

Matter 5 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 DM10 Standards for Residential Development	1
2.1.	Question 60	1
2.2.	Question 61	2
2.3.	Question 62	4
2.4.	Question 63	5
2.5.	Question 66	6
2.6.	Question 67	7
2.7.	Question 68	8
3.	Policy DM11 Houses in Multiple Occupation	9
3.1.	Question 69	9
4.	Policy DM12 Residential Conversions and Specialist Accommodation	9
4.1.	Question 72	9

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 5 (Questions 60, 61, 62, 63, 66, 67, 68, 69 and 72) 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 DM10 Standards for Residential Development

2.1. Question 60

“Is there sufficient evidence to justify the use of the Nationally Described Space Standards?”

2.1.1. It is not considered that there is sufficient evidence to justify the use of the Nationally Described Space Standards (NDSS).

2.1.2. The Planning Practice Guidance (PPG)¹ requires that where a need for internal space standards is identified, Local Planning Authorities should take into account need, viability and timing considerations. In relation to demonstrating the need to apply NDSS, National Planning Policy Framework (NPPF) footnote 46 states that “*policies may also make use of the NDSS where the need for an internal space standard can be justified*”. NPPF paragraph 31 also specifies that all policies should be underpinned by relevant and up to date evidence which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned.

2.1.3. The Council’s own evidence, as set out within the Topic Paper², identifies that whilst some dwellings delivered / approved in the past have not achieved NDSS requirements, the majority (76%) of the dwellings that have received planning permission in Birmingham between July 2016 and June 2019 are either compliant or close to compliant with the NDSS. This is presented within the Topic Paper as a positive

¹ PPG Paragraph: 020 Reference ID: 56-020-20150327 Revision date: 27 03 2015

² EBD40 Birmingham City Council. Development Management in Birmingham Development Plan Document. Standards for Residential Development Topic Paper. July 2020.

situation. The evidence accordingly does not demonstrate such a persistent significant under delivery against NDSS as a whole, or identify that the Council has experienced a systemic problem such as to provide a compelling robust 'need' case for NDSS to be required to be enshrined into Local Plan Policy for all sites to achieve.

2.2. Question 61

“Has the effect of the use of space standards on viability been adequately demonstrated?”

- 2.2.1. It is considered that the effect of the use of space standards on viability has not been adequately demonstrated. The Council's evidence highlights that the achieved level of compliance with Nationally Described Space Standards (NDSS) varies both geographically and between sites. It should be noted that the example large scale sites with planning permission outside of the City Centre identified within Table 1 of the Topic Paper are generally densely planned schemes, comprising housing (but not a significant proportion of 4+bedroom dwellings) and apartments, with associated roads, but which do not all deliver additional on-site infrastructure, including public open space. It should also be noted that the example sites do not all achieve the full Policy-compliant planning obligations requirement, including in relation to affordable housing, which may have influenced their ability to achieve the level of NDSS compliance that they have achieved.
- 2.2.2. This highlights the importance within Birmingham of considering the application of additional housing standards, including NDSS, on a site-specific basis and taking account of all Policy requirements. The fact that development viability varies based on site-specific circumstances is evidenced through the accompanying Financial Viability Assessment.
- 2.2.3. It is noted that the scenarios tested within the Financial Viability Assessment³ only vary values and affordable housing percentages for a variety of different sized schemes, albeit it is not made clear what values each of the value bands used relate to. The results of the appraisal scenarios included within the report demonstrate that the ability to deliver the full policy-compliant affordable housing requirement is brought into doubt with the inclusion of the additional Development Management policy requirements and

³EBD71 BNM Paribas Real Estate. Development Management in Birmingham: Development Plan Document – Financial Viability Assessment (November 2019) (made available online January 2020). Page 92.

not all development typologies tested show the schemes to be viable using the applied assumptions even in the highest value scenarios.

- 2.2.4. As a result of this the Financial Viability Assessment highlights that: *“In some instances where policy requirements are not viable, the Council may need to apply the requirements flexibly and weigh which are priorities over others. Some DMB policies are explicitly expressed as being applied on a ‘subject to viability’ basis. In some instances, the Council may decide to accept a reduced quantum of affordable housing (below its 35% target) to facilitate a scheme meeting other DMB or BDP requirements. Clearly there are some trade-offs between affordable housing contributions towards infrastructure and DMB requirements and all of these serve vital functions in weighing the planning balance”.*
- 2.2.5. The Consortium contends that the Council should not be adopting a Local Plan document which demonstrates from the outset that it is likely that some applicants will be required to enter into viability appraisals at the planning application stage to determine how adopted Policies, including in relation to affordable housing, should be applied, even if the whole of Policy DM10 is explicitly stated to be ‘subject to viability’ (which it is currently not). This is especially pertinent given that the PPG⁴ requires that impacts on affordability are considered where a space standard is to be adopted.
- 2.2.6. There are also key concerns with some of the underlying assumptions applied within the viability appraisal. The scheme typologies tested include some large housing-based schemes, but do not take into consideration the implications of applying the additional proposed policy requirements, including DM10 requirements for NDSS and Part M4(2) to an urban extension. The majority of the larger schemes within the typologies are apartment-only schemes, which have a different land-take and design and policy requirement to housing or mixed housing and apartment schemes.
- 2.2.7. This is considered to be a significant omission because although strategic urban extensions might not be considered ‘typical’ of the majority of development sites that are expected to come forward within Birmingham during the Plan period, the major residential allocation within the Birmingham Development Plan (Policy GA5) is the allocation for approximately 6,000 dwellings at the Langley Strategic Urban Extension, which makes a significant contribution to the Birmingham housing provision. This is compounded further by the inclusion of an assumption of £1,500 per dwelling S106 contribution and

⁴ PPG Paragraph: 020 Reference ID: 56-020-20150327 Revision date: 27 03 2015

£91psqm CIL contribution for market units (within certain areas), which significantly underestimates the contribution towards S106 infrastructure required to bring forward a strategic urban extension. It is not considered to be appropriate to state that “*in practice SUEs comprise a number of smaller developments*”⁵.

2.2.8. Furthermore it is noted that the viability appraisal scenario testing does not test the impact of not delivering all new homes to NDSS sizes. The assumption is made that all new homes will be of a size that meets NDSS standards. However the evidence set out within the Topic Paper demonstrates that not all homes approved and delivered within Birmingham in recent years have been planned as NDSS compliant and the wider housing market forces have not required all new dwellings to be NDSS compliant. The Topic Paper does not highlight that the dwellings delivered by the market that have not met the NDSS requirements have either not sold or not met a particular housing need / purchaser requirement. The fact that the application of NDSS to development sites can reduce the number of dwellings that can be achieved on the site, making land use less efficient and requiring the planning obligation and infrastructure package to be shared across fewer dwellings, should also not be ignored.

2.2.9. The viability appraisal should therefore also test the viability implications of the current level of (under)delivery against NDSS as a comparison, to understand the additional implications of full NDSS compliance in tandem with the other proposed Policy considerations. The evidence base is therefore still considered to be lacking in this respect.

2.3. Question 62

“Should the policy include a transitional period?”

2.3.1. Notwithstanding the answers to Questions 61 and 62, if the introduction of Nationally Described Space Standards is considered to be sound then the Policy should include a transitional period. The PPG⁶ identifies that that “*There may need to be a reasonable transitional period following adoption of a new policy on space standards to enable developers to factor the cost of space standards into future land acquisitions*”.

⁵ CSD6 Publication Version Representations and Council Responses. Response to ID Ref 21/9 Point 4.

⁶ Planning Practice Guidance Paragraph 020 Reference ID: 56-020-20150327.

- 2.3.2. The Consortium still contends that it is unreasonable for the Topic Paper⁷ to conclude that there is no need to allow for a transitional period following adoption of a new Nationally Described Space Standards (NDSS) policy on the grounds that it is considered that there are no notable viability impacts anticipated from the introduction of NDSS and that the intention to introduce the standard has been in the public domain for over 4 years.
- 2.3.3. A historic intention by the Council to bring in NDSS carries little weight and the first time the Council published its proposed evidence to justify introducing NDSS was in January 2020. There has been no requirement for development proposals or land deals secured before now to take account of NDSS. A sufficient time period therefore needs to be allowed to enable these sites to progress through the planning system. Accordingly outline planning applications and reserved matters approvals agreed prior to a specified date should not be required to be subject to NDSS.
- 2.3.4. However it is noted that the Council's response⁸ to the representations states that following adoption "*the policy should not be applied to any reserved matters applications or any outline or detailed approval prior to a specified date*". This implies that the Council is prepared to allow a reasonable transitional period following adoption. This therefore needs to be clarified and explored further through the Hearings.

2.4. Question 63

"Is there sufficient evidence to justify the requirement for 30% of dwellings to meet M4(2) Category 2 – Accessible and Adaptable Dwellings?"

- 2.4.1. There is not considered to be sufficient evidence to justify the requirement for 30% of dwellings to meet M4(2) Category 2 standards.
- 2.4.2. The National Planning Policy Framework (NPPF) footnote 46 identifies that "*planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable dwellings where this would address an identified need for such properties*". The PPG⁹ also requires that when assessing the need for additional accessibility requirements, regard is to be given to: the future need for

⁷ EBD40 Birmingham City Council. Development Management in Birmingham Development Plan Document. Standards for Residential Development Topic Paper. July 2020.

⁸ CSD6 Publication Version Representations and Council Responses. ID Ref 12/1. Response to point 14.

⁹ PPG Paragraph: 007 Reference ID: 56-007-2015037 Revision date: 27 03 2015.

housing for older and disabled people; the size, location and type of dwellings needed; the accessibility and adaptability of existing housing stock; how needs vary across different housing tenures; and the overall impact on viability.

2.4.3. It is noted that the Council has published an updated Topic Paper¹⁰ since the Publication consultation was undertaken. The statements included within the Topic Paper do highlight that Birmingham has an ageing population and provide data relating to long term illness and disability. However it is not clear how this data translates into a need for at least 30% of all new dwellings to be assessable and adaptable homes in accordance with Building Regulations Part M4(2). In the light of the recent High Court decision¹¹ that the use of the word 'dwelling' is not automatically restricted to Use Class C3, it is also not clear whether the proposed standards will apply to a wider range of homes than traditional Use Class C3 flats and houses and also include student accommodation, houses in multiple occupation, care homes and other forms of specialist accommodation for older persons.

2.4.4. As set out in the response to Question 61, the Financial Viability Assessment also shows that, notwithstanding the fact that the scenarios tested do not include a sustainable urban extension (which in itself is considered to be a significant omission), not all scenarios tested are viable and accordingly bring into doubt the ability to deliver a policy-compliant amount of affordable housing.

2.4.5. Furthermore the viability appraisal and wider evidence base has not robustly tested the implications of including less than 30% of all dwellings achieving Part M4(2) compliance, which is an exercise which is considered to be necessary to provide an informed comparison. The evidence base is therefore considered to be lacking and not robustly justifying the inclusion of this proposed standard.

2.5. Question 66

“Is point 6 of the Policy effective in enabling flexibility within the Policy? Does the change proposed by the Council address the shortcomings in this regard?”

¹⁰ EBD40 Birmingham City Council. Development Management in Birmingham Development Plan Document. Standards for Residential Development Topic Paper. July 2020.

¹¹ Rectory Homes Limited v SSHCLG and South Oxfordshire District Council [2020] EWHC 2098 (Admin).

- 2.5.1. Notwithstanding the answers given to Questions 60-65, should the proposed provisions of Policy DM10, as set out within criteria 1-5 of the proposed Policy wording still be considered sound then suitable flexibility needs to be allowed for in order to allow for viability and other site-specific considerations to be taken into account at planning application stage. Point 6 of the Policy does not allow for this and is not currently effective in enabling flexibility within the Policy.
- 2.5.2. It is considered that more than just 'exceptional' site issues should be taken into consideration. The proposed Policy wording and supporting text (as identified in the response to Question 63) do not specify whether the standards will apply to a wider range of homes than traditional Use Class C3 flats and houses and also include student accommodation, houses in multiple occupation, care homes and other forms of specialist accommodation for older persons. Some of these wider forms of accommodation may not be able to meet all of the proposed Policy DM10 criteria. Furthermore neither point 2 nor point 6 of the Policy take account of particular physical attributes of sites which may make it unsuitable to accommodate all of the proposed Policy DM10 criteria, e.g. vulnerability to flooding, topography or other factors that may make a site unsuitable for M4(2) compliant dwellings¹².
- 2.5.3. The approach included within the Council's proposed modification 15¹³ will improve the effectiveness of the Policy by allowing for physical constraints or viability issues to be taken into account, but this would benefit from further expansion and explanation.

2.6. Question 67

“Is the weight of Policy being applied to the Birmingham Design Guide? Do the Council’s proposed modifications overcome this?”

- 2.6.1. As identified within the Consortium’s response to Question 86, the National Planning Policy Framework (NPPF)¹⁴ is clear that SPDs are *“Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular*

¹² Planning Practice Guidance Paragraph ID: 56-008-20150327.

¹³ CSD4 Schedule of Proposed Minor Changes. Change ref 15.

¹⁴ National Planning Policy Framework (February 2019) Annex 2: Glossary.

issues, such as design. Supplementary planning documents are capable of being a material consideration, but are not part of the development plan”.

2.6.2. The wording used within criteria 4 and 5 of the proposed Policy, the asterisked footnote to the Policy and the accompanying explanation at paragraph 4.10 do not make it sufficiently clear that the standards which the Council is seeking to attain, and which are proposed to be introduced through the forthcoming Birmingham Design Guide, are only guidance. There is therefore potential that the wording might be interpreted as applying the weight of Policy to the Birmingham Design Guide.

2.6.3. The wording of proposed Policy DM10 therefore needs to make the role of the Birmingham Design Guide as a supporting guidance document expressly clear. The Council has not proposed any modifications to overcome this. However, to remain consistent with the Council's proposed modification 24 (Parking SPD), as considered under Question 86, it is proposed that the asterisk within the proposed Policy should be amended to state [underlining added]: *“Guidance on standards is ~~are~~ set out in Places for Living SPD which will be replaced by the guidance included within the Birmingham Design Guide”.*

2.6.4. Similarly it is proposed that the wording in accompanying paragraph 4.10 is amended to state [underlining added]: *“Existing guidance on outdoor amenity space and separation distances is set out in Places for Living SPD, which will be updated through the guidance set out within the forthcoming Birmingham Design Guide SPD”.*

2.7. Question 68

“Should the Policy make reference to Secured by Design Standards?”

2.7.1. The wording for proposed Policy DM2 already requires the assessment of the impact of development to include safety considerations, fear of crime and anti-social behaviour. The introduction of Secured by Design Standards as a Policy requirement has not been considered and assessed through the evidence base accompanying and underpinning the Development Management in Birmingham DPD and is not a requirement of either the National Planning Policy Framework or Building Regulations. There is an opportunity for the approach and / or principles of the Secured by Design Standards to be considered as part of the pending consultation on the Birmingham Design Guide. It is accordingly not considered to be necessary for Secured by Design to be referred to within the proposed Policy DM10 wording.

3. Policy DM11 Houses in Multiple Occupation

3.1. Question 69

“Is the Policy wording effective? Would the Council’s suggested modification address the shortcomings in this respect?”

3.1.1. In common with the wording used within criterion 1.e of proposed Policy DM12 (see the response to Question 72), the wording used within criterion 1.d of proposed Policy DM11 is currently so broad that in theory it might prevent the creation of HMOs through either conversion of existing dwellinghouses or erection of new buildings. This is because it could be argued that the Council’s objectives, strategies and policies currently support a full mix of uses. This wording is therefore not considered to be effective and should be rephrased. The Council’s proposed modification 16¹⁵ would make the proposed Policy wording more effective.

4. Policy DM12 Residential Conversions and Specialist Accommodation

4.1. Question 72

“Is the wording of the Policy effective? Would the Council’s suggested modifications address the shortcomings in this respect?”

4.1.1. The wording used within criterion 1.e of proposed Policy DM12 is not effective. The Council’s proposed support for development where *“it will not result in the loss of an existing use that makes an important contribution to the Council’s objectives, strategies and policies”* is so broad that in theory it could prevent any conversions or subdivisions of any properties to create individual units or specialist accommodation. This is because it could be argued that the Council’s objectives, strategies and policies currently support a full mix of uses. This wording is therefore not considered to be effective and should be rephrased. The Council’s proposed modification 17¹⁶, to simply require assessment of whether the development would not conflict with any other Policies in the Local Plan, would make the proposed Policy wording more effective.

¹⁵ CSD4 Schedule of Proposed Minor Changes. Change ref 16.

¹⁶ CSD4 Schedule of Proposed Minor Changes. Change ref 17.

