

Council's Response to Inspector's Matters, Issues and Questions (MIQs)

Matter 6: Environment (Natural & Built)

Issue 6a: Proposed modification to policy DM17

38. **The Council has proposed modifications to policy DM17. Specifically, adding text to paragraph 6.8 to clarify that in some circumstances the loss of trees the subject of a Tree Preservation Order may be unavoidable; and the insertion of additional text regarding the 3:1 compensatory planting ratio. Would these changes be main or additional modifications? Would the modifications affect the soundness of the plan?**

The Council considers that both proposed modifications to the supporting text of Policy DM17 should be additional modifications as they do not materially affect the policy or plan.

The addition of text into paragraph 6.8 is intended to explicitly state the circumstances under which a loss of a tree covered by a TPO will be justified. This complements the exceptions for works listed in the Planning Practice Guidance¹ (not just losses of trees but all form of works, including crown thinning, crown lifting and crown reduction).

The insertion of additional text regarding the 3:1 compensatory planting ratio is intended to explain further the Council's approach and reasoning for including a replacement ratio of at least 3:1. The additional text frames matters that will be considered in agreeing appropriate replacement planting. The Planning Practice Guidance recognises that any replacement planting will be conditional upon the circumstances of specific works and a sites context, and that applicants should discuss this with the local authority to agree a mutually acceptable action².

The Woodland Trust has provided further clarification to the Council on the reasons for why there is a need to plant more trees than are felled as a result of development.

1. Newly planted trees are much smaller than mature ones and will take many decades to reach maturity, hence in the early years will

¹ [Paragraph: 060 Reference ID: 36-060-20140306](#) of the Planning Practice Guidance, and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

² [Paragraph: 067 Reference ID: 36-067-20140306](#) of the Planning Practice Guidance

provide much lower benefits in terms of amenity or biodiversity value than a mature tree;

2. Particularly in a busy urban street environment, trees are exposed to many hostile factors (e.g. air and soil pollution, vandalism, accidental damage by cars) and some of those planted may not survive. Therefore, planting more than one replacement tree ensures maintenance or enhancement of the tree population over time; and
3. Multiple benefits of having more trees, especially in urban areas – health, wellbeing, air quality, cooling, desirability, and so on

As such the policy is justified and the Council does not consider that either of the proposed modifications would affect the soundness of the plan in any negative way.

Issue 6b: Are the requirements for minimum information that should be included in Flood Risk assessments set out in the text accompanying policy DM20 justified and consistent with national policy?

39. Paragraph 6.34 sets out the information that Flood Risk Assessments should include as a minimum including sectional information and proposed land levels. Is this justified and consistent with national policy? Is the need to consider climate change also a relevant consideration?

Yes, the requirements set out in paragraph 6.34 are justified and consistent with national policy. The Environment Agency (EA) has confirmed to the Council in writing that it would return any Flood Risk Assessment (FRA) that did not clearly provide the information set out, including sectional information. The Planning Practice Guidance also makes clear that it is in the best interests of developers and applicants to consider flood risk to and from the development site as early as possible³.

The need to consider climate change is also of relevance due to the clear advice set out in the Planning Practice Guidance, and further discussions held with the EA. PPG states that any site-specific FRA *'should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking [climate change](#) into account and with regard to the vulnerability of its users'*⁴.

Issue 6c: Is policy DM22 consistent with national policy regarding non-designated heritage assets?

³ [Paragraph: 029 Reference ID: 7-029-20140306](#), Flood Risk and Coastal Change, Planning Practice Guidance

⁴ [Paragraph: 030 Reference ID: 7-030-20140306](#), Flood Risk and Coastal Change, Planning Practice Guidance

40. Paragraph 7 of policy DM22 states that non-designated heritage assets that are demonstrably of equivalent significance to designated assets will be treated as if they are. Is this justified and consistent with national policy?

Paragraph 135 of the NPPF clearly states that *'the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application'*. It goes on to state that *'in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'*

In Hyndburn there are many buildings in the Borough that could prove to be as significant in heritage terms as designated assets, if a Heritage Assessment were to be undertaken on them. The fact is that in Hyndburn the number of listed buildings is very low compared to other areas with comparable populations⁵. This is partly down to a lack of comprehensive surveys and assessments having been undertaken in the past.

The NPPF is clear that the significance of non-designated assets is an important consideration and paragraph 7 of Policy DM22 clarifies how the Council will deal with this at the local level. The policy is therefore justified and consistent with national policy.

NOTE: Following a review of Policies DM22 and DM23 the Council would like to propose further modifications to the policies to strengthen and improve them. These are not directly related to this question therefore they are covered under Matter 11: Any Other Matters.

Issue 6d: Proposed modification to policy DM23

41. The Council has proposed modifications to policy DM23. Specifically, the deletion of paragraph 2 and alterations to paragraph 6.55. Would these changes be main or additional modifications? Would the modifications affect the soundness of the plan?

The Council considers that both modifications are additional modifications only as they do not materially affect the policy or plan.

The Council has proposed deleting 'in exceptional circumstances' from paragraph 2 of Policy DM23 as opposed to the entire paragraph. This is in recognition that the restriction of weighing community benefits against arguments in favour of preservation only in exceptional circumstances could potentially frustrate development and does not sit naturally with the

⁵ the [Pastscape](#) website has information on the architectural and archaeological heritage of England by Borough. No. of heritage items listed by Borough include: Hyndburn (145 items), Rossendale (218 items), Burnley (384 items), Pendle (431 items).

thrust of the NPPF. Deletion of reference to exceptional circumstances would therefore bring the policy more in line with national policy and improve its effectiveness, thereby improving soundness.

A further modification is also proposed to Paragraph 2 to ensure consistency with paragraph 133 of the NPPF. The Council proposes to replace 'would bring' with 'is necessary to achieve'. Paragraph 2 would therefore read '*The fact that a development is necessary to achieve substantial benefits to the local community may be weighed in the balance against arguments in favour of the preservation of the building*'.

The alteration to paragraph 6.55 is to ensure that the 'significance' of any building when considering its potential loss is properly taken into account. Paragraphs 133 and 134 of the NPPF refer to the key distinction between '*substantial harm*' and '*less than substantial harm*'. Policy DM23 will be used in the NPPF context therefore the additional text will help clarify and improve the soundness of the policy (improving effectiveness and delivery, and ensuring consistency with national policy).

NOTE: Following a review of Policies DM22 and DM23 the Council would like to propose further modifications to the policies to strengthen and improve them. These are not directly related to this question therefore they are covered under Matter 11: Any Other Matters.