

# Managing Development DPD Public Examination

## Issue 1: Housing

Position Statements prepared on behalf of MGPA: Representation 334

04.09.2012

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1.1 The following Position Statements set out why the Managing Development DPD (the 'DPD') is unsound and provides a recommendation to the Inspector outlining how the DPD could be amended to be made sound.

1.2 **What particular part of the document is unsound?**

1.3 Policy DM3 is unsound.

**Which soundness tests does it fail?**

1.4 It is unsound because it is not effective and is not consistent with the National Planning Policy Framework (NPPF, 2012) and the London Plan (2011).

1.5 **Why does it fail?**

1.6 The NPPF requires planning to proactively drive and support sustainable economic development including through the delivery of new homes, including affordable homes.

1.7 London Plan Policy 3.12 requires Borough's to seek the maximum reasonable amount of affordable housing when negotiating on individual private residential and mixed-use schemes.

1.8 London Plan Policy 3.11 includes a strategic target that 60% of new affordable housing should be for social rent and 40% for intermediate rent or sale.

1.9 The Mayor has published an early minor alteration to the London Plan to address the introduction of affordable rent, with further guidance set out in a draft Affordable Rent SPG.

1.10 Regarding tenure split, the Mayor's position is that both social rent and affordable rent should be included within the 60% element of the strategic target.



- 1.11 The Core Strategy Policy SP02 sets an overall strategic 50% target for affordable homes until 2025, including the requirement for 35%-50% affordable homes on sites providing 10 new residential units or more (subject to viability).
- 1.12 Policy DM3, as drafted, requires development to provide affordable housing in accordance with the Council's tenure split (70% Social Rent and 30% Intermediate) as set out in the Core Strategy.
- 1.13 Policy DM3 only allows for the provision of affordable rented homes where: the required proportion of 70% for Social Rent homes is demonstrated to be unviable; the provision of Affordable Rent homes alongside Social Rent homes ensures the delivery of between 35%-50% affordable housing; and the delivery of larger family homes is prioritised for Social Rent.
- 1.14 The Tower Hamlet's Affordable Housing Viability Assessment (July 2011) forms part of the evidence base for Policy DM3. It concluded that the Borough should not shift its policy position to adopt Affordable Rent on an equal footing with Social Rent, hence the subsequent drafting of Policy DM3.
- 1.15 The drafting of proposed early minor alterations to the London Plan as they relate to affordable housing provision and the Affordable Rent product makes it clear that the Mayor's intention is that Affordable Rent is intended to address the same housing needs as Social Rent housing in London. Regional guidance does not advocate the cascading policy approach that is currently set out in Policy DM3.
- 1.16 In failing to adopt a similar approach in the drafting of Policy DM3 and failing to further review its affordable housing evidence base, it is considered that the Council has failed to ensure the soundness of Policy DM3.
- 1.17 We argue that Policy DM3 as drafted will not be effective and will not comply with national and regional planning policy insofar as it will fail to secure the maximum delivery of affordable housing.
- 1.18 We consider that the policy therefore fails to take full account of the importance of scheme viability considerations and will constrain the ability of developers to deliver new housing. Through the provision of Affordable Rent housing as part of development



proposals, there is an opportunity to increase the viability of schemes and to therefore maximise the overall delivery of affordable housing provision.

1.19 We also note correspondence which has been sent by the Mayor of London to the Inspector dated 30 August 2012. In summary, the following sets out in broad terms some of the key conclusions reached by the Mayor in this correspondence:

- Prioritising Social Rented housing at the expense of Affordable Rent will constrain the Council's ability to maximise overall provision of affordable housing;
- In not taking a realistic account of available resources the plan will not be 'deliverable' in the sense the term is used in paragraph 173 of the NPPF and thus will not be sound;
- Prioritising Social Rented housing before Affordable Rented housing would slow down the process of planning applications and add undue burdens on developers;
- National guidance and the early alterations to the London Plan make it clear that Affordable Rent and Social Rent are intended to meet the same housing needs.
- A pragmatic approach should be taken to deciding which tenure is going to result in the maximum provision of affordable housing and there is no basis for preferring one over the other;

1.20 We support the Mayor's conclusions insofar as these are consistent with those of MGPA.

#### **How could the document be made sound?**

1.21 Policy DM3 should be amended to ensure that the preference for Social Rent provision over Affordable Rent provision is removed.

#### **What is the precise change/wording sought?**

1.22 Part 1 of Policy DM13 should be amended by deleting the following sentence and criteria:

*"Affordable Rent will be accepted where:*

*a. the required proportion of 70% for Social Rent homes is demonstrated to be unviable;*

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*b. the provision of Affordable Rent homes alongside Social Rent homes ensures the delivery of between 35%-50% affordable housing;*

*c. the delivery of larger family homes is prioritised for Social Rent.”*

Italics have been added for emphasis to highlight the text to be deleted.



## Managing Development DPD Public Examination

### Issue 2: Building Height (policy DM1)

Position Statement prepared on behalf of MGPA: Representation 329

04.09.2012

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- 1.23 MGPA submitted representations on 9 March 2012. They noted that we do not consider that a transition between the scale of Canary Wharf and the Harbour Exchange site is necessary or justifiable.
- 1.24 A detailed position statement in relation to Building Heights has been submitted under issue 3 in relation to Policy DM26. This addresses the key principle behind our suggested alteration to Policy DM1 and should be considered in connection with this issue.
- 1.25 **What particular part of the document is unsound?**
- 1.26 The wording under part 2 of Policy DM1.
- 1.27 **Which soundness tests does it fail?**
- 1.28 Justified + Consistent with national policy
- 1.29 The policy wording fails to be the most appropriate strategy when considered against reasonable alternatives. We understand the reasoning in relation to a transition in the character of development from the CAZ, Canary Wharf Activity Area and wider Borough. This transition should be managed without fettering the potential of a site to be optimised.
- 1.30 Paragraph 1.1 of the postamble to the policy notes that policy DM1 will be applied to town centre uses. The quantum of town centre uses is adequately addressed by the National Planning Policy Framework and detailed policies set out in the draft Managing Development DPD. It is not necessary to limit the scale of development in the Canary Wharf Activity Area that could also include other uses such as residential.
- 1.31 **Why does it fail? – justified**
- 1.32 We deal with matters of building height and associated scale under MGPA's Position Statement for Issue 6. A blanket application of the transition in scale as described in Policy



DM1 is not supported by an assessment for this approach nor does it reflect the NPPF that states developments should optimise site potential (paragraph 58).

1.33 **How could the document be made sound?**

1.34 To address this issue we propose that 'scale' is deleted from the third line of draft Policy DM1.

1.35 **What is the precise change/wording sought?**

1.36 The policy wording should be amended as follows:

1.37 'Developments in these areas should provide a transition between the ~~scale~~, activity and character of the CAZ and Canary Wharf major centre and their surrounding places.'



## Managing Development DPD Public Examination

### Issue 3:

Position Statement prepared on behalf of MGPA: Representation 336

04.09.2012

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1.38 MGPA acquired the Harbour Exchange site in 2010. Since this acquisition MGPA has invested in the estate to improve the standard of the employment floorspace securing high rates of occupancy and the long term future employment use of the site. The land to the west of Harbour Exchange adjacent to Millwall dock is currently under utilised. It is important that Policy DM15 does not prejudice the ability for MGPA to bring forward a viable development proposal at the Harbour Exchange site.

1.39 **What particular part of the document is unsound?**

1.40 Part 1 of Policy DM15 as currently drafted is unsound.

1.41 **Which soundness tests does it fail?**

1.42 It is unsound because it is not effective and it is not in conformity with the National Planning Policy Framework (NPPF).

1.43 **Why does it fail?**

1.44 It would fail to deliver the objective of Core Strategy Policy SP06 to maximise and deliver investment and job creation in the Borough by unnecessarily protecting existing employment floorspace which is vacant or underused and which could instead be used for alternative uses, which could include a range of alternative employment generating uses.

1.45 Policy DM15 would through the requirement to actively market sites for approximately 12 months delay the ability of these sites to come forward sooner for alternative use where this is the most appropriate solution.

1.46 The NPPF addresses the supply of employment land. It notes at paragraph 22 that where there is no reasonable prospect of a site being used for employment use then applications for alternative uses of land or buildings should be treated on their merits having regard to

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market signals and the relative need for different land uses. The NPPF does not fetter the ability to review the suitability of alternative uses of land or buildings on the basis of a prescribed period of marketing. Market signals that are also of relevance are the ability for land or buildings to be brought back into viable employment use. In some instances it may be the case that the market would not support the re-provision of employment uses on the basis that it is not viable to do so. Where this is the case the NPPF is clear that alternative uses should be assessed on their own merits. Policy DM15 as currently drafted fails to conform to this aspect of the NPPF.

1.47 **How could the document be made sound?**

1.48 Part 1 of Policy DM15 could be made sound by making amendments to the policy to introduce a greater level of flexibility such that where an existing employment site is proposed for redevelopment, it would either need to actively marketed for a 12 month period or there would be a requirement to produce evidence that demonstrates that a building is incapable of viable refurbishment or redevelopment for continued employment use.

1.49 **What is the precise change/wording sought?**

1.50 Part 1 of Policy DM15 should be amended to read as follows:

“The upgrading and redevelopment of employment sites outside of spatial policy areas will be supported. Development should not result in the loss of active and viable employment uses, unless it can be shown, through a marketing exercise, that the site has been actively marketed (for approximately 12 months) or that the site is demonstrated as being unsuitable for viable refurbishment or redevelopment for continued employment use due to its location, accessibility, size and condition.”

1.51 The inclusion of this suggested amendment would ensure that the policy could effectively deliver the objectives of the Core Strategy as they relate to the use of existing employment sites.



# Managing Development DPD Public Examination

## Issue – 6: Building Heights

Position Statement prepared on behalf of MGPA: Representation 330 & 332

04.09.2012

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1.52 MGPA issued a representation on 9 March. The representation stated that Policy DM26 – Building Height was unsound noting that there is insufficient evidence to support the policy which includes a rigid definition of building heights. Furthermore, we do not consider that an arbitrary guideline provides a suitable opportunity for site specific circumstances to be assessed. The Statement provides further justification on this matter in accordance with the Briefing Notes – August 2012 document that was issued for the examination in public (EiP).

1.53 MGPA issued a representation to the Site and Place Making Development Plan Document (DPD) a forerunner of the Managing Development DPD during the documents consultation in the summer 2012. This noted that the Harbour Exchange site is suitable for a 'landmark building' at a key dockside location where tall buildings have the potential to act as an effective marker for the relocated South Quay DLR station. The Harbour Exchange site falls within the Canary Wharf Activity Area.

### **What particular part of the document is unsound?**

1.54 Part 1 of Policy DM26 in relation to the areas identified as acceptable for tall buildings and building height guidance and the associated figures 9 and 10 referenced in the policy.

1.55 **Which soundness tests does it fail?**

1.56 Positively prepared

1.57 Part 1 of Policy DM26 fails to objectively meet the assessed development requirements for the Borough. The evidence base LBTH Building Heights Note (2012, version 2, document EB35) seeks to apply a restrictive zone based approach to identifying suitable building heights in the Borough with a particular reference to the 150m upper guideline limit for the Canary Wharf Activity Area. The original evidence base document LBTH Building Heights

Note (2011, document EB34) included at Appendix 2 a townscape cross section from 1 Canada Square through Marsh Wall East to the east of the Harbour Exchange site. The cross section is still cross referenced in version 2 of the document (EB35) as the basis for the building heights approach in the wider Borough.

- 1.58 The cross section used at Appendix 2 of the original evidence base (EB34) is an arbitrary line. A cross section drawn through the Harbour Exchange site (that has an existing building height of approximately 76 meters) from 1 Canada Square would create a different baseline condition.
- 1.59 Part 2 of Policy DM26 includes a list of objective criteria for the assessment of tall buildings. Similar to both policy 7.7 of the London Plan and Guidance on Tall Buildings produced by English Heritage and CABE this is based upon an objective assessment of site specific criteria and the proposed architectural response that has been proposed. We support the approach of part 2 of policy DM26 that is 'positively prepared' in accordance with the test of soundness.
- 1.60 **Why does it fail? – positively prepared**
- 1.61 Part 1 of Policy DM26 fails to provide an objective basis for the upper guideline height of 150m within the Canary Wharf Activity Area. The suggested policy approach is based upon extremely limited evidence that reflects a single baseline condition. This does not form the basis for a robust and objective policy.
- 1.62 Justified
- 1.63 Part 1 of Policy DM26 fails to be the most appropriate strategy when considered against reasonable alternatives. The alternative that we consider to be the most appropriate response is that building heights are assessed on the basis of part 2 of Policy DM26 in accordance with the approach taken at policy 7.7 of the London Plan and Guidance on Tall Buildings produced by English Heritage and CABE. This would pre-suppose that the most appropriate building height would be identified on a case by case basis and not limited by an arbitrary guideline.
- 1.64 The evidence base that sets out the suggested indicative building heights included in figure 9 is based upon an extremely limited data set using a single townscape cross

section to support this approach. Therefore we do not consider that evidence base is proportionate to the weight afforded the indicative height guidelines within the policy.

1.65 **Why does it fail? – justified**

1.66 An insufficient level of evidence has been prepared to support the assertions set out in part 1 of policy DM26. The level of weight afforded figure 9 of policy DM26 even as an indicative guideline is not based upon a proportionate level of evidence to support the guideline heights within the Canary Wharf Activity Area. On this basis and in the context of London Plan policy and guidance prepared by English Heritage and CABE we do not consider that part 1 of policy DM26 is justified.

1.67 Consistent with national policy

1.68 The National Planning Policy Framework (2012) contains a number of requirements in relation to 'Requiring good design'. Paragraph 58 notes that local plans should develop policies that are based upon understanding and evaluating areas and their defining characteristics. The third bullet under the policy states that policies should aim to ensure that developments optimise the potential of site's to accommodate development. The fourth bullet goes on to note that developments should respond to local character whilst not preventing appropriate innovation.

1.69 Paragraph 60 of the design section of the NPPF also notes that planning policies should not impose architectural styles or tastes, innovation, originality or initiative through unsubstantiated requirements.

1.70 **Why does it fail? – consistent with national policy**

1.71 Part 1 of policy DM26 is not consistent with the NPPF specifically those parts of the document relating to design as noted above. The policy fails to allow for appropriate building heights to be assessed on the basis of design rationale on a case by case basis. For the Canary Wharf Activity Area the arbitrary use of an indicative 150m building height guideline fails to allow this flexibility of approach to ensure that development potential of site's is optimised. It also imposes an unsubstantiated design parameter upon development.



1.72 **How could the document be made sound?**

1.73 We consider that the document could be made sound through the deletion of part 1 of Policy DM26 and the deletion of figures 9 and 10 that sit alongside the policy.

1.74 **What is the precise change/wording sought?**

1.75 As noted above at paragraph 1.22.

## Managing Development DPD Public Examination

### Issue 14:

Position Statement prepared on behalf of MGPA: Representation 325

04.09.2012

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- 1.76 MGPA acquired the Harbour Exchange site in 2010. Since this acquisition MGPA has invested in the estate to improve the standard of the employment floorspace securing high rates of occupancy and the long term future employment use of the site. The land to the west of Harbour Exchange adjacent to Millwall dock is currently under utilised.
- 1.77 MGPA has agreed with the Borough that the development parcel should extend up to the dock edge. This has been identified in the Statement of Common Ground to be agreed between the parties.
- 1.78 MGPA is concerned that the design principles set out in the document are too rigid and suggest a plan form for the future development of the site that is not evidenced upon a townscape analysis of the site.
- 1.79 **What particular part of the document is unsound?**
- 1.80 Figure 48 of the Managing Development DPD and bullet 4 under the explanatory text entitled 'What are the design principles for the site'.
- 1.81 **Which soundness tests does it fail?**
- 1.82 Effective and not in accordance with the National Planning Policy Framework
- 1.83 **Why does it fail?**
- 1.84 Figure 48 of the Managing Development DPD includes annotations for publicly accessible open space, walking cycling routes, and active frontage at the Harbour Exchange site. The annotations presume development of the Harbour Exchange site that largely accords with the current land arrangement that splits the site into three development parcels.
- 1.85 Notwithstanding the agreement to alter the annotation of the development parcels between MGPA and the Borough the design principles that are drawn on the figure are

overly restrictive. The overall objective of the designations to provide publicly accessible open space, walking cycling routes, and active frontage at the Harbour Exchange site is not being questioned by MGPA. The designations as drawn are not an effective approach for the long term delivery of development at the site.

- 1.86 The fourth bullet under the explanatory text entitled 'What are the design principles for the site' notes that development should be stepped back from the docksides to enable activation of the docksides. It was noted in representation that it is possible that landmark development could be designed up to the dockside edge nurturing activity and pedestrian movement from South Quay DLR station to the wider Crossharbour site to the south and Wood Wharf to the north along the docks edge. We consider that the objectives of the fourth bullet point to enable activation of the docksides does not preclude development up to the edge of the dock e.g. development that goes up to the dock side edge but not at ground floor level with the inclusion of adequate details to create an active edge would fulfil this objective without the need to step back the building line at higher levels.
- 1.87 Both the figure and bullet point have the effect of stifling potential innovation in relation to the future development of the Harbour Exchange site. This approach is contrary to the objectives noted at paragraph 60 of the NPPF in the context of the great importance that is placed on design in the built environment (paragraph 56 of the NPPF).
- 1.88 **How could the document be made sound?**
- 1.89 Figure 48 could be made sound through an explanatory note setting out the indicative nature of the designations and their use for design principles only.
- 1.90 The fourth bullet under the explanatory text entitled 'What are the design principles for the site' should be re-worded so that activation is specific to ground floor levels around the dock.
- 1.91 **What is the precise change/wording sought?**
- 1.92 Insert the following text with the Figure 48 header:
- 1.93 'The figure is for indicative purposes only noting design principles for Marsh Wall East'.



- 1.94 Rerword the fourth bullet under the explanatory text entitled 'What are the design principles for the site' to:
- 1.95 'Be stepped back from the docksides to enable activation of the dockside at ground floor level'.