
Report to the London Borough of Lewisham

by Roy Foster MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 23 July 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION OF THE
LEWISHAM DEVELOPMENT MANAGEMENT LOCAL PLAN**

Document submitted for examination on 15 November 2013

Examination hearing held on 26 February 2014

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Abbreviations Used in this Report

AA	Appropriate Assessment
CS	Core Strategy
LBL	London Borough of Lewisham
DMLP	Lewisham Development Management Local Plan
LDS	Local Development Scheme
LP	London Plan
MM	Main Modification
NPPF	National Planning Policy Framework
PTAL	Public Transport Accessibility Level
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy

Non-Technical Summary

This report concludes that Lewisham Development Management Local Plan is 'sound', subject to a number of 'Main Modifications'. These modifications emerged from the examination process and were proposed by the Council, who specifically requested me to recommend them in order for the plan to progress to adoption.

The Main Modifications can be summarised as follows:

- Changes to housing policies to secure conformity with the London Plan and create clarity about the intended approach to specialist accommodation;
- Changes to policies DM9-11 to clarify policy concerning 'internal fit-outs' and required marketing periods;
- Changes to policies DM12 & 29 to replace unclear references to 'car-free' and 'car-limited' developments with the Public Transport Accessibility Level (PTAL) necessary for certain types of approach to parking provision;
- Changes to DM19 to avoid the policy being in conflict with the Advertisement Regulations or placing an inappropriate gloss upon them;
- Changes to a number of design policies to avoid conflict with statute, create conformity with the London Plan and introduce greater clarity; and
- Changes to a number of policies to remove inappropriate references to Supplementary Planning Documents and various sources of non-statutory guidance.

Introduction

1. This report contains my assessment of Lewisham Development Management Local Plan (DMLP) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether or not the plan's preparation complied with the duty to co-operate, recognising that there is no scope to remedy any failure in that respect. It then considers whether or not the plan is sound and complies with legal requirements. The National Planning Policy Framework (NPPF) states (at paragraph 182) that a sound plan is one which has been positively prepared and is 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 basis for my examination is the submission version of the DMLP (November 2013).
3. The Council specifically requested (under S20(7C) of the Act) that I should make main modifications (MM) to rectify any matters otherwise making the plan unsound/not legally compliant and thus incapable of progressing to adoption. The report concludes that some MMs are required and identifies them in bold thus (**MM**). These MMs have been subjected to sustainability appraisal (SA) and public consultation and are set out in full in the appendix to this report.

Assessment of the Duty to Co-operate

4. Section S20(5)(c) of the Act requires me to consider whether or not the Council has complied with the duty to co-operate imposed by S33A with regard to the plan's preparation.
5. The Council's statement on this matter provides an audit trail indicating that constructive, active, ongoing engagement took place on the main 'strategic matters' covered by the plan. This involved the public bodies listed in part 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012, including the Mayor of London, as well as other relevant London authorities.
6. An appendix to the statement identifies the processes and outcomes relating to those strategic matters. This activity was of appropriate type and depth for the matters covered by this development management plan and I conclude that the duty has been met.

Assessment of Soundness

Main Issues

7. Taking account of (a) all the representations made to the submitted plan, (b) the representations made to the consultations on the MMs, where relevant to their content, (c) the questions which I raised with the Council and others about soundness-related matters and the participants' subsequent written response statements, and (d) the discussions that took place at the hearing, I consider that the soundness of the plan can be considered in the context of the following issues.

Issue 1 – Has the plan been 'positively prepared'?

8. NPPF paragraph 182 requires plans to be positively prepared, containing strategies *'to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so...'*
9. The DMLP succeeds the adoption of the London Plan (LP) and the Lewisham Core Strategy (CS). The latter, together with other adopted parts of the development plan (Lewisham Site Allocations Plan and Lewisham Town Centre Local Plan) play the principal roles in making direct provision for assessed needs on the scale required by the LP and CS, in consultation with the neighbouring authorities. Other future Local Plans identified in the Local Development Scheme (LDS) – for Catford Town Centre and for provision for gypsies and travellers – will address needs relevant to their content. A DMLP would normally have a limited role in such matters and there is no suggestion or evidence that any such needs would fall to be met by this plan.

Issue 2 – Are policies DM2-8 sound (concerning housing)?

10. A potential threat to the soundness of the DMLP arose from the Mayor of London's view that policy DM7 was out of conformity with the LP's approach to affordable rent at paragraph 3.63 of the Revised Early Minor Alterations to the LP. This states that *'In view of the particular priority the Mayor gives to provision of new affordable homes to meet London's very pressing need, boroughs should give particular weight to the criteria set by national government for the allocation of public resources for affordable housing in setting local plan targets or negotiating provision in private housing or mixed use developments and should avoid imposing any requirements (such as borough-level caps on rent levels for affordable rented housing) that might restrict the numbers of new affordable homes.'*
11. Consequently, a series of discussions took place between representatives of the Mayors of London and Lewisham before, at, and after the hearings with the objective of narrowing or removing the differences between the views of the respective Mayors. The package of changes to DM7 and its accompanying paragraphs of justification (2.73-79) set out at **MM3** succeed in reaching a satisfactory agreed position, removing the previous lack of conformity.
12. Turning to other housing-related policies, significant parts of DM5 and its accompanying text (concerning sheltered housing and care homes) are not clearly expressed and result in difficulties in understanding precisely what is sought. The term 'care home' is loosely-defined and it is hard to understand what the policy seeks to achieve on the provision of 'affordable housing' as part of such developments. The package of changes (at **MM1**) includes extensive redrafting of DM5 and paragraphs 2.58-64 as well as an additional entry in the glossary. Together, these changes (a) result in a broader more welcoming approach to a wider range of models of specialist accommodation, (b) provide clearer definitions, and (c) thereby deal with tenure issues in a way more closely linked with the types of accommodation most relevant to the provision of 'affordable housing' as a realistic outcome.
13. Policy DM6 (houses in multiple occupation) requires developments to satisfy

'the appropriate Environmental Health standards'. Such standards are part of a different regulatory regime, so compliance should not be sought through the development plan. Similarly, DM8 (student housing) inappropriately refers to unexplained 'ANUK' standards and 'any relevant standards' for houses in multiple occupation. Again, such matters cannot be elevated to statutory status. At most, they may be material considerations to be weighed in individual planning decisions. The changes at **MM2 & MM4** remove these references and make the policies effective.

Issue 3 – Are policies DM9-DM11 sound (concerning employment locations)?

14. The Council has explained its view that policies DM9&10 add value to other policies on Mixed Use Employment Locations and Local Employment Locations set out in the Core Strategy and Site Allocations Local Plan.
15. Both policies (DM9 part 3 and DM10 part 3) require '*internal fit-outs to an appropriate level*' to ensure future flexibility of use by a range of B class businesses. This is supportable, subject to the supporting paragraphs including text to indicate that the circumstances of individual cases and end-users will be considered in determining the 'appropriate level', since this could be quite different from one case to another. The changes at **MM5 & MM6** give effect to this.
16. Turning to DM11, the changes included at **MM7** modify part 1 of the policy to clarify the way in which its criteria will be applied. They also (a) give further guidance in paragraphs 2.102-103 about the requirement for evidence of a 'suitable period of active marketing', thereby ensuring that the plan is not too restrictive on that issue and (b) in paragraph 2.108 cover the same issue concerning 'internal fit-out' as that referred to under MM5 & MM6.

Issue 4 – Is policy DM12 sound (concerning hotels)?

17. Part 2e of DM12 gives unclear guidance about the way in which the adequacy of parking at new hotel developments would be assessed and includes the undefined and misleading term 'car-free'. **MM8** removes these uncertainties by defining 'good public transport accessibility' as PTAL 4 and above and indicating the limited types of parking considered appropriate at such locations, thus making the policy effective.

Issue 5 – Is policy DM18 sound (concerning hot food take-away shops)?

18. The aim of policy DM18 is to reduce the negative health impacts of hot food take-away shops. Proposals for new A5 uses are to be refused where the percentage of units in Major and District Centres (or the number within Local Parades) would exceed various specified levels. In addition, new hot food take-aways would be prohibited within 400m of the boundaries of primary and secondary schools.
19. There are currently some 282 A5 units in the Borough, giving it the 13th highest concentration of such uses (per head of population) in England. Lewisham's set of residents is the 39th most deprived in the country, with many areas among the 10% most deprived. Residents of such areas have disproportionately high levels of obesity, including among children.

20. There are many good sources of evidence about the ill-effects upon health of the consumption of the types of products sold in A5 units which are too often high in fat and sugar and low in fibre, fruit and vegetables. Among those quoted by the Council are the Foresight Review, the Fraser Report, and the Marmot Review, as well as papers prepared by the Department of Health and Public Health England. Some of these discuss how far land use restrictions may or may not have a meaningful impact as a tool in combating the adverse health effects of the products of hot food take-aways. The Public Health England report 'Obesity and the environment briefing: regulating the growth of fast food outlets' (November 2013) recognises the lack of empirical evidence for direct causal links between actions and outcomes in this field. It points to some American evidence for associations between obesity and fast food, although other work by Royal Holloway College tracking the BMI of different post-war population cohorts in relation to historic data about the location of fast-food found no direct link. The Public Health England report also notes that taking action on food take-aways does not address the ability of children to buy cheaper sweets and other high calorie food in shops near schools, an aspect identified as more important than take-away hot food in a small study by London Metropolitan University. All this no doubt shows the difficulty of disentangling direct causes and effects in issues of health, food consumption, exercise and lifestyles. However, the Public Health England report finds 'strong theoretical arguments' for the value of restricting the growth in fast food outlets, albeit that the complex nature of obesity makes it unlikely that any single intervention would make a measurable difference on its own.
21. The Council has perhaps overstated the extent to which the NPPF provides overt support for policy DM18 since most of the health-related references (such as those in part 8) cover factors more directly related to, and influenced by, spatial planning. On the other hand paragraph 171 advises authorities to work with '*public health leads and health organisations to understand and take account of the health status and needs of the local population.....and any information about relevant barriers to improving health and well-being*'.
22. Certainly, a central aim of the NPPF is to ensure '*that the planning system does everything that it can to support sustainable economic growth*' (para 19). However, in view of the very large stock of existing A5 units it is not clear (and there has been no evidence to suggest) that scope exists for Lewisham to experience a substantial increase in economic activity in this sector. Analysis of the present number and distribution of A5 uses indicates that DM18 would offer almost no scope for expansion so the overall broad effect of the policy would be to cap or stabilise the present number of units, perhaps leading over the longer term to some slight decline. Overall, the policy could impose some breaks on individual business initiatives, but it is unclear that its overall economic effects would be materially great.
23. Since the present number of A5 units may not change much over the course of the plan period, the actual health benefits achieved by DM18 may be similarly limited in practice. However, it is plain that Lewisham (in company with other London Boroughs which have broadly similar adopted or emerging policies) have enough concern about the role of A5 units to ascribe greater weight to any health gains rather than any economic losses. On balance this is not an unreasonable conclusion to draw and the plan is not unsound in that

respect, albeit DM18 may play only a limited complementary role in much wider national and local health strategies aiming to inform and educate the public about dietary matters and encourage individuals to exercise greater personal responsibility for healthy lifestyles.

Issue 6 – Is policy DM19 sound (concerning shopfronts, signs and hoardings)?

24. DM19 (part 2) amounts to a negative pre-judgement of every application for posters and is therefore unsound. It is also inappropriate to place poster hoardings in a separate category from other advertisements since the only relevant considerations in respect of all types of advertisements are those set out in the Advertisement Regulations. A development plan policy cannot add further gloss to those factors. The changes included as **MM9** therefore delete part 2 and linked para 2.155 and suitably amend part 1g.
25. **MM9** also clarifies matters with regard to the requirements for the fit-out of new shop-fronts by introducing a revised part 1j and a new part 2.

Issue 7 – Are policies DM24 & DM27 sound (concerning biodiversity and lighting respectively)?

26. Part 1a of DM24 includes references to the Lewisham and London Biodiversity Action Plans and the 'local list', while part (a) of DM27 requires compliance with various aspects of guidance by the Institute of Lighting Professionals. As already indicated in relation to policies DM6 & DM8, such guidance can only represent a possible 'material consideration' in appropriate individual cases. **MM10 & MM11** remove these references and instead rely on appropriate references in the explanatory paragraphs.

Issue 8 – Is policy DM29 sound (concerning car parking)?

27. It is unclear what is meant by the reference to 'car limited' development in part 2 of DM29, and whether (and to what extent) this may differ from 'car free' development mentioned in CS policy 14. It is also unclear whether the criteria in part 2 all need to apply. The changes comprising **MM12** resolve these ambiguities.

Issue 9 – Are policies DM30-38 sound (concerning various design and conservation issues)?

28. Policy DM30 contains inappropriate reference to supplementary planning guidance (SPG) which is rectified by changes at **MM13**. Those changes also substitute a reference to table 2.1 of the plan rather than the Borough-Wide Character Study, since although that study was previously SPG its urban typologies have now been taken through the entire statutory development plan process and are appropriate for inclusion in the DMLP.
29. **MM13** also brings conformity with the LP by introducing references (in the policy) to '...panoramas and vistas including those identified in the London Plan...' and (in para 2.242) to the relevant SPG.
30. As for DM32, the Council has proposed some appropriate changes (**within MM14**) introducing a revised, more broadly-based opening to the policy as

well as deleting references to non-statutory standards in parts 3 and 4. With regard to part 4e of the policy, the Council's response to my initial queries adequately addressed the issue of whether there is a lack of conformity with the LP. While there are some differences in wording, these are not contrary to soundness. The slightly different emphasis is appropriate to Lewisham's circumstances. **MM15** replaces the inappropriate policy linkages with the Lewisham Character Study and Conservation Area Appraisals with references to the urban typologies at table 2.1 and 'the special distinctiveness of any relevant conservation area'.

31. **MM16** corrects policy DM38's inaccurate quotation from S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 concerning the duties of the authority with regard to conservation areas.

Issue 10 – Would a sound plan require more coverage of certain other issues?

32. The development plan as a whole contains adequate policy coverage of water supply and water-related infrastructure. The same applies to waste issues which are already adequately dealt with by the London Plan and the Site Allocations Local Plan.

Assessment of Legal Compliance

33. My examination of the plan's compliance with the legal requirements is summarised in the table below. I conclude that it meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The most recent approved version of the LDS (February 2013) expected examination of the DMLP to occur in January 2014 and adoption in April 2014. The plan's content and timing generally comply with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	Consultation on the DMLP, including that on the post-submission proposed 'main modifications' (MM) has met the requirements of the adopted SCI.
Sustainability Appraisal (SA)	Adequate SA has been undertaken, including that covering the MMs.
Appropriate Assessment (AA)	A stage 1 screening report revealed no need for further stages of HRA assessment. Natural England supports this conclusion.
National Policy	The DMLP complies with national policy except in those cases in which this report concludes otherwise and recommends appropriate modifications.
The London Plan (LP)	Subject to the MMs, the DMLP generally conforms with the LP.
Sustainable Community Strategy (SCS)	The plan pays satisfactory regard to the Councils' SCS (Shaping our Future 2008-20).
2004 Act (as amended) and 2012 Regulations.	The DMLP complies with the Act and Regulations.

Overall Conclusion and Recommendation

- 34. As explored in the main issues covered above, the plan has some material deficiencies of soundness. In accordance with S20(7A) of the Act I therefore recommend its non-adoption as submitted.**

- 35. However, the Council requested me to recommend main modifications to make the plan sound and/or legally compliant and therefore capable of progressing to adoption. Subject to the recommended main modifications set out in Appendix A, I conclude that the Lewisham Development Management Local Plan satisfies the requirements of S20(5) of the Act and meets the criteria for soundness set out in the National Planning Policy Framework.**

Roy Foster

Inspector

This report is accompanied by Appendix A containing the Main Modifications