



Written Statement Responding to Inspector's Questions

Matter 10: Development Management and Other Policies

Dartford Local Plan Examination Stage 2

Prepared on behalf of PMG Regeneration Ltd

Respondent I.D: 1293

Our ref: DP/20007

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Matter 10 – Development Management and Other Policies (Policies S3, M1, M2, M3, M4, M5, M6, M14, M15)

- 1.1. This Statement provides PMG's response to the Inspector's Questions relating specifically to Dartford's approach to Development Management Policy M2.
- 1.2. This Statement should be read in conjunction with PMG's objections to the Pre-Submission (Publication) consultation (September 2021).

Matter 10 Issue: Whether the Development Management and other Policies are justified, effective and consistent with national policy (Policies S3, M1, M2, M3, M4, M5, M6, M14, M15)

- 1.3. PMG has no specific representations to make in response to the matters, issues and questions raised by the Inspector regarding:
 - Policy S3 – Climate Change Strategy (question 145)
 - Policy M1 – Good Design for Dartford (questions 146 and 147)
 - Policy M3 – Sustainable Technology, Construction and Performance (questions 149 and 151)
 - Policy M4 – Flood Risk and Riverside Design (questions 152 to 153)
 - Policy M5 – Designated Heritage Assets (question 154)
 - Policy M6 – Historic Environment Strategy (questions 155 to 157)
 - Policy M14 – Green and Blue Infrastructure and Open Space provision (question 158)
 - Policy M15 – Biodiversity and Landscape (questions 159 to 163)
 - Policy M18 – Community Uses (question 164)
- 1.4. Turning to **Policy M2 –Environmental and Amenity Protection** PMG strongly argues that the policy is unjustified objecting on the grounds that the requirements for investigating and remediating ground contamination are unduly onerous and inconsistent with the advice contained in the NPPF and case law,
- 1.5. Policy M2 is flawed for the following reasons.
 - ***Policy M2 does not present a positive framework that is consistent with national policy and the very significant weight that should be attached to supporting opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land***
- 1.6. Policy M2:3 and supporting text does not present a positive framework for growth that is consistent with the Framework and National Planning Policy Guidance. Although strategic Policy S1 aims to direct development to "...brownfield land and sites with good access by public transport and walking / cycling to a range of local supporting services/infrastructure", which is welcome as it is positive, but it becomes clear with reference to subsequent policies and principally Policy S2: Infrastructure Planning Strategy, Policy S4: Borough Development Levels, Policy M2 Environmental and Amenity Protection and M9 Sustainable Housing Locations that the overall strategy is focused on constraining growth with the expectation being that growth will be kept in check and not permitted to go beyond a pre-determined set level. This is not consistent with the NPPF and specifically is in clear conflict with:
 - Para. 16 and particularly parts (b) insofar as plans should be "prepared positively" (d) clearly written and unambiguous and (f) serve a clear purpose
 - Paras. 11 and 35 and the presumption in favour of sustainable development and directing plans to "as a minimum, provide for objectively assessed needs" (11 (b) and 35(a))
 - Paras. 120(c) and 174 (f) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

- ***Policy M2 is overly prescriptive in the level of detail it is seeking to accompany applications. This is not proportionate and is inconsistent with statute, national policy and guidance. The policy is not positively prepared insofar as it fails to promote the remediation of despoiled, degraded, derelict, contaminated or unstable land***

1.7. With reference to Policy of M2 of the adopted Development Management Plan and to the High Court decision in *R (Judson) v Amber Valley Borough Council* EWHC 517 (6 March 2020), a copy is attached , there is no legal or policy basis which would preclude outline planning permission being granted for landfill or former land fill sites subject to appropriately worded conditions.

1.8. The relevant paras. in the Lewis J judgement:

“The Statutory Provisions

“11. Section 70 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides for a local planning authority to grant or refuse applications for planning permission. Outline planning permission may be granted, that is, permission may be granted for the development but conditional upon the development not being commenced until reserved matters (that is, matters not specified in the application for planning permission) have been approved: see section 92 of the 1990 Act. Applications for planning permission must be determined in accordance with the development plan adopted by the local planning authority unless material considerations indicate otherwise: see section 38(6) of the Planning and Compulsory Purchase Act 2006

.....”

“The Framework

15. The Framework is a material planning consideration. Paragraph 121 [now 183] of the Framework provides that:

“121 Planning policies and decisions should also ensure that:

The site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;

After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

Adequate site investigation information, prepared by a competent person, is presented.

The PPG

16. The Ministry of Housing, Communities and Local Government have published an online document, the PPG, on land affected by contamination. The heading indicates that the documents provides guiding principles on how planning can deal with land affected by contamination. The text deals, amongst other things, with applicants bringing forward proposals for a site that could be contaminated. The text refers to the obligation to identify contaminated land under the EPA. It says that if there is a reason to believe contamination could be an issue, developers should provide proportionate but sufficient site investigation information to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and those subject to the risk so that the risks can be assessed and satisfactorily reduced to an acceptable level. The investigation, it says, should identify the potential sources, pathways and receptors of pollutants and evaluate the risk. It says that this will enable the local planning authority to determine whether more detailed

investigation is required or whether any proposed remediation is necessary. It says at this stage an applicant "may be required to provide at least the report of a desk study and site walk over". It says that unless this initial assessment clearly demonstrates that the risk from contamination can be satisfactorily reduced to an acceptable level, further site investigations will be needed before the application can be determined.

17. *The text considers whether an outline planning application requires less information. It notes that the information sought should be proportionate to the decision at the outline stage but, before granting outline permission, a planning authority will, amongst other things, need to be satisfied that it understands the contaminated state of the site, that the proposed development is appropriate as a means of remediating it, and it has sufficient information to be confident that it will be able to grant permission in full at a later stage. The text considers whether planning permission should be refused if there are concerns about land contamination and says that local planning authorities should work with developers to find acceptable ways forward. Examples given are granting planning permission subject to conditions or obligations. It notes that local planning authorities should be satisfied that a proposed development will be appropriate for its location and not pose an unacceptable risk. It deals with the use of conditions to ensure that development is not commenced until the identified stages in delivering a remediation scheme have been discharged.*

30. *There is nothing in the wording of, or the purpose underlying, paragraph 121 of the Framework to suggest that a local planning authority cannot, in appropriate circumstances, require investigations to be carried out as a condition of the grant of outline planning permission. The paragraph applies to "Planning policies and decisions". It sets a number of aims for such policies and decisions. It is not setting out a sequential framework whereby all of those aims must be achieved in a particular way, or at a particular time, e.g. before the grant of outline planning permission if, in fact, those aims can be appropriately met in other ways."*

- 1.9. Furthermore, the PPG does not prohibit the Council dealing with the carrying out of investigations by way of a condition attached to outline planning permission. In that regard, the provisions of Policy M2 materially differ from the provisions of the PPG.
- 1.10. Finally, requiring potential contamination issues to be resolved prior to the grant of outline permission rather than by way of conditions would for all practical purposes be perverse. It would involve a radical departure from the usual way of dealing with such matters and would deter developers who might wish to know that a proposed development was acceptable in principle, subject to detailed investigations of certain matters before the development could be commenced.
- ***Policy M2 is inconsistent with national planning policy insofar as the economics of provision of e.g. affordable housing should be assessed on a case by case basis subject to the individual circumstances of a site and weighed in the overall planning balance. The Council has provided no evidence to demonstrate that the development of landfill sites will be compromised e.g. in terms of design quality and in any event these detailed impacts will be assessed with regard to other relevant policies in the Plan.***
- 1.11. We accept that the redevelopment of landfill sites for residential purposes in certain circumstances may involve abnormal costs, particularly in relation to remediation that may be required to make the site safe for residential use.
- 1.12. The economics of provision is a material consideration and national planning is clear that developers should only be expected to contribute to a level of development that they can support and it would be entirely reasonable to off-set normal contributions for the greater good e.g. affordable housing when weighed against other scheme benefits including putting back previously used land to productive use and the very significant benefits a particular scheme may have.
- 1.13. Para: 007 Reference ID: 10-007-20180724 [Revision date: 24 07 2018] of the NPPG states:

“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.

Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force”.

- 1.14. In such circumstances, in accordance with national planning policy, a viability appraisal should be submitted in support of application proposals and assessed by the determining authority.

- ***The description of landfill sites as ‘greenfield’ land is inappropriate and unjustified as it fails to recognise the significant weight supporting their redevelopment.***

- 1.15. The general characterisation of “landfill sites” as “greenfield” is at best unhelpful and at worst factually incorrect. It fails to recognise that in almost all respects they will, within the NPPF definition, comprise “previously developed” land, unless provision for restoration has been made through development management procedures. It is also likely that in most cases there will remain evidence of the remains of permanent structures that will not have blended into the landscape. Without full restoration of former landfill to a pre-developed state will mean that these sites will remain despoiled with varying degrees of contamination. In accordance with national planning policy Policy M2 should seek to prioritise, rather than discourage, the redevelopment of these sites, particularly those located within the urban area.

- 1.16. Policy M2 and supporting text as currently drafted is contrary to the principles of sustainable development and the very substantive weight that Council’s should attach to supporting appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

- 1.17. Accordingly, Policy M2:3 and supporting text at paras. 5.24 to 5.27 must be redrafted in their entirety to ensure the Policy is justified and effective.

Other Matters

- 1.18. Finally, to assist the Examination please refer to PMG’s proposed amendments to Policy M9 as set out in its objections to the Pre-Submission Plan and supporting text which would overcome its objections to Policy M9.

