

Matter 3 Hearing Statement

**Development Management in Birmingham DPD
Examination
Response on Behalf of the Langley Sutton Coldfield
Consortium**



Contents

1.	Introduction	1
1.1.	Introduction	1
2.	Policy DM1 Air Quality	1
2.1.	Question 21	1
2.2.	Question 22	1
2.3.	Question 23	2
3.	Policy DM2 Amenity	2
3.1.	Question 24	2
3.2.	Question 27	2
4.	Policy DM3 Land affected by Contamination, Instability and Hazardous Substances	3
4.1.	Question 28	3
4.2.	Question 29	3
5.	Policy DM4 Landscaping and Trees	3
5.1.	Question 31	3
5.2.	Question 32	4
5.3.	Question 33	4
5.4.	Question 36	4
5.5.	Question 37	5
5.6.	Question 38	6
5.7.	Question 40	6
5.8.	Question 41	6
6.	Policy DM6 Noise and Vibration	7
6.1.	Question 46	7
6.2.	Question 47	7

1. Introduction

1.1. Introduction

1.1.1. Savills has been instructed by the Langley Sutton Coldfield Consortium to submit a Hearing Statement in response to Matter 3 (Questions 21, 22, 23, 24, 27, 28, 29, 31, 32, 33, 36, 37, 38, 40, 41, 46 and 47) of the Development Management in Birmingham DPD Examination. The Langley Sutton Coldfield Consortium is promoting development on the site allocated within Policy GA5 of the adopted Birmingham Development Plan for the “Langley Sustainable Urban Extension”.

2. Policy DM1 Air Quality

2.1. Question 21

“Is the policy consistent with national policy relating to air quality?”

2.1.1. Paragraph 181 of the National Planning Policy Framework (NPPF) makes it clear that planning policies should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants. The Consortium contends that the concept of development not being considered favourably where it results in exposure to pollutant concentrations that are “*close to the limit values*” is not clearly defined in local or national planning policy.

2.2. Question 22

***“Is the policy wording sufficiently clear and effective for Development Management purposes?
Would the modifications proposed by the Council address any shortcomings in this respect?”***

2.2.1. The Policy does not provide a clear, effective and justified definition for what is meant by the definition included in the supporting text at paragraph 2.7 of “*unacceptable deterioration in air quality*”. It is also not clear how the reference to the West Midlands Low Emissions Towns and Cities Programme: Good Practice Air Quality Planning Guidance (2014), which appears to focus on achieving compliance with the EU Air Quality Directive Limit Values, justifies the approach taken.

2.2.2. Whilst it is accepted that the Council's proposed modification 1¹ would provide a more measurable definition, it is however not clear why the Council has chosen a threshold requirement for exposure to pollutant concentrations that are within 5% of the nationally or locally set objectives or what other alternative thresholds were considered. The proposed modification is therefore not currently considered to be fully justified. It is still therefore contended that the test for air quality impact should more closely focus on assessing whether developments would result in a demonstrable exceedance of EU Air Quality Directive Limit Values (or relevant replacement / alternative local or national requirements).

2.3. Question 23

“Does the policy adequately address the use of mitigation measures?”

2.3.1. Point 2 of the proposed Policy wording provides a framework for introducing mitigation measures as part of development proposals to help reduce and / or manage air quality impacts.

3. Policy DM2 Amenity

3.1. Question 24

“Is it clear what is meant by vicinity in 1.h of the policy?”

3.1.1. It is not clear what is meant by “vicinity” in 1.h of the Policy. The presumption is that the appropriate area for which the individual and cumulative impacts of development proposals on amenity are considered will depend on the individual circumstances of each proposal. This would need to be scoped and agreed between the applicant and the Council through the planning application process. However it is noted that a definition is not specified within the supporting text for this Policy.

3.2. Question 27

“Are the criteria in the policy flexible enough to enable housing delivery and be consistent with the National Planning Policy Framework?”

¹ CDS4 Schedule of Proposed Minor Changes. Change Ref 1.

- 3.2.1. Subject to clarification in relation to criterion 1.h it is considered that the proposed Policy wording provides a framework that is free from unnecessary levels of prescription and within which the amenity implications of development can be assessed. Comments are made separately in relation to Policy DM10 to reflect the proposed introduction of guidance and standards.

4. Policy DM3 Land affected by Contamination, Instability and Hazardous Substances

4.1. Question 28

“Are the requirements of the policy consistent with national policy?”

- 4.1.1. It is contended that the requirements of the proposed Policy are not sufficiently effective or fully consistent with the National Planning Policy Framework (NPPF). Paragraph 170 (f) of the NPPF identifies that planning policies should contribute to and enhance the natural and local environment by remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. The wording of proposed Policy DM3 does not make any specific reference to mitigation. The Council's proposed modification 3², to include a requirement to minimise and mitigate unacceptable risks, will improve both the effectiveness of this policy and its consistency with national policy requirements.

4.2. Question 29

“Are the requirements of the policy effective and would the modifications proposed by the Council overcome the shortcomings in this respect?”

- 4.2.1. Please refer to the answer to Question 28.

5. Policy DM4 Landscaping and Trees

5.1. Question 31

²CDS4 Schedule of Proposed Minor Changes. Change Ref 3.

“Is the Policy consistent with national policy? Do the proposed amendments by the Council address the shortcomings in this respect?”

5.1.1. The proposed Policy is not considered to be consistent with national policy. Part 1 of the proposed Policy wording states that all developments must take opportunities to provide high quality landscapes that enhance existing character and the green infrastructure network. The proposed Policy wording would seem to exceed the provisions set out in paragraph 127 of the National Planning Policy Framework, which requires development to be “*sympathetic*” to local character and history, including landscape setting. It also exceeds the wording of the adopted Birmingham Development Plan policies. The Council’s proposed amendments do not address this shortcoming.

5.2. Question 32

“Is point 1 of the Policy on landscaping schemes justified and effective?”

5.2.1. Please refer to the response to Question 31.

5.3. Question 33

“Is point 2 of the Policy clear and effective?”

5.3.1. The requirement to “*maximise the provision of new trees and green infrastructure*”, included within the proposed wording of Part 2 of the Policy, is not considered to be measurable and should therefore not be included. It is noted that the Council has sought to define³ “*maximise*” as ‘to make as great as possible or make the best use of’. Whilst the aspiration of the Council to increase tree canopy cover and green infrastructure in general across Birmingham is laudable, it should be still balanced against the requirement set out in the NPPF of promoting an effective use of land for homes and other uses.

5.4. Question 36

“Is point 5 of the Policy clear and effective? Would the Council’s suggested amendments address the shortcomings in this regard?”

³CSD6 Publication Version Representations and Council Responses. Response to ID Ref 21/4 Point 2.

- 5.4.1. Point 5 of the proposed Policy is not considered to be clear and effective on the basis that it does not identify how contributions for off-site replacement tree planting will be calculated for inclusion within a S106 agreement. Whilst paragraph 2.39 makes reference to Capital Asset Value for Amenity Trees (CAVAT), it is not currently clear how CAVAT would be implemented, including how it would be applied to large phased sites with outline planning permission.
- 5.4.2. Capital Asset Value for Amenity Trees (CAVAT) is neither mentioned in the adopted Birmingham Development Plan nor within the National Planning Policy Framework (NPPF) and is not a national requirement being brought in through existing or emerging legislation.
- 5.4.3. The Council's proposed modification 6⁴, to state that the method of calculating contributions will be contained within the City's Tree Strategy, is not considered to address these shortcomings because it is not clear what status the Tree Strategy would have and what the opportunities would be for engaging with, and commenting on, the provisions contained within this document.

5.5. Question 37

“Is paragraph 2.39 of the supporting text effective? Would the Council's suggested amendments address the shortcomings in this regard?”

- 5.5.1. It is recognised that there might be a limited use for CAVAT for calculating of value of trees that are lost from a conservation area or are the subject of a Tree Preservation Order, but there does not appear to be sufficient justification for applying this provision to all landscaping features on all development sites. The Council's proposed modification 7⁵ to just restrict the use of CAVAT to trees rather than to all landscaping features goes some way to improving the effectiveness of the proposed wording. However it is not considered that the need for introducing CAVAT at all has been justified or has been specifically accounted for through the Local Plan viability assessment work.

⁴ CDS4 Schedule of Proposed Minor Changes. Change Ref6.

⁵ CDS4 Schedule of Proposed Minor Changes. Change Ref7.

5.6. Question 38

“Is the use of the Capital Asset Value for Amenity Trees methodology justified, including consideration of the impact on viability and is it clear which method will be used in the policy (full method or quick method)?”

- 5.6.1. As set out through the answers to Questions 36 and 37, it is not considered that the need for introducing CAVAT at all has been justified or has been specifically accounted for through the Local Plan viability assessment work.
- 5.6.2. National Planning Policy Framework paragraph 34 states that development contributions should not undermine the deliverability of a Local Plan. It is considered to be important for landscaping to be viewed in the context of development proposals as a whole rather than in isolation. It is also considered that the focus in new residential developments should be on the provision of high quality green infrastructure rather than on the capital value of green infrastructure, and replacement planting should be provided as part of development proposals to compensate for this loss in a manner that is appropriate to the creation of the new residential environment.

5.7. Question 40

“Should the Policy identify where off site S106 contributions for replacement tree planting will be located?”

- 5.7.1. If it is demonstrated that CAVAT is necessary and justified, the Council should identify within the proposed Policy wording, or within the supporting text, what its strategy would be for spending the S106 contributions to ensure that the CAVAT approach can be effectively implemented.

5.8. Question 41

“Should part 5 of the Policy refer to the Council’s Tree Strategy? Would the amendment proposed by the Council address the shortcomings in this regard?”

- 5.8.1. Please refer to the answer to Question 36.

6. Policy DM6 Noise and Vibration

6.1. Question 46

“Is point 1 of the Policy effective? Would the Council’s suggested amendments address the shortcomings in this regard?”

6.1.1. It is considered that the proposed Policy wording is not effective because it does not provide an explanation of whether the identified requirement to take account of existing levels of background noise refers to background noise at the proposed development or background noise at nearby receptors. Further clarification on this matter therefore needs to be provided within point 1 of the proposed Policy wording, or within paragraph 2.52 of the supporting text. The Council’s proposed modification 9⁶ clarifies that this Policy relates to predicted noise levels at both the development site and nearby receptors and therefore addresses this particular shortcoming.

6.2. Question 47

“What is the status of the Noise and Vibration Guidance Note referred to in paragraph 2.52 of the supporting text and is greater clarity required on the weight it should be given in the determination of planning applications?”

6.2.1. The Council’s Noise and Vibration Guidance Note⁷ has been produced to provide guidance to the Council’s Environmental Protection Officers. Section 1 of the Guidance Note identifies that it provides general guidelines and stresses that it is for guidance only. This document has not been subject to the same level of consultation prior to publication / adoption that a supplementary planning document would have been and therefore should accordingly be afforded less weight in the decision making process. Greater clarity should be given by the Council on the weight that this document should be given in the determination of planning applications.

⁶ CDS4 Schedule of Proposed Minor Changes. Change Ref 9.

⁷ BCC Regulation and Enforcement Planning Consultation Guidance Note Noise and Vibration Version 6 Issued March 2020.

