Report to the Council of the London Borough of Hackney

by Simon Berkeley BA MA MRTPi

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 11 August 2015

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO THE HACKNEY

DEVELOPMENT MANAGEMENT LOCAL PLAN

Document submitted for examination on 9 December 2013

Examination hearings held on 24 and 25 September 2014

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### Abbreviations Used in this Report

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<thead>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AA</td>
<td>Appropriate Assessment</td>
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<td>CAZ</td>
<td>Central Activities Zone</td>
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<td>CfSH</td>
<td>Code for Sustainable Homes</td>
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Non-Technical Summary

This report concludes that the Hackney Development Management Local Plan provides an appropriate basis for the planning of the Borough providing a number of modifications are made to the plan. The Council has specifically requested that I recommend any modifications necessary to enable the plan to be adopted.

Most of the modifications to address this were proposed by the Council. Where necessary I have amended detailed wording and/or added consequential modifications where necessary and I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised broadly as follows:

- Clarifying policies, their intentions and their operation;
- Defining terms used in policies and supporting paragraphs;
- Amending policies to better reflect national policy and the London Plan;
- Altering policies to be more specific where necessary;
- Expanding the scope of policies to ensure effectiveness;
- Removing uncertain or ineffective terminology;
- Satisfactorily reflecting statutory limitations and duties;
- Introducing flexibility to allow the effective operation of policies;
- Introducing a ‘presumption in favour of refurbishment’;
- Ensuring that student housing is affordable;
- Ensuring that the loss of family housing and good quality HMOs is effectively resisted;
- Avoiding demands to applicants for unnecessary information;
- Treating apart-hotels and hotels equally;
- Doing more to protect and encourage allotments and food growing projects;
- Recognising geo-diversity; and
- Not giving development plan status to other guidance, publications and standards.
Introduction

1. This report contains my assessment of the Hackney Development Management Local Plan (the DMLP/the plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the plan’s preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the plan is sound and whether it is compliant with the legal requirements. Paragraph 182 of the National Planning Policy Framework (the Framework) makes clear that to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.

2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan dated July 2013, which is the same as the document published for consultation between 8 July and 15 September 2013.

3. My report deals with the main modifications that are needed to make the plan sound and legally compliant and they are identified in bold in the report (MM). In accordance with section 20(7C) of the 2004 Act the Council requested that I should make any modifications needed to rectify matters that make the plan unsound/not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.

4. The Council submitted a schedule of modifications alongside the submission draft plan. Further modifications were put forward by the Council both during and after the hearings. A public consultation on a comprehensive schedule of the modifications advanced by the Council, along with the associated Sustainability Appraisal (SA), was held for a little over eight weeks from 24 February to 24 April 2015. Initially, this consultation had been scheduled for a six week period. It was subsequently extended to allow for comments about the effect on the plan of the Ministerial Statement by the Secretary of State published on 25 March 2015.

5. As a consequence of the Ministerial Statement, the Council suggested some further revisions, although no further SA has been undertaken. However, for the reasons given in this report, I am of the firm view that these modifications are necessary for soundness and that further SA work is not necessary. I am also satisfied that although these changes resulting from the Ministerial Statement have not been the subject of consultation, no party would be prejudiced by them.

6. I have taken account of all the responses from every relevant consultation in coming to my conclusions in this report. Indeed, some have persuaded me to either reject the revision suggested by the Council or to amend detailed wording. None of the changes I have made to the modifications undermines the participatory processes and SA that has been undertaken.

7. A significant number of other changes have also been put forward by the Council. However, these comprise minor or consequential revisions and factual updates. Whilst generally helpful and to be welcomed, their inclusion in the plan is not essential for soundness. I have generally therefore not
referred to them in this report or the Appendix, although for reasons of clarity I have made some exceptions to this approach.

Assessment of Duty to Co-operate

8. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A of the 2004 Act in relation to the plan’s preparation. The Council considers that the plan relates to a strategic matter for the purpose of the Act, such that the Duty to Co-operate is engaged. I agree.

9. The Council has provided evidence about the ways in which it has engaged with the prescribed bodies including the Mayor of London, Transport for London and neighbouring Boroughs. This is set out in the Duty to Co-operate report, supplemented by the Consultation Report. Furthermore, no strategic issues in relation to the development management policies have been raised by these organisations and none of them have made objections on the basis of a failure to co-operate. Overall, I am satisfied that the Council’s engagement with the prescribed bodies has been adequately constructive, active and ongoing and that the duty has therefore been met.

Assessment of Soundness

Main Issues

10. Taking account of all the representations, written evidence and discussions that took place at the examination hearings I have identified eight main issues upon which the soundness of the plan depends.

Issue 1 – Whether the plan has been positively prepared and based on a sound process of sustainability appraisal

Engagement and positive preparation

11. The Council’s Consultation Report sets out details about the engagement processes that have been undertaken. It is clear to me that the statutory requirements have been met. That is to say, the Council has engaged with relevant bodies and the public at the prescribed stages and has done so in line with its Statement of Community Involvement (SCI). Indeed, in certain ways the Council’s SCI commitments have been exceeded, particularly in relation to the length of some formal consultation periods.

12. A variety of engagement techniques have been used. The Council has placed leaflets in local libraries informing people about the plan. It has operated a ‘LDF Hotline’ whereby people were able to speak directly to a relevant planning officer on the telephone. Stalls have been erected at various locations around the borough at certain points where people were able to talk directly with planning officers on a one-to-one basis about the plan, the issues they consider most important, and to make comments. Workshops have been held with a range of organisations. All of this is positive.

13. I note the criticisms about the Council’s engagement. It may be that more could have been made of some of the efforts. For example, it is possible that more of a ‘planning for real’ approach could have been taken in relation to the
stalls, and perhaps with better record keeping people’s comments and ideas could have been more transparently handled.

14. But more could always be done. Councils can only go so far and one must be realistic. On the evidence, I am satisfied that the Council has complied with the SCI and has done enough. In the context of realistic expectation, its engagement has been sufficient to ensure that the plan can be fairly and reasonably described as positively prepared.

*Sustainability appraisal*

15. SA has been undertaken at various appropriate points in the plan’s formulation, including during the examination. From the original SA report, a number of updates have been produced and consulted on alongside the emerging plan. The SA methodology is based on the testing of policies against 20 sustainability objectives, each with its own list of decision making criteria. For each objective, the key ‘borough sensitivities’ are noted, ensuring that they are taken into account through the process. The assessment considers the policies against the objectives and the decision making criteria using a scoring system of the type commonly used.

16. In my view, the SA objectives cover a wide spectrum and satisfactorily reflect the economic, social and environmental dimensions of sustainable development. In short, they are adequate to ensure that the policies have been suitably tested.

17. A Habitats Regulations Assessment (HRA) report has been produced. This undertakes a screening assessment of the plan’s policies in relation to European Sites. While there are none within Hackney, the Lee Valley Special Protection Area and Ramsar site is adjacent to the borough while the Epping Forest, Richmond Park and Wimbledon Common Special Areas of Conservation lie further afield. It concludes that with the mitigation measures included in the Core Strategy, the plan is unlikely to have any significant effects on the relevant European Sites identified, either alone or in combination with other plans or projects. As such, it concludes that an Appropriate Assessment is not necessary. Natural England has confirmed that it agrees with this conclusion.

*Conclusion on Issue 1*

18. Considering the above, I conclude that the plan has been positively prepared and based on a sound process of sustainability appraisal.

**Issue 2 – Whether the policies for delivering sustainable growth are justified, effective and consistent with national policy**

19. Policy DM1 relates to design. It sets out a range of criteria and factors for assessing development proposals against. These are not unduly prescriptive. Rather, they provide a suite of principles for judging design quality. All of the criteria are reasonable and founded on widely accepted good design principles.

20. However, it seems to me that there may be a subtle difference between the requirement for development to respect the surroundings and that of responding to and being compatible with them. For example, introducing a taller, brasher building among lower, humbler ones may achieve the latter, but
may not be respectful, possibly deliberately so. **MM1** aims to help the policy’s effectiveness in this regard. It clarifies that the latter relates to the wider context. In my view, providing this contextual frame of reference is appropriate and necessary.

21. Measures which promote health and wellbeing are sought through Policy DM3. Ranging from the provision of facilities to support walking and cycling to preventing pollution and protecting open space, the variety of requirements and controls are all reasonable and justified. However, I agree with those who consider requiring a Health Impact Assessment (HIA) of schemes for 10 houses or for other types of developments of 1,000 square metres or more to be rather onerous. The Council now proposes (**MM2**) to loosen the approach by raising the threshold for an HIA to developments of 100 houses or 10,000 square metres for other uses. In my opinion, this is more proportionate and reasonable.

22. Policy DM3 includes a reference to “unhealthy food”. I consider this issue in detail in relation to Policy DM12. For the reasons set out there, I consider that this phrase should also be removed from Policy DM3. I have recommended a change (**MM3**) accordingly.

23. I am not wholly convinced of the necessity for much of the content of Policy DM4. Compliance with the Community Infrastructure Levy is required through Regulations, and the Council is in any event entitled to seek planning contributions to mitigate site-specific development impacts. In these respects, this policy adds little to the existing development management regime. That being said, that does not render the policy unsound. The clarification that the Council will take into account financial viability when seeking contributions from development projects is helpful, and is a justified stance.

24. Policy DM5 generally aims to protect existing social and community facilities and places of worship, and to support the delivery of new ones. Broadly speaking, this is justified and consistent with national policy. The drafting of the policy, though, is not as precise as it might be. To ensure that this does not compromise its effectiveness, the modifications suggested by the Council are necessary. **MM4** adds clarity about the term ‘community facilities’ and **MM5** explains why public houses are included in the definition. **MM6** clarifies the policy exception in relation to key public services. These include emergency services which are defined more clearly in the glossary (**MM7**). On this point, I consider that allowing the Council scope to make such exceptions is justified. Applying the requirements of the policy could unnecessarily hamper the rationalisation of the estates of key public services, including emergency services. That would be neither acceptable nor in the public interest.

25. I note the point about the reference to ‘major development’ in Policy DM5. The Council has proposed an addition to the glossary defining this. I deal with this under the heading ‘other matters’ below.

**Conclusion on Issue 2**

26. Considering the above, I conclude that, with the main modifications discussed, the policies for delivering sustainable growth are justified, effective and consistent with national policy.
Issue 3 – Whether the policies for a dynamic and creative economy are justified, effective and consistent with national policy

27. To protect the vitality and viability of centres, Policy DM7 directs retail development to designated town centres. It seeks to control new retail or leisure schemes in excess of 200 square metres at edge and out of centre locations. The Council says this threshold was derived from a survey and estimation of existing premises within Hackney. In essence, the policy’s controls are aimed at developments larger than the borough’s average retail and leisure facilities. This is a reasonable approach, and it lends adequate justification for the threshold.

28. The question of whether Policy DM7 should be more permissive of retail development in the Central Activities Zone (CAZ) has been raised. The CAZ is designated through the London Plan, and its strategic priorities and functions are set out in London Plan Policies 2.10 and 2.11. There seems to me no conflict between Policy DM7 and these. The London Plan does not particularly seek larger retail developments in the CAZ.

29. However, I agree with the Council that, to ensure consistency with the Framework, entertainment uses should be covered by Policy DM7 and supporting text. Moreover, to ensure the policy is effective, the sequential test set out in the Framework should be referred to, and the effects of a development on the vitality and viability of centres should be included as a factor for consideration. Modifications MM8, MM9 and MM10 are therefore necessary. These changes introduce the term ‘main town centres uses’. A further alteration, MM11, adds this to the glossary. The definition given is that from the Framework. This is necessary and appropriate.

30. Policy DM8 aims to secure the provision of small and independent shops throughout Hackney. From my visits around the borough, I agree that small, largely independent shops do add significantly to the borough’s distinctiveness and, no doubt, enhance its attractiveness as a place to live and visit. In this context, I support the Council’s effort to ensure this continues.

31. To that end, the policy requires small retail units to be included as part of larger projects, including developments for A Class uses and major residential schemes. A number of thresholds are relied on. The average shop size in Hackney has been used as the basis for defining ‘small’ shops. One thousand square metres of floorspace is used as the threshold for A Class use schemes which should include small premises, and following modification through MM12, which I discuss later, 10 units is the equivalent threshold applied for housing schemes. The definition of ‘major development’ in the Town and Country Planning (Development Management Procedure) (England) Order 2010 has influenced both of these thresholds. Requiring the small units to amount to at least 10% of the floorspace of such schemes is justified on the basis of the Local Plan Viability Assessment (March 2014). In general, these thresholds all seem reasonable and the Council has satisfactorily justified them.

32. Some amendments are needed to Policy DM8, though. The second part of the policy aims to prevent the amalgamation of affordable small shop units that it has secured through legal agreements. While I agree that this is an appropriate course, MM13 is necessary for clarity. The other changes
included by the Council within MM13 are welcomed, though not essential for soundness. For effectiveness, MM12 is required to clearly and satisfactorily define the term ‘major housing scheme’. Other modifications (MM14, MM15 and MM16) to the paragraphs supporting Policy DM8 are also necessary in order to adequately clarify the intention of the policy and how it will operate.

33. The main underlying purpose of Policy DM9 is to ensure that the vitality and viability of the borough’s centres is not eroded by shops being changed to other uses. It seeks to prevent the proportion of units in A1 use falling below certain specified minimum levels, varying in relation to district and local centres and depending on the primary or secondary nature of the frontage. Both the centres and the frontages are defined on the Policies Map and reflect already established, clearly defined areas and frontages. I have been told that the percentages used are based on present circumstances informed by survey work undertaken as part of the 2012/13 annual monitoring report. This is appropriate and justified.

34. Part of the policy refers to ‘standard size shop units’. This is specified through MM17 as 5.5 metres. Again based on survey work, this is a reasonable approach and is necessary for effectiveness. In relation to the major and district town centres changes of use are not permitted in circumstances set out in a list. MM18 is needed to clarify that this applies where any one of the listed situations would occur. This modification also deletes the reference to an ‘over-proliferation’ of non-retail uses. This criterion is rather imprecise. Given that its aim of preventing harm to vitality and viability is directly addressed by another criterion, it is also superfluous.

35. Moreover, adding reference to vitality and viability to the section that deals with local shopping centres will ensure consistency with national policy and amending criterion (iv) as proposed will help with effectiveness. MM19 is therefore necessary.

36. As submitted, Policy DM10 concerns shops outside town centres. This leaves one guessing as to whether it applies in local shopping centres. MM20 and MM21 are needed to clarify that it does not. In addition, in relation to proposals for uses associated with the evening economy, consideration should be given to the effects on the conditions within not only adjacent dwellings but also other, non-residential properties. Consequently, I agree with the Council that the proposed modifications (MM22, MM23 and MM24) to Policy DM11 and its supporting paragraphs are necessary. Adding a cross-reference to Policy DM7, though, is not essential for soundness. That policy would clearly apply in any event.

37. Policies DM9 and DM10 both require that a shop is marketed for a minimum of one year before a change of use is allowed. While not scientifically arrived at, this seems to me to be a reasonable period. It strikes an appropriate balance between ensuring that shopping frontages continue to perform a predominantly retail function, and avoiding vacant units remaining empty and detracting from the vitality and viability of the centre.

38. Policy DM12 relates to hot food takeaways (A5 uses) and secondary schools. The draft originally submitted seeks to prevent A5 uses that sell food ‘considered to be unhealthy’ within 400 metres of secondary schools. It requires applicants to submit information about the nutritional content of food
to be sold and the cooking practices to be used. In addition, it says that conditions will be used to prevent businesses selling unhealthy food operating from the premises.

39. There are arguments both for and against this policy. On the one hand, some may say that it is not for the authorities to attempt to hamper people’s access to certain foods. Many would consider that a healthy, balanced diet can include hot food takeaway meals, now and again at least. Some question whether planning is the appropriate domain for debating the issue and for seeking to assert influence.

40. Moreover, in practical terms, the proposed approach has shortcomings. It relates to just one particular sort of food outlet, whereas less healthy consumables can be purchased in many forms from a wide variety of outlet types. The policy would not prevent the sale of confectionary from newsagents or cakes from bakeries near to secondary schools, for example. In addition, there are already A5 uses close to some schools, a point the policy does not, and cannot, address. Added to this, it is quite possible that those pupils intent on doing so will purchase less healthy food on their way to or home from school, or at some other time outside the school day.

41. On the other hand, though, childhood obesity is a national issue, and is a factor contributing to increased risk of cardiovascular disease. The purpose of this policy is to help tackle this problem by making it more difficult for secondary school pupils to access hot food takeaways during the school day. This is a commendable aim.

42. The Framework is clear that planning has a social role. It says that planning should reflect the community’s needs and support its health, social and cultural wellbeing. Policy DM12 is consistent with this.

43. In support of its position, the Council points to NICE Public Health Guidance 25: Prevention of Cardiovascular Disease (National Institute for Health and Care Excellence, 2010). Recommendation 11 encourages planning authorities to restrict planning permission for takeaways and other food retail outlets in specific areas, including within walking distance of schools. Indeed, as the Council points out, at least one other London authority’s adopted Local Plan includes a policy of this sort.

44. Overall, the approach proposed through Policy DM12, notwithstanding the shortcomings, is a step in a positive direction. Though an imperfect measure, the fact that it offers some response to a significant national problem justifies it. In my view, it should be supported.

45. Having said that, the policy’s attempt to distinguish between hot food takeaways selling “food considered to be unhealthy” and others is not sound. Cooking practices and the nutritional content of food being sold are not matters that can be readily controlled through planning conditions. Nor should they be. The point here is to make it more difficult for schoolchildren to access hot foods of less than ideal nutritional value, not to prevent such food being offered to the public generally. MM25 is therefore needed, and MM26 and MM27 will provide some necessary clarification.

46. Policy DM14 seeks generally to retain land in employment use. For schemes
involving the redevelopment of employment land or floorspace, it requires that the maximum amount of economically feasible employment floorspace is (re)provided. I note the arguments to the effect that this is onerous, and that it should be enough for redevelopment schemes to bring about an increase in employment floorspace. This point is also put in relation to Policy DM17 which relates to Priority Employment Areas (PEAs).

47. However, in my view, the Council’s position is robust. On the Council’s evidence, business growth in Hackney is strong and the demand for floorspace is high, but supply is relatively short. The PEAs represent only 6% of the borough. Perhaps unsurprisingly, rents for business space are consequently high. These factors amount to a good reason to increase supply.

48. Added to this is the issue of residential values. These are significantly higher than employment land values, and the Council contends that this is putting employment land under pressure for residential use. Indeed, as I understand it, it is at least partly on the strength of this that the Council secured an exemption from the national permitted development rights to change a building’s use from office to housing. Moreover, I am mindful that some of the business areas concerned are of national, if not international, significance. Little argument has been made to dispute these points.

49. Overall, in the context of these circumstances, I consider it appropriate to require of redevelopment schemes the most employment floorspace that is financially viable. I see no particular reason why the requirements of Policies DM14 and DM17 should be diluted. There can be few places in the country with better justification for this approach. On this basis, though quite stringent, the requirements in relation to marketing evidence to justify any loss of employment land are also justified.

50. It is in my view wholly appropriate that housing should be allowed but should be secondary to employment. Schemes should be ’employment-led’, as Policy DM17 puts it. This is necessary for consistency with Core Strategy Policy 17. While I acknowledge the Framework’s focus on housing delivery, and the new London Plan housing targets, this is not a question of somehow prioritising economic development over housing. Hackney must meet the needs for both. It is just a question of where, and the PEAs are, as the name suggests, the priority area for employment uses rather than for new housing.

51. Two modifications are necessary to Policy DM14. MM28 clarifies which part of Appendix 4 is being referred to in the policy. Deleting the last paragraph of the policy as proposed by MM29 is also necessary. Requiring the creation of employment and apprenticeship positions for Hackney residents would not meet the statutory limitations on the use of planning obligations. In addition, a change is also required to Policy DM17 (MM30) to clarify that the D2 and sui generis uses referred to as possibly being acceptable are those considered to be alternative employment generating uses.

52. Paragraphs 4.10.10 and 4.11.2 relate to schemes for town centre uses. Requiring such proposals to be supported by a retail impact assessment is, therefore, not justified. The deletion of the word ‘retail’, as proposed by MM31 and MM32, is necessary for effectiveness and for consistency with national policy.
53. Through Policy DM16, 10% of new floorspace in major commercial developments should be affordable workspace. **MM33** is necessary to clarify that this applies to schemes of more than 1,000 square metres. This threshold reflects the London Plan, and is appropriate.

54. As originally submitted, this policy requires confirmation that the workspace provider is willing to manage the 'shell and core' to an agreed specification, and includes other details. It secures the workspace as affordable for ten years, and sets a sliding scale of rents compared to market rent value over the period. However, through **MM33** and **MM34**, the Council proposes to modify this, deleting much of the detail and leaving matters for agreement on a case by case basis.

55. I note the changes sought concerning a separate category of affordable workspace for non-profit/charitable organisations, at 50% market rent. However, the proposed modifications do not rule out such terms for charities or, indeed, any other occupier of the workspace. Where a registered workspace provider is involved, the commercial terms are subject to agreement. They could be even better than 50% of market rent. Where the organisation concerned chooses to not involve a registered workspace provider, **MM34** is quite clear that the rent level should be at least 20% less than comparable local market rents. The point here is that the Council’s approach is adequately flexible and accommodating, and is sound.

56. More fundamental changes are also proposed (**MM33** and **MM35**), removing the ten year period and the sliding scale, such that the affordable workspace will remain as such in perpetuity. This has been taken into account through the Local Plan Viability Assessment. Moreover, and in any case, the requirement to provide the affordable workspace is clearly stated in the policy to be subject to scheme viability. Consequently, given the evidence, these modifications represent the most appropriate option and are justified.

57. As put forward by the Council, **MM33** includes the deletion of text from Policy DM16 allowing financial contributions to provide the affordable workspace off-site where on site provision is not possible. I appreciate that on-site provision is the Council’s strong preference and I agree that should be the starting point. But where this is simply not possible then I consider that financial contributions should be allowed. If they are not, when considering an application, it seems the choice for the Council would be to reject a scheme that might otherwise be acceptable, or to allow it without any contribution to affordable workspace at all. The original wording is more appropriate, in my view, and its deletion is not necessary for soundness.

**Conclusion on Issue 3**

58. Considering the above, I conclude that, with the main modifications discussed, the policies for a dynamic and creative economy are justified, effective and consistent with national policy.

**Issue 4 – Whether the policies for providing better homes are justified, effective and consistent with national policy**

59. Policies DM19 and DM20 set out a general approach of presuming in favour of new housing development and resisting the loss of residential floorspace save
in certain circumstances. This reflects the thrust of the Framework and the situations where the loss of dwellings is allowed are all appropriate. This applies to all homes, and therefore covers social rented homes just as much as any other type. It is adequately effective in this respect.

60. The Council has proposed to add a ‘presumption in favour of refurbishment’ to Policy DM20. The change proposed is to require applications for redevelopments to justify why refurbishment is not preferred, and to include information about social and environmental costs, and concerning financial viability. However, no clear or convincing justification is given for this. More fundamentally, the system of town and country planning requires that applications for development be decided on the merits of what is proposed, not on the basis of whether a different scheme would be somehow better or more desirable. The proposal in every planning application is a matter for the applicant to decide, to be judged on its acceptability in its own right. The proposed modification would run counter to this basic principle and as such would render Policy DM20 unsound. I therefore do not support it.

61. I agree with the Council that changing dwellings to community uses should not be supported where there would be negative impacts on the character and function of the area. MM36 and MM37 are therefore necessary. Furthermore, MM38 is required to clarify that Policy DM20 resists the net loss of family dwellings. Family sized units may be redeveloped so long as replacement family sized dwellings are provided as part of the scheme.

62. Policy 20 of the Core Strategy requires affordable housing on all developments of ten residential units or more. Policy DM21 reiterates this, and adds a threshold of 1,000 square metres. To ensure that sites which could deliver this level of development do so, to ensure the efficient use of land, MM39 is needed. The Council’s Affordable Housing Viability Study lends support for the ten unit threshold, and it is clear from the supporting text that it is subject to viability considerations. Overall, it is adequately justified.

63. During the examination, the Government altered national policy and the national Planning Practice Guidance to prevent contributions being sought from developments of ten units or less and which have a maximum floorspace of no more than 1,000 square metres. However, in the light of the judgement in West Berkshire DC and Reading BC v DCLG [2015] EWHC 2222 (Admin), no changes to Policy DM21 are necessary in this respect.

64. I agree with the Council that paragraph 5.3.14, which supports Policy DM21, should be altered (MM41). It is necessary for effectiveness to be clear that the mix of social and affordable rent accommodation will be determined on a case by case basis, taking account of the existing tenure mix and local factors. Clarifying that the term ‘affordable housing’ includes social rent and affordable rent accommodation (MM42) is also appropriate.

65. All housing schemes are required by Policy DM22 to provide a mix of dwellings for each tenure type in accordance with the preferred mix specified. This has been arrived at drawing on evidence from the 2009 Housing Needs Assessment, the 2011 Housing Needs Assessment Update, the Affordable Housing Viability Study 2010 and its 2011 Update. These are appropriate sources. On the absence of any persuasive evidence to the contrary, I consider the mix specified to be appropriate. Moreover, the policy does allow
departure from the preferred mix, and is adequately flexible.

66. Conversions from houses to flats are permitted by Policy DM23 so long as, among other things, the original floorspace of the house is of no less than 120 square metres. This underlying point here is that the policy does not support the conversion of smaller family homes, for which there is a need in Hackney. The Council’s argument, as I understand it, is that 120 square metres is a generally accepted size for a smaller family dwelling. Though not an especially scientific approach, I am satisfied that this is adequate justification for this threshold. Added to this, on the basis of the Council’s aforementioned evidence of housing needs, requiring conversion schemes to provide a minimum of one family unit of three or more bedrooms is justified.

67. Policy DM24 relates to student housing. I accept that not relying on PTAL ratings to influence the location of student housing enables flexibility within Policy DM24, and is appropriate. I also agree that student housing should be prevented on employment land and on sites allocated for housing or for other uses. However, I see no justification for resisting student housing on other sites suitable for general housing. Land unsuitable for general housing is most likely to also be unsuitable for occupation by students. MM43 is therefore necessary.

68. There is no good reason to require that student housing schemes should serve academic institutions in Hackney, and I doubt the effectiveness of the phrase “within reasonable travelling time of the borough”. I do, however, support the Council’s approach of, through legal agreement, linking student housing schemes to the specific academic institutions they are intended to serve. This is an appropriate starting point for securing the affordability of the accommodation and will help to lend confidence in that respect. However, it would in my view be unreasonable to demand as a matter of policy that an academic institution must be party to such a legal undertaking. A change is necessary to deal with the situation where no specific academic institution is so directly involved. In such circumstances, I agree with the Council that the housing provider should be required to ensure that the accommodation is affordable for students. Modifications MM44 and MM45 provide appropriate remedy, and directly reflect paragraph 5.53B of the London Plan.

69. Policies DM25 and DM26 support, respectively, new houses in multiple occupation (HMOs) and shared and supported housing, each subject to certain criteria. As necessarily clarified by MM46, one is that if the HMO is being brought about by a conversion from a dwelling, it should have a floor area of more than 120 square metres. As with Policy DM23, the aim here is to prevent the loss of smaller family homes. For the reasons already given, this is justified.

70. I agree with the Council that the criteria preventing an ‘over-concentration’ of HMOs and shared and supported housing should be deleted (MM47 and MM48). Couched in the terms given, I doubt the effectiveness of these aspects of the two policies. Moreover, I have been given no compelling evidence to suggest that either HMOs or shared and supported housing cause amenity problems or harm an area’s character or function. Such outcomes do not seem inevitable. In any event, Policy DM2 clearly deals with amenity issues.
71. In addition, I support the Council’s view that the loss of good quality HMOs should be resisted. This should be clearly embedded in the policy. For effectiveness, MM49 is therefore needed.

72. Furthermore, I see no reason why the details of any intended occupiers should be provided to the Council for planning purposes. To make such a demand is unreasonable. Requiring the details of the length of tenancy agreements is more appropriate, and modifications MM50 and MM51 are therefore necessary.

73. While I note the Council’s suggested deletion of the reference to ‘a good standard of accommodation’ in criterion (vi) of Policy DM25 and criterion (v) of Policy DM26, this is not necessary for soundness. What constitutes a ‘good standard’ of accommodation is somewhat subjective. But the application of many planning policies demands that judgements be made. This is a reasonable approach to take.

74. Modification MM52 is needed to clarify that Policy DM26 applies not only to new shared and supported housing schemes but also to the expansion of existing facilities. In addition, as with HMOs, I agree that details of the management arrangements for shared and supported housing should be submitted for the Council’s consideration. This can have an effect on the impacts of the development. As such, MM53 is also necessary.

75. The question of whether Policy DM26 does enough in terms of accommodation for older people has been raised. The Council points to the London Plan and the support it gives for older people, particularly through Policy 3.8. In this context, I consider that the development plan in Hackney caters satisfactorily for its older residents.

76. Policy DM27 supports proposals for hotels. It sets out the key areas appropriate for large scale hotels. MM54 clarifies that large hotels are those of 50 beds and more. But the policy appears to indicate that small scale hotels are only appropriate elsewhere. There is no justification for resisting them in the key areas mentioned. However, MM55 and MM56 rectify this satisfactorily.

77. The Council prefers conventional hotels to apart-hotels. As submitted, Policy DM27 requires proposals for apart-hotels to demonstrate why a conventional hotel is not appropriate, along with other requirements not set for conventional hotels. That is not justified. I understand the Council’s preference for conventional hotels to be because they create more jobs. Even if that is so, I have been given no compelling evidence to demonstrate it. Nor have I been given any evidence to show how apart-hotels differ from conventional hotels in terms of their effects on infrastructure and housing delivery. Modifications MM57 and MM58 address this. Lending particular support to conventional hotels without putting additional hurdles in the way of apart-hotel schemes is an appropriate solution.

78. As I have said in relation to Policy DM14, and for the reasons given, requiring the creation of employment and apprenticeship positions for Hackney residents would not meet the statutory limitations on the use of planning obligations. This should therefore be deleted from Policy DM27 as proposed (MM59).
79. Policy DM19 requires a minimum of 10% of all new homes to be wheelchair accessible or easily adaptable. Policy DM23 requires dwelling and room sizes to meet the minimum standards in London Plan Policy 3.5. Policy DM24 requires that 10% of student accommodation units are wheelchair accessible or easily adaptable, though I note the Council’s proposal to alter this to at least one in twenty bedrooms. The Council also proposes to add to Policy DM27 a requirement that at least 10% of hotel bedrooms are wheelchair accessible.

80. The Secretary of State’s Ministerial Statement of 25 March 2015 is clear that Local Plans should not set any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. The streamlined system introduced through the Ministerial Statement instead rests on the mandatory Building Regulations. Optional, nationally set Building Regulations can be applied where there is a Local Plan policy giving effect to them. Any such policy must address a clearly evidenced need and have considered the impact on viability. No case has been made for the application of the optional Building Regulations standards.

81. Consequently, in my view, Policies DM19, DM23 and DM24 are not consistent with the new national policy. They seek to introduce into the Local Plan technical standards of the kind the Ministerial Statement aims to prevent. I acknowledge that Policy DM19 reflects the London Plan requirement and Policy DM23 directly relies on London Plan policy. I understand that Policy DM24 mirrors the Building Regulations. Be that as it may, there is no need to duplicate existing development plan policy or Regulations, and it is not appropriate to do so where more recent national policy takes a different approach. As such, modifications are necessary (MM60, MM61 and MM62) to remove these local technical housing standards from the plan.

82. However, the new national policy does not apply to hotels. The changes proposed in respect of Policy DM27 directly reflect Policy 4.5 of the London Plan, and are in general conformity with it. As such, with modifications MM63 and MM64, Policy DM27 is sound.

Conclusion on Issue 4

83. Considering the above, I conclude that, with the main modifications discussed, the policies for providing better homes are justified, effective and consistent with national policy.

Issue 5 – Whether the ‘cleaner safer greener’ policies are justified, effective and consistent with national policy

84. Policy DM28 relates to managing the historic environment and it covers a wide range of heritage assets. On the whole it is consistent with national policy and is justified. That said, the Council has proposed some necessary amendments. Modification MM65 ensures that the policy more clearly reflects the statutory duties in relation to conservation areas.

85. In conservation areas, Policy DM28 says that alterations and extensions should be confined to the rear or least important facades of buildings. There is no justification for this. More prominently positioned additions than this wording would allow for may well preserve or enhance the character or appearance of
the conservation area, and therefore be acceptable. This is a matter where each case must be considered on its own merits, without any pre-judgement embedded in the starting point of local policy. For these reasons I also consider that ‘normally’ confining such extensions to the rear or least important facades would be an unwarranted policy approach. MM66 is therefore needed for soundness. While I appreciate the concerns raised, it is clear to me that the ability to reject unsatisfactory proposals will remain firmly within the Council’s power. Policies DM28 and DM1 should prove effective instruments – there is no reason why they should not.

86. Paragraph 6.3.3 requires that the materials from demolitions in conservation areas should be salvaged and where possible re-cycled in the new development. Modification MM67 clarifies that salvaging is necessary only when it is possible to do so.

87. The Council has proposed to remove a requirement that any development of listed buildings should not harm the structural integrity or stability of the building or those adjoining it. Even if covered by other legislation, the importance of the issue and emphasising it through planning policy is such that this alteration is not necessary. Indeed, I concur with Historic England that this requirement should be kept in order to help prevent harmful works to heritage assets.

88. As submitted, Policy DM29 prevents advertisements from causing a hazard to pedestrians and road users. However, for consistency with the Regulations, I agree with the Council that this should be expanded to include people using any type of transportation (MM68). I note the Council’s intention to make minor changes in relation to this policy and these are supported. However, the reference to ‘exceptional circumstances’ is not justified. To rectify this, I have added this change to MM68 and recommended deleting that wording accordingly.

89. Developments of 10 dwellings or more and/or of more than 1,000 square metres of commercial floorspace are required by Policy DM31 to provide communal amenity open space. Through MM69 this is defined in the glossary, which is appropriate and helpful for effectiveness. Ten square metres per person should be provided for residential schemes and four square metres per employee for commercial developments. The Council says that the ten square metres requirement is based on the 2005 Open Space Study, and the four square metres reflects the open space provided by the public parks in Shoreditch, which is a centre of employment growth. Some have argued that ten square metres should be applied to both development types.

90. On the one hand, the rationale underpinning these figures is not especially robust. There is no clearly quantified relationship between these requirements and the need for open space. Indeed, as I understand it, the Council does not have a comprehensive, robust and up-to-date open space needs assessment of the kind required by paragraph 73 of the Framework. This is a shortcoming and the Council is open to criticism on this point.

91. On the other hand, though, I am persuaded that the specific figures given in Policy DM31 should be regarded as sound for the time being for three main reasons. Firstly, though far from perfect, the Council’s evidence is the most comprehensive and persuasive that has been produced. I have been
presented with none more compelling. Secondly, these figures, including the development size thresholds, have been taken into account in the Council’s Local Plan Viability Assessment. As such, one can have a reasonable degree of confidence that the policy will not undermine the viability of schemes. Finally, the Council confirmed at the hearing that the present evidential shortfall will be rectified through the imminent review of the Core Strategy. This commitment is crucial to my conclusion here, and following through on it will likely have a bearing on the soundness of the new Core Strategy as it advances through the process.

92. That being said, a number of changes are required to Policy DM31. **MM70** is needed to ensure that food growing opportunities are explored and taken. **MM71** and **MM72** clarify that specialised housing types, such as supported housing or student housing, will be required to provide communal open space, though at a level determined on a case by case basis. This approach need not necessarily mean that specialised housing types have less communal space. It is just that the possibility of differing space requirements renders a ‘case by case’ approach appropriate. To unambiguously explain the policy approach to a range of factors, including the question of when providing the open space off-site may be acceptable, **MM73**, **MM74** and **MM75** are necessary.

93. Policy DM33 supports the provision of new, improved and expanded allotments and local food growing operations on open spaces. However, as submitted, it appears that it only does so on “... existing open spaces within housing estates, and temporary derelict land where short or medium term development is not planned”. That is not the Council’s intention. It is clear that the Council’s support for allotments and food growing is rather more wide ranging. To rectify matters, **MM76** is required for effectiveness. I have altered the Council’s suggested wording as I see no particular reason why housing estates should be specially emphasised above other places as appropriate locations for food growing initiatives.

94. In my view, as submitted, the plan appears to do little to protect existing and encourage new allotments and food growing projects. However, modifications **MM70** and **MM75** have introduced new references in Policy DM31 and its supporting text. **MM77** introduces a reference to food growing facilities in Policy DM32, and **MM78** says that food growing should be considered as part of landscaping schemes. These satisfactorily address the issue and ensure that the plan is effective in this regard.

95. Residential moorings on the borough’s waterways are supported by Policy DM36 so long as certain listed criteria are met. Among these are that the moorings should be off-line from main navigation routes, on the non-towing side of the waterway. However, on the evidence of the Canal & River Trust, the Council accepts that these requirements should be deleted from the policy as schemes which do not comply with them can be acceptable in certain circumstances. I do not dispute this. Consequently, to ensure the policy is justified and effective, it is necessary to delete these requirements and introduce explanatory text as the Council has proposed (**MM79** and **MM80**). While other suggestions from the Canal & River Trust may improve the plan, and the Council may wish to consider them, they do not alter its substance and are not necessary for soundness.
Conclusion on Issue 5

96. Considering the above, I conclude that, with the main modifications discussed, the ‘cleaner safer greener’ policies are justified, effective and consistent with national policy.

Issue 6 – Whether the policies for climate change and environmental sustainability are justified, effective and consistent with national policy

97. Policies DM37, DM38 and DM39 set sustainability standards for major and minor residential development, and other development, respectively. However, the Secretary of State’s Ministerial Statement of 25 March 2015, discussed above, has effect here. It specifically applies to any policy requiring any level of the Code for Sustainable Homes (CfSH) to be achieved by new development. Policies requiring compliance with energy performance standards that exceed the requirements of Building Regulations are allowed, but should not exceed Level 4 of the now withdrawn CfSH.

98. In the light of this, it is clear that changes to the plan are needed. The Council proposes to delete all reference to the CfSH from the policies. As amended, Policy DM37 says that major residential schemes should meet the London Plan carbon dioxide emission standards, being a 40% improvement on Building Regulations until 2016, and zero-carbon (including allowable solutions or off-setting contributions) thereafter. For Policy DM38 the Council proposes that minor residential developments should meet the requirements of Building Regulations. It also proposes to delete from Policy DM39 the reference to tall buildings exceeding minimum standards where possible.

99. To my mind, the revisions proposed by the Council in response to the Ministerial Statement (MM81, MM82 and MM83) are generally appropriate and consistent with the Government’s policy. However, as put forward by the Council, MM81 and MM82 include requirements for residential development to meet BREEAM standards. The former also includes standards regarding carbon dioxide emissions. As explained previously, local standards of this kind are not consistent with the new national policy. These requirements render these two modifications unsound, and so I have not recommended these elements. I have also made consequential changes to MM82, clarifying that all residential development must meet the Building Regulations, not just minor schemes.

100. Overall, the modifications result in policies that are slightly less stringent than those originally proposed. I note that the Council’s Viability Study includes within the contingency the cost of meeting the policies as originally drafted. Consequently, these modifications do not undermine the Council’s viability work. Development that would have been viable with the submitted draft policies will likely now be slightly more so.

101. Where development cannot meet the plan’s requirements for carbon dioxide emissions, Policy DM40 allows for carbon off-setting payments to be made instead. Simply put, the Council will accept a commuted sum and will spend it on an off-set project, such as a community owned renewable project or a district heating network. This is an appropriate measure. In my view, it is one which is capable of meeting the limitations on the use of planning obligations. One issue will be that of the restrictions on pooling contributions.
However, it is for the Council as a responsible public authority to ensure that it meets the statutory requirements through its operation of the off-setting system put in place by the policy. I have been given no particular reason to suppose that it will act other than in accordance with the Regulations.

102. Flooding and flood risk is addressed by Policy DM44. It builds on Core Strategy Policy 31 and sets detailed requirements in relation to run-off, sustainable drainage systems, critical drainage areas and water and sewerage infrastructure. All of this seems to be appropriate and reasonable, and the Environment Agency has raised no objection.

Conclusion on Issue 6

103. Considering the above, I conclude that, with the main modifications discussed, the policies for climate change and environmental sustainability are justified, effective and consistent with national policy.

Issue 7 – Whether the transport policies are justified and effective

104. Paragraph 8.1.5 explains that the plan aims to reduce the need to travel by directing housing and employment growth to town centres and other accessible locations. This is consistent with the Core Strategy and national policy. However, clarifying that this relates to higher density development (MM84) will help the plan’s effectiveness.

105. Between them, Policies DM46 and DM47 require financial contributions from developments towards various aspects of transport and travel. For clarity, I agree that Crossrail and the Mayor’s Community Infrastructure Levy should be added to the list (MM85). Many of these requirements are quite obviously capable of meeting the limitations on the use of planning obligations. I am, however, more doubtful about others. That being said, what may be necessary to make a development acceptable depends on the particular circumstances of each case. Policy DM46 requires the contributions ‘as appropriate’. In any event, it will remain the responsibility of the Council to ensure that the Regulations are adhered to on a case by case basis. Just because an item of infrastructure is included within one of these policies does not necessarily mean that a financial contribution can be sought for it in every case. Meeting the statutory requirements is an on-going duty.

106. Policy DM48 sets out to secure car free and car capped developments. It particularly focuses on areas: with a high PTAL rating; near a wide range of shops and facilities; within a controlled parking zone or area of known parking stress; or where off-street parking would cause conflict with pedestrians and other road users. Such an approach has obvious sustainability advantages and the aim is laudable.

107. However, the operation of the policy as submitted relies on legal agreements under Section 106 of the 1990 Act to prevent people occupying the development from applying for a parking permit. The judgement in Westminster City Council v SSCLG & Mrs Marilyn Acons [2013] EWHC 690 (Admin) highlights the difficulty in formulating such an obligation which would fall within the limited scope of Section 106 and be enforceable.

108. To address any doubt about the effectiveness of Policy DM48, the Council has
proposed modifications. MM86 removes from the policy the reference to Section 106 agreements restricting on-street parking. MM87 deletes the supporting text accordingly. MM88 introduces new text explaining that “the Council will restrict access to on-street permits where necessary to do so”. I understand this to mean that if legal agreements cannot be formulated satisfactorily then the Council will use its powers under other legislation to refuse any application for a parking permit from people occupying car-free or car capped developments. These are all necessary and appropriate.

Conclusion on Issue 7

109. Considering the above, I conclude that, with the main modifications discussed, the transport policies are justified and effective.

Issue 8 – Whether the changes proposed to the Policies Map are justified

110. This plan brings about only limited changes to the Policies Map. It introduces secondary shopping frontages to the district town centres of Hackney Central and Finsbury Park, along with both a primary and secondary shopping frontage in Stoke Newington. This is necessary for the effective operation of Policy DM9. It is an appropriate approach, consistent with national policy.

111. The extents of the frontages shown on the Policies Map generally reflect the present situation. That is the intention. Their demarcation is based on survey work from both the annual monitoring report process and the undertaking of town centre health checks. These are appropriate sources to draw on, and the evidence is adequately up-to-date. From this, and from my visits to the centres, I am satisfied that the frontages proposed are reasonable.

Conclusion on Issue 8

112. I therefore conclude that the changes to the Policies Map are justified.

Other matters

113. Other modifications have been suggested by the Council, largely as a result of representations and discussion at the hearings. While these have not been at the heart of the main issues in the examination I nonetheless regard them as soundness matters and address them here.

114. On a number of occasions throughout the plan, the policies require adherence to other documents such as supplementary planning guidance, other guidance, local authority and other publications and sometimes to ‘best practice’. These documents have not been drawn up as development plan documents and have not undergone the scrutiny of examination. Consequently, demanding adherence to them as a matter of development plan policy and thereby effectively giving them development plan status is not appropriate. Modifications MM61 and MM62, and MM89 to MM101 inclusive, proposed by the Council, are therefore necessary. As the plan should not demand that these documents be complied with, either within the policies or the supporting text, I have accordingly altered the changes advanced by the Council.

115. In relation to MM90 I have altered the change advanced by the Council. Only the reference to the SPG need be deleted. The remainder of the original text
should remain, to ensure that the backdrop and skyline setting of St. Paul’s Cathedral is not negatively affected. While I note the comments from the City of London Corporation, additional wording to protect views of St. Paul’s is not necessary. The plan is adequate in that regard.

116. As submitted, Policy DM34 does not go far enough in relation to geo-diversity. To ensure that when considering development proposals the protection, management and/or enhancement of sites of significant geo-diversity value is taken into account, **MM102** is necessary. It is also appropriate to recognise the geo-diversity value of Springfield Park, as proposed through **MM103**.

117. The term ‘major development’ is relied on in numerous parts of the plan and its policies. For clarity, the modification (**MM104**) adding this to the glossary is necessary. For consistency throughout the plan, this should be development of more than 1,000 square metres or where the site is over one hectare, rather than being 1,000 square metres or more and one hectare or more.

118. Moreover, for completeness, I have also expanded this glossary definition to encompass major residential schemes. Policies DM8 and DM37 rely on the term and Policy DM21 uses the same 10 unit threshold. I have also slightly amended the thresholds where necessary in the policies, so that all refer to more than ten dwellings or units. Consequential changes to the plan are a matter for the Council.

119. I note the Council’s intention to include a definition of Local Green Space in the glossary. But this is not essential to the soundness of Policy DM31 or any other policy.

**Assessment of Legal Compliance**

120. My examination of the compliance of the plan with the legal requirements is summarised in the table below. I conclude that the plan meets them all.

<table>
<thead>
<tr>
<th>LEGAL REQUIREMENTS</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Local Development Scheme (LDS)</td>
<td>The Development Management Local Plan is identified within the approved LDS of November 2014 which sets out an expected adoption date of March 2015. Although the plan’s content is compliant with the LDS, some delays in its progress have occurred. I am satisfied that there is no fundamental conflict with the LDS.</td>
</tr>
<tr>
<td>Statement of Community Involvement (SCI) and relevant Regulations</td>
<td>The SCI was originally adopted in 2006. In January 2014 it was replaced by an updated document. Consultation has been compliant with the requirements within the SCI applicable at the time, including the consultation on the post-submission proposed ‘main modification’ changes (MM).</td>
</tr>
<tr>
<td>Sustainability Appraisal (SA)</td>
<td>SA has been carried out and is adequate.</td>
</tr>
<tr>
<td>Appropriate Assessment (AA)</td>
<td>The Habitats Regulations AA Screening Report (July 2013) sets out why AA is not necessary.</td>
</tr>
</tbody>
</table>
## Overall Conclusion and Recommendation

121. The plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.

122. The Council has requested that I recommend main modifications to make the plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Hackney Development Management Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

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### National Policy

<table>
<thead>
<tr>
<th>National Policy</th>
<th>The Development Management Local Plan complies with national policy except where indicated and modifications are recommended.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The London Plan</td>
<td>The Greater London Authority has confirmed that the plan is in general conformity with the London Plan.</td>
</tr>
<tr>
<td>Sustainable Community Strategy (SCS)</td>
<td>Satisfactory regard has been paid to the SCS.</td>
</tr>
<tr>
<td>Public Sector Equality Duty (PSED)</td>
<td>The Development Management Local Plan complies with the Duty.</td>
</tr>
<tr>
<td>2004 Act (as amended) and 2012 Regulations.</td>
<td>The Development Management Local Plan complies with the Act and the Regulations.</td>
</tr>
</tbody>
</table>

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**Simon Berkeley**

Inspector

This report is accompanied by the Appendix containing the Main Modifications