

Examination of the Climate Emergency Review of the Lancaster District Strategic Policies and Land Allocation Development Plan Document (DPD) and the Development Management DPD

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Mr Maurice Brophy
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By email

10 November 2022

Dear Mr Brophy

Inspector's Post Hearings Letter to the Council

1. As I indicated at the end of the hearings on 7 October 2022, I am writing to set out my thoughts on the Climate Emergency Review of the Lancaster District Strategic Policies and Land Allocation Development Plan Document (DPD) and the Development Management DPD (the Plans). This letter outlines the way forward for the Examination based on all that I have read and heard to date. Please note that the Examination has not reached its conclusion as public consultation on Main Modifications is still to take place. As such, the views set out in this letter are without prejudice to my final conclusions on the Plans.
2. The submitted Plans represent a Climate Emergency Review of both Plans. The remit of the Examination is therefore limited in scope. Accordingly, the changes proposed in the submitted Plans are limited to those areas of the Plans which can be altered without significantly amending the overall spatial strategy and the strategic policies of the adopted Plans. As a result, the Council is not seeking to change the timeframe for the Plans which runs from 2011 to 2031. This would result in amended strategic policies and the new strategic Policy CC1 not looking ahead over a minimum 15 year period from adoption. Notwithstanding the limited scope of the Examination, the amendments to existing policies and the provision of new policies to address climate change are not insignificant.
3. The Council declared a Climate Emergency in January 2019. At this point, the Examination of the Lancaster District Strategic Policies and Land Allocation DPD and the Development Management DPD was advanced and the relevant Plans were subsequently adopted in July 2020. Immediately following adoption, the

Council entered into a partial review of those Plans to deliver more far-reaching policies in terms of climate change adaptation and mitigation. If adopted, the Plans would still include a commitment at Policy LPRM1: Local Plan Review Mechanism to review the Local Plan within 5 years of the date of adoption and that an earlier review would be undertaken if certain circumstances are triggered. It seems sensible therefore to allow the Plans, subject to Main Modifications, to proceed to adoption despite the limited time horizon. This would allow some progress to be made to better address climate change.

4. I am of the view that, subject to Main Modifications, it is likely that the Plans would be found to be legally compliant and sound. My reasoning for this will be set out in my report in due course.

Main Modifications

5. As discussed at the hearings, there were some matters which I confirmed would require my further consideration. This letter provides my views on these matters on a policy by policy basis.

Policy DM30a: Sustainable Design and Construction

6. Policy DM30a provides a stepped approach on the energy efficiency of new homes. The three stages include a minimum 31% reduction in carbon emissions against Part L of Building Regulation (2013) at Plan adoption; a further minimum 75% reduction against Part L of Building Regulations (2013) by January 2025 with reduced energy consumption achieved via a fabric first approach; and net zero carbon to be achieved by January 2028. All steps are to be achieved by using a fabric first approach with an emphasis on minimising demand for energy and maximising energy efficiency prior to use of renewable energy, low carbon energy, and alternative energy sources.
7. Section 19 (1A) of the Planning and Compulsory Purchase Act 2004 outlines that development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.
8. The Climate Change Act 2008, as amended by The Climate Change Act 2008 (2050 Target Amendment) Order 2019, requires the net UK carbon account for 2050 to be at least 100% lower than the 1990 baseline.
9. The Planning and Energy Act 2008 states that a local planning authority in England may include policies in their development plan documents imposing reasonable requirements for development in their area to comply with energy efficiency standards that exceed the energy requirements of Building Regulations. The same Act confirms that those policies included in development plan documents must not be inconsistent with relevant national policies for England.

10. Paragraph 8 c) of the National Planning Policy Framework (the Framework) confirms that the environmental objective of sustainable development includes mitigating and adapting to climate change, including moving to a low carbon economy. Paragraph 152 of the Framework asserts that the planning system should support the transition to a low carbon future in a changing climate, including contributing to radical reductions in greenhouse gas emissions and supporting renewable and low carbon energy. Paragraph 154 b) of the Framework states that any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.
11. The Written Ministerial Statement – Planning Update dated 25 March 2015 (HCWS488) (WMS) outlines that for “the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill. This is expected to happen alongside the introduction of zero carbon homes policy in late 2016. The Government has stated that, from then, the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the Government's intention into account in applying existing policies and not set conditions with requirements above a Code level 4 equivalent.” The WMS remains an extant expression of national policy.
12. Section 43 of the Deregulation Act 2015 provides the capability to disapply the power to set energy efficiency standards in England in relation to the construction or adaptation of buildings to provide dwellings or the carrying out of any work on dwellings, but this provision has never been brought into force.
13. Planning Practice Guidance refers to the Planning and Energy Act 2008, the Deregulation Act 2015, and the WMS and states that such policies should not be used to set conditions on planning permissions with requirements above the equivalent of the energy requirement of Level 4 of the Code for Sustainable Homes (approximately 20% above the then Building Regulations across the build mix).
14. Part L of Building Regulations was updated in 2021 to achieve a 31% reduction in carbon emissions for new dwellings. Current Building Regulations, which took effect on 15 June 2022, therefore exceed Level 4 of the Code for Sustainable Homes. Policy DM30a seeks to reach the same carbon emissions' reduction as existing Part L of Building Regulations in its first step. As such, and notwithstanding the differences between the Council's fabric first approach and Building Regulations, this first step may not be necessary and justified as it would achieve the same end reduction in carbon emissions as Building

Regulations. Furthermore, the two later steps for 2025 and 2028 go beyond existing Part L of Building Regulations.

15. In light of the legislative and national policy circumstances set out above, I am concerned that the Council's three step approach is inconsistent with national policy. In addition, given the absence of consistent viability testing of the full three steps within the Council's viability work, the policy's stepped approach is not justified by evidence on viability. In order to be consistent with national policy, effective, and justified, I am minded to recommend removal of the three step approach from Policy DM30a. However, in advance of requesting such a significant main modification, I wish to offer the Council the opportunity to respond to my initial thoughts on this matter.

Policy DM33: Development and Flood Risk

16. A number of Main Modifications have been proposed to Policy DM33 by the Council to address points discussed during the hearings. In order to be consistent with national policy and guidance, a further Main Modification is required to remove reference to 'including access/egress, play/recreation areas and gardens' from the first paragraph and from criterion V of the policy.

Policy DM34: Surface Water Run-Off and Sustainable Drainage

17. In addition to the main modification proposed to new paragraph 37 of the supporting text, the fifth sentence of new paragraph 37 should be deleted as it is not clearly written and unambiguous.

Policy DM43: Green and Blue Infrastructure

18. Policy SP8 has been amended to address the issue of all spaces, corridors and chains being able to protect, manage, maintain, and enhance green and blue infrastructure. The first paragraph of Policy DM43 should be amended to be consistent with Policy SP8.

Policy DM62: Vehicle Parking Provision and Electric Vehicle Charging Points

19. Policy DM62 seeks to go beyond Part S of Building Regulations on Infrastructure for the charging of electric vehicles (2021 Edition). However, I consider that the Council has not provided a fully justified and reasoned rationale for exceeding Building Regulations in this respect and that the policy approach proposed has not been shown to be viable. In order to be justified, therefore, the following text should be removed from Policy DM62:

"All new development and changes of use with associated car parking shall provide, as a minimum:

1. One charging unit for each dwelling with an associated parking space.
2. 20% of communal parking spaces to be provided with standalone chargers. Ducting/cabling/supply capacity must also be provided/ensured for all parking spaces."

20. Alongside the removal of the aforementioned text from Policy DM62, the Council should make corresponding Main Modifications to the policy's supporting text and to the Plans' monitoring framework.

Next Steps

21. With regard to the concerns I have expressed about Policy DM30a, I would be grateful if the Council could indicate the likely timescale for provision of its response.
22. In addition to drafting the Main Modifications requested in this letter, I would be grateful if the Council could consider any commensurate changes required to the Plans' sustainability appraisal and habitats regulations assessment, as necessary.
23. The Council has already provided a detailed draft schedule of proposed Main Modifications reflecting a number of matters discussed during the hearings. I will provide feedback on the draft schedule of proposed Main Modifications via the Programme Officer, with the aim of the Council being able to publish them for public consultation in due course.

Yours sincerely

Joanna Gilbert

INSPECTOR