

15 January 2013

Dear Ms May

Three Rivers Development Management Policies LDD Examination

I shall be writing to you shortly with the issues and questions that I would like to pursue at the forthcoming Hearings but before I do so I would like to set out one or two matters on which I have particular concerns. This may assist you to give them some initial, early consideration and to assess whether you consider any changes should be made to the plan.

My principal concerns relate to Policy DM2, Green Belt (GB). I note that the Core Strategy states that detailed changes to the GB will be made through allocation of land for development in the Site Allocations DPD. This means that any essentially "operational" policy in the Development Management Policies LDD needs careful consideration to ensure that it dovetails satisfactorily with both of the other two plans. On the face of it I am not sure that Policy DM2 in its current form does this. My comments below are referenced to the various sections of the Policy.

Para (a): The final sentence says that where sites are allocated in the Site Allocations LDD "this may represent very special circumstances". Very special circumstances essentially relate to the last stage in the GB reasoning and decision making process as it is applied to proposals for development within the GB; and para. 88 of the NPPF sets out the balance that must then be addressed; "Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

It seems to me that if the Site Allocations LDD is to allocate sites for development, with consequent changes to GB boundaries, this should be on the basis of clear and unequivocal proposals put forward by the Council and tested through the local plan preparation process. A situation in which allocations are apparently made in some provisional way, but it is left to the planning application stage for the Council to assess whether or not very special circumstances exist justifying their release, appears imprecise, ambiguous and potentially unsound. Nor is it clear that an "operational" policy, presumably intended to set out the way in which proposals within the GB will be assessed, has any real remit to deal with the way in which allocated sites might be released in future; that surely is a matter for the plan that makes the allocations.

Because of the particular meaning that attaches to the term "very special circumstances" you may also wish to review its use in the first sentence of the Policy. As noted above, it refers to part of a carefully structured decision making process, a process which has been exhaustively considered by the courts. Whilst para. 4.3 of the supporting text does set out the balance which may lead to a judgement that very special

circumstances exist, to use the term essentially in isolation and in shorthand form in the Policy may be potentially misleading.

The Policy should also avoid any implication that dwellings for agricultural and similar rural workers are not inappropriate in the GB. The Policy cross refers to Appendix 3 which in para. 1 repeats NPPF advice that "buildings for agriculture and forestry are not inappropriate in the GB." However, such "buildings" do not equate to "dwellings". Dwellings are in principle inappropriate though agricultural or similar need may outweigh GB harm (and any other harm) in such a way as to amount to very special circumstances. References to "the concession that the planning system makes for such dwellings" (para. 3) and "new, isolated development in the GB" (para. 15) are ambiguous, the latter because agricultural justification presumably applies equally to countryside locations outside the GB also (though I do not know if there are any such locations in Three Rivers).

Para (b): The plan user might reasonably expect to find some guidance on what would constitute "disproportionate" and "the original building". Also, although landscape character may be an important issue within the GB, GB policy is principally concerned with maintaining openness. "Prominent in the landscape" may have some bearing on openness but loss of that attribute may still be important if not readily seen. It seems to me that this policy strays too readily into matters of design and landscape impact rather than being principally concerned with openness.

Para (c): See (b) above in relation to "materially exceed" and "visual amenity". The derivation of the figure of 110 sq m is not evident.

Para (d): See (b) above in relation to "prominent in the landscape" and "dormer windows".

Para (e): This section gives very limited guidance and the words "unlikely to be supported" imply a tentative approach.

Para (f): See (b) above in relation to criteria (i)-(iii). I would question whether issues such as noise, smell and traffic should feature in a GB policy.

The lack of focus evident in the Policy appears to be further reflected in the Reasoned Justification which cross-refers to a number of CS objectives but not that concerned with GB. Overall I consider that the Policy fails to provide adequate guidance on a matter which, given the extent of the GB in the District and the pressures upon it, is clearly of fundamental local importance.

Phrasing of policies: As a general soundness point I would suggest that the phrasing of some policies is unduly tentative. For example in DM3 the Council "will seek to support" or be "likely to support"; in DM8 it "will seek to support"; and in DM9 it "will seek to refuse". The NPPF certainly refers to local plans as being aspirational and creative and one of the tests of soundness is that they should be positively prepared. However, policy

wording that is not clear as to what will **not** be permitted risks leaving potential holes that less scrupulous applicants may seek to exploit.

Other matters: I would draw your attention to the fact that para. 3 of Policy DM3 does not reflect the "character **or** appearance" formulation of the statutory Conservation Area test and therefore would appear to go beyond that test. Also, para. (f) of the same Policy, applied as written, would only enable permission to be refused for development close to a Conservation Area if it adversely affected both views into **and** out of that Area; "or" might be more appropriate here. Finally, the suggested change to Policy DM3 might usefully include the words "viable **and** **appropriate** uses" as a use might be viable but not in the best long-term interests of a Listed Building (though I accept that that might be implicit in the words "future protection"). These are not soundness points but suggestions for ways in which the plan might be made clearer and, if you felt them appropriate, could be handled as additional modifications, not requiring examination.

Supplementary Planning Documents: I have already raised with you the role of Supplementary Planning Documents (SPD) in relation to the LDD in the light of the more restrictive approach taken by the 2012 Local Plans Regulations. The effect of Regulations 2,5 and 6 is that SPDs can only contain environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land which the local planning authority wish to encourage during any specified period. SPDs thus cannot make statements on the development and use of land, allocate sites for a particular type of development or use, contain development management and site allocation policies to guide the determination of applications for planning permission, or contain policies for an area defined as being one of significant change or special conservation. As the LDD makes extensive references to SPDs the Council should check that their intended content will reflect what the Regulations indicate is permissible. It would also assist the Examination if you could draw up a composite list of the proposed documents with an indication of their intended content and publication date.

Could you please let me have your response, especially on Policy DM2, within a week. If anything I have said is unclear please do not hesitate to contact me through Ian. I would also be grateful if you could post this letter and, in due course your reply, on the Council's examination web page.

Yours sincerely

Robin Brooks