

Birmingham City Council

Report to Cabinet

9 November 2021



Subject: **ADOPTION OF THE 'DEVELOPMENT MANAGEMENT IN BIRMINGHAM' DEVELOPMENT PLAN DOCUMENT**

Report of: **ACTING DIRECTOR, INCLUSIVE GROWTH**

Relevant Cabinet Member: **Councillor Ian Ward, Leader of the Council**

Relevant O &S Chair: **Councillor Saima Suleman, Economy and Skills**
Councillor Liz Clements, Sustainability and Transport

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009059/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 Cabinet is asked to note the Planning Inspector's report (Appendix 1) on the 'Development Management in Birmingham' Development Plan Document (DMB) and recommend to Council adoption of the DMB as submitted and subsequently amended by the main modifications (Appendix 2) and additional (minor) modifications. (Appendix 3).
- 1.2 Upon adoption of the DMB, the remaining parts of the Birmingham Unitary Development Plan 2005 (Chapter 8) (Appendix 4) are to be superseded.

2 Recommendations

- 2.1 Notes the report of the Planning Inspector on the 'Development Management in Birmingham' Development Plan Document (DMB) (Appendix 1) and the Inspector's schedule of main modifications (Appendix 2).
- 2.2 Recommends to City Council the adoption of the DMB incorporating the Inspector's main modifications and additional (minor) modifications in accordance with the provisions of Regulations 26 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 2.3 Notes the final version of the Strategic Environmental Assessment (SEA)/ Sustainability Appraisal and Habitats Regulation Assessment (HRA) (Appendix 7)
- 2.4 Notes the accompanying DMB Adoption Statement (Appendix 9) and Sustainability Appraisal Adoption Statement (Appendix 8).
- 2.5 Approves the revocation and withdrawal of the remaining parts of the Birmingham Unitary Development Plan 2005 (Chapter 8) (Appendix 4) and the withdrawal of relevant superseded Supplementary Planning Guidance referenced within it (Appendix 5).
- 2.6 Delegates authority to the Acting Director of Inclusive Growth in consultation with the Leader to make any typographical, grammatical, graphical, and presentational changes to the final DMB prior to adoption.

3 Background

- 3.1 The adoption of the DMB means that it will become part of Birmingham's Local Plan and it will support the adopted Birmingham Development Plan (2017) (BDP) by setting out non-strategic planning policies for the determination of planning applications. It will be one of the Council's key planning policy documents alongside the BDP and it replaces the remaining extant policies of the Birmingham Unitary Development Plan (2005) (UDP) which will be revoked.
- 3.2 The DMB document has been subject to four public consultation events which have all been previously approved by Cabinet.
 - Stage 1 – Development Management DPD Consultation (Regulation 18) (June 2015) Consultation period 7 September - 19 October 2015 (6 weeks)
 - Stage 2 - Preferred Options Document Consultation (Regulation 18) (January 2019) Consultation period 4 February and 29 March 2019 (8 weeks)
 - Stage 3 – Publication DMB Document (Regulation 19) (October 2019) Consultation period 9 January – 21 February 2020 (6 weeks)
 - Stage 4 – Proposed Main Modifications to the DMB document following Examination Hearings (Regulation 22) (March 2021) Consultation period 24 March – 5 May 2021 (6 weeks)
- 3.3 Following Stage 3 (Publication), the DMB was published and submitted to the Ministry for Housing, Communities and Local Government (MHCLG) in July 2020 for examination by the Planning Inspectorate (PINS). A Planning Inspector (Kelly

Ford) was appointed to carry out the Examination in Public of the DMB. As part of the Examination, public hearings took place between the 10th and 12th November 2020.

- 3.4 At the end of the hearings, the Inspector agreed a set of 12 main modifications with council officers which were deemed to be required to make the document sound and compliant. As set out in paragraph 3.2 above (Stage 4), these modifications were then approved by Cabinet and subject to consultation earlier this year. Primarily, the modifications added additional text to the policies and/or the supporting text to clarify and assist in the application of the policies. The thrust of the policies themselves remained the same.
- 3.5 Following consultation on the proposed main modifications, 16 individual representations were received and forwarded to the Planning Inspector for her consideration. The Inspector issued her final report on 30 September 2021 which was published soon after receipt in line with Regulation 25 of the Town and Country (Local Planning) (England) Regulations 2012. The report is attached as Appendix 1 and is available on the Council's website. In addition, those who responded at the Regulation 19 consultation have been notified of the publication of the report in line with Regulation 35. The report concludes that with the recommended main modifications (Appendix 2) being incorporated into the DMB, it satisfies the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004 and meets the tests of 'soundness' as set out in the National Planning Policy Framework 2012.
- 3.6 In summary the key effects of the Inspector's main modifications are as follows:
- MM1- DM1 Air quality – clarification of terms 'unacceptable deterioration' and 'unacceptable levels' to improve effectiveness of the policy.
- MM2 – DM2 Amenity – cross reference to other relevant policy and definition of what 'in the vicinity' means in relation to point h. of the policy which is concerned with the individual and cumulative impacts of development proposals in the immediate area.
- MM3 – DM3 Contaminated land – consistency with the NPPF with regards to the mitigation of risk where proposals for new development are to be located on land which is known to be or potentially contaminated or unstable.
- MM4 – DM4 Landscaping and trees – additional wording to improve the effectiveness of the policy and to clarify that the provision of new trees will be expected in appropriate locations within the multi-functional green infrastructure network. Additional wording in relation to Ancient Woodland or Ancient/ Veteran trees to ensure consistency with the NPPF. Clarity on the definition of quality trees in reference to the British Standard for Trees BS5837. Reference to category A, B and C trees in relation to replacement provision.
- MM5 – DM6 Noise and vibration - clarification that the criteria of the policy apply only where it is relevant. Changes to the supporting text to clarify that noise assessments will be based on an understanding of the existing and predicted levels of environmental noise at both the development site and nearby receptors.

MM6 – DM8 Places of worship – clarification that the preferred location for such uses will be the network of centres, as defined in Policy TP21 of the BDP and outside of this where identified criteria are met.

MM7 – DM9 Day nurseries and early years provision - clarification that the preferred location for such uses will be the network of centres, as defined in Policy TP21 of the BDP and outside of this where identified criteria are met.

MM8 – DM10 Standards for residential development – clarification on when the policy applies and makes clear the status of the Places for Living SPD.

MM9 – DM13 Self and Custom Build Housing – defines larger sites and explains that affordable self and custom build should not be substituted for social rented and affordable rented housing where it is needed.

MM10 - DM14 Transport Access and Safety - additional supporting text to clarify where details of the future transport improvements referred to in part 6e of the policy can be found.

MM11 - DM15 Parking and Servicing – deletion of reference to the Parking SPD within part 1 of the policy and additional wording in the supporting text to clarify the status of the SPD as guidance.

MM12 – Monitoring framework – amendments to identify appropriate targets and trigger to enable effective monitoring.

- 3.7 Where the Inspector's report recommends that main modifications are needed, the Council must incorporate the recommended main modifications if it wishes to adopt the DMB. The report is not binding on the Council, but the Council may not adopt an unsound plan.
- 3.8 Adoption of the DMB provides the city with a comprehensive Local Plan framework. The DMB will be given full weight in determining planning applications and appeals decisions.
- 3.9 During the preparation of the Local Plan Review the Council is required by law (Planning and Compulsory Purchase Act 2004 and Environmental Assessment of Plans and Programmes Regulations ["the SEA Regulations"]) to carry out a Sustainability Appraisal (SA) and a Strategic Environmental Assessment (SEA) of the plan as it developed. This legal requirement is an important element of testing the "soundness" of local plans that is required by National Planning Policy Framework 2012 paragraph 182. Both the SA and SEA requirements were met through a single integrated process (referred to as SA), the method and findings of which were described in numerous SA reports published alongside the different versions of the DMB during its development.
- 3.10 The SA (incorporating SEA) of the DMB commenced following the publication of the SA Scoping Report in December 2014 which was updated in May 2018. Iterative stages of the SA were then published by the Council: SA of Preferred Options (January 2019); SA of Publication Document (October 2019); and SA Addendum (May 2020). There are no implications on the SA of the main modifications. A SA

Post Adoption Statement (Appendix 8) has been prepared ready for publication upon adoption of the DMB.

- 3.11 The adoption of the DMB means that the document now supersedes what remains of the Birmingham Unitary Development Plan (UDP) (Chapter 8). The UDP was originally adopted in full in 2005 but the majority of the document was revoked in 2017 when the Birmingham Development Plan was adopted, apart from the development control policies set out as Chapter 8 and attached as Appendix 4. The DMB will also supersede a number of outdated Supplementary Planning Documents and Guidance. Authority is therefore also sought to revoke and withdraw this remainder of the UDP as a result of the adoption of the DMB.

4 Options Considered and Recommended Proposal

- 4.1 **Option 1- Do Nothing:** Not adopting the DMB would delay having up to date Development Management policies in place to help determine planning applications and appeals. The option of not adopting the DMB is not recommended. The DMB has been found sound, subject to the recommended modifications. If the DMB is not adopted there is uncertainty over the planning framework for the city. In turn this will assist in facilitating poor or inappropriate development.
- 4.2 **Option 2 – Adopt the DMB Without Accepting the Recommendations Set Out by the Planning Inspector or the Proposed Main Modifications Set Out in the Report:** This approach would risk the DMB being challenged as ‘unsound’ and not legally compliant and would risk the delay of having an up to date set of policies to help determine planning applications.
- 4.3 **Option 3 – Seek Approval to Adopt the DMB and Revoke and Withdraw the Remaining Birmingham Unitary Development Plan (UDP) Policies and List of out-dated SPD/Gs.** Based on the evidence heard during the examination hearings and the subsequent consultation on the proposed main modifications, this is considered the most appropriate way forward. This is necessary to enable the City Council to adopt the DMB and ensure that sound and legally compliant development management policies are in place to help determine planning applications and appeals. Adoption of the DMB provides the city with a comprehensive Local Plan framework. The DMB will then be given full weight in determining applications and appeal decisions. The recommended proposal is to proceed with the adoption of the DMB.

5 Consultation

- 5.1 The DMB itself has been subject to public consultation on three occasions followed by a further consultation earlier this year on the proposed main modifications which had been agreed with the Planning Inspector. All consultations are detailed in paragraph 3.1 above and have been carried out in accordance with the Council’s adopted Statement of Community Involvement, under the provisions of the Planning and Compulsory Purchase Act 2004, and the revised procedures required by the Town and Country Planning (Local Planning) (England) Regulations 2012.

- 5.2 Representations in support of the proposed main modifications were received on behalf of National Grid, Canals and Rivers Trust, Historic England and Natural England. Representations were also received on behalf of Bloor Homes and the Langley Consortium which raised objections to some of the proposed modifications relating to issues they had previously raised at the examination hearings in November 2020. As set out in paragraph 3.4 above, all responses were forwarded to the Planning Inspector for her consideration in accordance with the provisions of Regulation 25 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

6 Risk Management

- 6.1 The main risk associated with failure to adopt the DMB document is the absence of up to date policies to guide development management decisions. The programme and timetable for adoption of the DMB has allowed for flexibility to account for any potential issues. The previous consultation on the Main Modifications held earlier this year (March - May 2021) was one such issue where flexibility in the timetable and process enabled it to be carried out without undue risk to the overall programme.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The DMB is consistent with the national and local planning policies, the Council Plan 2018-2022 (as updated in 2019) and in particular the outcome; 'Birmingham is an Entrepreneurial City to learn, work and invest in', by providing up to date policies against which planning applications for development will be assessed.

7.2 Legal Implications

- 7.2.1 The preparation of the DMB is being carried out in accordance with the Planning and Compulsory Purchase Act 2004 and its adoption is prescribed under Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

7.3 Financial Implications

- 7.3.1 There are no direct financial implications from adopting the DMB. Preparation of the DMB and associated evidence, including all consultation stages and the Examination in Public, have been carried out using existing Inclusive Growth Directorate (Planning and Development) staff resources and specialist external consultants to prepare specific evidence in its support. The cost of preparing the documents is funded from existing approved Inclusive Growth revenue budgets.

7.4 Procurement Implications (if required)

7.4.1 No implications.

7.5 Human Resources Implications (if required)

7.5.1 No implications

7.6 Public Sector Equality Duty

7.6.1 The DMB has been prepared in line with Section 149 of the Equality Act 2010 in ensuring that public bodies, in the exercise of their functions, have due regard to and consider the needs of all individuals in shaping policy. Preparation of the DMB document includes the carrying out of an integrated Sustainability Appraisal at each formal stage which ensures positive social, economic and environmental impacts. An Equality Analysis (EA) has also been carried out during each stage and has been updated once more for its adoption and attached as Appendix 10.

8 Appendices

- Appendix 1 – Report of the Planning Inspectorate for the ‘Development Management in Birmingham’ Development Plan Document
- Appendix 2 - Main modifications
- Appendix 3 – Additional (minor) modifications
- Appendix 4 – Saved policies of the Birmingham Unitary Development Plan 2005 (Chapter 8) to be superseded
- Appendix 5 – Supplementary Planning Guidance to be superseded through the adoption of the Development Management in Birmingham Development Plan Document
- Appendix 6 – The Development Management in Birmingham Development Plan Document, including the main modifications and additional (minor) modifications
- Appendix 7 - Sustainability Appraisal of the Development Management in Birmingham Development Plan Document and Addendum
- Appendix 8 - Sustainability Appraisal of the Development Management in Birmingham’ Development Plan Document Post Adoption Statement
- Appendix 9 - Development Management in Birmingham Development Plan Document Adoption Statement
- Appendix 10 – Equalities Analysis of the final version of the ‘Development Management in Birmingham’ Development Plan Document

9 Background Documents

- Cabinet Report 27th July 2015 - Public Consultation on the Development Management Development Plan Document (Issues and Options)
- Cabinet Report 22nd January 2019 - Public Consultation on the 'Development Management in Birmingham' Development Plan Document. (Preferred Options).
- Cabinet Report 29th October 2019 - Public consultation on the Publication version of the 'Development Management in Birmingham' Development Plan Document
- Cabinet Report 23rd June 2020 – Submission of the 'Development Management in Birmingham' Development Plan Document
- City Council Report 14th July 2020 - Submission of the 'Development Management in Birmingham' Development Plan Document
- Cabinet Report 16th March 2021 – Consultation on Main Modifications to the 'Development Management in Birmingham' Development Plan Document