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Drafting Policies for Local Plans

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Holborn Studios v Hackney LBC [2020] EWHC 1509 (Admin) .

Dove J said at paragraph 43:

"Where a question of interpretation of planning policy does genuinely arise for the court, in approaching that question the court must bear in mind that the policy is not a statute or other formal legal instrument, but is intended to be a practical aid to decision-taking. These documents are statements of policy and their purpose and intended audience (being both professionals and the wider public) must be taken into account in assessing any question of interpretation which arises. The policy should be read and interpreted in a straightforward manner, taking into account the context in which it arises."



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Ribble Valley Borough Council v The Secretary of State for Housing Communities and Local Government [2021] EWHC 3092 (Admin)

DMG2 provides:

Development should be in accordance with the core strategy development strategy and should support the spatial vision.

1. development proposals in the principal settlements of Clitheroe, Longridge and Whalley... should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement.

25. The language used in the policy, when given its normal everyday meaning in the context in which it is intended to be read, clearly means that any consideration of consolidation, expansion or rounding-off only arises in respect of proposed development which is "in the principal settlements". The word "in" in this context is a preposition. It describes the relation between the proposed development on the one hand and the settlement on the other. The former must be "in" the latter. If the relationship described by the preposition is satisfied then questions of consolidation, expansion or rounding-off arise. If the relationship described by the preposition is not met such questions do not arise. To put it another way: the relation between the proposed development on the one hand and the settlement on the other (described by the preposition "in") is a condition precedent which must be satisfied before there can be any consideration of consolidation, expansion or rounding-off.

26. The word "in" has no special meaning, it means what it says, and anyone interested enough to look at the core strategy would readily understand it.



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Supporting Text is Not Policy



Cherkley Campaign Limited v Mole Valley District Council [2014] EWCA Civ 567

21. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved.



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Supporting Text is Not Policy



Policy 1: All applications for new residential buildings will be required to demonstrate that measures to ensure heat efficiency savings are included in the design of the building.

Supporting text: Heat efficiency measures in new residential buildings must include the provision of heat pumps and the ability to connect to district heating networks.



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Supporting Text is Not Policy



Policy 2:

A. All applications for new residential buildings will be required to demonstrate that measures to ensure heat efficiency savings are included in the design of the building.

B. All new residential buildings must include the provision of heat pumps and the ability to connect to district heating networks unless it can be demonstrated that this is not feasible.





Define, define, define



Precision is important, need to ensure the policy means what you want it to mean.

Ways of providing definitions:

Policy itself

Supporting text

Glossary



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Define, define, define



Policy 1: All applications for major residential schemes shall contribute to urban greening.

Policy 2: All applications for major residential schemes shall contribute to Urban Greening.

Policy 3: All applications for residential schemes of 50 units or more shall contribute to Urban Greening.

Policy 4: All applications for Major Residential schemes shall contribute to Urban Greening.

Policy 5: All applications for Major Residential schemes shall increase Urban Greening by 5%.



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Define, define, define



Policy 1: Limited housing development adjoining settlement boundaries will be permitted.

Policy 2: Development for 10 or less houses adjoining settlement boundaries will be permitted.

Policy 3: Development for 10 or less houses adjoining settlement boundaries will be permitted.

Supporting text: When considering whether a site adjoins the settlement boundary regard will be had to the degree of physical proximity, any visual separation created by existing features, the existence of any roads, footpaths or other connections, and any other relevant considerations.

Policy 4: Development for 10 or less houses on sites that physically adjoin the settlement boundary will be permitted.



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Mandatory language



Gladman v Secretary of State for Homes, Communities and Local Government (1) Lancaster City Council (2) [2026] EWHC 51 (Admin)

175. The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).

Court confirmed that failure to comply doesn't automatically result in a refusal of planning permission, must still undertake a balance.



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Mandatory language



“should”

Does this mean all applications must do something?

“should where appropriate”

How do you judge when something is appropriate?

“must”

No ambiguity, has to be done



Permissive Policies

Gladman Developments Ltd. v Canterbury City Council [2019] EWCA Civ 669

Policy H1 stated:

*"The City Council **will permit residential development on sites allocated** for housing or mixed use as shown on the Proposals Map (see also all Insets). On other non-identified sites, on previously developed land within the urban areas, **planning permission will also be granted** unless the particular site makes an identifiable contribution to the economic, environmental or social well-being of the town or District, and there is unlikely to be an excessive supply of new housing development coming forward within the Plan period. In these circumstances policy H3 will be applied. All development will be subject to policy BE1 of the Local Plan and those sites specified in paragraph 6.62 shall be the subject of a Development Brief." (emphasis added)*



Permissive Policies

Gladman Developments Ltd. v Canterbury City Council [2019] EWCA Civ 669

Policy H9 stated:

"Planning permission for new residential development, in excess of minor development, on previously developed sites within villages, will only be granted where:

(a) An appraisal has been carried out to ascertain that the development will not have an adverse impact upon the existing social and physical infrastructure of the village and surrounding area;

(b) The development has regard to the character and appearance and historic environment of the village;

(c) The development does not conflict with other Local Plan design or environmental objectives;

(d) A Development Brief has been prepared in advance of any determination of a planning application to ensure the proper planning of the area." (emphasis added)



Permissive Policies

Gladman Developments Ltd. v Canterbury City Council [2019] EWCA Civ 669

35. The policies themselves were perfectly clear. The judge's conclusion to that effect was right. As he recognized, the fact that the policies were expressed in permissive terms does not exclude the obvious corollary that proposals without their explicit support were not in accordance with them or with the plan's comprehensive strategy for housing development. As he also recognized, however, this necessary inference is only reinforced by the policy objectives and the supporting text, which emphasized the city council's intention to steer housing development to the existing urban areas and previously developed land and away from undeveloped sites in the countryside. The inference, therefore, is not neutral or positive towards development without specific support in the policies, but negative





Permissive Policies



Policy 1:

Economic development which increases the range of services and facilities available in rural settlements will be supported.

Policy 2:

Major development for affordable housing schemes will be supported in the following settlements:

Hormuz

Falkland

Kremlin



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Permissive Policies



Policy 3:

Economic development which increases the range of services and facilities available in rural settlements will be supported.

Add supporting text to explain what support looks like.

Policy 2:

Major development for affordable housing schemes will **only** be supported in the following settlements:

Hormuz

Falkland

Kremlin





“and” or “or”



Policy 1:

Development will be exempt from the requirement to provide public open space where:

- i. There is an existing surplus of open space within the settlement;*
- ii. The site is within 400m of existing public open space; and*
- iii. Private open space of at least 10% more than minimum policy requirements is provided.*

Policy 2:

Development will be exempt from the requirement to provide public open space where:

- i. There is an existing surplus of open space within the settlement;*
- ii. The site is within 400m of existing public open space; or*
- iii. Private open space of at least 10% more than minimum policy requirements is provided.*



SPD's in DM Policies

Wakil (t/a Orya Textiles) & Others v Hammersmith and Fulham
LBC [2014] Env. L.R. 14

*Development plan policies cannot be used to elevate the status of
an SPD to that of planning policy*

Hersch Schneck v Secretary of State for Levelling Up, Housing &
Communities, West Berkshire District Council [2022] EWHC 3335
(Admin)

*Where there are overlapping development policies and SPD
policies. Breach of the SPD does not automatically result in
breach of the policy, they are two separate questions*





SPD's in DM Policies



Policy 1: All proposals for development within the Town Centre must comply with the design principles of the Town Centre Design SPD.

Policy 2: All proposals for development within the Town Centre must have regard to the design principles of the Town Centre Design SPD.



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SPD's in DM Policies



Policy 3:

A. All proposals for development within the Town Centre must have regard to the design principles of the Town Centre Design SPD.

B. All proposals for development with the Town Centre must be accompanied by a design statement which demonstrates how regard has been had to the Town Centre Design SPD.





SPD's in DM Policies



Policy 4:

A. All proposals for development within the Town Centre must have regard to the design principles of the Town Centre Design SPD.

B. All proposals for development with the Town Centre must be accompanied by a Design Statement. The Design Statement shall demonstrate how regard has been had to the Town Centre Design SPD including:

- i. Details of how buildings have been cited to reflect traditional street patterns;
- ii. Identification of which design features of existing development have been used to influence the external detailing of new buildings.....



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Clawback Provisions



Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd

[2017] UKSC 66

51 The inclusion of a policy in the development plan, that the planning authority will seek such a planning obligation from developers, would not make relevant what otherwise would be irrelevant. Section 37(2) (para 25 above) requires the planning authority to have regard to the provisions of the development plan “so far as material to the application” and treats its provisions as a relevant consideration only to that extent. Thus, a Green Belt policy will be relevant to an application if the site of the application falls within the specified Green Belt and a requirement that a certain amount of open space is provided in a proposal for residential development will be relevant to an application for residential development. Similarly, a requirement in the plan that an applicant should agree to contribute to the cost of offsite infrastructure, which is related to its development, will be relevant to the application. But the words, which I have emphasised, mean that if a planning obligation, which is otherwise irrelevant to the planning application, is sought as a policy in the development plan, the policy seeking to impose such an obligation is an irrelevant consideration when the planning authority considers the application for planning permission.



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Clawback Provisions



Viability is a pre-requisite for soundness, however, cannot prevent it from being raised as an issue. So, what do you do? Consider a clawback policy

Policy 1:

Where a viability case has been made the Council at the planning application stage the Council reserve the right to review developments upon completion. In all cases where a schemes gross development value has been exceeded the Council will claw back funding up to the delivery of a policy compliant scheme.





Clawback Provisions



Policy 2:

For Major Developments, where a viability case has been made to the Council at the planning application stage the Council reserve the right to review development's viability upon completion, or in the case of strategic schemes of over 500 units on completion of 60% of housing units. In all cases where a schemes gross development value against updated costs/normal profit has been exceeded the applicant shall pay a financial contribution equivalent to the uplift, capped at the value required to achieve full policy compliance. Any clawback contribution shall be used by the Council for the delivery of affordable housing and/or infrastructure in accordance with the priorities set out in the Local Plan or Infrastructure Delivery Plan.





Clawback Provisions



Policy 3:

For Major Developments, where a viability case has been made to the Council, at the planning application stage, the Council reserve the right to review developments viability upon completion, or in the case of strategic schemes of over 500 units on completion of 60% of housing units. In all cases where a schemes gross development value against updated costs/normal profit has been exceeded the applicant shall pay a financial contribution equivalent of:

up to a maximum of 70% in the uplift in the value of the scheme; or the policy compliant level, whichever is the lowest.

Any clawback contribution shall be used by the Council for the delivery of affordable housing and/or infrastructure in accordance with the priorities set out in the Local Plan or Infrastructure Delivery Plan.



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Allocated Site Capacity



Important for soundness – do you have a 5 year HLS?

Important for DM – how do you assess whether an application accords with the allocation?

Policy 1: Site H1 is allocated for the development of:

50 homes

approximately 50 homes

no more than 50 homes

a minimum of 50 homes

between 45 to 55 homes



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Allocated Site Capacity

Policy 2:

Any application for the development of an allocated site for an alternative quantum of housing to that contained in the allocation policy must be supported by appropriate justification. This shall include [*list generic criteria which must be addressed in the justification*]

Policy 3:

- A. Site H1 is allocated for the development of 50 homes.
- B. Any application for the development of the site for an alternative quantum of housing must be supported by evidence which demonstrates the development would not increase the harm to:
 - i. *List the site constraints of particular concern*





Pooled contributions



Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd [2017] UKSC 66

41 Similarly, a planning authority may contract for the payment of financial contributions towards, for example, educational facilities, healthcare facilities, sewerage or waste and recycling: requiring a development to contribute to, or meet, its own external costs in terms of infrastructure involves regulating the development of the land which is burdened by the obligation. The financial contribution can be applied towards infrastructure necessitated by the cumulative effects of various developments, so long as the land which is subject to the planning obligation contributes to that cumulative effect and thereby creates a sufficient relationship between the obligation in question and the land so that one can fairly speak of the obligation as regulating the development of the land.



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Pooled contributions



Large site, multiple developers

Policy 1: The local planning authority will require applicants to prepare an infrastructure phasing and delivery strategy to be agreed by the local planning authority for sites where build out will be delivered by different developers or in phases. This strategy must outline what needs to be provided by when and who will fund and deliver it.



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Pooled contributions



Different sites, shared infrastructure requirements

Policy 1: The local planning authority will require applicants to prepare an infrastructure phasing and delivery strategy to be agreed by the local planning authority. This must detail:

- a) What infrastructure is required, having regard to the Infrastructure Delivery Plan;
- b) When it will be required, having regard to the phasing of sites H1, H2 and H3; and
- c) The apportionment of contributions for the required infrastructure.

The required infrastructure shall include: the provision of a primary school on Site H2; a new access road from the Hormuz Roundabout; and any other essential infrastructure required to deliver the totality of the allocation.





Over to you.....



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Thank you

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