



**Brighton & Hove  
City Council**

**Proposed Submission City Plan Part 2  
Brighton & Hove Development Plan April  
2020**

**Hearing Session: 12 November 2021 (AM)**

**BHCC19 - Statement in Response to  
Matter 14: Design and Heritage (DM18-32)  
4 Oct 2021**

**BY  
BRIGHTON & HOVE CITY COUNCIL**

## List of Abbreviations

CPP1 - City Plan Part 1  
CPP2 – City Plan Part 2  
DPD - Development Plan Document  
HER – Historic Environment Record  
LPAs - Local Planning Authorities  
NDG – National Design Guide  
NMDC – National Model Design Code  
NPPF - National Planning Policy Framework  
PPG – Planning Policy Guidance  
SA - Sustainability Appraisal  
SCI – Statement of Community Involvement  
SPD – Supplementary Planning Document

## DM18 High quality design and places

**Q1. How would the policy interact with the Urban Design Framework Supplementary Planning Document, in particular aspects of design relating to natural light for residential development, tall buildings, public realm, intensification of neighbourhoods, and public art? Should it provide specific policy to guide tall building development? Does it adequately reflect the principles set out in the National Design Guide and National Model Design Code and NPPF para 127 and 128?**

1. CPP1 Policy CP12 provides general strategic design advice and sets out the policy to guide tall building development. CP13 provides guidance on public realm and public art. This policy (DM18) provides detailed criteria to help deliver well-designed places and adequately reflects the principles set out in the NDG, NMDC and NPPF. SPD17 Urban Design Framework (OD79) supports CP12, CP13 and DM18 and is consistent with NDG principles, providing city-wide detailed design guidance on local priorities, tall building areas, strategic views and preparation of design proposals. The supporting text could helpfully reference the council's intention to prepare design codes. See proposed changes in MM19 (BHCC02) below.

**Q2. Are the key design aspects, set out in A-D justified by appropriate available evidence, having regard to national policy and local context, including meeting the requirements of the City Plan Part 1?**

2. The CPP2 Scoping Paper (CD20) identified a CPP1 policy gap for CPP2 to address. Whilst CP13 deals with streets and spaces, the need for a placemaking policy was identified and confirmed through consultation. Responses recorded in the Statement of Consultation for CPP2 Scoping Stage Consultation (CD22a) informed the key design aspects set out in the Draft CPP2 policy (CD16) in respect to local context (a), buildings (b and c) and spaces between buildings (d). The draft policy was amended to provide more detail in response to Appendix 4 Summary of Key Issues Arising from Representations (CD18b).
3. To reflect the preparation of the codes referred to in Question 1 above and to include reference to the NDG as a source of more detailed design guidance, it is proposed that MM19 (BHCC02) is further revised (see highlighted text) as follows:

MM19	Supporting text to Policy DM18 page 63	<p><b>Policy DM18 High quality design and places</b>  <i>Amend the supporting text at paragraph 2.147 to read:</i></p> <p>More detailed design guidance for developers, including area- and site-specific design principles, will form part of the are set out in the National Design Guide, SPD17 Urban Design Framework Supplementary Planning Document and future design codes the council will bring forward to which will supports City Plan Part 1</p>	To reflect NPPF in respect of the preparation of codes and signposting the NDG.
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		Policies CP12 Urban Design and <del>City Plan Part 2</del> Policy DM18 High Quality Design and Places. Guidance on identified strategic views and how new strategic and local views can be identified will be included in SPD17.	
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**Q3. Are Modifications to this policy or its supporting text required to ensure that it is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

4. To provide further clarity the following Main Modification to the policy is proposed:

MM ##	Policy DM18 page 63	<p><b><i>Policy DM18 High quality design and places</i></b>  <i>Amend the first sentence of the policy to read:</i></p> <p><u>Planning permission will be granted for development proposals that demonstrate</u><del>Development proposals must demonstrate</del> a high standard of design and make a positive contribution to a sense of place and the visual quality of the environment. The council will require an integrated approach to the design process from project inception where place making and sustainable development, including the principles of the circular economy, are considered as one.</p>	To provide greater clarity to decision makers.
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**DM19 Maximising development potential**

**Q1. Would this policy reflect the application of the minimum density standards set out in City Plan Part 1 policies CP12 and CP14, along with national policy set out in NPPF para 125?**

5. CPP1 takes a strong policy approach to promote higher density housing development, in particular through CP14 which sets a general expectation for development to achieve a minimum net density of 50 dwellings per hectare (dph) with a minimum of 100 dph within DA1-6 and DA8.
6. DM19 strengthens CP14 further by requiring that development proposals should avoid the under development of sites and seek to maximise opportunities for the development and use of land and this is explained at paragraph 2.16.1. This accords with NPPF 125 a) which requires policies to optimise the use of land.

**DM20 Protection of amenity**

**Q1. Is this policy and its supporting text clearly written and unambiguous, so it is evident how a decision maker should react to**

**development proposals? Does the policy effectively address the impact of development on natural daylight and sunlight?**

7. In protecting amenity, DM20 requires proposals to consider their impact on sunlight and daylight as set out in supporting text paragraph 2.163. The policy is positively worded allowing for a flexible, context-based assessment of the impact of new development upon daylight and sunlight in line with NPPF paragraph 125. The tests in respect to tall buildings and their impact upon neighbouring properties are set in CP12 and detailed in SPD17 Urban Design Framework.

**DM21 Extensions and alterations**

**Q1. Is this policy and its supporting text clearly written and unambiguous, so it is evident how a decision maker should react to development proposals? Does the policy effectively guide upward extensions and the impact of development on nearby trees?**

8. The policy is worded flexibly, setting out the relationships that extensions should be assessed against including the property and its neighbour. It is supported by OD06 SPD12 Design Guide for Extensions and Alterations as referenced in paragraph 2.174, which provides the decision maker with detailed guidance on how to react to proposals. Criteria b) takes account of a neighbourhood's character while allowing for contemporary or innovative design as explained in supporting text paragraph 2.170. This approach is supported by NPPF para 130 c). Paragraph 2.171 refers to the design elements to be taken account of when considering proposals.
9. In respect of the impact of development on trees by upward extensions, the sequential test is set out in Policy DM22 Landscape and Trees criteria d) which requires development to retain existing trees and where removal is unavoidable to provide suitable replacement in criteria e). See also the response to Matter Statement 14 Q.1.

**DM22 Landscape design and trees**

**Q1. Would this policy be effective in requiring, in the first instance, retention of trees and then replacement to the satisfaction of the Council? Does it effectively reflect the importance of trees and planting in providing climate change mitigation and environmentally sustainable and climate resilient townscape?**

10. The opening paragraph states that trees are required to be retained, with criteria (d) and (e) providing further detail on retention and replacement. The council acknowledges the link between criteria (d) and (e) could be clearer to ensure retention in the first instance and improve effectiveness. The following Main Modification is proposed:

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MM ##	Policy DM22 page 72	<p><b>Policy DM22 Landscape Design and Trees</b>  <i>Amend (d) and (e) of policy to read:</i></p> <p>d) the retention of existing trees and hedgerows with details <u>provided</u> of appropriate protection during construction.</p> <p>e) Where removal <u>of a tree</u> is unavoidable, <u>for example by reason of it being severely diseased or dangerous:</u></p> <p style="padding-left: 40px;">(i) the provision of plans <u>are</u> <u>is required</u> that clearly identify the location and species of all those to be lost and all those to be retained; <u>and</u></p> <p style="padding-left: 40px;">(ii) <del>e)</del> replacement trees along with appropriate associated planting space and works of a type of tree, size and location to the satisfaction of the council for any tree felled; <del>for example by reason of it being severely diseased or dangerous.</del></p>	To improve effectiveness
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11. The contribution of trees and planting in providing climate resilience is recognised through various criteria including (a), (d), (e) and (f), and in supporting text paragraph 2.175 in relation to landscaping. The council acknowledges the link between trees, planting and climate resilience could be made clearer in paragraph 2.175. To then be consistent with paragraph 2.175, additional wording is proposed for paragraph 2.179. The following Main Modifications are proposed:

MM ##	Supporting text to Policy DM22 para 2.175, page 73	<p><b>Policy DM22 Landscape Design and Trees</b>  <i>Amend final sentence of paragraph 2.175 of supporting text to read:</i></p> <p>Early consideration ensures advantage of the ‘additional’ opportunities landscape, <u>trees and planting</u> provides can be taken, such as, climate change mitigation and resilience, water purification, air pollution mitigation...</p>	To better accord with NPPF.
MM ##	Supporting text to Policy DM22, para 2.179 page 75	<p><b>Policy DM22 Landscape Design and Trees</b>  <i>Amend paragraph 2.179 of supporting text to read:</i></p> <p>...provide shelter; <u>support climate change mitigation and resilience;</u> and can help to reduce noise and atmospheric pollution.</p>	For consistency.

**Q2. Are Modifications to this policy or its supporting text required to ensure that it is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

12. Main Modifications MM26, MM27, MM28, MM29 and MM30, as set out in BHCC02 Schedule of Proposed Modifications, have been proposed to

address representations and improve clarity, with further modifications proposed as above. No further modifications are proposed.

## **DM23 Shopfronts and DM24 Advertisements**

### **Q1. Does the policy in general effectively reflect the heritage balance set out in NPPF paras 201 and 202?**

13. The policy seeks to ensure that proposals cause no harm to a heritage asset, in accordance with the duties under s16, s66 and s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and that any potential harm is minimised or mitigated as far as possible through design. The heritage balance set out in NPPF paras 201 and 202 would be applied where there is harm and would include consideration as to whether that harm has been minimised or mitigated through reference to the policy. It should be noted that these policies would need to be applied together with CPP2 policies DM26 and DM27 where appropriate.

### **Q2. Are these policies and supporting texts clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

14. Yes, it is considered that by referring to those matters that need to be considered in assessing a proposal in each circumstance and when making a determination, these policies clearly set out how a decision maker should approach proposals.

### **Q3. Are these requirements for advertisements clear and effective in light of guidance set out in PPG ID 18b paragraph 026?**

15. Yes, the requirements of DM24 would enable the decision maker to properly assess whether the proposal would cause harm, to visual amenity in particular. PPG ID 18b paragraph 079 explains that some factors relevant to amenity are the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest. This policy seeks to amplify those factors in respect of Brighton & Hove.

## **DM25 Communications infrastructure**

### **Q1. Does this policy accord with requirements of NPPF paras 117 and 118?**

16. Yes, the policy accords with the requirements of NPPF paragraph 117 to 118 as it is positively worded to support the expansion of electronic communications networks and the criteria relate to relevant planning matters only; ensuring installations are kept to a minimum and consideration is given infrastructure sharing (DM25.e); ensuring they are

sympathetically designed and camouflaged having regard to the city’s built and natural environment (DM25.a-d); ensuring compliance with International Commission on Non-Ionizing Radiation Protection (ICNIRP) standards (DM25.f) and that interference has been considered (DM25.g).

**Q2. Is it clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

17. The following Main Modification to DM25 is proposed to provide further clarity:

MM	Policy DM25 page 81	<p><b><i>Policy DM25 Communications Infrastructure</i></b> <i>Amend last two paragraphs of policy:</i></p> <p>New development or major renovation works to existing buildings should <del>ensure that</del> <u>provide</u> sufficient ducting space for future digital full fibre connectivity infrastructure is provided as part of the development.</p> <p>Where <del>possible/feasible</del>, <del>the council will encourage the removal of</del> older communication equipment that is no longer required <u>should be removed</u> in order to minimise visual impact.</p> <p><i>Supporting text 2.200 Amend footnote 60:</i></p> <p><sup>60</sup> National Planning Policy Framework (NPPF), paragraphs 116 <del>-118</del>.</p>	For clarity.
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**DM26 Conservation areas**

**Q1. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that, in the exercise, with respect to any buildings or other land in a conservation area, of any functions under the planning Acts special regard shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Further NPPF paragraphs 201-202 set out how to weigh the impact of development on the significance of a designated asset. Overall, is the wording of this policy and explanatory text clear and justified having regard to the statutory provisions and national policy?**

18. Yes, the policy gives great weight to the conservation of these areas. It sets out those considerations that can assist the decision maker in identifying and assessing whether development would avoid harm or may enable enhancement, with reference to the local context and the available evidence base. The wording of the policy and supporting text would further help the decision maker assess whether any harm has been appropriately minimised or mitigated. The heritage balance set out in NPPF paras 201 and 202 would be applied where there is harm and would include



consideration as to whether that harm has been minimised or mitigated through reference to the policy. The policy also allows for where there may be heritage benefits to a development that would be included in the net heritage balance and so form part of the wider balancing exercise.

19. For clarity, however, a Main Modification is proposed to the supporting text as follows:

MM ##	Policy DM26 page 85	<p><b><i>Policy DM26 Conservation Areas</i></b>  <i>Amend paragraph 2.204 of the supporting text by adding the following sentence at the start of the paragraph:</i></p> <p><u>Where either substantial harm or less than substantial harm is identified, the council will expect the applicant to fully meet the requirements set out in the NPPF.</u></p>	For clarity, effectiveness and consistency with the NPPF.
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**Q2. In the absence of a commitment to produce up to date management plans for conservation areas, would this policy be effective?**

20. Yes, OD32 Conservation Strategy (2015) is specifically referenced in CPP1 Policy CP15 as a framework for future conservation area management proposals. It is a ten-year Strategy to be reviewed in 2025. It currently prioritises the production of Conservation Area character statements for those areas without one, and after that the review of those existing ones that are most out-of-date or ineffective. The adoption of DM27 would give greater impetus for the 2025 review to programme future management plans.

21. In the meantime, it is not considered that the absence of such a commitment weakens the effectiveness of this policy to any notable degree. A management plan would be a material consideration in the determination of planning applications and is a useful tool in identifying potential enhancements in particular. However, management plans are not as germane to the effectiveness of this policy as conservation area statements.

**DM27 Listed buildings**

**Q1. Section 66(1) of the same Act sets out ...'in considering whether to grant planning permission for development which affects a listed building or its setting ... shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.' In this context, the supporting text to this policy explains national policy requirements where substantial harm is identified. In the absence of the same for less than substantial harm, would the policy as a whole be effective?**

22. The specific reference to the NPPF approach to be followed in the case of substantial harm was included to clarify that the absence of such tests from this policy was simply to avoid either repeating or paraphrasing national policy. However, a Main Modification is proposed to clarify that in all cases where harm is identified the relevant paragraphs in the NPPF will apply, as follows:

MM ##	Policy DM27 page 86	<p><b><i>Policy DM27 Listed Buildings</i></b>  <i>Amend paragraph 2.213 of the supporting text to read:</i></p> <p>There is a general presumption in favour of the preservation of listed buildings. Where <u>either</u> substantial harm <u>or less than substantial harm</u> is identified the council will expect the applicant to fully meet the requirements set out in the NPPF. Any substantial public benefits put forward must directly relate to the development itself, must benefit the local community in the long term and must not otherwise be achievable.</p>	For effectiveness and for consistency with the NPPF.
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**Q2. Overall, is the wording of this policy and explanatory text clear and justified having regard to the statutory provisions and government policy?**

23. Yes, subject to the Main Modification set out above.

### **DM28 Locally listed buildings**

**Q1. NPPF paragraph 203 sets out how to weigh the impact of development on the significance of a non-designated asset. Does this policy effectively reflect this?**

24. Yes. The council has a public Local List of Heritage Assets, with an entry for each asset, that has been compiled using criteria set out in OD12 Planning Advice Note 07. This enables the significance of the asset to be understood and taken into account. The policy then seeks to avoid or minimise conflict between the asset’s conservation and the development proposal, in accordance with NPPF paragraph 195, and sets out clearly how that should be demonstrated.

### **DM29 Setting of heritage assets**

**Q1. What is the justification for the considerations to be taken into account in assessing the contribution of setting to the significance of a heritage asset and the impact of development on that setting, with regard to the local context?**

25. The policy is intended to guide applicants/agents and decision makers as to what potential factors are likely to be of most relevance when assessing the contribution of setting to an asset’s significance and the potential

impact of the development on those contributors to setting, with particular emphasis on the context of Brighton & Hove. It is not intended to be exhaustive, however, but provide a policy basis for assessing any heritage impact statement or similar.

**Q2. The last paragraph of this policy sets out that, where there are impacts on the setting of multiple heritage assets, priority should be given to enhancing the setting of those assets of greatest significance. In the absence of a consideration of impacts, would this policy be justified, effective and consistent with national policy?**

26. The policy was intended to reflect NPPF paragraph 199, but it is accepted that in the absence of a consideration of impacts the policy as worded would not be properly effective. Therefore, a Main Modification to the policy is proposed as follows:

MM ##	Policy DM29 page 89	<p><b><i>Policy DM29 The Setting of Heritage Assets</i></b>  <i>Amend the last paragraph of the policy to read:</i></p> <p>Opportunities should be taken to enhance the setting of a heritage asset through new development. Where a major development impacts on the settings of multiple heritage assets, the scale of impact should be assessed against the importance of the heritage asset and the degree to which setting contributes to its significance. <del>priority should be given to enhancing the setting of the asset(s) of greatest significance</del></p>	For effectiveness and for consistency with the NPPF.
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### **DM30 Registered parks and gardens**

**Q1. Are modifications to this policy or its supporting text required to ensure that it is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

27. BHCC02 Revised Schedule of Proposed Modifications proposes Main Modifications MM32 and MM33 to ensure that the policy is clearly written.

**Q2. NPPF paragraphs 201 and 202 set out how to weigh the impact of development on the significance of a designated asset. Is this reflected in this policy?**

28. A Main Modification is proposed to the supporting text to reflect NPPF paragraphs 201 and 202 more explicitly, as follows:

MM ##	Policy DM30 page 91	<p><b><i>Policy DM30 Registered Parks and Gardens</i></b>  <i>Amend paragraph 2.232 of the supporting text to read:</i></p> <p>Parks and gardens are key components of the historic environment. Registered parks and gardens are designed</p>	For effectiveness and for consistency
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		landscapes of national importance, including: public parks; communal gardens of historic groups of houses; and cemeteries. <u>Where either substantial harm or less than substantial harm is identified the council will expect the applicant to fully meet the requirements set out in the NPPF.</u>	with the NPPF.
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### **DM31 Archaeological interest**

**Q1. Should the policy explicitly require suitable field evaluation/survey at pre-determination stage?**

29. Yes, and BHCC02 MM35 proposes a Main Modification to the policy to specifically address this:

**Q2. Does the policy address the way in which development affecting the different categories of remains should be weighed as set out in NPPF paragraphs 201 to 203 and PPG Conserving and enhancing the historic environment ID 18a 040?**

30. Yes, the wording addresses NPPF paragraphs 201 to 203, but a Main Modification is proposed below to the supporting text to reflect NPPF paragraphs 201 and 202 more explicitly. In respect of paragraph 203 and PPG ID 18a 040, an Archaeological Notification Area (ANA) as identified via the local HER is considered to fall under the status of a non-designated heritage asset (unless demonstrated otherwise).

MM ##	Policy DM31 page 93	<p><b><i>Policy DM31 Archaeological Interest</i></b>  <i>Amend paragraph 2.237 of the supporting text to read:</i></p> <p>Archaeological remains are finite and irreplaceable resources which are particularly vulnerable to the effects of new development. Archaeological interest is defined in the NPPF.  <u>Where either substantial harm or less than substantial harm is identified the council will expect the applicant to fully meet the requirements set out in the NPPF.</u></p>	For effectiveness and for consistency with the NPPF.
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### **DM32 The Royal Pavilion Estate**

**Q1. Does the policy effectively identify the gardens' historic interest and acknowledge the previous restoration scheme and the need to enhance the successes of that scheme? Are Modifications required to ensure that the policy is effective in these regards?**

31. Whilst the policy is not intended to summarise the gardens' significance, including its historic interest, BHCC02 MM36, MM37 and MM38 propose Main Modifications to acknowledge the positive legacy of the previous

restoration scheme and how it should be respected. No further modifications are proposed.