

LBWF DMPDPD

Inspector's Questions

Comments on Introduction, policies DM1 – DM10

As is usual with this method, it may be that the Inspector will ask a question or make a point which is likely to be answered when he reaches a later point in his reading, so the Council should not be inhibited in its response in telling the Inspector that it has already submitted the evidence which will give him an answer; it will help the Inspector if the Council is able to point me to a particular passage in a submitted document, if that gives the appropriate answer.

A few general observations first.

1) Paragraph 1.8 states a key element of the examination; that is clarity, which is fundamental to effectiveness. The DMPDPD is a sizeable document; 42 policies in 421 pages. Its very size adds to the task of a developer in reaching a clear understanding of what development will or will not be permitted. From the concerns expressed in paragraph 1.11 about the length of policies, it is clear that the Council itself is aware of this. I make two observations in relation to this consideration;

(i) Figure 1.3 of the DMPDPD explains the relationship between Development Management Policies and Core Strategy policies. Yet, in some places, this relationship is not used to help justify DMPDPD policies; they are often justified *ab initio*. Where circumstances have not changed, that should not be necessary; a simple cross reference to the CS should justify the principle of the policy. All the justification in the DMPDPD need then do is justify the extra detail which the DMPDPD adds. This duplication of justification does not make the DMPDPD unsound, so I do not insist on its elimination but I will point it out where it occurs, so that the Council may choose to edit the DMPDPD and so improve its approachability and effectiveness.

(ii) The Council's concern with the length of policies may explain why, in a number of instances, I have noted elaborations of policy appearing in the justification rather than in the policy itself. In a number of places, there is simply a restatement of policy rather than an elaboration. Despite the concerns about policy length, I will be drawing to the Council's attention a number of places where, in my view, this device leads to a lack of clarity and, therefore, effectiveness.

2) Neither an elaboration of policy nor its restatement count as justification. There are a couple of instances where elaboration or repetition crowd out justification. I will draw this to the Council's attention but it does not necessarily follow that the remaining brevity of justification is unsound. Only where the removal of elaboration or repetition of policy reveals an absence of justification would unsoundness be found. A test that I apply is this; a policy tells a developer what his/her development must do. The justification tells him/her why it must

be done.

3) In a number of places the justification contains advice on how the policy can be met. Advice or supplementary guidance gives advice on how it can be done (without saying it must be done that way as a matter of policy). Again, this isn't really justification. Its inclusion would not be unsound but it can mask an absence of justification.

4) In a number of places both policy and justification state procedural requirements. These are useful in telling a developer what he/she must do in order to submit an application; they do not say what the development must do and so they are not planning policy; they are administrative policy. I need to be convinced that they have a place in the DMPDPD because although they might amount to a reason for refusing to validate an application, they would not represent a reason to refuse (or grant) a permission for development.

Comments in detail

DM1

5) Figure 1.3 relates this policy to Core Strategy policy CS1 but there does not appear to be anything in the stated justification which makes this connection. Presumably, the intent of part B of this policy is to give effect to parts A, B, C and E(i) of CS1 but that's just my presumption; I don't see anything in the justification that makes the link; I've only made that presumption because (a), (b) and (c) of part B of DM1 parallel A, B and C of CS1 and paragraphs 2.20 to 2.29 of the justification in the DMPDPD parallel paragraphs 4.7 to 4.26 of the Core Strategy. As far as soundness goes, it may not be necessary to make any modification to the DMPDPD; all I need is confirmation from the Council that my presumption is correct. But the Council may wish to reflect that its selection of areas for development and growth has been justified in the Core Strategy and has been found sound. If circumstances have not changed, is it then necessary to rejustify it in paragraphs 2.20 to 2.29 of the DMPDPD? A simple cross reference might suffice?

6) Paragraph 2.32 contains three sentences. The first is a restatement of the policy. The second and third can be read either as advice or as policy. Neither is justification.

7) The last clause of paragraph 2.33 contains a policy requirement which is not stated in the policy itself, so the policy is not clear.

8) Paragraph 2.34 is a policy requirement, not stated in the policy itself, so the policy is not clear.

9) Paragraph 2.35 simply repeats policy.

10) Paragraph 2.37 is a policy requirement, not stated in the policy itself, so the policy is not clear.

11) Paras 2.38 -2.44 appear to be largely advice and explanation. Useful but not justification.

12) The last sentence of paragraph 2.40 imposes a procedural requirement. Why does the scale need to be justified unless it would conflict with policies DM 4 A (i) (amplified by paragraph 5.3), DM 8 A or DM 30 A (iv)?

13) The last sentence of paragraph 2.41 is a statement of policy, not included in the policy itself, which is therefore unclear.

14) It is not clear whether paragraph 2.42 represents policy or advice. It rather reads as the former, but is not stated within the policy itself, which would therefore be unclear.

15) The first sentence of paragraphs 2.44 and 2.50 simply restate the policy.

DM2

16) This policy is presumably intended to give effect to policy CS2 A (i), already justified in principle in CS paras 5.13 and 5.14.

17) The last clause of para 3.2 simply restates the policy and is not justification.

18) The first clause of the first sentence of para 3.3 is justification; the remainder of the sentence simply repeats part A of the policy and is not justification. The second sentence is advice, not justification. The third sentence repeats or elaborates part D of the policy, indicating a lack of clarity in the policy itself and is not justification. The fourth sentence is a policy requirement not made within the policy itself, which is therefore unclear. The justification for choosing the figure of 87 sq m needs to be stated.

19) The first sentence of paragraph 3.44 simply restates part C of the policy and is not justification.

20) The first and last sentences of paragraph 3.5 simply restate part D of the policy and are not justification.

21) The second sentence of paragraph 3.6 states a policy requirement, not part of the policy itself, which is therefore unclear. The justification for prioritising refurbishment over redevelopment is not stated. The third sentence restates part E of the policy and is not justification. The last sentence is advice, not justification.

DM3

22) This policy is intended to give effect to CS2 B. Its principle is already justified by CS paragraphs 5.15 to 5.19 but I appreciate that DMPDPD paras 4.2 to 4.4 update the justification.

23) It is not clear to me whether the last sentence of paragraph 4.5 represents policy or not. If it is justification, I am not clear what part of this policy it is meant to justify.

24) It's not clear to me that part B of the policy takes us much beyond policy CS2 B (ii). If anything it is stated in less detail. Paragraphs 4.7 to 4.12 give detail to the policy and an explanation of process and so perhaps are the policy. They do not appear to contain any justification for their provisions.

25) Paragraphs 4.13 to 4.15 read like statements of policy rather than justification.

26) Paragraph 4.17 states policy; it is not justification. It is not stated in the policy itself, which is therefore unclear.

27) Other than the first clause of the first sentence, paragraph 4.18 is a statement of policy, not justification. The policy requirements are not stated in the policy itself, which is therefore unclear.

28) The last sentence of paragraph 4.22 is a statement of policy not included in the policy itself, which is therefore unclear.

29) The first sentence of paragraph 4.23 simply restates policy DM3 E using different words; it is not justification.

30) Paragraphs 4.24, 4.25 and 4.26 are statements of policy, not included in the policy itself, which is therefore unclear.

DM4

31) Figure 1.3 suggests that this policy is related to Core Strategy policy CS2 but I cannot identify any part of CS2 which would give rise to, or justify, this policy. Rather, part A appears to relate partly to CS13 A and the justification set out in CS paras 16.12 to 16.15 and partly to CS15 and the justification set out in paras 18.26 and 18.27.

32) Part B appears to be a new stand-alone, possibly even strategic, policy, not presaged in the Core Strategy at all. Although introduced in a policy headed extensions and alterations, the reference to a separate dwelling suggests that the policy would also apply to new build infill developments. I would have expected a policy against the development of garden land to have been flagged up in policy CS1 of the Core Strategy which sets out the strategic approach to where the Council would like development to be directed. The new policy's proposed resistance to any rear extension of a property appears to contradict the intentions of Core Strategy policies CS2 A (v) and CS1 E (i), (justified by core strategy paragraph 4.32 which refers specifically to infill and expansion of existing buildings), although I accept that the preamble to CS1 E refers to previously developed land and that garden land is not now so regarded. It would appear to negate the observation made in paragraph 5.8 of the

Core Strategy. It also appears to contradict the policy stated in the last sentence of paragraph 5.5 of the DMPDPD. I recognise that paragraph 5.7 (except for the fifth sentence which duplicates the policy itself and the tenth sentence which introduces criteria not stated in the policy itself) presents a justification for the policy. In a borough with extensive areas of terraced housing such as LBWF a policy of no loss of garden land would effectively represent a ban on any rear extension to a terraced house beyond that allowed under p.d. I need to be convinced that the implications of this policy have been clearly spelt out to the public in the consultations carried out on the DMPDPD and in the sustainability appraisal made.

33) Paragraphs 5.2, 5.3 and 5.5 appear as restatements of policy, not justification.

34) Paragraph 5.6 seems to be describing a policy which is not in fact stated in the policy itself, which is therefore unclear.

DM5

35) This policy gives effect to policy CS2 (C) which is itself justified by Core Strategy paragraphs 5.20 to 5.25.

36) The second sentence of paragraph 6.4 appear to represent policy, not stated within the policy itself, which is therefore unclear.

37) Paragraph 6.5 describes a policy consideration, not included within the policy itself, which is therefore unclear.

38) Paragraph 6.6 appears as a statement of policy which appears to conflict with policy DM5 and table 6.1

DM6

39) This policy also gives effect to policy CS2 (C) which is itself justified in principle by Core Strategy paragraphs 5.20 to 5.25. The justification in the DMPDPD need not duplicate this, unless circumstances have changed.

40) The choice of the threshold figure of 124 sq m in part A(i) and part B of the policy does not appear to have a justification at any point.

41) For clarity, should section A(ii) of the policy make specific reference to figure 7.1 (which is labelled as picture 7.1, perhaps in error)?

42) Section A(iii) of the policy does not make clear what is to be regarded as an over-concentration of conversions in one street (and there is no stated justification for any particular threshold which may be chosen)

43) Section A(iv) of the policy does not make clear what is to be regarded as "pressure" on existing levels of parking, open space and other services and there is no stated justification for any trigger or threshold which may be chosen.

- 44) Section A (vi) of the policy appears to have been garbled.
- 45) How is the figure of 74 sq m referred to in parts A(vi) and B(ii) of the policy justified? How does it relate to the figure of 87 sq m referred to in paragraph 3.3 of the DMPDPD and the figures for three bedroomed dwellings in table 8.1?
- 46) Would the qualification to policy DM5, set out in paragraph 6.5 of the DMPDPD also apply to this policy?
- 47) The last sentence of paragraph 7.11 is simply a restatement of the policy; it's not justification.
- 48) Only the third sentence of paragraph 7.13 provides justification; the rest reads as policy but is not stated in the policy itself which is therefore not clear.
- 49) Paragraph 7.14 reads as policy but is not stated in the policy itself, which is therefore unclear.
- 50) The first and last sentences of paragraph 7.15 read as policy statements, not justification.
- 51) Only the first clause of paragraph 7.16 reads as justification; the rest appears to be a reiteration of policy.
- 52) The first sentence of paragraph 7.17 restates the policy; only the second sentence provides justification.

DM7

- 53) Like policy DM4, figure 1.3 relates this policy to Core Strategy policy CS2 but I cannot identify any part of CS2 which would give rise to, or justify, this policy. Rather, parts A and B appear to relate to CS13 A and the justification set out in CS paras 16.12 to 16.15. Part C appears to relate to CS5 N and the justification set out in CS paragraph 8.39.
- 54) The first two sentences of paragraph 8.4 duplicate the provisions of the policy itself; they are not justification.
- 55) Paragraphs 8.5, 8.6 represent policy requirements but they are not stated within the policy itself, which is therefore unclear.
- 56) The second sentence of paragraph 8.7 makes a policy statement which appears to be at odds with the policy itself, which requires adherence to table 8.3. the last sentence of the paragraph duplicates the policy itself.
- 57) Paragraphs 8.8 and 8.9 appear to be largely statements of policy, rather than justification but as the requirements are not stated within the policy itself, it is unclear what the policy requires developers to do.

DM8

59) Although figure 1.3 relates this policy to Core Strategy policy CS2 A (v) and D, only parts B, C and D of the policy are in fact so related. Parts A and H appear to be more related to CS15 and the justification set out in paras 18.26 and 18.27. Parts E and F appear more related to CS13 A and the justification set out in CS paras 16.12 to 16.15. Part G relates more to policy CS6 B and its justification, paragraph 9.13 of the Core Strategy.

60) Paragraphs 9.2, 9.3 9.5 the fourth and fifth sentences of paragraph 9.4 ,the first, second, fourth and fifth sentences of paragraph 9.6 and the first and third sentences of paragraph 9.7 appear to represent policy rather than its justification. Insofar as they do not duplicate the policy itself but give rise to new requirements not stated in the policy, then the policy is incomplete and so, unclear.

61) The policy does not explain what is meant by satisfactory levels of sunlight, daylight, privacy or outlook. A developer would therefore struggle to reach a clear understanding of what development will or will not be permitted. Any levels chosen in response to this comment would need to be justified.

62) Other than sunlight, daylight, privacy or outlook, what amenities of neighbouring properties would be envisaged by part F of the policy? What criteria would be used to judge compliance? What justification is there for the criteria which would be used?

DM6, 7 & 8

63) Between them, these policies set standards of various kinds for residential development. Where will I find the evidence that the costs of such requirements to be applied to housing development have been considered in accordance with paragraph 173 of the NPPF and found not to affect the viability of development?

DM9

64) This policy has two (unnumbered) paragraphs of justification. The last sentence of each is a re-iteration of the policy itself and is not, therefore justification.

DM10

65) Figure 1.3 relates this policy to Core Strategy policy CS2 E, which is justified by Core Strategy paragraphs 5.32 to 5.38.

66) Paragraphs 11.5, 11.9, 11.10, 11.11 and 11.13 , the first sentence of paragraph 11.6, the first sentence of 11.7, all except the first clause of paragraph 11.8 and the first and last three sentences of paragraph 11.12 either restate aspects of the policy or add new policy. They are not justification. Insofar as they state policy not included in the policy itself

they demonstrate that the policy is incomplete and so, not clear as to the requirements for permission.

67) Part A (ii) of this policy does not indicate what would be regarded as an over concentration of uses (and the level chosen to indicate such an over concentration would need to be justified).

68) What is the justification for the figures chosen to represent the minimum space standards of table 11.1?
Please advise if you require any further information.

Comments on policies DM11 – DM12

DM11

69) Figure 1.3 relates this policy to CS policies CS4 and CS6. It appears to give effect to policies CS4 A, B and C, (which are justified by CS paragraphs 7.10 to 7.14) and to part of CS6 A (justified by CS paragraph 9.14). Much of the justification for the DMPDPD policy appears to be justification "in principle" duplicating or paraphrasing the justification of the CS (eg DMPDPD para 12.2 parallels CS para 7.10; paras 12.5-12.7 of the DMPDPD largely elaborate CS para 7.12 and DMPDPD para 12.23 largely duplicates CS para 7.13).

70) Except for the choice of the threshold of 100sqm, paras 12.12 to 12.22 appear to provide a thorough justification for part A of the policy.

71) Part B of the policy is repeated and elaborated in para 12.10 and in 12.26. Its justification is paragraph 12.8. It is a procedural policy, concerned with validating an application, rather than a planning policy seeking a particular outcome from a development, so I am not convinced that it has a place here (other perhaps than in para 12.26)

72) There is no part C. Is this a deliberate omission?

73) There does not appear to be any justification stated for requiring the particular level of the CfSH and BREEAM codes chosen. (The use of the codes in principle is justified in the CS and repeated in paragraph 12.6 of the DMPDPD but there is no justification stated for choosing level 4 and "very good" respectively). Where will I find this justification?

74) Other than the requirement for a Sustainable Development Statement, (which is a procedural requirement for validating an application, not a planning outcome for a development to achieve), does part F take us any further than what is already required by Core Strategy policy CS6 A?

75) Other than the introduction of the threshold of 100 sqm and the examples given in paragraph 12.24, does part G, elaborated and repeated in paragraph 12.24 (where draught proofing appears twice), take us any further forward than what is already required by Core

Strategy policy CS4 C? There is no stated justification for the chosen threshold of 100sqm (which also appears in parts A, B and E of this policy). Where will I find this justification?

DM12

76) This policy appears intended to give effect to Core strategy policies CS4 E and F, justified in paragraphs 7.15 to 7.25 of the Core Strategy. Paragraph 13.2 of the DMPDPD duplicates paragraph 7.15 of the Core Strategy. The first and last sentences of paragraph 13.13 of the DMPDPD duplicate passages in core strategy paragraphs 7.18 & 7.19. Paragraphs 13.18 and 13.20 of the DMPDPD parallel paragraph 7.23 of the Core Strategy.

77) The third sentence of paragraph 13.8 and its bullet points together with paras 13.9 and 13.10 appear to represent statements of policy, not included within part A of the policy itself, which would thus seem to be incomplete and therefore unsound. Is that correct? Paragraph 13.7 and the first two sentences of 13.8 provide the justification for these policy requirements.

78) Part B of the policy requires a financial payment to be made. How is this compatible with the general principle (stated, for example in paragraph 83 of circular 11/95 related to planning conditions but of general applicability) that "No payment of money or other consideration can be required when granting a permission or any other kind of consent required by a statute, except where there is specific statutory authority."? As is well known, the Council may seek to implement its policies through the use of s.106 agreements which allow for the use of financial payments in lieu of physical elements of a development but those are, by definition, agreements and cannot be required. Charges under CIL are authorised by a different process. Paragraph 13.11 which provides the justification for this policy makes a parallel with the connection charges of public utilities but those charges are set by the utility companies, licensed by regulators, not by policies in a DPD. What would be the Council's response to a suggestion that this part of the policy and paragraph 13.11 would be ultra vires?

79) Paragraph 13.12 seems to state a policy requirement which is not stated in the policy itself, which therefore appears to be incomplete and so, lacking in clarity. Should it be included within the policy? Is this policy deliverable – what would be the mechanism?

80) The second and third sentences of paragraph 13.13 appear to be stating elements of policy. Should they be included within the policy itself?

81) The first sentence of paragraph 13.14 reads as justification but the remainder of the paragraph appears to be stating or interpreting policy requirements. Should they be included within the policy itself?

82) The first sentence of paragraph 13.15 appears to re-state part C of the policy.

83) Paragraph 13.16 seems to be a statement of policy, not expressed in the policy itself. Should it be?

84) Paragraph 13.17 seems to be a statement of administrative policy relating to the validation of an application falling within the remit of Core Strategy CS13 A and DMPDPD policy DM25 c, rather than a justification of any aspect of DMPDPD policy DM12. In so far as it does express policy requirements for on-site renewable energy plants, would part D of the policy be incomplete without their inclusion within the policy?

85) Paragraph 13.19 seems to be making a statement of policy rather than justification and in some way duplicating policies elsewhere in the DMPDPD rather than policy DM12. In so far as it does express policy requirements for decentralised and renewable energy plants, should they not be included within the policy itself?

Comments on policies DM13, DM40 & DM42

DM13

a) clarity points

85) NPPF paragraph 154 advises that only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan. In this light, I am not convinced that the vague term "affecting" used in parts B and G of this policy to indicate developments to which the policy would be applied would be sufficiently clear. Does it mean "sited within" or "abutting" or "within a distance of x metres or "generating use of" or some other meaning?

86) Similarly, how would a developer be expected to know how the decision maker would apply the term "where appropriate" in parts I and K of this policy?

87) Similarly, how would a developer know where the areas are which are identified as having the shortage of allotments which would trigger the application of part E of this policy?

88) As phrased, the first clause of part C of the policy would seem to apply to all planning applications, without limitation or exception. Where will I find the justification for its application to such developments as changes of use or minor extensions?

89) In contradiction of the apparent universal application of the first clause of part C of the policy, the second clause starts with the word "particularly". This suggests that there is in fact some differentiation of policy between areas of deficiency/deprivation and other areas. What is the different policy which would be applied in each circumstance?

90) The first sentence of paragraph 14.14 appears to represent a statement of policy rather than justification but is not included within part H of policy DM13, which is therefore incomplete and so, unclear.

91) The sixth sentence of paragraph 14.19 appears to be a statement of policy, rather than of justification, but the policy requirement is not stated within part K of the policy itself, which is therefore incomplete and so, lacking in clarity.

b) justification points

92) The provisions of policy DM13 seem barely to go beyond the provisions of Core Strategy policy CS5. My understanding is that the additional detail specified by DM13 comprises;

- The second sentence and bullets of part A
- The application of Part C (subject to my comment above)
- Parts D and L
- The clarification in the first sentence of Part E and the first sentence of part G that all existing facilities are to be retained
- The rest of part E
- Parts I, J and K (subject to my comments above)

If my understanding is correct, then these are the only parts of the policy which require justification in the DMPDPD; the rest has already been justified in the Core Strategy. The other parts of the policy (including all of parts B, F and H) appear simply to duplicate the provisions of the Core Strategy, using different words. I find the justification for the above points, insofar as it exists at all, in the second half of paragraph 14.4, parts of 14.7, the last sentence of 14.9, parts of 14.10 and paragraph 14.16. The rest of the justificatory paragraphs are expressed in terms appropriate for justifying Core Strategy policies themselves (though using different arguments to those of the Core Strategy itself). Paragraph 14.6 justifies Core Strategy policy CS5 C which is not elaborated in the DMPDPD at all. Paragraph 14.9 appears to be justifying policy DM30, rather than any part of DM13. Where is the justification for the other additional detail (albeit limited) introduced by the DMPDPD?

DM40 & DM42

93) There is obviously considerable duplication between policy DM13 H and its justificatory paragraphs and policies DM40 and 42 and their justificatory paragraphs which may lead to a lack of clarity. Their separation may lead to the latter two policies being overlooked and consequently, ineffective. What is the reason for detaching policies DM40 and 42 from DM13 H and separating them by so many intervening unrelated policies?

94) Paragraph 41.6 seems to be a repetition of policy DM40, rather than a justification of it.

Comments on policies DM14 – DM17

DM14

95) What do parts A, B, C, D and E of this policy require that are not already required by Core Strategy policy CS7 parts C and D?

96) Part H is presumably in pursuit of Core Strategy policy CS5 (I). It cross refers to figure 19 of the Core Strategy but figure 19 (Transport connections) of the Core Strategy does not indicate the boundaries of the Epping Forest SAC. Is figure 14 meant? (though this does not identify the Epping Forest SAC separately from other Sites of Metropolitan Importance to Nature Conservation).

97) Paragraph 15.3 and the first two sentences of paragraph 15.4 largely duplicate the justification for Core Strategy policy CS7 set out in Core Strategy paragraphs 10.15-10.17.

98) The third and fourth sentences of Paragraph 15.4 appear to be statements of policy rather than justification. The third sentence appears to be policy not stated elsewhere (and apparently, not justified anywhere). The fourth sentence appears to duplicate both CS7 C and DMPDPD DM14 A without providing justification for either.

99) Paragraph 15.5 appears to be a statement of policy, not justification but it's not set out in the policy itself, which would therefore seem to be incomplete and therefore unclear, so not sound.

100) Paragraph 15.6 is a justification of Core Strategy policy CS7 D, already justified in Core Strategy paragraphs 10.18 and 10.19.

101) Paragraph 15.7 appears to represent a policy statement setting out what policy would be applied to developments which fail to comply with CS policy CS7 D but it doesn't appear as a policy included in either the CS or DMPDPD. In any event, the suggestion that a financial contribution may be "required" raises the same issues of compliance with the law previously raised in my question 78.

102) What part of any policy does paragraph 15.8 seek to justify?

103) The second and third sentences of paragraph 15.9 and the whole of paragraphs 15.10 appear not to be justification but appear to elaborate the policy requirements of CS7 D. They are not set out in DMPDPD DM14, but, transport assessments are only an appraisal document, not a characteristic of the development itself, so any policy is only a procedural requirement for the validation of an application, not a policy for managing development and so should perhaps appear in the Council's statement of its requirements for validating an application rather than in the DMPDPD. The principle of transport assessments is already justified in paragraph 10.18 of the Core Strategy and in paragraph 16.10 of the DMPDPD. If the policy is to be elaborated in the DMPDPD (rather than in the Council's planning application validation requirements), then the additional requirements need be justified in the DMPDPD; but what we seem to have

at the moment is the inclusion of an administrative policy, but not stated as policy and lacking justification. Is that right?

104) Paragraphs 15.13 to 15.15 appear to set out policy requirements for Travel Plans. As these are a characteristic of the development proposed, rather than an appraisal document, I would expect the DM policies to include these policy requirements within the DM14 policy itself. Without them, it appears incomplete, unclear and therefore unsound. The principle of travel plans is already justified in CS paragraph 10.19, so I would expect the DMPDPD to include justification for the extra policy requirements set out in paragraphs 15.13 to 15.15. Where will I find it?

105) Paragraph 15.16 appears to set out policy requirements for Construction Management plans. These requirements are not stated within DM14 F, which therefore appears incomplete and unclear and so, unsound. There does not appear to be any stated justification for the policy requirements. Where will I find it?

106) The phrase "Where appropriate" in policy DM14 F and repeated at the beginning of paragraph 15.16 is vague and might not give a developer the clear indication of how a decision maker would receive an application, which is required by NPPF paragraph 154.

107) Other than the first clause of paragraph 15.17, which provides justification, the rest of the paragraph appears to set out policy requirements omitted from DM14 F, which as a result might appear incomplete, unclear and therefore unsound.

108) The last sentence of paragraph 15.18 appears to represent a policy requirement not included within DM14 G itself. (And note that "require" may not be legally sound with reference to s106 agreements, which, by definition can only be sought, not required.)

109) Paragraph 15.20 appears to be either a policy requirement omitted from DM14 F itself or advice, not justification.

110) Paragraph 15.24 seems to duplicate the provisions of part H of the policy itself and is not justification.

DM15

111) The phrase "where appropriate" in part A of the policy is vague and might not give a developer the clear indication of how a decision maker would receive an application, which is required by NPPF paragraph 154.

112) Paragraph 16.3 appears to set out a policy consideration not included in the policy itself, which is therefore incomplete, unclear and so, possibly not sound.

113) The third and fourth sentences of paragraph 16.4 appear to set out policy requirements not included within the policy itself, which is therefore incomplete, unclear and so, possibly not sound.

114) The last sentence of paragraph 16.5 appears to set out a policy requirement not included in the policy itself which is therefore incomplete, unclear and so, possibly not sound. Where will I find the justification for this requirement?

115) The third, fourth and fifth sentences of paragraph 16.6 appear to set out policy requirements not included in the policy itself which is therefore incomplete, unclear and so, possibly not sound.

116) Paragraphs 16.7 and 16.8 appear to set out policy either not included in the policy itself which is therefore incomplete, unclear and so, possibly not sound, or duplicating what is stated in the policy without providing justification.

117) The last sentence of paragraph 16.9 repeats a policy requirement of part G; it is not justification.

DM16

118) The third sentence of paragraph 17.3, together with paragraph 17.4 and 17.5 appear to be policy requirements elaborating DM16 A but not stated in the policy itself, which is thereby incomplete, so not clear and possibly unsound. The justification for the policy requirements is incomplete; the first two sentences of 17.3 give some justification but where will I find the explanation for the nature of the hierarchy chosen (i.e. why four levels not three, five or some other number?) and for the allocation of roads to each level of the hierarchy (I.e. what were the criteria for designating a road "local" rather than "district distributor")?

119) Paragraphs 17.9, 17.10, the last sentence of 17.11, the third and fourth sentences of 17.12, and all of paragraphs 17.13, 14, 15 and 16 appear to be statements of policy, either not included in DM16 or repeating what is included but without providing a reasoned justification for their requirements. In consequence, the policy appears incomplete, so not clear and possibly unsound and, in part, unjustified.

DM17

120) The term "appropriate" in Part A and K appears vague and might not give a developer the clear indication of how a decision maker would receive an application, which is required by NPPF paragraph 154.

121) What noun do the adjectives "active and passive" qualify in part J?

122) The second clause of the second sentence of paragraph 18.4 appears to state a policy provision not set out in Part C of the policy itself, which is thereby incomplete, unclear and possibly unsound.

123) Paragraphs 18.5 and 18.6 appear to state policy provisions not set out in part A of the policy itself which is thereby incomplete, unclear and

possibly unsound. The Council then needs to consider whether the policy provisions have a stated justification.

124) The last clause of paragraph 18.7 appears to state a policy requirement, rather than a justification.

125) Paragraphs 18.8 and 18.9 appear to state policy rather than to justify it, largely repeating the policy requirements of parts D and G respectively. These then seem to lack stated justifications for their provisions.

126) The third and fourth sentences of paragraph 18.10 appear to state policy requirements, not stated in the policy itself.

127) The first, second and last sentences of paragraph 18.11 appear to state policy rather than its justification.

128) Other than the second clause of the second sentence, this paragraph appears to state policy rather than justification.

129) Is part H of the policy a planning policy? It appears to be a requirement of the Highways Acts, as stated in paragraph 18.14.

130) Planning policy appears to be stated in the bullet points of paragraph 18.14. These are not stated in the policy itself, which is therefore incomplete, unclear and so, possibly unsound. Some of the requirements bulleted in paragraph 18.15 may also be planning policy, not stated in the policy itself. In either case where will I find the reasoned justification stated for these policy requirements?

131) What aspect of planning policy does paragraph 18.16 seek to justify?

132) The third, fourth and fifth sentences of paragraph 18.18 appear to represent policy, not stated in the policy itself which is therefore incomplete, unclear and so, possibly unsound.

133) Other than the phrase "In accordance with the Mayor of London's electric vehicle strategy", which provides the justification, paragraph 18.19 appears to set out policy requirements not completely set out in part D of the policy itself, which is thereby incomplete, unclear and so, possibly unsound. What, in this context is meant by active and passive parking spaces?

134) The first sentence of paragraph 18.20 and the first clause of paragraph 18.21 both seem to set out policy requirements related to car club facilities which are not set out in the policy itself, which is thereby incomplete, unclear and therefore possibly unsound.

135) The last sentence of paragraph 18.22 and the whole of paragraphs 18.23 and 18.24 seem to set out policy requirements for the provision of

cycle parking, which is not included in part C of this policy, which is thereby incomplete, unclear and possibly unsound.

136) The first sentence of paragraph 18.25 appears to duplicate the policy provision of part I. It does not appear to be justification.

137) Paragraph 18.26 appears to be a statement of policy not included in the policy itself which is thereby incomplete, unclear and possibly unsound. Where will I find the justification for these provisions?

138) Paragraph 18.27 appears to be a statement of policy not included in the policy itself, which is thereby incomplete, unclear and possibly unsound. Where will I find the stated justification for this stipulation?

Comments on policies DM18

DM18

139) I need to have explained to me how this chapter setting out policy DM18 and its justification adds to what is already set out in policies CS3 and CS9 of the Core Strategy. Much of the content of this chapter, both the policy itself, and its justification, seems to be written in terms appropriate to a Core Strategy; setting direction, rather than specifying in detail how a development proposal would be managed and so, I question whether there is adequate justification for including this policy at all in its present form within the DMPDPD.

Specifically;

(a) Policy CS3 A promised that the Development Management DPD would provide criteria for managing the loss of facilities where population change reduces demand for them. Such criteria are conspicuously lacking from any part of DM18, which reverts to calling for a developer to provide evidence about demand, without indicating criteria by which the evidence would be assessed, and without reference to any criteria other than demand. Policy CS3 indicates a wider set of criteria, so policy DM18 A seems to have regressed into abstraction rather than progressing into detail.

(b) Part C seems to go no further than CS3 D

(c) Part H seems to go no further than CS3 E

(d) It is not clear how part G relates to DM12

140) Parts A and C appear to be intended to apply to all social infrastructure facilities without qualification or limitation. Social infrastructure includes culture and leisure facilities, so why is part E included at all? It appears simply to duplicate parts A and C.

141) Much of the justificatory text for this policy simply restates the policy itself and is not justification, or sets new, strategic policy requirements and aims, not included within the DM18 policy itself and anyway more appropriate to the Core Strategy and without stated

justification. In consequence, much of the policy appears to lack justification.

Specifically;

- (a) The second and third sentences and bullet points of paragraph 19.6, together with paragraphs 19.7 and 19.8 simply repeat the provisions of the policy and do not provide justification.
 - (b) The last sentence of paragraph 19.9, together with paragraphs 19.10 and 19.11 state policy rather than justification.
 - (c) Paragraph 19.13 goes over the same ground as paragraphs 12.10-13 of the Core Strategy in providing a justification for Core Strategy policy CS9.
 - (d) The second and third sentences and bullet points of paragraph 19.14, together with paragraph 19.15 and the last sentence of paragraph 19.17 state policy, not justification.
 - (e) How does the reference to cemeteries in the heading to paragraph 19.18 relate to this policy, rather than DM13 F?
 - (f) The second clause of the second sentence and the last sentence of paragraph 19.18 appear to represent policy, not justification
 - (g) Paragraph 19.20 appears to be justifying Core Strategy CS9
 - (h) What parts of this policy do paragraphs 19.21 and 19.22 seek to justify?
 - (i) Paragraphs 19.23 and 19.24 appear to run over the same ground as paragraphs 12.10 to 12.13 of the Core Strategy. Paragraph 19.24 makes the point that there is an outstanding need for secondary school places within the centre and south of the borough. What aspect of part D of policy DM18 is reflected in this evidence? Is this paragraph justifying a proposal in the Site Allocations DPD rather than any part of the DMPDPD?
 - (j) The fourth, fifth and sixth sentences of paragraph 19.25 represent policy, not stated within the policy itself (the second (a) of part D).
 - (k) Paragraph 19.26 simply duplicates paragraphs 6.23 and 6.24 of the Core Strategy.
 - (l) The last sentence of paragraph 19.28, the first, third and fourth of 19.29 and paragraph 19.30 appear to be statements of policy rather than justification.
 - (m) Paragraph 19.31 simply duplicates paragraph 6.16 of the Core Strategy.
 - (n) What part of the policy does paragraph 19.32 seek to justify?
 - (o) Paragraph 19.33 seems to be stating a policy suitable for the Core Strategy rather than the DMPDPD.
 - (p) All but the last sentence of paragraph 19.34 appears to be a statement of policy.
 - (q) The second sentence of paragraph 19.35 appears to be a statement of policy, duplicating the provisions of DM38.
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Comments on policies DM19 - 22

DM19

142) Core Strategy policy CS8 A refers to promoting, protecting and managing the SILs. DMPDPD policy DM19 (a) adds detail to the promotion part of the policy. DMPDPD policy DM19 (b) covers the protection aspect. I am not convinced that the management aspect is covered. Typically, what kind of planning applications are made or expected within the SILs that need to be managed? Would they be applications for extensions, alterations, ancillary development (other than catering which is specifically covered), changes of use, redevelopment at lesser or greater intensities? How would such proposals be managed?

143) Part (b) of the policy is concerned with protection. It refers to loss of SIL. But a change of use to, say residential, would not, of itself, change the Proposals Map designation as SIL. It is presumably certain uses located within the SIL which this policy is seeking to protect. Should that be made clear?

144) Is part (c) of the policy necessary? It is a requirement of law that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

145) All but the last sentence of paragraph 20.3 appears to be providing justification for the Core Strategy policy itself, which is not necessary; only the sentiments of the last sentence are needed to justify the provisions in the DMPDPD. (This is not a soundness point; duplication does not make the DMPDPD unsound, only bulky).

DM20

146) Core strategy policy CS8 B refers to intensifying & upgrading land, providing jobs and prioritising education, health or social infrastructure. Parts (a), (b), (c), (d) and (e) of DM20 add detail to all these points except that of upgrading (though I'm not sure that (c) and (d) add much over parts C and D of the Core Strategy policy). Would upgrading cover such matters as enlarging service areas or providing parking and unloading areas (possibly at the expense of floorspace) or adding ancillary support facilities? How would such proposals be dealt with?

147) In practice, what would be meant in part (c) by giving preference for schemes that incorporate social infrastructure? How would this tell a developer that his proposal would get permission or not? How would it tell a development control officer to recommend approval or not?

148) Is part (f) of the policy necessary? It is a requirement of law that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

149) Whilst nearly all the justificatory paragraphs read as such, (there is policy material in the third and fourth sentences of 21.11 which should be in the policy itself) there is considerable duplication and overlap with the

justification to the core strategy policy. It isn't necessary to justify the Core Strategy all over again; all that is needed is to refer to it and then justify the additional detail of the DMPDPD. (this isn't necessarily a soundness point; duplication does not inevitably make the DMPDPD unsound, just bulky; excessive bulk can cause a lack of clarity and so be unsound but I wouldn't take the view that this example alone is excessively bulky or unclear).

DM21

150) Core Strategy policy CS8 E refers to a pragmatic approach to land surplus to requirements, not fit for purpose, more productive uses and priority for social infrastructure. Some aspects of this policy are given greater detail in DM21 but;

- a) Is the word "only" in (a) consistent with the pragmatic approach promised by the CS?
- b) DM21 does not give detail about how "surplus to requirements" would be recognised. Would there be reference to some annual or periodic review of the need for employment land in the borough?
- c) The term "fit for employment use" is not explained. Is there any detail which could be given to explain how the Council will recognise this criterion?
- d) What sort of matters would provide mitigation for the loss of employment, required in the third bullet point? (DM37 is simply a procedural policy; it does not set out the substantive matters which would need to be secured by a planning obligation). Paragraph 22.3 explains that financial contributions may be meant but does not explain what they would be spent on. How does this sit with the generally accepted requirement that planning permissions cannot be bought and sold; payments can only be accepted in lieu of some substantive matter which it would be impractical or inconvenient for a developer to provide him/herself)?
- e) How would the "more productive uses" of the CS be recognised? What would be "less productive uses" (presumably not permitted)?
- f) In (b) what would be meant by giving preference for schemes that incorporate social infrastructure? How would this tell a developer that his proposal would get permission or not? How would it tell a development control officer to recommend approval or not? Is it intended that social infrastructure must be provided in all cases? (if so, that's not giving preference).
- g) Is the requirement to demonstrate a "need" for live/work premises consistent with the assertion that they "should be encouraged" in paragraph 22.5?

151) Whilst nearly all the justificatory paragraphs read as such, (though paragraph 22.3 touches on matters which might form appropriate policy detail) there is some overlap with the justification to the core strategy policy. It isn't necessary to justify the Core Strategy all over again; all that is needed is to refer to it and then justify the additional detail of the DMPDPD. In this case, the second bullet point of (a) is additional detail which does not appear to be specifically justified.

DM22

152) Figure 1.3 of the DMPDPD relates this policy to Core Strategy policy CS8 but I recognise it also as relating to CS10.

153) Core Strategy policy CS10 A refers to the promotion of facilities to be located where defined in the DMPDPD. Part (a) of DM22 adds detail to this. The phrase "not conflict" in the third bullet point is somewhat vague and lacking in clarity

154) CS10 B seeks training facilities. Part (b) of DM22 repeats this with the qualification "where appropriate" without giving detail that would allow a developer to understand where might be appropriate and gives no detail on how the criterion "proportionate to size" set out in CS10 B would be applied in practice.

155) CS10 C seeks enhanced residents' access. Part (c) of DM22 simply duplicates policy DM14 E. Part (d) of DM22 translates this into financial contributions (correctly saying only that they would be "sought", not required) but only "where appropriate" without giving any indication of how a developer (or development control officer) is to judge when that might be appropriate.

156) Paragraphs 23.3 and 23.4 reiterate the justification for CS10 set out in the Core Strategy paragraphs 13.14 and 13.15. There is no need to do so. What does need to be justified, and does not appear to be, is the use of the sequential test in part (a) of the policy DM22.

Comments on policy DM23

DM23

157) Strictly speaking, the reference to cycle parking in part (c) of this policy duplicates policy DM17 C but this is a minor matter.

158) The reference to PTAL 3 and above in paragraph 24.5, which is used as justification for part (b) of the policy might have given greater clarity to the policy if referred to within it but this is not a matter of soundness.

158) Strictly speaking, the last two sentences of paragraph 24.12 represent policy which should perhaps be included in part (h) of the policy but it's not very significant.

159) The justification overlaps somewhat with the justification for policy CS11 in the core Strategy but is clearly redirected to justify the additional material included in DM23, so is not an issue.
