

**City Plan Part Two Brighton and Hove City Council's Development Plan
(the Plan/Local Plan) April 2020 Examination
Inspector – Ms R Barrett MRTPI IHBC
Programme Officer – Pauline Butcher**

Inspector Note 9

Actions required following hearing sessions

1. Introduction

- 1.1 Further to the discussions at the hearing sessions, and consideration of the additional topic-based explanation/justification requested of the Council, the following actions are required. I consider these to be necessary to inform my consideration of whether the Plan is sound and/or how it could be made sound by main modifications (MMs). Unless otherwise stated, each of the action points is for the Council to pursue. Where appropriate and possible, the Council should liaise with relevant participants in preparing its response. These action points are in addition to the MMs set out in BHCC04, unless otherwise specified and any others indicated/agreed during the hearing sessions.
- 1.2 The action points set out below should culminate in a revised list of MMs to the Plan, which should be submitted to the Programme Officer to an agreed timescale. All modifications to a policy and supporting text should be included as one MM. The updated list of MMs will then be published on the Examination website and consulted on in the usual way.
- 1.3 I have already visited the area and intend to carry out further site visits on an unaccompanied basis as soon as possible. If there is a need to make a visit on private land or accompanied by the Council and other interested parties, arrangements will be made via the Programme Officer. My comments at this stage are subject to any findings as a result of those further site visits, plus any other deliberations.
- 1.4 I do not set out the reasons for my advice. The reasons for the MMs sought will be contained in my final report, which I will send to the Council at the end of the Examination.

2. Action points

- 2.1 As a general point, the Council should assess the Plan to ensure that policies and supporting text should not rely on standards or requirements set out in untested documents. Where this is the case the wording should be changed, making it clear that untested documents are guidance only, with wording such as `... having regard to XYZ ...' e.g. DM12, DM33 2(d), DM35, DM37 (para 2.278), DM39 (proposed MM89), DM40 (iii), DM43. (Please note this is not an exhaustive list)

3. Matters 3 and 11 Housing

- 3.1 Policy DM1(e): The Council should prepare an MM to make a distinction between wheelchair adaptable homes and wheelchair accessible homes; the latter being applied in circumstances in which the Council has nomination rights.
- 3.2 Policy DM8 para 2.76: The Council should prepare an MM to para 2.76 to explain what is meant in practice by '... a predominance of cluster flats...'

4. Matter 16 The Environment and energy

- 4.1 Policy DM37¹: The Council should amend proposed MM63-MM88 to address the following:
- DM37B Nationally protected sites footnote 10: to include reference to requirement for Marine Conservation Zone Assessment.
 - DM37C Locally protected sites: first para remove the words '...the integrity of...'
 - Policy DM37C(iii) include reference to local strategic ecological networks
- 4.2 Policy DM39: In addition to actions in para 2.1, the Council should amend MM90 to refer to the need for a Marine Conservation Zone Assessment where appropriate.
- 4.3 Policy DM40(e): The Council should prepare an amendment to proposed MM95 to omit or replace the phrase '... have been considered...'
- 4.4 Policy DM43: In accordance with para 2.1 of this note, the Council should prepare an amendment to proposed MM97.
- 4.5 Policy DM44: The Council should prepare an amendment to proposed MM99-106 to ensure that para 2.351 is clear that requirements when submitting a planning application are not overly onerous. This should make clear that a draft EPC report is not required when submitting a planning application.

5. Matters 4, 9 and 12 and 13 Employment, retail and community

- 5.1 Policy E1: The Council should amend proposed MM147 to reflect MMs to policy DM37.
- 5.2 Policy DM10: The Council should prepare an MM to address the impact of development that would compromise the operation or viability of a public house use e.g. proposals for redevelopment of associated accommodation, facilities or development within the garden of a public house.

¹ For clarity, comments in relation to amended policy version tabled at the hearing, which should be published as an Examination document

- 5.3 Policy DM12 1(iv)²: In accordance with para 2.1, the Council should prepare an amendment to proposed MM18.
- 5.4 Policy DM12 1(iv) supporting text (unnumbered): The Council should prepare an MM to provide clarity on what is meant by 'Where appropriate, shopfront design should ...'.
- 5.5 Policy DM12(2) The Council should prepare an MM to provide the correct reference to criteria cited (a-d or i-iv).
- 5.6 DM12: The Council should include within the MMs to this policy the deletion of the last three paras of the policy which repeat previous paras.
- 5.7 Policy DM13(a)³: The Council should prepare an amendment to explain what is meant by '...character of the Important Local Parade...'.
- 5.8 Policy DM13(d): and supporting text. The Council should prepare an MM to provide clarity on what is meant by '... where appropriate, proposals should be in alignment with the Council's shop front policy DM23'.
- 5.9 Policy DM13 para 2.122: The Council should prepare an MM to clarify that an Important Local Parade refers to a group of 6 or more shops.
- 5.10 Policy DM14: The Council should prepare an amendment to proposed MM22 to replace '...support the existing commercial and leisure offer...' to '...maintain and enhance the existing commercial and leisure offer...'.
- 5.11 Policy DM15: The Council should amend proposed MM24 to replace '...will be supported...' with '...will be permitted...'.

6. Matter 5 Strategic Site Allocations

- 6.1 Policy SSA1: The Council should include an MM, in accordance with BHCC37, which sets out measures to safeguard, protect and support swift colonies throughout the entirety of development. In addition, an MM to SSA1 A should ensure the preservation of the listed building or its setting or any features of special architectural or historic interest which it possesses. In relation to SSA1B the Council should prepare an MM to ensure that the term 'heritage character' is clearly understood.
- 6.2 Policy SSA2: The Council should prepare an MM to require a heritage impact assessment to identify the impact of development on heritage assets.

² For clarity, comments in relation to amended policy version tabled at the hearing, which should be published as an Examination document

³ For clarity, comments in relation to amended policy version tabled at the hearing, which should be published as an Examination document

7. Matters 6 and 8 Housing and mixed-use site allocations (rest of the City) and student accommodation site allocations

- 7.1 Policy H1 Table 6: The Council should prepare an MM to delete the proposed allocation between Marine Drive and The Cliff.
- 7.2 Policy H1 Table 6: The Council should prepare an MM to increase the indicative number of dwellings to 14 dwellings at Land at corner of Fox Way and Foredown Road, Portslade.
- 7.3 Policy H1 Tables 6 and 7: Both tables use the words 'Indicative number of residential units...'. Having given this some further thought, I am content that, together with proposed policy DM19 and CPP1 Policy CP14, that wording provides a reasonable degree of certainty about the scale of development (and allows overall supply to be calculated) whilst providing flexibility to allow a design-led approach.

8. Matter 7 Housing allocations (urban fringe)

- 8.1 Policy H2 Table 8: The Council should prepare an MM to replace the words 'Potential number of dwelling units...' with 'indicative number of residential units...'.

9. Matter 10 Special Policy Area (SA7 Benfield Valley)

- 9.1 The Council should prepare an MM to include the words ...'as shown on the policies map...' within the first sentence of the policy.

10. Matter 14 Design and heritage

- 10.1 Policy DM18: The Council should prepare an MM to ensure that the last sentence of the policy in relation to the incorporation of an artistic element in major development on strategic and/or prominent sites is consistent with the para 2.158, in terms of the types of development captured by the policy and whether it is a requirement or desirable.
- 10.2 Policy DM25: The Council should prepare an MM to ensure that DM25(b) refers to the significance of heritage assets.
- 10.3 Policy DM26: The Council should prepare an MM to ensure that the policy reflects the heritage balance set out in NPPF paras 199-202. This should include words such as, 'Proposals that result in harm to a conservation area will be refused unless the public benefits are sufficient to outweigh that harm, having regard to the significance of the heritage asset/s affected.'
- 10.4 Policy DM27: The Council should prepare an MM to this policy to ensure that it reflects the heritage balance set out in NPPF paras 199-202. This should include words such as 'Proposals that result in harm to the significance of a listed building or its setting will be refused unless the harm is outweighed by the public benefits of the proposal, having regard to the significance of the heritage asset/s affected.'

10.5 Policy DM28: The Council should prepare an MM to the second para of this policy to explain the last part in brackets ('...where not included, within a heritage statement ...') which is meant to refer to assets not yet included in the local list.

10.6 Policy DM30: The Council should prepare an MM to this policy to ensure that it reflects the heritage balance set out in NPPF paras 199-202. This should include words such as 'Proposals that result in harm to the significance of a registered park or garden will be refused unless the harm is outweighed by the public benefits of the proposal, having regard to the significance of the asset/s affected.'

10.7 Policy DM32: The Council should prepare an amendment to DM32(d) to refer to the '...garden as previously restored...' within the supporting text, rather than the policy.

11. Matter 15 Transport and travel

11.1 Policy DM33: The Council should prepare an amendment to MM57 to include reference to the Bus Improvement Plan.

12. Matters 17 and 18 Infrastructure, viability and monitoring

12.1 No MMs recommended.

13. Next Steps

13.1 In conclusion, I am assuming that the Council would be content to adopt the Plan subject to the running list of MMs, those referred to above and any consequential changes to the Plan required. Therefore, I would be grateful if the Council would prepare a revised composite schedule of MMs that takes account of the further changes I have indicated. Should this not be the case, the Council should advise me of its position as soon as possible.

13.2 The subsequent version of the schedule of proposed MMs should be provided to me for comment prior to public consultation. The MMs should now be numbered accordingly, and any consequential changes that might arise should also be considered. A separate schedule of the changes that are necessary to the policies maps to reflect the policy changes should also be prepared and consulted upon.

13.3 The proposed MMs should be subject to further Sustainability Appraisal and Habitats Regulation Assessment as necessary. These addendums should be published as part of the MM consultation and I would appreciate sight of any drafts of these.

13.4 When I am satisfied with the schedule of proposed MMs, in accordance with the Procedural Guide for Local Plan Examinations⁴, it will be subject to

⁴ Pins February 2021 (7th edition)

a six-week period of public consultation which should be undertaken in accordance with the Council's Statement of Community Involvement. It should be made clear that the consultation relates solely to the proposed MMs.

- 13.5 Representations about the proposed MMs and changes to the policies maps should be sent to the Council. At the end of the period, the Council should forward the representations to the Programme Officer along with a summary of the main issues raised and the Council's brief response to those main issues. I will then consider all of the representations about the proposed MMs before finalising my report. Normally, all issues arising from the consultation on the MMs should be capable of being considered through the written representations procedure. Further hearing sessions will only be necessary exceptionally.
- 13.6 The list of Additional Modifications which has been prepared is a matter solely for the Council (unless I consider any of these should be defined as MMs). If the Council intends to publicise these it should be made clear that I will not be considering them.
- 13.7 As previously stated, you should note that these comments do not represent my full findings on these matters, which will be set out in my final report (considering any representations made). I would appreciate a response to this letter from the Council, including an indication of a timetable for the necessary outstanding work and MM process. I am not inviting comments from anyone else at this stage. Should the Council have any queries, or require further clarification, please contact me through the Programme Officer. A copy of this correspondence should be published on the Examination website.

R Barrett

INSPECTOR 26 November 2021