



The Planning Inspectorate

3G Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5412
Customer Services: 0303 444 5000
e-mail: Stuart.liddington@pins.gsi.gov.uk

Dudley MBC
Annette Roberts-Planning
Manager
Place Directorate
Planning Policy
4 Ednam Road
Dudley
DY1 1HL

Our Ref: PINS/C4615/429/11
Date: 1 November 2016

Dear Annette,

DUDLEY MBC DEVELOPMENT STRATEGY PLAN: FINAL REPORT

Thank you for your letter of 31 October 2016, providing your comments in response to the fact check of the Inspector's report on the Council's Development Strategy Plan.

As you accept the comments made in the Fact Check report the Inspector has re-dated the report, and I enclose your final report.

Clearly it is now for the Council to adopt the Document at its discretion. The Inspectorate maintains a national database of Local Plans progress on the Planning Portal (and a submissions database) and we would be grateful if you can advise the Plans Team when you adopt in order that your plan status can be updated.

We will contact you shortly to provide us with a Purchase Order Number so that we can include it on your invoice. Both the fees and expenses will be payable for all duties carried out in examining your Local Plan.

The Council should consider whether adoption could have any effect on appeals currently being considered by the Planning Inspectorate. As you know, appeals must be determined on the basis of the development plan as it exists at the time of the Inspector's (or the Secretary of State's) decision, not as it was at the time of the Council's decision. If adoption changes the policy position, the relevant Inspector(s) will need to take that into account. In addition, please ensure that your new policy position is clearly explained when submitting your Questionnaire in relation to future appeals received after adoption.

If the above circumstances apply, it would be very helpful if the Council could contact the relevant Case Officer(s) in the Planning Inspectorate dealing with any outstanding case(s) at the time of adoption.

Yours sincerely

Stuart Liddington

Stuart Liddington
Plans Team



The Planning Inspectorate

Report to Dudley Council

by Jameson Bridgwater PGDip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 1 November 2016

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION OF THE DUDLEY BOROUGH DEVELOPMENT STRATEGY

Document submitted for examination on 11 March 2016

Examination hearings held on 17 and 18 May 2016

File Ref: PINS/C4615/429/11

Abbreviations Used in this Report

AA	Appropriate Assessment
AHVA	Affordable Housing Viability Assessment
BDS	Dudley Borough Development Strategy
BHAAP	Brierley Hill Area Action Plan
CS	Black Country Core Strategy
DAAP	Dudley Area Action Plan
DtC	Duty to Co-operate
FPC	Further Proposed Change
HAAP	Halesowen Area Action Plan
HMA	Housing Market Area
LDS	Local Development Scheme
LEP	Local Enterprise Partnership
LP	Local Plan
MM	Main Modification
OAN	Objectively assessed need
PUA	Principal Urban Area
SA	Sustainability Appraisal
SAAP	Stourbridge Area Action Plan
SCI	Statement of Community Involvement
SES	Strategic Employment Site
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment

Non-Technical Summary

This report concludes that the Dudley Borough Development Strategy provides an appropriate basis for the planning of the district providing a number of modifications are made to the plan. Dudley Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted. All of the main modifications to address this were proposed by the Council and I have recommended their inclusion after considering the representations from other parties.

The Main Modifications can be summarised as follows:

- Modify Policies D9 and S2 by deleting references to the siting of hot food takeaways in relation to proximity of secondary schools; and
- Modify Policy S23 to ensure consistency with the Framework in relation to the Green Belt; and
- Modify Policy S36 to relate solely to Public Houses and ensure consistency with the Framework.

Introduction

1. This report contains my assessment of the Dudley Borough Development Strategy (BDS) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and compliant with the legal requirements. The National Planning Policy Framework (the Framework) (paragraph 182) makes clear that to be sound; a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan (January 2016) which is the same as the document published for consultation in January 2016 (BDS11).
3. My report deals with the Main Modifications that are needed to make the BDS sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any modifications needed to rectify matters that make the Plan unsound and thus incapable of being adopted. These Main Modifications are set out in the Appendix.
4. The Main Modifications that are necessary for soundness all relate to matters that were discussed at the Examination Hearings. The Council have prepared a schedule of proposed Main Modifications and carried out a sustainability appraisal and this schedule has been subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.
5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in Dudley Borough Development Strategy.

Assessment of Duty to Co-operate

6. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.
7. In the BDS Duty to Co-operate Statement (BDS10) and elsewhere, the Council has provided satisfactory evidence of its engagement with all those main bodies prescribed under Section 33 of the 2004 Act, where appropriate, and the relevant public bodies having planning and related responsibilities in the area during the plan preparation process.
8. There are no other significant outstanding duty to co-operates issues, and I am satisfied that the duty to co-operate in respect of the preparation and progress of the BDS has been satisfied.

Assessment of Soundness

Preamble

9. The BDS has been prepared in the context of the adopted Black Country Core Strategy (CS), a document prepared jointly by Dudley, Sandwell and Walsall Metropolitan Borough Councils and Wolverhampton City Council. Much of the evidence base for the BDS is shared with that of the CS and was prepared in co-operation with other participating Councils. The CS provides the strategic planning policy background for the matters contained within the BDS, and it is not necessary to address those matters further.
10. The BDS seeks to direct and inform development proposals predominantly in the regeneration corridors which the CS identified within the Borough, linking the four main town centres. These centres and corridors contain the areas where the majority of growth will be concentrated over the plan period (up to 2026). Furthermore, the BDS sets out Development Management policies to be used for the determination of planning proposals for the Borough.
11. The BDS will form part of the suite of plans comprising the CS, Brierley Hill Area Action Plan (BHAAP), Halesowen Area Action Plan (HAAP), and Stourbridge Area Action Plan (SAAP) and, when adopted, the Dudley Area Action Plan (DAAP). This, in turn, will replace the saved UDP policies and will be used as necessary to assess development proposals within the Plan area. Appendix 2 provides a list those saved UDP policies which will be superseded by the BDS.

Main Issues

12. Taking account of all the representations, written evidence and the discussions that took place at the Examination Hearings I have identified 4 main issues upon which the soundness of the Plan depends.

Issue 1 – Is the Borough Development Strategy consistent with, and does it positively promote, the visions, objectives and spatial policies contained in the Core Strategy; is its relationship with the Core Strategy sound and is its overall approach consistent with national policy?

13. Dudley as a Borough benefits from having a diverse range of settlements each with their own unique character. Each of these settlements is bound together by the Borough's natural and industrial heritage. The BDS is explicit in that it seeks to preserve and enhance the key components of the Borough's character whilst building on recent successes and positively planning for its future. The BDS seeks to direct strategic development and growth across the Borough. To achieve this, the Plan sets out social, economic and environmental policies that include infrastructure, enhancement of the public realm, improvement of movement in and around the Borough, and the achievement of high quality urban design, architecture and landscape that is both sustainable and enhances local character and distinctiveness. These objectives are fully compliant with the CS and the adopted and emerging Area Action Plans.
14. There is broad local support for the Plan's vision and objectives, which are based on an understanding of community needs and aspirations gained

through extensive public consultation and engagement. This is fully explored in the draft Options Report (BDS2) which demonstrates how the Council has reached its preferred options for the vision and aims of the plan.

15. Overall, and subject to the Main Modifications identified, the Plan is positive and flexible, and it promotes and encourages economic development and environmental improvement across the Borough throughout the Plan period consistent with the aims of the CS and the Framework.
16. I discuss below specific issues relating to matters of housing, employment land Green Belt, community facilities and hot food takeaways. Otherwise though I consider proportionate and appropriate evidence has been presented to show the allocations and approach towards transport, parking, heritage and environmental issues are sound and justified.

Issue 2 – Are the strategic policies clear, justified and consistent with national policy and will they be effective?

S3 Renewable Energy

17. The policy seeks to ensure that opportunities for renewable energy are encouraged and that the existing infrastructure is utilised and expanded upon, including the exploration of the use of the Borough's extensive canal network for heating and cooling purposes. Notwithstanding this, it was argued in representations that there should be specific protection to prevent the loss of agricultural land in relation to the siting of solar farms. However, the CS and the BDS already have policies that would allow for an adequate assessment of any solar farm proposal should one arise. Furthermore, development on agricultural land is specifically addressed within paragraph 112 of the Framework. Therefore I conclude that Policy S3 Renewable Energy is sound.

S6 Urban design

18. It was suggested at the Examination Hearings that there should be a separate design guidance policy for rural areas particularly those within the Green Belt. However, strengthening local character and distinctiveness is stated to be a primary objective of Policy S6 along with seeking to ensure that development is of high quality, sustainable, and responsive to local character (BDS 14). Therefore, given that these requirements are equally applicable to development in rural areas it is not necessary for soundness to require a separate policy. The policy is therefore in accordance with the Framework, and builds on relevant CS policies including CSP4: Place Making, and ENV3: Design Quality. Accordingly, I consider the Plan's overall approach to design and built environment issues is sound.

Policy S23 - Green Belt

19. The purpose of Policy S23 is to enable the Council to properly assess the effect of development on the Green Belt. Within the policy the Council have also set thresholds in relation to evaluating extensions or alterations to buildings to ensure that they are not disproportionate. The policy also contains criteria relating to the structure of the original building and the design of extensions or alterations. However, following detailed discussion at the Examination Hearings the Council accepted that the policy as submitted was not consistent with the Framework; in particular with regard to its reference to and

application of 'very special circumstances' in terms of the assessment of development proposals. It is therefore necessary for soundness to delete the reference to 'very special circumstances'. Additionally, as proposed as a main modification, it is not necessary for Policy S23 to apply an additional test in relation to openness as this is established in the Framework. Furthermore, this approach is consistent with the Courts (Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404).

20. Moreover, I accept that a number of adjoining Councils apply thresholds for extensions and alterations within their local plans. However, this alone, without locally established evidence, does not provide the necessary justification for the application of the Council's thresholds. Consequently, the ultimate judgement should rest with the decision maker in relation to whether an extension or alteration is disproportionate based on the site specific circumstances and the proposal before them. As the modified policy relies on the Framework the reference to this test in the proposed modification would be inconsistent with its construction and so I have omitted it. Furthermore, the design and structural criteria largely replicate Policy S6 of the BDS and therefore in the interests of clarity it is not necessary to replicate them within Policy S23.
21. The Council have not proposed any changes to the Borough's Green Belt Boundary in the BDS. Nonetheless, a local interested party argued that the Green Belt boundary should be amended to exclude a site within their ownership in the Sedgley area. It was argued that it would be a suitable site for housing. However, the proposed amendment does not meet the exceptional circumstances required to justify a Green Belt boundary change. Furthermore, the BDS did not set out to undertake such an exercise which, if required, should be undertaken as part of a comprehensive review of the Local Plan. Consequently, based on all of the available evidence including representations at the Examination Hearings there is no evidence that justifies an amendment to the Green Belt boundaries.
22. Having reached the conclusions above it is therefore necessary for soundness to modify Policy S23 (**MM2**).

Policy S28 Sports Facilities and Stadiums

23. Representations received in writing and at the Examination Hearings have stated that there had been a loss of sports stadiums in the Borough. In these circumstances it was argued that Policy S28 was unsound as it did not adequately promote the provision of new stadia within the Borough in particular with regard to a dedicated stadium suitable for speedway (a stadium based motorcycle motorsport). However, whilst it was common ground that there had been a loss of stadia within the Borough, Policy S28, sets out a balanced approach to the provision of new stadia which seeks to ensure that development proposals are sustainably located and do not result in material harm to adjoining residents or businesses.
24. Furthermore, the policy does not preclude the promotion of the development of new stadiums in Dudley and is consistent with the Framework in that it seeks to direct such development to accessible locations. Moreover, the policy

is consistent with the general support for the promotion of sport and recreation within the CS and the Framework. Consequently it provides an adequate basis for the consideration of sports stadia should proposals come forward and this is not altered by the omission of a direct reference to sports stadia within Policy S2 Planning for a Healthy Borough.

25. Consequently, based on all of the available evidence and the representations at the Examination Hearings I conclude that Policy S28 is soundly based.

Policy S36 Safeguarding community facilities

26. The Council are concerned that Dudley has experienced a loss of community facilities, in particular Public Houses which make a significant social contribution to the population of the Borough. Policy S36 seeks to safeguard community facilities including assets of community value (Libraries, Public Houses, and Sports Pitches etc.). The policy proposes a series of 5 criteria based tests to demonstrate that a facility is no longer viable or has potential to become viable as a community asset. However, some of the proposed tests go beyond the requirements of the Framework, whilst others, in particular heritage, were adequately addressed by the Framework or elsewhere in the CS and BDS. Moreover, whilst there was adequate evidence in relation to the loss of Public Houses, it was not substantively demonstrated that other community facilities needed specific protection beyond the existing policies of the CS or the Framework.
27. Accordingly, it is necessary for soundness to amend Policy S36 to relate solely to Public Houses. (MM3).

Issue 3 – Are the regeneration corridors and site allocations for employment and housing and policies for green infrastructure and heritage landscape consistent with the Core Strategy and national policy, are site allocations deliverable and has the plan been positively prepared in these respects?

28. The Council have designated 6 regeneration corridors with an overall purpose to allocate land in accordance with the CS to promote, focus and enable sustainable economic growth for the Borough. This is an evidence based response to the significant changes in the Borough's economy and the BDS seeks to balance the provision of available and deliverable housing land alongside the reassessment of employment land provision. The Council have demonstrated that they have carefully and robustly analysed their employment land requirements (BDS21). This has allowed sites that are no longer suitable for employment use to be allocated for housing where it is appropriate, whilst seeking to significantly improve the quality of the Borough's employment land. This approach is consistent with paragraph 22 of the Framework.
29. Outside of the regeneration corridors the BDS allocates a number of site specific housing and employment sites, these seek to ensure that regeneration and growth are distributed sustainably across the Borough. These allocations build positively on the locational advantages and unique character of the settlements that they relate to. As such these allocations complement the areas covered by Area Action Plans and regeneration corridors. This ensures

that the BDS has a balanced and positive approach supporting development and economic growth.

30. This was further evidenced at the Examination Hearings by the Council who set out a coherent and comprehensive strategy of transport related improvements to maximise and enhance the existing infrastructure and connectivity of the Borough (cycling, improved interchanges, rail and rapid transit schemes). These measures gained broad support in the Examination Hearings and it was common ground that they will contribute towards supporting economic growth across Dudley as a whole. I therefore conclude that the transport strategy underpinning the BDS is justified by the available evidence and consequently sound.
31. Another key component in the Council's strategy is the Borough's green infrastructure and heritage landscape. These help define and characterise the Borough and are important to the overall strategy of the BDS; they are therefore central in defining the Plan's regeneration corridors and site allocations. Consequently, providing, protecting and enhancing a well-connected landscape, heritage features and public realm are key themes and as such the overall strategy and specific site allocations within the corridors are justified by the landscape and heritage evidence base (BDS 13, BDS 15).
32. Notwithstanding this a number of representations argue that the housing requirement in the BDS does not represent an up to date full objective assessment of need. However, this is not a matter for me to consider in an examination of a subsidiary plan which is intended to implement the CS and to be consistent with it. Any new objective assessment of need and subsequent re-assessment of the housing requirement would need to be carried out through a review of the CS taking into account recent household projections as appropriate. Moreover, this approach has been endorsed by the Courts (Gladman Development Limited v Wokingham Borough Council [2014] EWHC 2320 (Admin)) and (Oxted Residential Ltd v Tandridge District Council [2016] EWCA Civ 414).
33. Consequently, based on all of the available evidence, the Council's overall approach to housing and employment is suitably flexible and positive. Further, it is underpinned by a strong track record of working in partnership with other agencies including the LEP to deliver difficult sites in challenging market conditions; in this regard the Council's strategy is likely to ensure delivery within the parameters of the CS.
34. Having reached the conclusions above, the BDS in conjunction with the four Area Action Plans make adequate provision to deliver the CS's overall housing requirement of 16127 dwellings (net) for the Borough and the requisite level of employment land. As such, the BDS is consistent with the CS and therefore, the strategy within the plan with regard to the provision of land for housing and employment is sound.

Issue 4 –Are the individual development management policies clear, justified and consistent with national policy and will they be effective?

Policy D4 – Unstable Land

35. The Coal Authority has sought to ensure that the issues relating to the Borough's mining legacy are highlighted where appropriate for each allocated site throughout the BDS. However, although the Council have amended the BDS to reflect the comments of the Coal Authority; I consider that the issue of mining legacy is adequately and proportionally addressed within Policy D4. Having reached this conclusion it is not necessary for soundness to insert references to specific sites for soundness and therefore Policy D4 and the Plan is soundly based in relation to unstable land.

Policy D5 – Noise Pollution

36. Concern was raised by a local interest group that Policy D5 could be a factor in hampering the provision of sports stadium based in the Borough. However, it is clearly important to ensure that account is taken of the likely noise impact of all development on the amenity of people living and working nearby. Further, it is justified to seek mitigation measures to minimise noise emissions to an agreed acceptable level.
37. Consequently, it is considered that Policy D5 satisfactorily addresses the issue of noise pollution and will help to ensure that adjacent uses of land are compatible. Consequently, it is concluded that Policy D5 is soundly based.

Policy D9 – Hot Food Takeaways

38. It was common ground that obesity is a national problem in relation to health and that the control of childhood obesity can result in long term health benefits. In this particular regard Policy D9 seeks to restrict hot food takeaways (A5 uses) within 400m of the boundary of existing secondary schools as a component part of the Council's overall public health strategy. The policy also seeks to ensure that there is not an overconcentration of A5 uses within the Boroughs centres, retail parades and protected frontages.
39. However, whilst the Council set out clear evidence in relation to issues of overconcentration of A5 uses, there was no local evidence that demonstrates a causal link between A5 uses and childhood obesity in relation to the proposed 400m zone around secondary schools. Moreover, whilst there is some limited international research that recognises some causality between A5 uses and negative health outcomes this was at a considerably shorter distance of 160m and therefore would not be comparable to the Council's proposed policy. Consequently, the restriction of A5 uses within 400m of secondary school boundaries is not justified by the available evidence.
40. Having reached the conclusions above it is therefore necessary for soundness to modify Policy D9 and the explanatory text to relate solely to the overconcentration of A5 uses (**MM4 and MM5**) and also to modify Policy S2 Planning for a Healthy Borough accordingly (**MM1**).

Other considerations

41. It was advanced at the Examination Hearings that the whole of Coombswood Wedge should be designated as a Local Nature Reserve (LNR) within the BDS. However, based on the available evidence it is clear that there is already significant protection for the Wedge due to it being located within the Green Belt. Notwithstanding this, the Council are well advanced in securing designation of Leasowes Historic Park and part of Coombswood Wedge as an LNR working with Natural England (CB3, CB4). However, as this is a separate legal process it is outside the scope of the BDS and consequently has no effect on the soundness of the plan.

Monitoring and delivery

42. The Council's Annual Monitoring Report (CD4) will constitute the main monitoring component, and provides most of the necessary evidence to assess the success or failure of delivery and what alternatives might reasonably be provided if necessary. A full review of the BDS during the plan period is not anticipated; although the monitoring regime should ensure that any risks to non-delivery are 'flagged up' and interventions made to alleviate risks should this prove necessary. Nevertheless, a review of the CS commenced in January 2016. Should strategic alterations be made to that document, changes may need to be made to the BDS as a consequence. This can be achieved through proper management and regular updating of the LDS.

Assessment of Legal Compliance

43. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Dudley Borough Development Strategy is identified within the approved LDS 2015 - 2018 and has been prepared in accordance with it.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in November 2006 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report contained within the SA dated December 2015 sets out why AA is not necessary.

National Policy	The Dudley Borough Development Strategy complies with national policy except where indicated and modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	The Dudley Borough Development Strategy complies with the Act and the Regulations.

Overall Conclusion and Recommendation

44. The Plan has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
45. The Council have requested that I recommend Main Modifications to make the Dudley Borough Development Strategy sound and capable of adoption. I conclude that with the recommended Main Modifications set out in the Appendix the Dudley Borough Development Strategy satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Jameson Bridgwater

INSPECTOR

This report is accompanied by the Appendix containing the Main Modifications