



**Brighton & Hove
City Council**

SPECIAL COUNCIL SUPPORTING DOCUMENTS

4.30PM, THURSDAY, 23 APRIL 2020

VIRTUAL MEETING

SUPPORTING DOCUMENTS

UNSOUND AMENDMENTS

FOR INFORMATION ONLY

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Green Group Unsound Amendments

Policy Number	Page Number	Paragraph number	Part of policy or Line(s)	Amendment proposed (revised text)	Evaluation*	Reason**	
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Topic – Housing, Accommodation and Community – including policies DM1 – DM10

DM8	37	After g)	N/A	<p>ADD NEW CRITERION h) AFTER g) AS SHOWN IN BOLD ITALICS:</p> <p><i>h) measures to promote the use of community consultation, such as an assessment of community involvement, to ascertain resident concerns and potential for community use of new development spaces</i></p>	Unsound – not justified.	Consultation on planning applications is addressed by requirements set out in the council’s Statement of Community Involvement. It is not considered appropriate to add to policy.	
DM9	40	Paragraph 3	Line 4	<p>INSERT THE TEXT IN BOLD ITALICS AFTER THE LAST SENTENCE:</p> <p>Partial loss of floorspace through change of use will be supported where it can be clearly demonstrated that the operational need of the community use requires less floorspace or where continuation of the existing use would otherwise be unviable and can be sustained by cross-subsidy.</p> <p><i>Where the loss of community facilities are permitted under criteria set out in</i></p>	Duplication - not necessary in policy as requirement addressed in NPPF.	Where the building in question is, or forms part of, a designated or non-designated heritage asset the council would require the loss of any such building (wholly or in part) to be recorded in accordance with Historic England guidance. The policy basis for this is set out in paragraph 199 of the NPPF. This would apply	

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				2., planning conditions should include recording the functions and features, if built form cannot be maintained.		to any heritage asset to be lost, irrespective of use, so does not need to be applied to specific uses. The level of recording required would vary depending on the building or use; for example a pub or community facility with a historic interior would require a higher level of recording.
DM9	40	Paragraph 3 1	New line	<p>INSERT THE TEXT AS SHOWN IN BOLD ITALICS BELOW:</p> <p><i>To ensure protection of community facilities such as music venues, that applicants engage with the ‘agent of change’ principle, as set out in policy area DM40. Prior to any potential loss of music venues, the Local Planning Authority will require applicants to demonstrate they have enacted the principles set out in ‘agent of change.’</i></p>	Not justified.	<p>This would represent duplication of requirements in Policy DM40 and its supporting text.</p> <p>However, signposting to this in the supporting text of DM9 / DM10 could be appropriate.</p> <p>Protection of community facilities such as music venues is addressed in adopted policy CP5 as well as DM9.</p>

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DM10	44	2.93	N/A	<p>Following best practice of recording details of listed buildings, such as evidenced during planning permission of the Astoria Theatre, we recommend this practice of recording historic features is also undertaken with regard to public houses.</p> <p>THEREFORE, INSERT THE TEXT IN BOLD ITALICS AFTER THE LAST SENTENCE:</p> <p><i>Where public house uses cannot be retained in their original buildings, the LPA will attach planning conditions to record historic details of the public houses for retention by the public libraries and the Keep.</i></p>	Not justified	See response above to DM8.
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- Evaluation including Soundness, Legal, Financial implications ** Reason – explanatory text to officer evaluation

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Topic Employment and Retail – including Policies DM11 – DM17

DM12	51	Table 3	N/A	Move Station Road/Boundary Road from 'District Centre,' to 'Town Centre,' Move High Street, Rottingdean from a 'Local Centre,' to a 'District Centre,' Add Preston Road, Brighton and George Street, Hove to 'Local Centres,'	Unsound – not justified	Not justified – retail hierarchy established through adopted Policy CP4. Change to hierarchy would require updated Retail Study to be undertaken as part of a review of CPP1	
DM13	53	A)	Bullets	ADD TO LIST a) Important Local Parades: <ul style="list-style-type: none"> • Saltdean Vale, Saltdean; • Hangleton Way, Hangleton; • Burwash Rd, Hangleton; • Graham Avenue, Mile Oak; • South Street, Portslade; • Mill Rise, Westdene; • Wilmington Parade, Hollingbury; • Carden Avenue/County Oak, Hollingbury; • Carden Avenue (Adj Carden Crescent), Patcham; 	Unsound – not justified apart from Preston Drove, Preston Park	Not justified - not consistent with the approach taken in the assessment of suitability for inclusion as local centre. Does not meet identified criteria. Parades not listed as Important Local Parades are still protected by through Part B of policy DM13	

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Topic Traffic and Transport – including policies DM33 – DM36

DM36	107	1	4	<p>INSERT THE TEXT IN BOLD ITALICS:</p> <p>Provision of parking, including 'blue badge' holder and cycle parking, in new developments should follow the standards in SPD14 'Parking Standards for New Development' (and any subsequent revisions) as set out in Appendix 2, <i>except where developments are in or adjacent to an AQMA in which case they are required to be 'car-free' (with the exception of blue-badge parking), and follow a menu of transport plan options including the provision of good pedestrian connectivity and cycle parking.</i> In addition:</p>	Unsound – not effective.	<p>It would not be appropriate to require all types of development to be car-free. The thrust of this amendment with regard to residential development is addressed in DM40 – see para. 2.307.</p> <p>The precise boundaries of AQMAs (e.g. to the kerbs of roads) would result in difficulties in defining 'adjacent'</p>
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- Evaluation including Soundness, Legal, Financial implications ** Reason – explanatory text to officer evaluation

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Topic Environment and Energy – including policies DM37- DM46

DM37	112	C. Locally protected sites	Line 1	<p>DELETE THE STRUCK THROUGH TEXT IN BOLD ITALICS:</p> <p><i>Unless allocated for development in the City Plan,</i> development proposal that will result in an adverse effect on the integrity of any local site which cannot be either avoided or adequately mitigated will not be permitted, unless:</p>	Unsound	<p>Not positive planning; contrary to NPPF and adopted City Plan Part One, Policy SA4.</p> <p>Policy SA4 Urban Fringe states that: ‘Development within the urban fringe will not be permitted except where: a) a site has been allocated for development in a development plan.’</p> <p>The Urban Fringe 2014 and Further Assessments 2015 provide evidence of the suitability of urban fringe sites for housing and in relation to those sites that are within or adjacent to locally protected sites (LNRs, LWS) the 2015 Further Assessments indicate that appropriate and robust mitigation and enhancement measures can be achieved.</p>
DM37	115	2.280	Lines 11 - 13	<p>INSERT THE TEXT IN BOLD ITALICS:</p> <p>This includes a need to undertake a full life cycle analyses of developments including <i>embedded carbon</i></p>	Unsound	<p>Not effective/ justified - introducing a new policy requirement through the supporting text which has not been subject to earlier consultation or assessment. This would be a matter for the review of CPP1.</p> <p>It is accepted that the existing reference to full life cycle analyses in the supporting text is not</p>

				<p>footprint, taking into consideration the impact of construction and materials over the long-term).</p>	<p>clear, it does not reflect wording in the British Code of Practice/ BS and is a matter that is usually addresses in policies relating to reducing carbon emissions (ie Policy CP8).</p> <p>Elements of reducing embodied carbon footprint of development are covered by adopted CPP1 Policy CP8 bullet points f)... reuses existing buildings; i) uses materials that are sustainable and have low embodied carbon; k) minimises waste and facilitates recycling, composting and re-use.</p> <p>Further consideration would need to be given to this issue in the CPP1 review as we would need to consider whether all developments would be covered by a requirement (The new London Plan only requires larger referable applications) and the assessment would need to follow a nationally recognised Whole Life-Cycle Carbon Assessment methodology and there would need to be clarification of the council's expectations re actions we would expect to be taken to reduce life-cycle carbon emissions.</p>	
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- Evaluation including Soundness, Legal, Financial implications ** Reason – explanatory text to officer evaluation

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Section 3 Site Allocations – including policies SA7, SSA1 – SSA7, H1 – H3 and E1

SSA1	152	Second bullet	N/A	<p>INSERT THE TEXT IN BOLD ITALICS & DELETE THE STRUCK THROUGH TEXT IN BOLD ITALICS:</p> <p>a minimum of 200 300 residential units (Use class C3); and</p>	Unsound	<p>Not justified.</p> <p>The proposed indicative site capacity is a minimum figure. Having reviewed the evidence and arguments put forward in the representations, the Council is not persuaded that a higher housing number should be indicated without making detailed investigations in terms of impact on landscape, historic environment and open space. The indicative site capacity in the Plan takes account of the number of buildings with heritage significance on the site which the policy seeks to retain; their conversion potential, and space requirement for up to 12,000 sq m of health and care facility on site.</p>
H2	177	Before a)	N/A	<p>INSERT NEW CRITERION a) AND RENAME THE FOLLOWING POINTS (e.g. b becomes c etc.):</p>	Unsound	<p>Not Justified, Effective or Consistent with national policy and Not consistent with CPP1.</p> <p>A requirement for 100% affordable housing is not consistent with Policy CP20 in the adopted CPP1 or with the NPPF. The NPPF requires that planning policies are deliverable and that</p>

				<p>a) Genuinely affordable homes</p>		<p>site allocations and affordable housing policies take account of viability considerations. The national planning practice guidance (PPG) specifically states that “<i>Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.</i>”</p> <p>Many of the urban fringe sites are not owned by the council so will not come forward unless development is viable for landowners and developers. A requirement for 100% AH would therefore be unsound for several reasons - Not justified (in terms of evidence), Not effective (i.e deliverable) and Not consistent with the NPPF.</p> <p>In addition, the proposed wording is unclear – “genuinely affordable” would need to be more clearly defined (see for example Policy DM6).</p>
H2	177	After “plots will be encouraged”	N/A	<p>INSERT THE TEXT IN BOLD ITALICS AFTER “plots will be encouraged”</p> <p><i>Development should be intensified at</i></p>	Unsound (for those sites not already allocated)	<p>Not effective as we have no evidence that some of the sites listed are available or deliverable.</p> <p>The land at the corner of Spring Gardens & Church St and the North St Sorting Office are already allocated as mixed use sites in Policy</p>

				<p>many large brownfield sites including: above M&S on Western Rd and over the storage area; above the NCP car park between King Place and Church St. The reconfiguration of land at the corner of Spring Gardens and Church Street, the sorting office and at the BHCC car park at Theobald House could glean more brownfield housing sites.</p>		<p>H1.</p> <p>None of the other suggested sites has been promoted to us or identified through the SHLAA. Therefore we have no evidence that they are available or deliverable at this stage, so to allocate them would not be Effective in terms of the soundness test.</p> <p>There are several policies in CPP1 and CPP2 which support and encourage more effective use of brownfield sites including CP1, CP14 and DM19. Therefore proposals for redevelopment/ intensification of the suggested sites could potentially come forward in future as windfall development.</p>	
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- Evaluation including Soundness, Legal, Financial implications ** Reason – explanatory text to officer evaluation

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Topic – Housing, Accommodation and Community – including policies DM1 – DM10

DM6	29	-	1. c)	Replace “the homes are held... 15 years” with “ <u>the homes are held as build to rent under a covenant in perpetuity. The Council will seek inclusion within the S106 Agreement a review mechanism for affordable housing in line with the then current affordable housing policy for sales in the event of units being sold or taken out of the build to rent sector</u> ”	unsound	Not consistent with national policy. Not positively prepared/ justified. The national planning guidance (NPPG) for Build to Rent states that consideration should be given to a covenant period for the retention of private market rent homes in that tenure and potential compensation mechanisms in the event that private market rent homes are sold before the expiration of an agreed covenant period. It states that LPAs should recognise that	.
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						<p>BTR operators will want sufficient flexibility to respond to changing market conditions and onerous exit clauses may impede development.</p> <p>In practice, covenants of around 15 years have become fairly standard and appear to be generally acceptable to BTR developers and investors. The requirement for BTR schemes to be held under covenant for 15 years is set in policy in the new London Plan which has recently been through public examination.</p> <p>A 15 year covenant was agreed by the applicant for the BTR scheme at Longley Industrial Estate (Legal & General) and is included in the s106 agreement. It is also</p>
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						<p>understood that a 15 year covenant has also been accepted by the Sackville applicant (Moda).</p> <p>Setting a policy requirement that developments are held as BTR in perpetuity would be inconsistent with national policy as it is contrary to the NPPG. Such a requirement might also be judged to be unreasonable and onerous for BTR developers – in which case the policy would fail the tests of being positively prepared and justified.</p> <p>With regard to affordable housing, Policy DM6 already provides for affordable homes within BTR schemes to be</p>
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						<p>secured in perpetuity with provision for 'clawback' in the event of the affordable units being sold.</p> <p>Setting a review requirement based on the then current affordable housing policy for sales would be considered unreasonable and onerous – therefore not consistent with national policy, not positively prepared/justified</p>
DM7	33	-	2. a)	Replace "20%" with "15%".	unsound	<p>The proposed policy approach to HMOs comprising the adopted tests in CPP1 Policy CP21, new criteria in Policy DM7 and the forthcoming citywide Article 4 Direction is already understood to be the toughest in the country and represents an appropriate and very</p>

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						robust approach to managing the distribution of HMOs. The proposed amendment to toughen this further is not justified and would risk soundness.	
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Topic Employment and Retail – including Policies DM11 – DM17

DM13	53	-	A)	Add " <u>Town's Corner, Hangleton Way, Hangleton</u> " to list of Important Local Parades.	unsound	<p>Not justified – would be inconsistent with approach taken to the assessment of suitability for inclusion as important local parade. Does not meet assessment criteria.</p> <p>This parade would still have protection through the policy as neighbourhood parade.</p>	.
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Topic Environment and Energy – including policies DM37- DM46

DM37	112		C. Locally Protected sites	<p>Delete the first eight words, which are: 'Unless allocated for development in the City Plan'...</p> <p>Add new point i) above existing points i) & ii):</p> <p><u>'within a Local Nature Reserve: there are overriding benefits of regional importance, and it can be demonstrated that there are no suitable alternative sites'</u>; (then proceed to existing points i) & ii))</p> <p>Then insert the following words at the beginning of the following point</p>	unsound	<p>Not positive planning; contrary to NPPF and adopted City Plan Part One, Policy SA4.</p> <p>Policy SA4 Urban Fringe states that: 'Development within the urban fringe will not be permitted except where:</p> <p>a) a site has been allocated for development in a development plan.'</p> <p>The Urban Fringe 2014 and Further Assessments 2015 provide evidence of the suitability of urban fringe sites for housing and in relation to those sites that are within or adjacent to locally protected sites (LNRs, LWS) the 2015 Further Assessments indicate that appropriate and robust mitigation and enhancement measures can be achieved.</p>
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				(existing point i)) <u>'and within other locally protected sites'</u> ...			
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Section 3 Site Allocations – including policies SA7, SSA1 – SSA7, H1 – H3 and E1

SA7	148	-	-	Remove SA7 from the plan.	unsound	<p>Not positive planning/ not justified and not consistent with CPP1.</p> <p>Only a limited amount of housing is proposed restricted to a small area. The suitability of Benfield Valley to accommodate some development has been considered in detail through the 2014 and 2015 Urban Fringe Assessments and further by council/county council officers (see topic paper). To remove the housing allocation from the Plan despite the evidence that the</p>	
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						site is suitable, available and deliverable would conflict with the CPP1 strategy and would not constitute positive planning.	
SA7	150	3.6	-	Replace "100" with "30".	unsound	<p>Not positive planning/ not justified and not consistent with CPP1.</p> <p>The proposed housing follows more detailed assessment of the site capacity by council officers, the County Landscape Architect, and County Ecologist in 2017. This concluded that the development areas identified in the 2014 and 2015 UFAs could support a higher density of development within the same footprint without detracting from the character of the wider area. It was</p>	

						<p>also felt that a higher level of development could help support the wider policy aspirations for the enhancement and long term management of Benfield Valley. See Benfield Valley Topic Paper for further explanation.</p> <p>To disregard the potential to accommodate additional housing when the city has an overall housing shortfall would not be positive planning and would not be consistent with the strategy in CPP1 or Policy CP1.</p>	
H2	177	-	-	Remove H2 (all urban fringe sites) from the plan.	unsound	Not positive prepared/not justified and not consistent with NPPF/ CPP1	

						<p>Principle firmly established through CPP1. The soundness of the evidence underpinning CPP1 was tested by the CPP1 Planning Inspector and has subsequently been tested through several planning appeals and decisions for urban fringe sites that have already come forward.</p> <p>CPP1 states that urban fringe housing sites will be allocated through the preparation of CPP2. The proposed sites in Policy H2 have all been identified following further analysis in the 2015 Urban Fringe Assessment.</p>	
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						Removal of any of the sites can only be justified if shown to be not suitable, available or deliverable. No evidence has been put forward to justify the removal of any of the sites, therefore this could not be justified against the 'soundness tests'. The plan must be prepared positively (aiming to meet objectively assessed needs), it must be justified by appropriate evidence, effective and in conformity with the NPPF.	
H2	180	-	-	Remove Site 30, Site 32/32a, and Site 33.	unsound	Not positive planning/not justified and not consistent with NPPF or CPP1 As stated above, the	

						<p>requirement to identify and allocate sites for c.1,000 homes on the urban fringe established at the CPP1 examination and is set out in CPP1 Policies CP1, whilst a commitment to allocate such sites through CPP2 is set out in Policy SA4.</p> <p>These three proposed sites were identified as having potential for housing in the 2014 Urban Fringe Assessment and were subject to further detailed evaluation in the 2015 UFA. The proposed allocations in Policy H2 have been based on this evidence. For Site 30, the proposed housing</p>	
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						number has been reduced from 150 to 30 dwellings reflecting the decision of 'Homes for Brighton & Hove' not to pursue proposals for a larger, high density scheme due to site access and technical difficulties affecting viability / deliverability of high density build.	
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