



The Planning Inspectorate

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## Report to Dudley Council

by Jameson Bridgwater PGDip TP MRTPI

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

Date 1 November 2016

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**PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)**

**SECTION 20**

**REPORT ON THE EXAMINATION OF THE DUDLEY BOROUGH  
DEVELOPMENT STRATEGY**

Document submitted for examination on 11 March 2016

Examination hearings held on 17 and 18 May 2016

File Ref: PINS/C4615/429/11

## **Abbreviations Used in this Report**

AA	Appropriate Assessment
AHVA	Affordable Housing Viability Assessment
BDS	Dudley Borough Development Strategy
BHAAP	Brierley Hill Area Action Plan
CS	Black Country Core Strategy
DAAP	Dudley Area Action Plan
DtC	Duty to Co-operate
FPC	Further Proposed Change
HAAP	Halesowen Area Action Plan
HMA	Housing Market Area
LDS	Local Development Scheme
LEP	Local Enterprise Partnership
LP	Local Plan
MM	Main Modification
OAN	Objectively assessed need
PUA	Principal Urban Area
SA	Sustainability Appraisal
SAAP	Stourbridge Area Action Plan
SCI	Statement of Community Involvement
SES	Strategic Employment Site
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment

SRA  
SUE

Strategic Regeneration Area  
Sustainable Urban Extension

### **Non-Technical Summary**

This report concludes that the Dudley Borough Development Strategy provides an appropriate basis for the planning of the district providing a number of modifications are made to the plan. Dudley Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted. All of the main modifications to address this were proposed by the Council and I have recommended their inclusion after considering the representations from other parties.

The Main Modifications can be summarised as follows:

- Modify Policies D9 and S2 by deleting references to the siting of hot food takeaways in relation to proximity of secondary schools; and
- Modify Policy S23 to ensure consistency with the Framework in relation to the Green Belt; and
- Modify Policy S36 to relate solely to Public Houses and ensure consistency with the Framework.

## Introduction

1. This report contains my assessment of the Dudley Borough Development Strategy (BDS) 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 compliant with the legal requirements. The National Planning Policy Framework (the Framework) (paragraph 182) 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 (January 2016) which is the same as the document published for consultation in January 2016 (BDS11).
3. My report deals with the Main Modifications that are needed to make the BDS 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 recommend any modifications needed to rectify matters that make the Plan unsound and thus incapable of being adopted. These Main Modifications are set out in the Appendix.
4. The Main Modifications that are necessary for soundness all relate to matters that were discussed at the Examination Hearings. The Council have prepared a schedule of proposed Main Modifications and carried out a sustainability appraisal and this schedule has been subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.
5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in Dudley Borough Development Strategy.

## Assessment of Duty to Co-operate

6. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.
7. In the BDS Duty to Co-operate Statement (BDS10) and elsewhere, the Council has provided satisfactory evidence of its engagement with all those main bodies prescribed under Section 33 of the 2004 Act, where appropriate, and the relevant public bodies having planning and related responsibilities in the area during the plan preparation process.
8. There are no other significant outstanding duty to co-operates issues, and I am satisfied that the duty to co-operate in respect of the preparation and progress of the BDS has been satisfied.

## Assessment of Soundness

### *Preamble*

9. The BDS has been prepared in the context of the adopted Black Country Core Strategy (CS), a document prepared jointly by Dudley, Sandwell and Walsall Metropolitan Borough Councils and Wolverhampton City Council. Much of the evidence base for the BDS is shared with that of the CS and was prepared in co-operation with other participating Councils. The CS provides the strategic planning policy background for the matters contained within the BDS, and it is not necessary to address those matters further.
10. The BDS seeks to direct and inform development proposals predominantly in the regeneration corridors which the CS identified within the Borough, linking the four main town centres. These centres and corridors contain the areas where the majority of growth will be concentrated over the plan period (up to 2026). Furthermore, the BDS sets out Development Management policies to be used for the determination of planning proposals for the Borough.
11. The BDS will form part of the suite of plans comprising the CS, Brierley Hill Area Action Plan (BHAAP), Halesowen Area Action Plan (HAAP), and Stourbridge Area Action Plan (SAAP) and, when adopted, the Dudley Area Action Plan (DAAP). This, in turn, will replace the saved UDP policies and will be used as necessary to assess development proposals within the Plan area. Appendix 2 provides a list those saved UDP policies which will be superseded by the BDS.

### Main Issues

12. Taking account of all the representations, written evidence and the discussions that took place at the Examination Hearings I have identified 4 main issues upon which the soundness of the Plan depends.

#### **Issue 1 – Is the Borough Development Strategy consistent with, and does it positively promote, the visions, objectives and spatial policies contained in the Core Strategy; is its relationship with the Core Strategy sound and is its overall approach consistent with national policy?**

13. Dudley as a Borough benefits from having a diverse range of settlements each with their own unique character. Each of these settlements is bound together by the Borough's natural and industrial heritage. The BDS is explicit in that it seeks to preserve and enhance the key components of the Borough's character whilst building on recent successes and positively planning for its future. The BDS seeks to direct strategic development and growth across the Borough. To achieve this, the Plan sets out social, economic and environmental policies that include infrastructure, enhancement of the public realm, improvement of movement in and around the Borough, and the achievement of high quality urban design, architecture and landscape that is both sustainable and enhances local character and distinctiveness. These objectives are fully compliant with the CS and the adopted and emerging Area Action Plans.
14. There is broad local support for the Plan's vision and objectives, which are based on an understanding of community needs and aspirations gained

through extensive public consultation and engagement. This is fully explored in the draft Options Report (BDS2) which demonstrates how the Council has reached its preferred options for the vision and aims of the plan.

15. Overall, and subject to the Main Modifications identified, the Plan is positive and flexible, and it promotes and encourages economic development and environmental improvement across the Borough throughout the Plan period consistent with the aims of the CS and the Framework.
16. I discuss below specific issues relating to matters of housing, employment land Green Belt, community facilities and hot food takeaways. Otherwise though I consider proportionate and appropriate evidence has been presented to show the allocations and approach towards transport, parking, heritage and environmental issues are sound and justified.

## **Issue 2 – Are the strategic policies clear, justified and consistent with national policy and will they be effective?**

### *S3 Renewable Energy*

17. The policy seeks to ensure that opportunities for renewable energy are encouraged and that the existing infrastructure is utilised and expanded upon, including the exploration of the use of the Borough's extensive canal network for heating and cooling purposes. Notwithstanding this, it was argued in representations that there should be specific protection to prevent the loss of agricultural land in relation to the siting of solar farms. However, the CS and the BDS already have policies that would allow for an adequate assessment of any solar farm proposal should one arise. Furthermore, development on agricultural land is specifically addressed within paragraph 112 of the Framework. Therefore I conclude that Policy S3 Renewable Energy is sound.

### *S6 Urban design*

18. It was suggested at the Examination Hearings that there should be a separate design guidance policy for rural areas particularly those within the Green Belt. However, strengthening local character and distinctiveness is stated to be a primary objective of Policy S6 along with seeking to ensure that development is of high quality, sustainable, and responsive to local character (BDS 14). Therefore, given that these requirements are equally applicable to development in rural areas it is not necessary for soundness to require a separate policy. The policy is therefore in accordance with the Framework, and builds on relevant CS policies including CSP4: Place Making, and ENV3: Design Quality. Accordingly, I consider the Plan's overall approach to design and built environment issues is sound.

### *Policy S23 - Green Belt*

19. The purpose of Policy S23 is to enable the Council to properly assess the effect of development on the Green Belt. Within the policy the Council have also set thresholds in relation to evaluating extensions or alterations to buildings to ensure that they are not disproportionate. The policy also contains criteria relating to the structure of the original building and the design of extensions or alterations. However, following detailed discussion at the Examination Hearings the Council accepted that the policy as submitted was not consistent with the Framework; in particular with regard to its reference to and

application of 'very special circumstances' in terms of the assessment of development proposals. It is therefore necessary for soundness to delete the reference to 'very special circumstances'. Additionally, as proposed as a main modification, it is not necessary for Policy S23 to apply an additional test in relation to openness as this is established in the Framework. Furthermore, this approach is consistent with the Courts (Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404).

20. Moreover, I accept that a number of adjoining Councils apply thresholds for extensions and alterations within their local plans. However, this alone, without locally established evidence, does not provide the necessary justification for the application of the Council's thresholds. Consequently, the ultimate judgement should rest with the decision maker in relation to whether an extension or alteration is disproportionate based on the site specific circumstances and the proposal before them. As the modified policy relies on the Framework the reference to this test in the proposed modification would be inconsistent with its construction and so I have omitted it. Furthermore, the design and structural criteria largely replicate Policy S6 of the BDS and therefore in the interests of clarity it is not necessary to replicate them within Policy S23.
21. The Council have not proposed any changes to the Borough's Green Belt Boundary in the BDS. Nonetheless, a local interested party argued that the Green Belt boundary should be amended to exclude a site within their ownership in the Sedgley area. It was argued that it would be a suitable site for housing. However, the proposed amendment does not meet the exceptional circumstances required to justify a Green Belt boundary change. Furthermore, the BDS did not set out to undertake such an exercise which, if required, should be undertaken as part of a comprehensive review of the Local Plan. Consequently, based on all of the available evidence including representations at the Examination Hearings there is no evidence that justifies an amendment to the Green Belt boundaries.
22. Having reached the conclusions above it is therefore necessary for soundness to modify Policy S23 (**MM2**).

#### *Policy S28 Sports Facilities and Stadiums*

23. Representations received in writing and at the Examination Hearings have stated that there had been a loss of sports stadiums in the Borough. In these circumstances it was argued that Policy S28 was unsound as it did not adequately promote the provision of new stadia within the Borough in particular with regard to a dedicated stadium suitable for speedway (a stadium based motorcycle motorsport). However, whilst it was common ground that there had been a loss of stadia within the Borough, Policy S28, sets out a balanced approach to the provision of new stadia which seeks to ensure that development proposals are sustainably located and do not result in material harm to adjoining residents or businesses.
24. Furthermore, the policy does not preclude the promotion of the development of new stadiums in Dudley and is consistent with the Framework in that it seeks to direct such development to accessible locations. Moreover, the policy

is consistent with the general support for the promotion of sport and recreation within the CS and the Framework. Consequently it provides an adequate basis for the consideration of sports stadia should proposals come forward and this is not altered by the omission of a direct reference to sports stadia within Policy S2 Planning for a Healthy Borough.

25. Consequently, based on all of the available evidence and the representations at the Examination Hearings I conclude that Policy S28 is soundly based.

*Policy S36 Safeguarding community facilities*

26. The Council are concerned that Dudley has experienced a loss of community facilities, in particular Public Houses which make a significant social contribution to the population of the Borough. Policy S36 seeks to safeguard community facilities including assets of community value (Libraries, Public Houses, and Sports Pitches etc.). The policy proposes a series of 5 criteria based tests to demonstrate that a facility is no longer viable or has potential to become viable as a community asset. However, some of the proposed tests go beyond the requirements of the Framework, whilst others, in particular heritage, were adequately addressed by the Framework or elsewhere in the CS and BDS. Moreover, whilst there was adequate evidence in relation to the loss of Public Houses, it was not substantively demonstrated that other community facilities needed specific protection beyond the existing policies of the CS or the Framework.
27. Accordingly, it is necessary for soundness to amend Policy S36 to relate solely to Public Houses. (MM3).

**Issue 3 – Are the regeneration corridors and site allocations for employment and housing and policies for green infrastructure and heritage landscape consistent with the Core Strategy and national policy, are site allocations deliverable and has the plan been positively prepared in these respects?**

28. The Council have designated 6 regeneration corridors with an overall purpose to allocate land in accordance with the CS to promote, focus and enable sustainable economic growth for the Borough. This is an evidence based response to the significant changes in the Borough's economy and the BDS seeks to balance the provision of available and deliverable housing land alongside the reassessment of employment land provision. The Council have demonstrated that they have carefully and robustly analysed their employment land requirements (BDS21). This has allowed sites that are no longer suitable for employment use to be allocated for housing where it is appropriate, whilst seeking to significantly improve the quality of the Borough's employment land. This approach is consistent with paragraph 22 of the Framework.
29. Outside of the regeneration corridors the BDS allocates a number of site specific housing and employment sites, these seek to ensure that regeneration and growth are distributed sustainably across the Borough. These allocations build positively on the locational advantages and unique character of the settlements that they relate to. As such these allocations complement the areas covered by Area Action Plans and regeneration corridors. This ensures

that the BDS has a balanced and positive approach supporting development and economic growth.

30. This was further evidenced at the Examination Hearings by the Council who set out a coherent and comprehensive strategy of transport related improvements to maximise and enhance the existing infrastructure and connectivity of the Borough (cycling, improved interchanges, rail and rapid transit schemes). These measures gained broad support in the Examination Hearings and it was common ground that they will contribute towards supporting economic growth across Dudley as a whole. I therefore conclude that the transport strategy underpinning the BDS is justified by the available evidence and consequently sound.
31. Another key component in the Council's strategy is the Borough's green infrastructure and heritage landscape. These help define and characterise the Borough and are important to the overall strategy of the BDS; they are therefore central in defining the Plan's regeneration corridors and site allocations. Consequently, providing, protecting and enhancing a well-connected landscape, heritage features and public realm are key themes and as such the overall strategy and specific site allocations within the corridors are justified by the landscape and heritage evidence base (BDS 13, BDS 15).
32. Notwithstanding this a number of representations argue that the housing requirement in the BDS does not represent an up to date full objective assessment of need. However, this is not a matter for me to consider in an examination of a subsidiary plan which is intended to implement the CS and to be consistent with it. Any new objective assessment of need and subsequent re-assessment of the housing requirement would need to be carried out through a review of the CS taking into account recent household projections as appropriate. Moreover, this approach has been endorsed by the Courts (Gladman Development Limited v Wokingham Borough Council [2014] EWHC 2320 (Admin)) and (Oxted Residential Ltd v Tandridge District Council [2016] EWCA Civ 414).
33. Consequently, based on all of the available evidence, the Council's overall approach to housing and employment is suitably flexible and positive. Further, it is underpinned by a strong track record of working in partnership with other agencies including the LEP to deliver difficult sites in challenging market conditions; in this regard the Council's strategy is likely to ensure delivery within the parameters of the CS.
34. Having reached the conclusions above, the BDS in conjunction with the four Area Action Plans make adequate provision to deliver the CS's overall housing requirement of 16127 dwellings (net) for the Borough and the requisite level of employment land. As such, the BDS is consistent with the CS and therefore, the strategy within the plan with regard to the provision of land for housing and employment is sound.

**Issue 4 –Are the individual development management policies clear, justified and consistent with national policy and will they be effective?**

*Policy D4 – Unstable Land*

35. The Coal Authority has sought to ensure that the issues relating to the Borough's mining legacy are highlighted where appropriate for each allocated site throughout the BDS. However, although the Council have amended the BDS to reflect the comments of the Coal Authority; I consider that the issue of mining legacy is adequately and proportionally addressed within Policy D4. Having reached this conclusion it is not necessary for soundness to insert references to specific sites for soundness and therefore Policy D4 and the Plan is soundly based in relation to unstable land.

*Policy D5 – Noise Pollution*

36. Concern was raised by a local interest group that Policy D5 could be a factor in hampering the provision of sports stadium based in the Borough. However, it is clearly important to ensure that account is taken of the likely noise impact of all development on the amenity of people living and working nearby. Further, it is justified to seek mitigation measures to minimise noise emissions to an agreed acceptable level.

37. Consequently, it is considered that Policy D5 satisfactorily addresses the issue of noise pollution and will help to ensure that adjacent uses of land are compatible. Consequently, it is concluded that Policy D5 is soundly based.

*Policy D9 – Hot Food Takeaways*

38. It was common ground that obesity is a national problem in relation to health and that the control of childhood obesity can result in long term health benefits. In this particular regard Policy D9 seeks to restrict hot food takeaways (A5 uses) within 400m of the boundary of existing secondary schools as a component part of the Council's overall public health strategy. The policy also seeks to ensure that there is not an overconcentration of A5 uses within the Boroughs centres, retail parades and protected frontages.

39. However, whilst the Council set out clear evidence in relation to issues of overconcentration of A5 uses, there was no local evidence that demonstrates a causal link between A5 uses and childhood obesity in relation to the proposed 400m zone around secondary schools. Moreover, whilst there is some limited international research that recognises some causality between A5 uses and negative health outcomes this was at a considerably shorter distance of 160m and therefore would not be comparable to the Council's proposed policy. Consequently, the restriction of A5 uses within 400m of secondary school boundaries is not justified by the available evidence.

40. Having reached the conclusions above it is therefore necessary for soundness to modify Policy D9 and the explanatory text to relate solely to the overconcentration of A5 uses (**MM4 and MM5**) and also to modify Policy S2 Planning for a Healthy Borough accordingly (**MM1**).

*Other considerations*

41. It was advanced at the Examination Hearings that the whole of Coombswood Wedge should be designated as a Local Nature Reserve (LNR) within the BDS. However, based on the available evidence it is clear that there is already significant protection for the Wedge due to it being located within the Green Belt. Notwithstanding this, the Council are well advanced in securing designation of Leasowes Historic Park and part of Coombswood Wedge as an LNR working with Natural England (CB3, CB4). However, as this is a separate legal process it is outside the scope of the BDS and consequently has no effect on the soundness of the plan.

**Monitoring and delivery**

42. The Council's Annual Monitoring Report (CD4) will constitute the main monitoring component, and provides most of the necessary evidence to assess the success or failure of delivery and what alternatives might reasonably be provided if necessary. A full review of the BDS during the plan period is not anticipated; although the monitoring regime should ensure that any risks to non-delivery are 'flagged up' and interventions made to alleviate risks should this prove necessary. Nevertheless, a review of the CS commenced in January 2016. Should strategic alterations be made to that document, changes may need to be made to the BDS as a consequence. This can be achieved through proper management and regular updating of the LDS.

**Assessment of Legal Compliance**

43. 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 Dudley Borough Development Strategy is identified within the approved LDS 2015 - 2018 and has been prepared in accordance with it.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in November 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.
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report contained within the SA dated December 2015 sets out why AA is not necessary.

National Policy	The Dudley Borough Development Strategy complies with national policy except where indicated and modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	The Dudley Borough Development Strategy complies with the Act and the Regulations.

## Overall Conclusion and Recommendation

44. 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 2004 Act. These deficiencies have been explored in the main issues set out above.
45. The Council have requested that I recommend Main Modifications to make the Dudley Borough Development Strategy sound and capable of adoption. I conclude that with the recommended Main Modifications set out in the Appendix the Dudley Borough Development Strategy satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Jameson Bridgwater*

INSPECTOR

**This report is accompanied by the Appendix containing the Main Modifications**

## Dudley Borough Development Strategy

### Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text.

The page numbers and paragraph numbering below refer to the submission Dudley Borough Development Strategy, and do not take account of the deletion or addition of text.

Reference	Submission Document Page No.	Policy number / Paragraph	Main Modification
MM1	Page 1-2	Policy S2 – Planning for a Healthy Borough	<p><b>Policy S2 – Planning for a Healthy Borough</b></p> <p>Dudley Council is committed to fostering a borough where people enjoy good health, well being and are supported to make healthy choices for a more active lifestyle. The application of Planning Policy, including the guidance set out within The Planning for Health Supplementary Planning Document (SPD), will help in achieving this aim.</p> <p>In particular, Dudley Council will :-</p> <ol style="list-style-type: none"> <li>1. utilise spatial planning to help address obesity and improve fitness and general well being by ensuring that environmental infrastructure is protected and enhanced and additional facilities are provided, with a focus on :-                     <ul style="list-style-type: none"> <li>• open space, playing fields (Policy) and sports facilities (Policy ) which are accessible to all</li> <li>• creating environments conducive to cycling and walking and aiming to create walkable neighbourhoods accessible to and integrated with a wide</li> </ul> </li> </ol>

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			<p>range of transport means in conjunction with Core Strategy Policy TRAN4</p> <ul style="list-style-type: none"> <li>• promoting active travel through the application of Travel Plans (CS Policy TRAN2), giving priority to pedestrians and cyclists, and aiming to connect new development to existing walking and cycling networks such as the canal network</li> <li>• protecting and enhancing Dudley's Green Network</li> </ul> <p>2. ensure that existing health, education, cultural and community facilities are protected and that the siting of such facilities meets the criteria set out in Core Strategy Policy HOU5 and Policy EMP6 to ensure accessibility and choice for the benefit and well being of all communities within the Borough</p> <p>3. apply the following measures to promote health related sustainable development as appropriate:-</p> <ul style="list-style-type: none"> <li>• seeking to improve air quality (Core Strategy Policy ENV8 ) and reducing noise pollution (Policy D5) within the borough</li> <li>• controlling the <del>siting</del> <u>concentration</u> of hot food takeaways and promoting greater access to healthy food, including the creation and protection of allotments</li> <li>• ensuring the submission of a Health Impact Assessment (HIA), where required in support of development proposals</li> <li>• providing good quality and well designed housing which is readily accessible to employment, education, health and community facilities and fresh food (Core Strategy Policies HOU2 and ENV3)</li> <li>• promoting safe residential environments and addressing the fear of crime (Core Strategy Policy ENV3)</li> <li>• improving road safety (Core Strategy Policy TRAN2)</li> <li>• addressing climate change issues and sustainable building principles (Policy S3)</li> <li>• requiring new large commercial and public buildings to include facilities for baby changing and breastfeeding</li> </ul> <p>4. support community based projects which promote physical activity and</p>
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			<p>campaigns such as <i>Walk to School Week</i> and <i>Bike to Work Week</i> and work in partnership with the NHS, business partners and agencies to enable health strategies to be interlinked and cross cutting.</p>
MM2	Page 5-7	Policy S23 – Green Belt	<p><b>Policy S23 – Green Belt</b></p> <p>There <del>is</del> <u>shall be</u> a presumption against inappropriate development in the Dudley Borough's <u>designated</u> Green Belt. The boundaries <u>and extent</u> of the Green Belt are shown on the Policies Map <u>forming part of the DBDS</u>. Within the Green Belt, development will not be permitted except <del>in the very special</del> for circumstances set out in the National Planning Policy Framework (<del>Section 9 or superseding national policy and guidance on this matter</del>).</p> <p>In addition,</p> <ol style="list-style-type: none"> <li><del>1. Extension and/or alteration to buildings or the replacement of dwellings will not be considered if it results in a disproportionate addition over 40% of the original building volume.</del></li> <li><del>2. The change of use of buildings and land and external alterations to buildings within the Green Belt will only be permitted if:-</del> <ul style="list-style-type: none"> <li><del>• it would</del></li> <li><del>• the applicants can demonstrate through a structural survey that the buildings are of permanent and substantial construction and are capable of conversion without major or complete re-construction</del></li> <li><del>• the form, bulk and general design of any new buildings are in keeping with their surroundings</del></li> <li><del>• the materials used in external facades normally conform with those of the original building or the character of the area</del></li> <li><del>• proposals conserve and enhance the historic or architectural features of the building and maintain its original character and appearance</del></li> </ul> </li> </ol>

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			<ul style="list-style-type: none"> <li>• <del>extensions to existing outbuildings should not exceed more than 20% of the original building volume.</del></li> </ul> <p><del>Permitted Development Rights will normally be removed from buildings converted for residential use inside the Green Belt to prevent the over-domestication of the setting. Proposals inside or adjoining the Green Belt should include biodiversity features and new landscaping to help support wildlife and biodiversity.</del></p>
MM3	Page 6-9	Policy S36 - Safeguarding Community Facilities including Assets of Community Value (ACV)	<p><del><b>Policy S36 - Safeguarding Community Facilities including Assets of Community Value (ACV) Public Houses</b></del></p> <p><del>Dudley Council will <u>guard against the unnecessary loss of valued public houses, particularly where this would reduce the community's ability to meet its day-to-day needs, by assessing any application for their change of use or their redevelopment against the provisions of the NPPF and the development plan.</u></del></p> <p><del>not permit the redevelopment or change of use of buildings used, or last used, for community facilities, (including public houses, libraries, sports pitches, leisure centres, places of worship and public halls) except where the following criteria can be met, demonstrating that the facility is no longer viable as a community asset or has no potential to become viable as a community asset:-</del></p> <p><del>Test 1: Viability</del></p> <p><del>Dudley Council will require evidence to demonstrate that:-</del></p> <p><del>the existing business is not financially viable, as evidenced by trading accounts for the last 3 years in which the business was operating as a full-time business</del></p> <p><del>a range of measures have been tested during this time to increase trade and diversify the use</del></p> <p><del>the potential for the building and its curtilage, without the demolition of the building, to extend the range of facilities offered at the site has been fully considered (including any planning issues) – e.g. in the case of public houses, hot and cold meals, accommodating functions and meetings, bed and breakfast and part use as a music or other entertainment venue.</del></p>

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			<p><del>Test 2: Marketing</del></p> <p><del>Where applications for the change of use or redevelopment of a community facility are received, Dudley Council will require evidence that the site has been prominently marketed at a realistic freehold or leasehold price as a community facility for a continuous period of at least 12 months.</del></p> <p><del>Where the proposal is for the change of use or redevelopment of public house, Dudley Council will require evidence that the site has been prominently marketed at a realistic freehold or leasehold price as a public house for a continuous period of at least 12 months. After this period, if there is no interest in the site for an A4 use, a further 12 month period of marketing for alternative community uses will also have been undertaken and evidenced.</del></p> <p><del>This evidence should be presented alongside evidence required under Test 1 in a 'Marketing and Viability Statement' that accompanies the planning application. In assessing this statement, the Council may be advised by an independent assessor.</del></p> <p><del>Test 3: Cultural and heritage value</del></p> <p><del>Development proposals which involve the change of use, loss or alteration of a community facility should not have a detrimental impact on the design, character, significance and setting of buildings or areas of acknowledged heritage value i.e. buildings which are identified as Heritage Assets, or within a Conservation Area, or identified within an Urban Historic Landscape Characterisation Study as making a high positive contribution to the street scene, or forming an integral part of an acknowledged heritage or recreational trail.</del></p> <p><del>In addition Dudley Council will also consider whether the potential loss of the buildings or use would unduly impact on the harmonious and settled character of the street scene.</del></p> <p><del>Test 4: Community value</del></p> <p><del>If the application site has been registered as an Asset of Community Value, this will be treated as a material consideration, alongside all viability and marketing</del></p>
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## APPENDIX - Dudley Borough Development Strategy Main Modifications

			<p><del>evidence; in determining if the site has a future as a viable community facility.</del></p> <p><del>Furthermore the potential appeal of a facility to a more widespread interest or community group, or as a tourist destination will also be taken into consideration.</del></p> <p><del>Test 5: Location</del></p> <p><del>In designated centres, Dudley Council will consider the implications of the loss of the community facility on the vitality and viability of that centre with particular regard to that centre's assets and role, and the range, diversity and connectivity of the services and facilities currently provided there.</del></p> <p><del>Outside of such areas, Dudley Council will consider the extent to which the premises provided a valuable role as a community facility for surrounding residential neighbourhoods.</del></p>
MM4	Page 10-7	<p>Policy D9 – Hot Food Takeaways.</p> <p>Supporting text</p>	<p><b>Hot Food Takeaways</b> - supporting text</p> <p><del>Although it is recognised that hot food takeaways shops can provide an important complementary service compared to other retail uses, they can also be more likely to have a detrimental impact on the amenity and the on retail character and function of shopping centres due to their hours of operation. Such harmful impacts relate to increased incidence of litter, smells odours, crime and anti-social behaviour, noise and general disturbance, as well as parking and traffic problems. The proliferation and proximity of hot food takeaways to schools is also of concern for health reasons and childhood obesity as the food they serve is often high in fat, salt and sugar.</del></p> <p><del>The introduction of a <u>planning</u> policy to control the numbers of hot food takeaways in <u>particular locations</u> <del>the Borough</del> will assist <u>in providing a healthy balance of food choices for all communities across the Borough.</u> <del>not only to reduce the levels of obesity, but it may also reduce school children being exposed to unhealthy food choices.</del> It will also help to counteract the over concentration of hot food takeaways in certain localities. It should of course be noted, that this policy will not reduce the numbers of premises already operating under an A5 <u>Land Use Class</u> category, but will aim to restrict new premises opening <u>where</u></del></p>

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			<p><u>they would lead to an over-concentration or exacerbate an existing over-concentration of such premises in certain locations.</u></p> <p><del>Similarly †</del><u>There is a need to take a co-ordinated approach to public health to tackle obesity (particularly childhood obesity). There are also other interventions that can contribute to the improvement in public health including alongside the Council's Licensing service to ensure that street vending also provides a healthy balance in terms of the location of food choices across the Borough.</u> <del>of unhealthy foods is also restricted in close proximity to school premises.</del></p> <p>This Policy should be read in conjunction with Policy L9 <u>of the DBDS on Protected Frontages</u> as certain requirements within that Policy will apply to A5 uses located within <u>designated Protected Frontages areas</u>.</p> <p><del>Further guidance on hot food takeaways and the Borough's position towards healthy planning in general, can be found in the Planning for Health Supplementary Planning Document.</del></p>
MM5	Page 10-8	Policy D9 – Hot Food Takeaways.	<p><b>Policy D9 – Hot Food Takeaways</b></p> <p>All applications for hot food takeaways whether through new build or change of use, will be assessed on their individual merits. However, within the Borough's protected frontages, planning permission for hot food takeaways will only be granted where no more than 5% of the units will consist of A5 uses.</p> <p>No more than two A5 uses will be permitted adjacent to one another within the boundaries of all the Borough's centres and retail parades. <u>Elsewhere, hot food takeaways will be permitted where they do not create or exacerbate a concentration (typically 3 or 4) of those uses.</u> <del>Outside designated centres and local parades, hot food takeaways will be resisted where the proposal will fall within 400m of the boundary of an existing secondary school.</del></p> <p>In all locations planning permission for hot food takeaways will only be granted where, in addition to the above considerations, there would not be an adverse</p>

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			<p>impact on public or highway safety. Regard will be given to:-</p> <ul style="list-style-type: none"> <li>• existing traffic conditions including availability of parking spaces</li> <li>• availability of safe and legal loading areas</li> <li>• proximity to junctions, pelican crossings, bus bays and bus stops</li> <li>• accessibility of the site by public transport and cycling</li> <li>• applications for hot food takeaways within close proximity to residential properties will be refused where it is considered that there may be significant adverse impacts on residential amenity in terms of disturbance, vibrations, odours, traffic impacts, litter or hours of operation as a result of the proposal</li> <li>• additionally, the cumulative impact of proposed hot food takeaways will be assessed with regard to their risks around community safety, crime and disorder.</li> </ul> <p>Wherever practicable, extract equipment should be accommodated internally within the building and routed within existing chimneys. Where external equipment is proposed, it should not be detrimental to the area or host property.</p> <p><b><i>*In addition to planning permission, proposals for hot food takeaways will require other approvals under other legislation and applicants should ensure that these requirements are met.</i></b></p>
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