

Matter 7 Development Management

Qs 7.30 - 7.34 Policy DM15 (Past Operator Performance)

1. We maintain our objection to Policy DM15 on the grounds that it is not consistent with national policy, and it fails to meet none of the soundness tests as it is not positively prepared, justified or effective. Elaborating on these points:
 - Planning permission runs with the land, not the applicant (let alone the 'operator' of a site);
 - Applications should be considered on their merits, in terms of the acceptability of the land use;
 - Judgement of the 'past performance' may be subjective and such 'performance' may be due to a range of factors which may not be material to determination.
2. Therefore, our direct answer to question 7.30 is no, it cannot be justified in land use planning terms.
3. The Consultation Statements (SD03 and SD04) refer to the policy reflecting issues raised in consultation and there being a 'policy gap' regarding the issues raised - namely past performance of 'operators'. The 'policy gap' ie no national policy addressing this, is for a reason - it is not a sound policy and does not relate to the principles of, and land-use controlled through, the planning system.
4. The Consultation Statement (SD04) includes comments in response to earlier representations on Policy DM15 (pp 240-241). This refers to Planning Practice Guidance¹ to support the Councils' position and to justify the policy.
5. PPG does refer to site planning history as being a relevant consideration, but rightly makes no mention to 'past behaviour' or 'performance'. This paragraph of PPG obviously primarily addresses applications for major housing development and reasons why earlier permissions have not been implemented, and not the performance of an 'operator'.
6. Even the use of the term 'operator' in the policy is odd. An operator of a site may not be the applicant, and as permission runs with the land there is no planning control over who may operate a site in future. The language does seem to indicate that a specific situation is in the mind of the authors, potentially influenced by those opposed to it and/or politicians, rather than land use planning matters.
7. Finally, our concern over this policy is wider than this Plan, as other planning authorities may also seek to produce such a policy and experience similar difficulties demonstrating how it is sound.
8. To make the Plan sound, this policy and references to it (eg para 6.80) should be deleted.

¹ <https://www.gov.uk/guidance/determining-a-planning-application> Paragraph: 010 Reference ID: 21b-010-20190315