

APPENDIX 1



The Planning
Inspectorate

Report to Three Rivers District Council

by Robin Brooks BA(Hons) MRTPI

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

Date: 29th May 2013

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO THE DEVELOPMENT MANAGEMENT POLICIES LOCAL DEVELOPMENT DOCUMENT

Document submitted for examination on 7 December 2012

Examination hearings held on 12 and 13 March 2013

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Abbreviations Used in this Report

CS	Core Strategy
DCLG	Department for Communities and Local Government
DM CD	Core Document
EB	Evidence Base Document
LDD	Local Development Document
MM	Main Modification
NPPF	National Planning Policy Framework
SPD	Supplementary Planning Document
SuDs	Sustainable drainage systems

Non-Technical Summary

This report concludes that the Three Rivers District Council Development Management Policies Local Development Document (LDD) provides an appropriate basis for the planning of the District over the next 15 years providing a number of modifications are made to it. The Council have specifically requested that I recommend any modifications necessary to enable them to adopt the Plan. All of the modifications were proposed by the Council, and I have recommended their inclusion after full consideration of the representations from other parties upon them.

The modifications can be summarised as:

- better reflecting guidance in the National Planning Policy Framework (NPPF);
- making policies more clearly determinative;
- clarifying the scope and purpose of policies;
- clarifying how policies will be applied and improving their effectiveness; and
- ensuring that the effects of policies can be properly monitored and assessed in order to improve their effectiveness.

Introduction

1. This report contains my assessment of the Three Rivers Development Management Policies LDD¹ in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the LDD'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 it is sound and compliant with the legal requirements.
2. The starting point for the examination is the assumption that the local authority have submitted what they consider to be a sound plan. The basis for my examination is the submitted draft plan (December 2012) which is the same as the document published for consultation in July 2012. The former was accompanied on submission by a schedule of changes proposed to the latter by the Council.
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 or not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The main modifications that go to soundness have been subject to public consultation and I have taken the responses into account in writing my report. The Council received seven letters, six of which are either expressions of support for the main modifications or raise matters of detail that do not bear directly on the soundness of the plan. I deal with the substantive representations under Green Belt (Policy DM2) and Climate Change (Policy DM8). Having sought the opinion of consultants the Council took the view that none of the modifications warranted Sustainability Appraisal (SA); I concur with that assessment.

Assessment of Duty to Co-operate

5. Section s20(5)(c) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) requires that I consider whether the Council have complied with any duty imposed on them by Section 33A of that Act in relation to the preparation of the LDD.
6. Preparation of the LDD was well advanced by the time the Duty to Co-operate came into effect in November 2011; and as the Duty relates principally to strategic matters that cross administrative boundaries it has limited bearing on

¹ The Town and Country Planning (Local Planning) (England) Regulations 2012 (the Regulations) state that the term *Local Plan* covers Local Development Documents (LDD) of various kinds including those, such as this one, that set out development management policies. The Council use the term to describe their portfolio of LDDs as a whole and the National Planning Policy Framework defines it in a similarly collective way. I have therefore referred throughout to this document as the LDD, which will form part of the larger Local Plan.

the operational development control policies of the LDD. Nevertheless, the Consultation Statement² and the Duty to Co-operate Statement³ show in detail how throughout the process the Council have consulted and worked co-operatively with other relevant local planning authorities, as well as with a wide range of other agencies, including those relevant ones listed in the Regulations. On all the evidence I am satisfied that the Council have complied with the Duty to Co-operate imposed by the 2004 Act.

Assessment of Soundness

Preamble

7. At the time the LDD was submitted the Regional Strategy for the East of England (The East of England Plan) was still extant. As the Strategy has since been revoked the Council have put forward a series of additional modifications deleting references to it. References to it are by way of setting a regional context and the LDD does not depend on any of its policies. Nor have any of those making representations on the LDD referred to it

Main Issues

8. The NPPF⁴ advises that plans submitted for examination should be *positively prepared* (to meet objectively assessed development requirements); *justified* (the most appropriate strategy, considered against reasonable alternatives; *effective* (deliverable over its period); and *consistent with national policy* (as set out in the Framework).
9. In that context, and taking account of all the representations, written evidence and the discussions that took place at the examination hearings, I have identified five main issues upon which the soundness of the Plan depends.

Issue 1

The Plan As A Whole

Whether the LDD is a coherent set of policies covering all relevant matters, underpinned by a robust and credible evidence base, and demonstrably the most appropriate strategy, considered against alternatives.

Whether it is consistent with national policy, relates satisfactorily to other existing and proposed plans and policies, takes proper account of the intentions of other agencies, and provides sound planning guidance.

Whether it will help secure high quality, sustainable development over the plan period and whether it is sufficiently flexible to cope with changing circumstances, and capable of being effectively monitored and reviewed.

² DM CD8

³ SD38

⁴ Para. 182

10. The LDD provides operational development control policies intended to support and put into practice the strategic objectives and policies of the Core Strategy (CS) adopted in October 2011. In its turn it will be supplemented by more detailed guidance on a topic basis in Supplementary Planning Documents (SPD) both extant and proposed.
11. Three Rivers District is a mix of housing areas, in small towns, villages and low-density housing estates (many of them of large houses in extensive grounds); attractive open country side and woodland. Green Belt covers some three quarters of the District, and “washes over” a number of smaller settlements, representing an important constraint on development. There is pressure for housing development but principally at the level of small-scale infill development, building in gardens and re-building and extending existing dwellings rather than large-scale and extensive schemes. The housing stock is generally of good quality. There is a high level of commuting to work in neighbouring towns and in London and local employment is principally in the service industries. There is high dependency on the car for transport. The District is characterized by a good number of attractive watercourses and bodies of water, with some areas at risk of flooding, but conversely it is an area of serious water stress due to low rainfall and high levels of abstraction. Such features could make it particularly susceptible to the effects of climate change.
12. Against this background, the choice and range of policies in the LDD appears generally appropriate. In particular, there are policies on residential design (DM1) and Green Belt (DM2) that reflect some of the particular characteristics of the District; on the green environment generally, in terms of biodiversity, landscape character and open space (DM6, DM7 and DM11); and on a range of matters related to climate change, notably carbon dioxide emissions, renewable energy and flood risk and water resources (DM4, DM5 and DM8). Although some policies have been carried forward from the Three Rivers Local Plan (2002) virtually unchanged, their efficacy has evidently been re-appraised and (with certain exceptions referred to later) the Council were able to justify them during the examination. From the documents submitted during the examination it is clear that the evidence base for the LDD is robust and credible; and although no alternative strategies for the LDD were expressly assessed, that is not necessarily significant for a document concerned with operational development control policies. Consultation has been thorough throughout and the results of that process have been properly assessed and appropriate amendments made to the policies.
13. Apart from limited exceptions referred to below, the LDD is consistent with national planning policy, notably so in its treatment of climate change-related matters. Also, to reflect the thrust of the NPPF it is proposed to add a policy statement on Presumption in Favour of Sustainable Development, based on the Planning Inspectorate’s model policy (**MM13**). At the same time, although a good deal of the policy content is inevitably what would be found in similar plans elsewhere in the country, there is a tangible local emphasis in the treatment of issues such as flooding, water resources and Green Belt. Although the plan user would at times have to look in three places to discern the Council’s attitude to a particular proposal – the CS, the LDD and SPD – this is to some extent inevitable given the structuring of development plan policy; and the process is at least made easier by helpful links to other sources of policy and guidance. The relationship between this and other plans and policies is broadly satisfactory. As already noted under the Duty to Co-

operate (above), there has evidently been good joint working and consultation with other relevant agencies so that the LDD takes proper account of their intentions.

14. The policies are sufficiently flexible to cope with changing circumstances and, subject to modifications proposed, flexible enough not to place unreasonable demands upon developers. They are also, broadly speaking, positively expressed. Indeed, in some cases they are too positively expressed. For example, Policy DM7, Landscape Character, says that *the Council will require proposals to make a positive contribution to the surrounding landscape and are likely to support proposals that...* I do not share the Council's view that by inference this indicates what would not be acceptable. It is important to make clear the circumstances in which proposals that might not bring any benefits to the landscape, and would be unacceptably harmful, would be treated. Other policies are expressed too tentatively. Thus in Policy DM2, Green Belt, *the Council will seek to safeguard the countryside from encroachment* and certain proposals are *unlikely* to be permitted; and under Policy DM3, The Historic Built Environment, *...the Council will seek to ensure the preservation of the District's Listed Buildings...* A range of modifications, discussed during the examination, would make these and other policies more clearly determinative and sound (**MMs 1e, 2e, 7a, 8a, 9a, 10a, 12a, 17, 18, and 32**).
15. In my view the LDD, as submitted is not capable of being effectively monitored. In the Monitoring Framework (Appendix 1), some targets are simply marked TBC and others say *No specific target – levels will be monitored* without any indication of what those levels might be. Modifications would introduce some precision and certainty (**MMs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49**) and, although they may not be the last word on the subject, I have no doubt that the Council will monitor and review the performance of the monitoring section itself. Subject to these changes proposals for monitoring are sound⁵.

Issue 2: Residential Design

Whether the policy and guidance on residential design (Policy DM1 and Appendix 2 are soundly based; address the relevant planning issues in the District; are properly justified; are likely to be effective in delivering high quality, sustainable development; are capable of being effectively monitored; and are consistent with national planning policy.

16. Policy DM1, Residential Design and Layout, is intended to supplement the generic design criteria found in Policy CP12 of the CS and, to a more limited extent, in Policy CP1. That this is the only policy in the LDD that deals with design "in the round" is explained by the prominence of housing in the planning of the District. For assessing other forms of development, such as commercial buildings, the Council will depend primarily on CS policy. Given that the criteria in CS Policy CP12 are both comprehensive and detailed, and that there are relatively few proposals for significant development other than housing, this seems to me a reasonable stance. For essentially the same

⁵ This addresses the point, raised under following issues, of whether the various policies referred to are capable of being effectively monitored.

reason it is appropriate for Policy DM1 to concentrate on specific aspects of residential development that are prevalent locally, namely small-scale housing proposals within existing residential areas and subdivision of dwellings, rather than to seek to replicate the more comprehensive coverage of CS Policy CP12.

17. The Policy criteria are essentially the same as those in Policies H13 and H14 of the Local Plan which deal with subdivision of dwellings and infilling and development on garden land respectively. This is not a criticism if the policy approach has been effective in achieving its objectives which, on the Council's unchallenged evidence, it has. Similarly, Appendix 2 of the LDD, which sets out more detailed design criteria, has in large part been carried over from the Local Plan. However, it appears to me to be generally soundly based and appropriate to the locality; and, importantly, it is not expressed in over-prescriptive terms. In particular, space and distance standards are indicative rather than requirements. The Council propose to produce further design guidance in the form of an SPD in early 2014. Nothing was said or written during the examination to suggest that the content of that SPD would go beyond the definition in the NPPF or what is permissible under the Regulations.
18. The NPPF advises⁶ that planning policies should not stifle innovation, originality or initiative in design but at the same time should seek to promote and reinforce local distinctiveness. Taken as a whole the design policies in the CS and the LDD do strike this balance. In particular, CS Policy CP12 expects proposals to use innovative design to optimise the potential of the site; and LDD Policy DM1 says that the Council will take account of the individual and cumulative effects of proposals on the character of an area. **MM22** reflects the latter point by stating at the outset that the Policy aims *to ensure that development does not lead to a gradual deterioration in the quality of the built environment*. In conclusion, subject to this change Policy DM1 and its supporting Appendix are soundly based; address relevant local issues; are justified and likely to be effective; and are consistent with national policy. They are therefore sound.

Issue 3: Green Belt

Whether the policy on Green Belt (Policy DM2) is soundly based; addresses the relevant planning issues in the District; is properly justified; is likely to be effective in protecting the integrity of the Green Belt; is capable of being monitored; and is consistent with national planning policy.

19. Beyond stating the general presumption against inappropriate development in the Green Belt, Policy CP11 of the CS is primarily concerned with strategic issues concerning the designation. The all-important role of controlling development in the Green Belt in detail therefore falls on LDD Policy DM2, a role which is given added weight by the extent of the Green Belt in the District.
20. The Policy states the general presumption against erection of buildings in the

⁶ Para. 60

Green Belt, other than for the exceptions set out in national policy, and then goes on to address proposals for extensions, replacement dwellings, ancillary buildings, extensions to residential curtilages and re-use and conversion of buildings. Given that these types of development account for most of the pressure on the Green Belt in the District, this approach is locally justified. However, as submitted the Policy is in my view flawed in several respects. Firstly, it does not focus sufficiently on safeguarding openness, one of the essential characteristics of the Green Belt. Secondly, it contains a potentially ambiguous cross-reference to Appendix 3 of the LDD which deals with dwellings for those engaged in agriculture and forestry (and which is itself ambiguous in part). Thirdly, it contains a reference to an issue outwith the scope of the LDD, namely the approach proposed to sites in the Green Belt allocated for development in the forthcoming Site Allocations LDD.

21. So far as the first point is concerned, both CS Policy CP11 and the supporting text to Policy DM2 do explicitly refer to openness. However, Policy DM2 uses the terms *prominent in the landscape*, *visual amenity of the Green Belt*, and *appearance of the landscape*. Important those these attributes are, especially where the Green Belt and attractive countryside are coterminous, they do not bear directly on Green Belt policy which is concerned with keeping designated areas permanently open irrespective of landscape quality and the prominence or otherwise of proposed development. Nor do I agree with the Council that the terms used are effectively proxies for the word *openness*. **MMs 1b, 1c, 1f and 29** insert appropriate references in the various sections of the Policy to the impact of proposals upon the openness of the Green Belt; and **MM23** strengthens the Policy as a whole by stating at the outset the general presumption against inappropriate development there.
22. Turning to the cross-reference to Appendix 3, the latter sets out the approach to be taken to proposals for dwellings for which an agricultural or forestry justification is claimed, drawing on guidance contained in the former Planning Policy Guidance Note 7. Although on the face of it this would be an issue of development in the countryside in general rather than in the Green Belt, the link here is appropriate as the two coincide in Three Rivers District. However, the statement in Policy DM2 that applicants for such dwellings *must demonstrate compliance to the tests detailed in Appendix 3* is potentially misleading as it could be taken that such compliance would result in an approval. In fact, whilst agricultural or forestry justification for a new dwelling is a matter to be weighed in the balance against any potential harm to the Green Belt, it is not part of the initial Green Belt policy reasoning; the starting point is that a new dwelling, for whatever purpose, is in principle inappropriate development. **MM28** substitutes more neutral wording.
23. Policy CP11 of the CS states that the Site Allocations Development Plan Document will make minor revisions to detailed boundaries of Green Belt around the main urban area to accommodate development needs. The Council apparently envisage that sites identified within the Green Belt would remain covered by that designation until monitoring of housing land supply indicated that their release was timely. At that point Green Belt reasoning would come into play, potential harm to the Green Belt being weighed against other considerations so as to establish whether or not there were very special circumstances to justify development. It is for the examination of the Site Allocations plan to assess the merits of that approach. Suffice to say that for present purposes, reference to very special circumstances relating to another plan, not yet adopted, is unnecessary and potentially ambiguous. **MM28**

deletes the sentence in question.

24. A representation has been received to this modification, arguing that it would mean that the Policy would fail to facilitate the Council's proposed mechanism for timely release of housing sites, contrary to national policy. In response I reiterate my view that the sentence in question has no part to play in this plan; and in any case, if the Council's approach prevails, assessment of whether very special circumstances will justify release of Green Belt sites will still be necessary under national planning policy. Separate reference in this plan amounts to unnecessary duplication.
25. As submitted, the first sentence of Appendix 3, Agricultural and Forestry Dwellings, to which Policy DM2 cross-refers, states that buildings for agriculture and forestry are not inappropriate in the Green Belt. That is correct, as the NPPF confirms⁷. However, the next sentence refers to *applications for agricultural and forestry dwellings*. New dwellings are in principle inappropriate development whatever the justification for them (though agricultural or similar need may outweigh any harm they cause to the Green Belt). **MM16a** removes the potential contradiction by deleting both sentences; it also removes the somewhat misleading description of the circumstances in which an isolated house may be justified for a rural worker as a *concession*.
26. The point was made at the hearings that proposals acceptable under Green Belt policy, for example because they were not inappropriate, might be open to other planning objections and there was concern that this might not be evident from Policy DM2 alone. **MM26** addresses this by making clear in supporting text that other policies, including that in the CS on design, also apply to such proposals.
27. What Policy DM2 means by *disproportionate in size...to the original building and the original dwelling*, and the derivation of the floorspace figure of 110m, are unclear at present. Extant Supplementary Planning Guidance No. 3, Extensions to Dwellings in the Green Belt, explains these matters. **MM1h** inserts a cross reference to that document in addition to the existing reference to a forthcoming SPD on design.
28. There are two references in para. 4.8 to development that might be *appropriate* in the Green Belt. Although this might reasonably be seen as the opposite of *inappropriate*, the NPPF employs the latter term throughout its guidance and it is one that has gained some legal pedigree over the years. At the risk of a double negative (not inappropriate) **MMs 24 and 27** address the point.
29. To conclude on Policy DM2, subject to the modifications referred to it is soundly based; concerned with a subject of local importance; justified and likely to be effective; and consistent with national policy.

⁷ Para. 89

Issue 4: Climate Change

Whether the policies on carbon dioxide emissions, renewable energy developments and water (Policies DM4, DM5 and DM8) are soundly based and properly justified; clear in their intentions; adequately reflect emerging national policy; are likely to be effective; and are capable of being effectively monitored.

Policy DM4: Carbon Dioxide Emissions and On-Site Renewable Energy

30. Policy CP1 of the CS requires planning applications for new residential and commercial development to be accompanied by C-PLAN⁸ Energy and Sustainability Statements demonstrating that the proposals will produce at least 25% less carbon dioxide emissions than permitted by the Building Regulations 2006. Policy DM4 of the LDD seeks to build upon and advance this sustainability approach by requiring such Statements to show a minimum 5% reduction in emissions compared with the requirements of the Building Regulations 2013, en route to the zero carbon standards that the Government has announced will apply from 2016 for housing and 2019 for non-domestic buildings.
31. The Planning and Energy Act 2008 enables local planning authorities to adopt policies that impose reasonable requirements for compliance with energy efficiency standards that exceed the requirements of the Building Regulations. The NPPF⁹ advises that local requirements for sustainability should be consistent with the Government's zero carbon buildings policy and should adopt nationally described standards; and that new development should comply with local policies for decentralised energy supply unless this would be demonstrably infeasible or unviable.
32. The Council have a strong record in promoting sustainability in development. The Inspector who conducted the examination into the CS drew attention to the fact that the Council had pioneered use of the C-PLAN carbon assessment and monitoring tool since 2008 and had secured consistently higher levels of performance than the minimum standard set by the Building Regulations 2010. Evidence to this examination shows that that performance has continued since adoption of the CS in October 2011.
33. Against this background the progress towards greater sustainability in Policy DM4 is clearly justified in principle. The Policy follows NPPF advice in being related to nationally described standards in the shape of the Building Regulations; and in paying due regard to feasibility and viability in implementation. It also leaves the developer free to choose the technologies used provided the target is achieved. That target follows broadly the same trajectory as the target in CS Policy CP1 and, on the Council's past performance, should be readily achievable.

⁸ C-PLAN is a web-based tool that helps assess carbon emissions and energy use implications of development proposals.

⁹ Paras. 95 and 96

34. The difficulty is that the Building Regulations Part L requirements (2013), referred to in the Policy, do not yet exist. The Government carried out consultations on changes to the regulations in Spring 2012¹⁰ and published responses at the end of the year¹¹. The Council pointed to the Government's proposed timetable for introduction of the changes from October 2013 and expressed confidence that the preferred option set out in the consultations (referred to in the report on consultation responses as the "gentler" of the two options put forward) would indeed be implemented. However, although I agree that on the evidence it is more likely than not that that option will be adopted, it would be unsafe to enshrine this expectation, unqualified, in policy. Accordingly, **MM30** introduces a rider that pending the anticipated revisions a target of 10% below the 2010 Building Regulations will apply, which is consistent with the direction of travel towards a zero carbon level.
35. As all possible ways of reducing carbon emissions on and off site may be insufficient to achieve the zero carbon level, it is likely that any residual emissions will be addressed by "Allowable Solutions", including payments into Carbon Offset Funds administered by local authorities to fund projects to reduce carbon emissions from the existing building stock. The Council have begun work towards such a Fund and already have projects in mind for "retrofitting" existing housing. This evident commitment justifies reference to a Carbon Offset Fund in the Policy which is any case qualified by the statement that Allowable Solutions *may* include payments into such a Fund.

Policy DM5: Renewable Energy Developments

36. The supporting text to this Policy, on Renewable Energy Development, says that applications for such development will need to be accompanied by statements on a number of issues, including the benefits in terms of expected energy generation. On the face of it this conflicts with advice in the NPPF¹² that applicants should not be required to demonstrate the overall need for such energy, and that even small-scale projects can make a valuable contribution to cutting greenhouse gas emissions. However, the Council acknowledge that the projected scale of energy generation (or lack of it) could not be cited as reason for refusal; and not unreasonably point out that such information would be helpful, not least for monitoring progress on renewable energy. And in reality it is always likely to be voluntarily supplied by developers in any case. On that basis I consider the requirement sound.

Policy DM8: Flood Risk and Water Resources

37. As submitted, the distinction between policy and supporting text (Further Guidance for Applicants) is unclear; as well as there being some duplication between the two, the latter includes what appear to be statements of policy on, among other matters, the approach to be taken to proposals for

¹⁰ 2012 Consultation on changes to the Building Regulations in England: Section two: Part L (Conservation of fuel and power): DCLG January 2012

¹¹ 2012 consultation on changes to the Building Regulations in England: Summary of responses: DCLG December 2012

¹² Para. 98

development in Flood Zone 3(b) and floor levels for new development in Zones 2 and 3. Moving the relevant paragraphs of supporting text into the Policy, with appropriate amendments to the latter, under **MM34**, addresses the point and makes for a clearer and more comprehensive policy statement. It also promotes reference to Sustainable Drainage Systems (SuDS) from the supporting text to the policy and thus addresses the Environment Agency's representation that this matter be given greater prominence. However, in my view references in both this LDD and the CS go as far as is reasonable and necessary for the District Council to address SuDS. More detailed guidance of the type sought by the Environment Agency would appear to be better provided by the County Council as the SuDS approval body.

38. A representation on the Main Modifications argues that part (b) of the Policy should permit development in Zone 3b where it would form part of a strategy to reduce flood risk overall. I find no support for this approach in national guidance; Technical Guidance to the NPPF indicates that Zone 3b is functional floodplain where only essential infrastructure and water-compatible uses should be permitted. In sanctioning redevelopment of existing buildings in that Zone under certain limited circumstances the Policy goes as far as it reasonably can.
39. The Environment Agency suggest that the acknowledgement in the supporting text that the District is an area of serious water stress should be followed through in the Policy. In particular they advocate including a requirement that new developments be required to limit water consumption to not more than 105 litres per person per day (lpd) compared with the Building Regulations requirement of 125 lpd and the current mean figure for the District of 170.7 lpd. The suggested figure has some evidential justification as it recommended in a Water Cycle Study commissioned by a number of Hertfordshire district councils and published in 2010¹³; and at least one of those councils has since included it in a CS policy. However, the efficacy of setting such a limit in terms of reducing consumption has not yet been established. In particular, the Council say that there is currently no evidence nationally to determine what effect the Building Regulations limit has had. This contrasts with the situation on Policy DM4, above, where submission of C-PLAN Energy and Sustainability Statements over several years has demonstrated that the approach to reducing carbon dioxide emissions is robust and effective. Against this background I consider that existing policy references to water conservation, notably in CS Policy CP1 and LDD Policy DM8, adequately address the issue of water stress and absence of a specific limit to water consumption does not render the LDD unsound.
40. **MM7**, dealing with the set back of development from watercourses, clarifies the difference between the 8m specified for main rivers and 5m for other watercourses; and corrects an error arising from the apparent misunderstanding of a response by the Environment Agency to the consultation on the submission LDD. The 8m setback for main rivers ensures consistency with land drainage bylaws. That such setbacks will "normally" be sought provides flexibility for justified exceptions.

¹³ EB 22

41. Subject to the modifications referred to, the policies relating to matters of climate change are soundly based; properly justified; clear; consistent with extant and emerging national policy; and likely to be effective.

Issue 5: Green Environment and Recreation

Whether the policies on biodiversity and landscape character and open space, sport and recreation facilities (Policies DM6, DM7 and DM11) are soundly based and properly justified; clear in their intentions; adequately reflect national policy; are likely to be effective; and are capable of being effectively monitored.

Policy DM6: Biodiversity, Trees, Woodlands, Watercourses and Landscaping

42. This policy takes a comprehensive and detailed approach to conservation of the natural world that is clearly supported by both the relevant statutory agencies and local wildlife groups. It reflects both the importance of natural habitats and sites within the District and the emphasis in the NPPF on minimising impacts on biodiversity and providing net gains in that quality where possible.
43. To that end the statement in criterion (b) of the Policy that: *Development should result in no net loss of biodiversity value across the District as a whole*, is a clear statement of intent, consistent with national guidance. However, given that it is in a development control policy I am not convinced that it is a requirement that can be satisfied by an individual applicant for planning permission. The direct effects of that individual's proposals on biodiversity on and around the site might be quite readily assessed but the implications for biodiversity *across the District as a whole* could be much harder to measure. In some cases, for example if proposals were likely to adversely affect a particular identified habitat that was rare or endangered, the judgement might be quite straightforward but in the majority of cases it might well be difficult to judge impacts on biodiversity generally in terms that could translate to a decision on a planning application. Moving the phrase to the start of the Policy under **MM31** would underline that this is a strategic objective that underpins the policy as a whole rather than a measurable requirement for each and every planning application.
44. In two respects the Policy is more restrictive than national guidance without obvious justification. The NPPF advises¹⁴ that in criteria based policies for safeguarding the natural environment: *Distinctions should be made between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status and gives appropriate weight to their importance...* As submitted the Policy does not make those distinctions; it applies the test of adverse impact equally to protected sites at all levels in the hierarchy. Whilst it may be implicit in the Policy that the decision maker will give different weight to the protection of sites according to their status, that approach should be made explicit. **MM31** does that.

¹⁴ Para. 113

45. The Policy as it stands is also at odds with national guidance in requiring the applicant for planning permission for development that would affect any designated site to demonstrate ...*exceptional circumstances for the development which clearly outweigh the need to safeguard the biodiversity of the site...* Although conservation of biodiversity is a matter of great importance, the exceptional circumstances test is in my view too onerous, if applied at all levels of the hierarchy of sites. The NPPF test¹⁵ of making an exception to a general presumption of refusal of permission is specific to Sites of Special Scientific Interest. **MM31** acknowledges this in applying a simple test that need for a development should outweigh need to safeguard biodiversity if planning permission is to be granted. Together with the different weight to be given at different levels in the hierarchy, this will ensure proportionate (but still effective) control.

Policy DM7: Landscape Character

46. This policy on landscape character gives more detailed expression to Strategic Objective S9 of the CS, namely to conserve and enhance the countryside and diversity of landscapes within the District. As such it has an essentially positive thrust. However, as noted under Issue 1, above, my concern is that it is too positive, stating what the Council would support but not clearly saying what it would oppose. Faced with a proposal unacceptably harmful to landscape character it would be necessary to argue that it would fail to secure the various benefits set out under the heading, Landscape Regions, which seems a somewhat tortuous and potentially dangerous logic. Nor would the CS policies greatly assist in this situation as both Policy CP1, Overarching Policy on Sustainable Development and CP12, Design of Development, deal with landscape in only the most general terms; and Policy CP9, Green Infrastructure, appears to be principally concerned with enhancing the network of green spaces within the District. **MM32** addresses the point by stating what the Council will resist in the landscape as well as what it will support.

Policy DM11: Open Space, Sport and Recreation Facilities and Children's Play Space

47. The NPPF advises¹⁶ that existing open space and land used for sport and recreation should not be built upon unless it is demonstrably surplus to requirements; the loss would be replaced by equivalent or better facilities; or alternative sports and recreation provision is to be made, the need for which outweighs the loss. As submitted, the Policy does not reflect this guidance. Criterion (iv) would sanction loss of space or facilities provided this did not result in a deficiency of provision. However, as Sport England point out, this would only apply where a new deficiency was created and not where a loss might exacerbate an existing deficiency. The NPPF makes clear that loss of open and recreational space should only be allowed where there is a demonstrable surplus of it. Criterion (vi) would permit loss of space where users would benefit from improvement of facilities on part of the site in question, a stance not supported by the NPPF. **MM11** addresses these points.

¹⁵ Para. 118

¹⁶ Para. 74

48. The Council have an impressive record on providing and improving public open space and play space, assisted by financial contributions from developers, and I agree with them that such spaces are essential to new developments. In that context to *require* provision of such facilities in principle is acceptable. However, to *require* developer contributions to provide or enhance local sports facilities goes too far, even if qualified by *may* and the caveat of a demonstrable need arising from the development concerned. It is a well established planning principle that planning obligations should be *sought*, a principle re-stated in the NPPF¹⁷. To *expect* developer contributions, in the terms of **MM35**, seems to me to strike the right note, stressing their importance but avoiding any implication that they would be demanded.
49. In conclusion, subject to the modifications set out, the policies dealing with the green environment and recreation are soundly based; justified; clear in their intentions; in line with national policy; and likely to be effective.

Other Matters

Policy DM3: The Historic Built Environment

50. The Council proposed a change to reflect what the NPPF¹⁸ says about the desirability of putting heritage assets to viable uses. **MM2a** builds on this to make clear that any such uses should be *appropriate* to securing the future protection of the assets. **MM2b** amends the wording on Conservation Areas to reflect the statutory test¹⁹ to be applied to development there. Such development should preserve or enhance the character *or* appearance of the area; it does not have to pass the stricter test of preserving or enhancing both those attributes.

Policy DM8: Contamination and Pollution Control

51. As submitted, under the heading of Air Quality the Policy states that development will not be permitted where it would have an adverse effect on air pollution levels. Under **MM9** it similarly proscribes new development that would be adversely affected by existing sources of pollution and disturbance, in line with guidance in the NPPF²⁰.

Policy DM15: Moorings

52. This Policy is justified by the presence of the Grand Union Canal in the District and the interest in it for residential moorings. In response to a representation from the Canal and River Trust that, as long-term leisure moorings do not require planning permission, the Policy cannot be effective, the Council rightly point out that policies can necessarily only bear on proposals that require permission. However, to clarify the scope of the Policy as applying to moorings for purposes other than residential, that do need permission, **MM36**

¹⁷ Para. 204

¹⁸ Para. 126

¹⁹ S72, The Planning (Listed Buildings and Conservation Areas) Act 1990

²⁰ Para. 120

and **MM38** amend the supporting text to refer to residential *and other* moorings.

Assessment of Legal Compliance

53. 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.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The LDD is identified within the approved Three Rivers LDS (December 2012) which sets out an expected adoption date of September 2013. The LDD's content and timing are compliant with the LDS. Indeed, the process is running a few weeks ahead of schedule.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in July 2006 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Habitats Regulations Assessment (HRA)	The Habitats Regulations HRA has been carried out and is adequate.
National Policy	The LDD complies with national policy except where indicated and modifications are recommended.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations.	The LDD complies with the Act and the Regulations.

Overall Conclusion and Recommendation

54. **The Plan has a number of deficiencies in relation to soundness 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 Act. These deficiencies have been explored in the main issues set out above.**
55. **The Council has requested that I recommend main modifications to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Three Rivers District Council Development Management Policies LDD satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.**

Robin Brooks

INSPECTOR

This report is accompanied by an Appendix containing the Main Modifications