005. The Plan area covers the city of Birmingham which has a population of over one million people. This is expected to rise to 1.25 million by 2031.
7. The city is a major employment centre, drawing workers from across the West Midlands to work in a wide range of employment sectors. The city centre is surrounded by many leafy suburbs and other residential areas. More than a fifth of the city's area consists of parks, nature reserves, allotments, golf courses and playing fields making Birmingham one of Great Britain's greenest cities.
8. The coronavirus pandemic started before the hearing sessions necessitating that they be undertaken virtually. Lockdown restrictions were also taken into account in the consultation arrangements on the MMs. The short, medium and long term social, economic and environmental impacts of the pandemic for the city and for the implementation of the Plan are unknown at the present time. Nevertheless, the Plan forms part of the framework to support the city's environment, communities and economy as it moves forward from the pandemic.

#### **Public Sector Equality Duty**

9. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of several matters during the examination including the need for accessible and adaptable housing and inclusive design in development.

#### **Assessment of Duty to Co-operate**

10. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
11. The Council's Duty to Co-operate Statement sets out the work that has been undertaken with relevant Council's and prescribed bodies. There are no strategic policies in the Plan. However, the Council consulted relevant bodies when preparing the Plan. No strategic issues were identified and no concerns have been raised by prescribed bodies about cross boundary issues under the Duty to Co-operate.
12. I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the Duty to Co-operate has therefore been met.

#### **Assessment of Other Aspects of Legal Compliance**

13. The Plan has been prepared in accordance with the Council's Local Development Scheme.
14. Consultation on the Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement and I am satisfied that individuals have had suitable opportunity to engage meaningfully in the development of the Plan.
15. The Council carried out a sustainability appraisal of the Plan, prepared a report of the findings of the appraisal and published the report along with the Plan and other submission documents under regulation 19. The appraisal was reviewed to assess the main modifications. The SA is considered adequate.
16. The Council has reviewed the Plan against the requirements of the Habitats Regulations and Section 4.4 of the Sustainability Appraisal (October 2019) sets out why an Appropriate Assessment is not necessary. The Plan will not introduce any new effect pathways and will not have any significant effects on any European sites as a result of its implementation as it is an expansion and clarification of the strategic policies in the BDP. The BDP was determined not to have any likely significant effects on European sites, either alone or in combination with other plans.
17. The Plan, taken as a whole, includes policies designed to ensure that the development and use of land in the Council's area contributes to the mitigation of, and adaptation to climate change. This includes policies DM1, DM4, DM14 and DM15.
18. The Plan complies with all other relevant legal requirements, including the 2004 Act (as amended) and the 2012 Regulations.

## **Assessment of Soundness**

### **Main Issues**

19. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified 6 main issues upon which the soundness of the Plan depends. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy or policy criterion in the Plan.

### ***Issue 1: Whether the Plan gives effect to and is consistent with the Birmingham Development Plan***

20. The Birmingham Development Plan was adopted in 2017 (BDP). It sets out the vision and objectives that will guide the future development of the City during the period up to 2031. It also establishes the spatial strategy and context for growth and how it will be planned, managed and delivered.
21. The role of the Plan, as set out in the Local Development Scheme is to provide detailed policies on a range of planning matters to ensure development in the city happens in the right place, delivers the best design and enhances infrastructure. The Plan builds on the strategic policies contained in the BDP, providing greater detail on a range of subjects for development management purposes. In doing so it assists in delivering the vision for the city and the 11 objectives contained in the BDP.
22. For the reasons set out above, I conclude that the Plan gives effect to, and is consistent with the BDP.

***Issue 2: Are the environment and sustainability policies justified, effective and consistent with national policy?***

*Policy DM1 Air Quality*

23. Birmingham has some of the highest levels of nitrogen dioxide exceedances outside of London and the whole city is designated as an Air Quality Management Area. It is estimated that poor air quality is responsible for some 900 premature deaths in the city each year. Policy DM1 seeks to ensure that new development considers air quality and is accompanied by an appropriate scheme of mitigation where negative impacts are identified. For effectiveness, **MM1** is necessary to identify that air pollution exposure will be considered at the development site or other relevant receptors and clarify that mitigation measures will be required as necessary. In the supporting text **MM1** also defines what is meant by unacceptable deterioration and unacceptable levels of air quality. This is necessary for effectiveness.

*Policy DM2 Amenity*

24. Policy DM2 seeks to protect the amenity of occupiers and neighbours of development with the aim of ensuring that places are fit for purpose and that development proposals are acceptable. In the case of residential development, the requirements of Policy DM10 link to the requirements of Policy DM2. More specifically, the separation distances referred to in Policy DM10 link to the achievement of criteria a, b and c of Policy DM2 and criterion d of Policy DM2 links to point 4 of Policy DM10. Cross reference to Policy DM10 is therefore necessary to make this effective. This is achieved through **MM2**.
25. For effectiveness **MM2** also defines what 'in the vicinity' means in relation to point h of the policy which is concerned with the individual and cumulative



impacts of development proposals in the immediate area. This is necessary for the purpose of effectiveness and clarity. There is little to indicate that the requirements of the policy are overly prescriptive or would stifle appropriate development, particularly in relation to noise. The supporting text identifies that businesses should not be subject to unreasonable restrictions where nearby land uses have changed since they were established. This is in line with paragraph 187 of the NPPF.

*Policy DM3 Land affected by Contamination, Instability and Hazardous Substances*

26. Policy DM3 seeks to ensure that land affected by contamination, instability and hazardous substances is brought back into use in a safe manner. **MM3** is necessary to ensure consistency with paragraph 174 of the NPPF with regards to the mitigation of risk where proposals for new development are to be located on land which is known to be or potentially contaminated or unstable.

*Policy DM4 Landscaping and Trees*

27. The Council recognises green infrastructure within the city as an asset that provides an important visual backdrop for development as well as a resource in mitigating the impacts of climate change.
28. Provisions within Policy DM4 ensure landscaping is integrated into the design of new development and takes a criteria-based approach in considering how existing landscaping should be factored into development proposals. The policy ensures that development takes opportunities to provide high quality landscapes that enhance landscape character and green infrastructure within the city. The policy is consistent with provisions in the NPPF in this regard.
29. For effectiveness it is necessary to specify in part 2 of the policy that the provision of new trees will be expected in appropriate locations within the multi-functional green infrastructure network. Following consultation on the MMs reference to 'other green infrastructure' has been deleted from **MM4** as it is unnecessary.
30. In part 3 of the policy it is necessary to make clear that 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. This is to ensure alignment with the provisions of paragraph 180 of the NPPF.
31. Part 5 of the policy requires contributions to off-site tree planting where on site replacement is not achievable. For effectiveness, it is necessary to make reference to the Council's Tree Strategy, a Supplementary Planning

Document (SPD) that will contain the methodology for calculating the contributions.

32. For clarity on the definition of quality trees, reference to the British Standard for Trees BS5837 and associated terms used within it is necessary in the supporting text. It is also necessary for effectiveness to refer a requirement to replace category A, B and C trees if they are removed as a result of development. Although category C trees are lower quality they generate significant benefits in an urban environment and their loss could have a significant impact on total tree coverage in the city. Therefore, in order to be effective and protect the environment in line with the policy aims, reference to category C trees alongside category A and B trees is justified. **MM4** achieves the required amendments.

*Policy DM6 Noise and Vibration*

33. Policy DM6 identifies a requirement for new development to be designed, managed and operated in such a way that it reduces exposure to noise and vibration. For effectiveness **MM5** is necessary to clarify that the criteria of the policy apply only where it is relevant because of the presence of a sensitive receptor. In doing so the policy demonstrates flexibility.
34. **MM5** also makes changes to the supporting text which clarifies that noise assessments will be based on an understanding of the existing and predicted levels of environmental noise at both the development site and nearby receptors. The supporting text also refers to a guidance note on noise and vibration. For certainty it is necessary to explain that the document does not have SPD status. This is achieved through **MM5**.

*Conclusion on Issue 2*

35. In conclusion, subject to the aforementioned modifications, the Environment and Sustainability policies within the Plan are justified, effective and consistent with national policy.

***Issue 3: Are the economy and network centres policies justified and consistent with national policy and will they be effective?***

*Policy DM8 Places of Worship and Faith Related Community Uses*

36. With a diverse population, there are a wide range of faiths within Birmingham that generate a need for faith premises. The policy states that the preferred location for faith related community uses will be the network of centres, as defined in Policy TP21 of the BDP and outside of this where identified criteria are met. However, the BDP also identifies some site allocations where faith related uses would be acceptable. For clarity and to ensure the policy is effective the policy should be amended in line with **MM6** so that such allocations are also the Council's preferred location for places of

worship and faith related community uses, as well as the network of centres and locations that meet the policy criteria.

*Policy DM9 Day Nurseries and Early Years Provision*

37. Policy DM9 seeks to balance the need for suitable child care facilities for children with the need to protect the amenity of the occupiers of neighbouring development. To achieve this the policy takes a criteria-based approach to ensure the care facilities for children are appropriately located. The policy directs day nurseries and facilities for the care, recreation and education of children to the network of centres defined in Policy TP21 of the BDP and the locations that meet the listed criteria. However, in addition to this there may be allocations in the BDP where such facilities would be appropriate. For effectiveness and clarity **MM7** is therefore required.
  
38. For effectiveness the threshold number of children, above which a home would be considered a day nursery, does not include the children living at the address. For effectiveness, **MM7** also ensures cross reference is made to the Council's Parking Guidelines and Car Park Design Guide SPDs to ensure sufficient safe parking is provided at such developments.

*Conclusion on Issue 3*

39. In conclusion, subject to the above modifications the policies in the Plan on the economy and network centres are clear, justified, effective and consistent with national policy.

***Issue 4: Are the homes and neighbourhoods policies justified and consistent with national policy and will they be effective?***

*Policy DM10 Standards for Residential Development*

40. Policy DM10 deals with development standards for residential dwellings. This includes the nationally described space standard (NDSS), residential internal space standards and accessible and adaptable homes.
  
41. Planning Practice Guidance on Housing (optional technical standards) indicates that in establishing a need for internal space standards, local planning authorities should take account of need, viability and timing. The Council's Local evidence on the space standard in the Standards for Residential Development Topic Paper EBD40 (SRDTP) indicates that developments are meeting the space standard voluntarily. However, this could not always be guaranteed. Of the developments not according with the space standard a notable amount were more than 10% below the standard. The requirement in the policy is therefore justified.

42. For effectiveness, in point one of the policy it is necessary to make clear that the requirement to meet the NDSS does not include specialist accommodation which is covered by Policy DM12 and paragraph 4.27 of the Plan.
43. Part 2 of the policy requires that housing developments of 15 or more dwellings should seek to provide at least 30% of dwellings as accessible and adaptable homes, in line with Building Regulations Part M4(2). The SRDTP identifies that during the period 2019-2031 the number of people in the city aged 65 and over is expected to increase from 147,900 to 188,500, accounting for 15.1% of the total population. By 2031 47,142 people aged 65 and over are expected to have limiting long term illnesses whose day to day activities will be limited a little. A further 55,730 people's activities will be limited a lot. Overall, this equates to a 19.6% increase between 2019-2036. There is predicted to be a 7.4% increase in people aged 18-64 with moderate or severe learning disability living with a parent by 2030. In addition, it is also apparent from the SRDTP that the housing stock in Birmingham tends to be older and therefore more difficult and expensive to adapt. Based on the evidence, cumulatively there is a clear need for the provision of accessible and adaptable homes.
44. The viability evidence does not indicate that the requirements of part 2 of the policy would render development unviable. In individual instances where the requirements of part 2 of the policy may make development unviable there is provision for the requirements to be reviewed. The policy is effectively flexible in this regard.
45. There is scope within national policy to apply a transitional period during which the requirements of the policy do not apply. Given the length of time that has elapsed since the proposed submission document was subject to consultation, the development industry has been aware of the potential for such a policy for some time, even if it was not adopted policy. It is not considered necessary to provide a transitional period. Nonetheless, for effectiveness it is necessary to make clear that the policy does not apply to applications registered prior to the adoption of the Plan. Following consultation on the MMs I have added additional words to **MM8** to clarify this point.
46. There is little to demonstrate that the requirements of the policy would prevent housing sites from coming forward for development. Nevertheless, Policy DM10 makes provision for exceptions in part 6 and is therefore flexible. However, for clarity and effectiveness it is necessary to include further detail explaining that exceptions may be acceptable where physical constraints or financial viability issues can be demonstrated. For

effectiveness, the wording in the footnote to policy DM10 should make clear that the Places for Living SPD will have the status of guidance. **MM8** makes the necessary amendments that have been identified.

*Policy DM13 Self and Custom Build Housing*

47. The Self-Build and Custom Housebuilding Act 2015 requires Councils to keep a register of those seeking to acquire a plot for self-build and to have regard to the register in carrying out their planning, housing, land disposal and regeneration functions. Policy DM13 is a reflection of the increasing number of people on the register in Birmingham.
48. It is reasonable that affordable and custom build housing is considered a suitable product within the affordable housing requirement on larger sites. **MM9** is necessary for effectiveness to define what is meant by larger sites, with the definition of 200 dwellings justified with reference to the Council's monitoring threshold of largescale major developments. For effectiveness **MM9** also explains that it should not be substituted for social rented and affordable rented housing where it is needed.

*Conclusion on Issue 4*

49. In conclusion, subject to the identified modifications the homes and neighbourhood policies of the Plan are clear, justified, effective and consistent with national policy.

***Issue 5: Are the connectivity policies justified and consistent with national policy and will they be effective?***

*Policy DM14 Transport Access and Safety*

50. Policy DM14 sets out the transport and traffic considerations of new development to ensure there is no negative impact on the efficiency and safety of the system. An amendment to part one of the policy regarding the need to ensure the safety of highway users by avoiding unacceptable adverse impacts is necessary for consistency with paragraph 111 of the NPPF.
51. Part 5 of the policy deals with access points onto the strategic highway network within the city. The strategic highway network is defined in the BDP. For consistency with the BDP reference to other principle and main distributor routes should be deleted.

52. Amongst other things, part 6 of the policy supports new vehicle access points where it would not prevent or restrict the implementation of necessary or future transport improvements. For effectiveness, additional supporting text is necessary to clarify where details of the future transport improvements referred to in part 6e of the policy can be found. **MM10** achieves all the necessary amendments.

*Policy DM15 Parking and Servicing*

53. Policy DM15 seeks to manage parking and servicing provision within the city. As worded the policy directs details of the parking standards to the Council's Parking SPD. In the absence of evidence to demonstrate the parking standards in the document are justified, reference to the Parking SPD should be deleted. As identified in paragraph 008 in the Planning Practice Guidance on Plan Making SPDs cannot be used to introduce new policy and set standards.
54. For effectiveness, additional supporting text is necessary to explain the use of the SPD as a guide in the determination of planning applications. Furthermore, for effectiveness and to reflect the status of the SPDs as guidance the supporting text should also identify that the Council will take into account other circumstances in which an alternative level of parking provision will be considered. **MM11** achieves these changes.
55. Representors made reference to Government consultation to make electric vehicle charging facilities mandatory through Building Regulations. Nevertheless, any changes associated with the consultation have not yet been confirmed or implemented. The NPPF supports the transition to a low carbon future in a changing climate and encourages measures that contribute to the reduction of greenhouse emissions. The NPPF also identifies that, where practical, developments should be designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles. The policy is consistent with national policy in this regard. The Council's Financial Viability Assessment indicates that the requirements of the policy would not have a significant impact on the viability of a development. **MM11** ensures that the policy promotes the provision of on street and off-street charging points. This is necessary for effectiveness and clarity.
56. For effectiveness and clarity, it is necessary through **MM11** to refer to the Parking SPD in the supporting text of Policy DM15 as the source of guidelines on the expected size of garages where they are to count towards parking provision. Following consultation on the MM's I have amended the wording in paragraph 5.16 to ensure it is clear that the reference is to guidance. **MM11** also includes requirements for servicing as well as parking to be designed to be secure and accessible to users and adhere to relevant SPDs. This is necessary for effectiveness.

*Conclusion on Issue 5*

57. Overall, subject to the above modifications, the connectivity policies in the Plan are clear, justified, effective and consistent with national policy.

***Issue 6: Will the Plan be viable and deliverable and are the monitoring arrangements robust?***

58. The Council's Financial Viability Assessment provides an assessment of Plan viability taking into account the requirements of the policies in the Plan. The assessment indicates that the Plan clearly sets out policy requirements so that they can be priced into land. Flexibility has been built into the policies where it can be justified and demonstrated that the requirements would impact on development viability.

59. Overall, the evidence is proportionate for its purpose and indicates that the deliverability of the Plan would not be put at serious risk as a consequence of the policies contained within it.

60. The monitoring framework for the Plan sets out a range of monitoring indicators. **MM12** is necessary to identify appropriate targets and triggers to enable the effective measurement of success in the delivery of the policies.

*Conclusion on Issue 6*

61. Subject to modification **MM12**, the Plan is viable and deliverable and provides robust monitoring arrangements.

## **Overall Conclusion and Recommendation**

62. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the main issues set out above.

63. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that the duty to co-operate has been met and that with the recommended main modifications set out in the Appendix the Plan satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

  
INSPECTOR

This report is accompanied by an Appendix containing the Main Modifications.