

Written Statement

On behalf of Davidsons Developments Limited and Jelson
Homes

Harborough Local Plan to 2041 - Examination

Matter 10: Design of Developments and Management of
Impacts

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Control Sheet

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10. Design of Developments and Management of Impacts

Issue 1: Development Standards

Policy DM01: High Quality Inclusive Design

Q1. Is it realistic, in criteria b and h of policy DM01 together, to expect all development to protect and enhance existing natural assets, and enhance the public realm?

- 1.1. No. It is neither realistic nor appropriate to expect *all* development to protect and enhance existing natural assets and enhance the public realm.
- 1.2. As drafted, criteria (b) and (h) fix determinative outcomes which, in turn, dictate the circumstances in which “development will be permitted”. Properly read, they apply to all development, irrespective of scale, typology, context, viability, or site-specific characteristics.
- 1.3. What criterion (1) fails to recognise is that, in practice, opportunities for enhancement will vary significantly between sites and development typologies. On that basis, it is plainly unrealistic, if not inappropriate, to expect that every proposal will be capable of delivering enhancements in all circumstances. This interpretation is significant, as the natural inference is that a failure to comply will result in development not being supported.

Q2. Is the policy justified, effective and consistent with both paragraph 16 (f) and Chapter 12 of the NPPF? What is meant by ‘a good quality experience’ in criterion 1 of the policy? Similarly, what is meant by, ‘integrated as far as possible’?

- 1.4. Securing high-quality inclusive design, in and of itself, is unobjectionable. Indeed, it aligns with the broad thrust of Chapter 12 of the Framework, which seeks to achieve well-designed and beautiful places.
- 1.5. Nevertheless, criterion (1) is expressed in vague and imprecise terms, absent any qualification. That is particularly so, where Policy DM01 necessitates an experiential assessment and, thus, imports subjectivity that fails to translate cleanly in practice. In this regard, it is unclear how the Council defines “a good quality experience”, or how a decision-maker might identify the hallmarks of such. The same is true in assessing whether a development has “integrated as far as possible”. Neither phrase is defined within the policy or subtext.
- 1.6. This linguistic interpretation is not merely academic. For, paragraph 16(d) of the Framework requires policies to be written clearly and unambiguously, whilst paragraph 16(f) requires that policies serve a clear purpose and avoid unnecessary duplication. Notwithstanding this clear direction, the phraseology in criterion (1) does not provide a standard against which proposals can be objectively assessed. It is quite conceivable, therefore, that across the District, across different development typologies, and across different decision-makers, Policy DM01 will be applied inconsistently in practice. By virtue of its drafting, it is our view that criterion (1) serves as an ambiguous recital of national planning policy, adding little further substance.

- 1.7. In the interests of effectiveness and consistency, Policy DM01 should employ greater precision or, at the very least, contain guidance which enables applicants and decision-makers to understand how compliance might be achieved.

Q3. How does the policy relate to DM04: Landscape Character and Sensitivity, with particular reference to planting, and reference to the topography and wider character of an area?

- 1.8. No comments.

Q4. Are any MMs necessary to make the Plan sound?

- 1.9. Yes. If the Council is minded to retain the substance and direction of Policy DM01, it should consider amending criteria (b) and (h), favouring a pragmatic approach and instilling sufficient flexibility to accommodate site-specific circumstances and the varying opportunities for enhancement arising from different development typologies. Greater clarity should also be provided in criterion (1), in order to elucidate the intended operation of subjective phraseology, thereby enabling applicants and decision-makers to understand how compliance might be achieved.

Policy DM02: Amenity and Wellbeing

Q1. Is the policy justified, effective and consistent with both paragraph 16 (f) and Chapter 12 of the NPPF? What is meant by ‘to an acceptable level’?

- 1.10. Safeguarding residential amenity is unobjectionable in principle. However, Policy DM02 imports subjective phraseology upon which it places repeated reliance.
- 1.11. There is nothing within the policy itself, or the subtext, that qualifies how “an acceptable level” will be judged. It is an outcome which cannot be measured objectively. Plainly, what is acceptable on one site may not be so on another. It will depend on a site’s capacity for mitigation and other relevant factors, including development typology, receptor sensitivity and the compatibility of neighbouring land uses.
- 1.12. The foregoing analysis, read in conjunction with our Regulation 19 representations, demonstrates that Policy DM02 is drafted in unclear and imprecise terms, contrary to paragraph 16(d) of the Framework. Furthermore, in the absence of an objective assessment framework, it is not evident how a decision-maker should apply the policy consistently in practice, contrary to paragraph 16(f) of the Framework. By virtue of its ambiguities, it is quite conceivable that, across the District, and across a range of development typologies, Policy DM02 is applied inconsistently. As with Policy DM01, it is our view that Policy DM02 serves as an ambiguous recital of national planning policy, adding little further substance.
- 1.13. In the interests of effectiveness and consistency, greater precision should be employed; providing an assessment framework, or threshold qualifier, which is unambiguous, enabling applicants and decision-makers to understand how compliance might be achieved.

Q2. Is the policy consistent with the Agent of Change principle referenced in paragraph 200 of the NPPF? Should this be made explicit within the policy text?

1.14. No comments.

Q3. Is the threshold at which a Health Impact Assessment (HIA) is required set at an appropriate and proportionate level? What is the purpose of the HIA and how will it influence any decision making? What role is envisaged by Leicestershire County Council within the reasoned justification of the Plan and is this appropriate given that it is not the decision-making body?

- 1.15. It is unclear from the policy itself, and the subtext, how the prescribed thresholds (150 dwellings or 1,000 sqm) have been derived, or whether alternative thresholds have been considered. Absent any robust evidence, this requirement is at best, burdensome and, at worst, totally arbitrary. Whilst we support the principle of ensuring that the health implications of development are properly understood, the justification for the prescribed thresholds is not readily apparent.
- 1.16. Furthermore, the purpose of the HIA within the decision-making regime is unclear. Whilst the policy subtext explains *why* HIAs may be beneficial, it fails to identify *how* their findings will be weighed in determining an application, or what the policy protocol is where adverse impacts are identified.
- 1.17. Finally, paragraph 8.8 of the policy subtext provides that the level of information required should be commensurate to the scale and nature of development proposed, but that its scope should be agreed in consultation with Leicestershire County Council. Whilst technical input *may* be appropriate, greater clarity should be provided as to the authorities' respective roles. As drafted, it reads more as effecting a diffusion of responsibility.

Q4. Are any MMs necessary to make the Plan sound?

- 1.18. Yes. If the Council is minded to retain the substance and direction of Policy DM02, it should provide greater clarity as to the assessment framework and employ more precise language to remedy its deficiencies. Furthermore, the policy should clarify the purpose of the HIA within the decision-making regime, the rationale for the prescribed thresholds and the respective roles of Harborough District Council and Leicestershire County Council.

Policy DM03: Heritage Asset Conservation and Design Standards

Q1. Is the title of the policy consistent with the NPPF, which requires a positive strategy for the conservation and enjoyment of the historic environment?

1.19. No comments.

Q2. Are criteria 1 and 4 of policy DM03 intended to apply to non-designated heritage assets, as well as designated heritage assets. If so, is this clearly articulated?

- 1.20. Policy DM03 fails to articulate itself in a manner which a reasonable reader might readily understand. Significantly, criteria (1) and (4) refer generically to "heritage assets". Subjected

to external scrutiny, it is unclear whether these provisions are intended to apply equally to designated and non-designated assets, both of which fall within the ordinary meaning of the term “heritage asset”.

- 1.21. Nevertheless, as an aid to interpretation, criterion (6) distinguishes between designated and non-designated heritage assets, applying exclusively to the latter. In so doing, the policy creates uncertainty as to the relationship between criteria (1), (4) and (6). A reasonable reader could, therefore, conclude either that criteria (1) and (4) do not extend to non-designated heritage assets, or that criterion (6) is intended to operate alongside them. Greater clarity should be provided as to the intended scope and operation of these provisions.

Q3. Could the first sentence of criterion 1 of the policy be considered superfluous, and how does it relate to national policy?

- 1.22. Yes. In both substance and operation, the first sentence of criterion (1) is superfluous. It establishes a broad design requirement for development affecting heritage assets, which resides uncomfortably under Policy DM03. That is particularly so, where the remainder of the policy provides a detailed assessment framework for impacts on heritage assets and their settings and which broadly reflects the approach promulgated in national planning policy. As drafted, it is unclear what purpose the opening sentence is intended to serve, or how it is to operate alongside the more detailed requirements below. The Heritage Topic Paper [TPC-NLP 2] recognises the “proactive design-led framework” provided for in Policy DM03 but does nothing to substantiate its inclusion.

Q4. Does the policy address the issue of heritage at risk, as required by paragraph 203 of the NPPF?

- 1.23. No substantive comments.

Q5. Do criteria 2 and 3 of the policy repeat national policy and lead to ambiguity as to how developments should be determined?

- 1.24. No substantive comments.
- 1.25. Nevertheless, as the Plan was submitted, it appears that despite attempting to duplicate the wording of the Framework, criterion (2) fails to accurately restate the provisions of paragraph 207. This risks a decision-maker’s assessment falling into error due to conflicting assessment frameworks at a national and local level. We are pleased to see that the Council has recognised this issue and has advanced substantive amendments to Policy DM03 via the Schedule of Proposed Modifications [S-NLP 15].

Q6. Does criterion 5 add any value to national policy?

- 1.26. No substantive comments.
- 1.27. Nevertheless, as the Plan was submitted, criterion (5) appears to largely restate the established statutory duty provided for in section 72 of the Planning (Listed Buildings and

Conservation Areas) Act 1990 (as amended). In that regard, it is not readily apparent what policy purpose is served by criterion (5) or how it materially advances the existing decision-making framework. We are pleased to see that the Council has recognised this issue and has advanced substantive amendments to criterion (5) via the Schedule of Proposed Modifications [S-NLP 15].

Q7. Is criterion 6 consistent with national policy, in particular paragraph 216 of the NPPF?

- 1.28. No. Paragraph 209 of the Framework provides that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 1.29. By contrast, criterion (6) requires that development affecting the significance of a non-designated heritage asset and/or its setting will be required to justify “any” harm or loss to significance. On its face, that is a more onerous test than that promulgated in national planning policy. Indeed, criterion (6) does not address the requisite balancing exercise or “scale” of harm and loss. It operates as a draconian requirement that fails to accurately reflect paragraph 209 of the Framework.
- 1.30. These submissions apply with equal force to the reworked version of criterion (6) (as it then was) in the Schedule of Proposed Modifications [S-NLP 15] given that the Council has once again materially departed from the corresponding ‘test’ in national planning policy.

Q8. Are any MMs necessary to make the Plan sound?

- 1.31. Yes. If the Council is minded to retain the substance and direction of Policy DM03, consideration should be given to: clarifying the relationship between criteria (1), (4) and (6) in respect of designated and non-designated heritage assets; removing or clarifying the purpose of the opening sentence to criterion (1); ensuring that criterion (2) accurately reflects the provisions of paragraph 207 of the Framework; and amending criterion (6) so that it reflects the nuances of paragraph 209 of the Framework.

Policy DM04: Landscape Character and Sensitivity

Q1. In criterion 1b) of policy DM04, would the absence of the wording less than substantial harm have the effect of inviting such harm to important landscape features, including some heritage assets?

- 1.32. In our view, excluding the phraseology “less than substantial harm” does not invite such harm. As regards heritage assets specifically, any such harm falls to be considered under the Plan’s heritage policies and the relevant provisions of the Framework.

Q2. Is what makes landscape features, public views, skylines and landmarks ‘important’ in policy DM04 sufficiently clearly articulated for users of the Plan? Is the policy’s approach to these elements justified?

- 1.33. No comments.

Policy DM05: Green and Blue Infrastructure

Q1. Is it realistic to expect all development, including residential development of less than 10 homes, to meet criteria 1a) to 1c) of Policy DM05, i.e. to contribute to creating high-quality multifunctional green and blue infrastructure, create and enhance accessible links for all and enhance access to publicly accessible open space?

- 1.34. No. It is neither realistic nor appropriate to expect *all* development to satisfy criteria (1)(a) through (1)(c).
- 1.35. As drafted, criterion (1) imposes three requirements which all development “must” satisfy. These include contributing to creating high-quality multifunctional green and blue infrastructure; creating and enhancing accessible links for all; and enhancing access to public open space. Properly read, these requirements apply to “all” development, irrespective of scale, typology, context, viability, or site-specific characteristics. This blanket requirement is wholly misguided; applying with equal force to schemes comprising a single replacement dwelling right up to large scale strategic developments.
- 1.36. What the policy fails to recognise is that, in practice, opportunities for enhancement, contribution and creation, will vary significantly between sites and development typologies. On that basis, it is plainly unrealistic, if not inappropriate, to expect that every proposal will be capable of delivering enhancements in all circumstances. This interpretation is significant, as the natural inference is that a failure to comply will result in development not being supported.

Q2. Is it realistic and justified to require residential development of 10 or more homes to meet a local standard of 8.5 Ha of Natural and Semi-Natural Open Space per 1000 people in urban and rural areas of Harborough District? Is criterion 2 of policy DM05 flexible enough to be effective?

- 1.37. No. As drafted, criterion (2) is insufficiently flexible and fails to appreciate the capacity differential between urban and rural sites.
- 1.38. The Open Space, Sport and Recreation Topic Paper [TPC-NLP 4] explains that open space provision should be proportionate to the *scale* and *location* of development. That principle, however, appears absent from the policy wording. In practice, the ability of development to accommodate on-site provision, and to the prescribed standards, will vary considerably depending upon site size, configuration, location, viability and existing provision within the surrounding area.
- 1.39. It also follows that strict compliance with the prescribed standards will vary between sites in rural and urban areas of the District. Greater flexibility should therefore be incorporated within criterion (2), to ensure that site-specific circumstances can be afforded proper weight in determining the form and extent of open space provision.

Q3. Are the requirements for Local Green Spaces in criteria 5 and 6 of Policy DM05 justified and consistent with national policy? Is it appropriate for Neighbourhood Plans to identify further Local Green Space?

- 1.40. No substantive comments.
- 1.41. Nevertheless, any future designation of Local Green Space through a Neighbourhood Plan should be supported by robust evidence demonstrating compliance with national planning policy.

Policy DM06: Transport and Accessibility

Q14. Policy DM06 appears to refer to other standards and guidance, including parking standards. Where, and what are they? Are they consistent with NPPF paragraphs 108 – 117?

- 1.42. Policy DM06 requires development to “have regard” to Highway Authority guidance and standards. However, neither the policy nor the supporting text clearly identifies the documents to which it refers. In the interests of clarity and consistency, those documents should be expressly identified.
- 1.43. Furthermore, where reliance is placed upon external *guidance*, the policy should make clear that such documents are intended only to inform the exercise of planning judgement and are not to operate as freestanding development plan policy requirements. This is particularly important where such guidance has not been subject to independent examination, or the same degree of external scrutiny, as the Local Plan. The policy subtext should be clear about the role of such guidance as a non-statutory document.
- 1.44. If the Council intends parking, access or highway design standards to carry determinative weight in decision-making, those standards should be set out clearly within the Plan itself and be subject to consultation and examination in the usual manner. It is not appropriate for policy requirements to be imposed indirectly through reference to unspecified external guidance documents which may be amended without proper consultation and rigour, outside the development plan process.

Policy DM09: Sustainable Construction and Climate Resilience

Q1. Is it clear to users of the Plan what ‘minimise’ carbon emissions during construction entails, to satisfy criterion 1a) of policy DM09?

- 1.45. No. As drafted, criterion (1)(a) is expressed in vague and imprecise terms.
- 1.46. There is a clear juxtaposition in criterion (1) mandating that development satisfy the requirements set out between (a) and (e) (note the drafters’ use of “must”), followed by the inherently subjective qualifier “minimise”. Whilst paragraph 8.29 of the policy subtext provides examples of how carbon emissions might be reduced; it does not provide any meaningful indication as to how compliance with criterion (1)(a) is to be assessed in practice. In order to provide certainty and consistency in the development management

process, the Council should consider importing more certain language that offers clear direction.

- 1.47. In any event, the evidential basis for this policy requirement is unclear. For, the policy seeks to regulate carbon emissions during the construction phase through the development management process, notwithstanding the existence of Building Regulations and other regulatory controls concerned with energy efficiency and sustainability. The Council should therefore clearly explain what purpose criterion (1)(a) serves, together with the evidential basis for its inclusion.

Q2. Does the water efficiency standard of a minimum equivalent to 110 litres per person per day for any residential use, in criterion e) of policy DM09, appropriately address local water stress?

- 1.48. The policy requirement for residential development to achieve a minimum water efficiency standard of 110 litres per person per day is already capable of being secured through the Building Regulations regime. It is, therefore, unclear what additional purpose is served by mandating that applicants demonstrate compliance through a separate standalone policy requirement.
- 1.49. Given the existence of regulatory controls concerned with water efficiency, it is our view that criterion (e) adds little additional value and should be deleted.

Q3. Are the BREEAM standards and ratings appropriate in policy DM09, and consistent with national policy? In criterion 2 of policy DM09, is the BRE Home Quality Mark minimum three star rating for residential development consistent with national policy and justified? Is whole-life cycle assessment practicable for major residential development?

- 1.50. No, the requirement in respect of the BRE Home Quality Mark is not consistent with national policy and is unjustified. We reserve the right to comment on this matter further in the hearing sessions.
- 1.51. As regards criterion (2), it is unclear how the minimum three-star BRE Home Quality Mark rating has been derived, why that requirement has been selected, or why compliance with that particular accreditation scheme is necessary in the local context. Whilst the Council explains that accreditation schemes are widely recognised and utilised elsewhere, that does not, in and of itself, justify their imposition through development plan policy.
- 1.52. In effect, criterion (2) imposes a requirement that extends beyond the standards secured through the Building Regulations regime, without providing the evidential basis for doing so. Where additional policy requirements are proposed, the Council should clearly demonstrate the local need for such and explain why compliance with the existing regulatory framework is insufficient.
- 1.53. Furthermore, it is unclear whether the implications of achieving a minimum three-star BRE Home Quality Mark rating have been robustly assessed from a viability perspective. This is particularly relevant given our comments in response to Question 4 below.

Q4. Have the implications of these standards of development for housing delivery, viability and affordability been robustly assessed?

- 1.54. No. The evidence does not clearly demonstrate that *all* aspects of Policy DM09 have been “robustly assessed” from a viability perspective.
- 1.55. The Whole Plan Viability Assessment (“WPVA”) [INF-NLP 3] explains that a *de minimis* allowance of £10 per unit was included in respect of the additional cost associated with water efficiency measures. However, it is unclear whether any allowance has been made for the costs associated with achieving a minimum three-star rating under the BRE Home Quality Mark scheme, undertaking whole life-cycle assessments, or complying with the wider accreditation requirements imposed by Policy DM09. In those circumstances, it is difficult to conclude that the implications of Policy DM09 for housing delivery, viability and affordability have been comprehensively assessed.
- 1.56. The aforementioned requirements should have a firm evidential basis which, in the interests of transparency and certainty, should be clearly explained within the Plan itself. In particular, it is not sufficient to simply state that accreditation schemes are widely recognised or utilised elsewhere. Where such standards are relied upon to justify additional policy requirements, the Council should demonstrate why they are necessary in the local context.

Q5. Should on-site renewable energy generation be addressed in policy DM09?

- 1.57. No substantive comments.
- 1.58. Nevertheless, should the Council be minded to address on-site renewable energy generation through Policy DM09, any such requirement should incorporate sufficient flexibility so as to respond to viability considerations, site-specific circumstances and evolving technologies. It should also be based on a firm evidential basis. Any additional criterion should avoid being overly prescriptive or focused on fixing determinative outcomes.

Policy DM10: Biodiversity and Geodiversity Protection and Enhancement

Q1. Is policy DM10 consistent with national policy on avoiding unnecessary duplication of policies?

- 1.59. No. As drafted, policy DM10 is inconsistent with national policy on avoiding unnecessary duplication of policies.
- 1.60. Criterion (1) seeks to prescribe a minimum biodiversity net gain requirement for all “qualifying” development. A requirement which is governed by a detailed statutory regime. In this respect, the focus of planning policy should be on whether development proposals represent an acceptable use of land, rather than concerning itself with the operation and product of a separate statutory regime. The Framework reminds the Council that planning decisions should assume these other controls and regimes will operate effectively.

Q2. Is the ‘at least 10% measurable biodiversity net gain’ figure in criterion 1 of policy DM10 justified, considering both local biodiversity need and the need to deliver development in the District?

1.61. No comments.

Q3. Is policy DM10 flexible enough? Are requirements 4a) to 4f) of policy DM10 realistically achievable for all development? Is it realistic to expect development to have no adverse impact on elements 5a) to 5c) of policy DM10?

1.62. No. That the Council should aspire to protect and enhance biodiversity and geodiversity is unobjectionable.

1.63. However, the evidence does not support the introduction of a blanket requirement across all development to achieve compliance with criteria 4(a) through 4(f), which confers no discretion upon a decision-maker to consider site-specific characteristics, viability and/or suitability. Similarly, criterion (2) adopts an inflexible approach to the delivery of biodiversity net gain, proceeding on the basis that all reasonable opportunities for on-site provision must first be exhausted before off-site measures may be considered. In practice, site design requires a balance to be struck between a range of competing objectives including sustainable drainage infrastructure, providing a sufficient quantum of public open space, landscaping and active travel infrastructure. The drafting of the policy should, therefore, be revisited, to better reflect the need to balance biodiversity objectives against other legitimate planning and design considerations.

1.64. As regards criteria 5(a) through 5(c), these requirements are, at best, aspirational and, at worst, unnecessarily obstructive. For, the policy expects development to have “no adverse impact” on the ecological components contained therein. That is an absolute threshold which fixes determinative outcomes and fetters a decision-maker’s judgement, particularly where national policy provides for a mitigation hierarchy. On this basis, criterion 5 risks frustrating otherwise acceptable and sustainable forms of development.

Q4. Is policy DM10’s provision for species and their habitats in the District, and on designated sites of international importance beyond its boundaries appropriate and consistent with national policy? Is the approach to compensation in policy DM10 appropriate?

1.65. No comments.