
Report to Merton Council

by Robert Yuille MSc Dip TP MRTPI

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

Date 4 June 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO MERTON SITES AND POLICIES

LOCAL PLAN

Document submitted for examination on 2 October 2013

Examination Hearings held between 21 and 29 January 2014

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Non-Technical Summary

This report concludes that the Merton Sites and Policies Local Plan provides an appropriate basis for the planning of the Borough over the next 15 years providing a number of modifications are made to it. The Council has specifically requested that I recommend any modifications necessary to enable them to adopt the Plan.

All of the modifications set out below were proposed by the Council and I have recommended their inclusion after considering representations from other parties on these issues.

The main Modifications can be summarised as follows:

- Make clear that the amalgamation of shopping frontages in Wimbledon Village will be resisted (MM1 to MM4);
- Confirm that the next Borough wide assessment of the need for Gypsy and Traveller Accommodation will take place in 2016 and should this reveal a further requirement for pitches over and above that already identified the Council will consider reviewing the Plan to support such provision (MM5);
- Make clear what must be done in flood prevention and flood protection terms when considering the development of previously developed sites in the functional floodplain (MM6 and MM7);
- Delete reference to a 65% rent cap (MM8);
- Delete reference to schools and the shared use of open space (MM9);
- Delete the proposal that Wimbledon Library be retained and improved with residential development taking place on part of the site (MM10); and
- Make clear that the decisions as to what enabling development will be acceptable on the Greyhound Stadium site will not be delegated to a Supplementary Planning Document (MM11).

Introduction

1. This report contains my assessment of the Merton Sites and Policies Local Plan (the Plan) 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 whether it is compliant with the legal requirements. The National Planning Policy 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 Submission Draft of the Plan which is the same as the document published for consultation between July and August 2013.
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 and thus incapable of being adopted. These main modifications are set out in the Appendix.
4. The Main Modifications that are necessary for soundness and all relate to matters that were discussed at the Examination Hearings. Following these discussions, the Council prepared a schedule of proposed main modifications and carried out sustainability appraisal and this schedule has been subject to public consultation. I have taken account of the consultation responses in coming to my conclusions in this report.

Assessment of Duty to Co-operate

5. 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.
6. The Council's Duty to Cooperate Statement¹ sets out the steps taken by the Council to discharge its duty in this respect. The only challenge to whether the Council has discharged this duty relates to planning for Gypsies and Travellers.
7. The London Plan makes clear that the needs of Gypsies and Travellers are best assessed and provided for at a borough level in coordination with neighbouring boroughs and districts as appropriate². The Council considered the possibility of working with its neighbours on this matter but, following a meeting with

¹ SP4.11. Duty To Cooperate Statement.

² SP2.1. The London Plan. Policy 3.8 i) and paragraphs 3.56 and 3.57.

other South London boroughs, decided to plan for Gypsy and Traveller sites at a local (borough wide) level while sharing best practice and research findings³. The principal reasons for this were that information gathering and plan preparation were at different stages in different boroughs and the make up of the Gypsy and Traveller communities varied across the boroughs.

8. None of the neighbouring boroughs have indicated that they require the Council to provide for their unmet needs for Gypsy and Traveller accommodation and the Council is not asking them to provide for any of its unmet needs for such accommodation.
9. The situation is, therefore, is that the Council acknowledges that the provision of Gypsy and Traveller accommodation has cross boundary implications but having met with and corresponded with neighbouring boroughs it has decided to deal with this matter locally, an approach that is consistent with the approach advocated in the London Plan. I am satisfied, therefore, that the Council has cooperated constructively, actively and on an ongoing basis and has thus discharged its duty in this respect.

Assessment of Soundness

Main Issues

10. Taking account of all the representations, written evidence and the discussions that took place at the Hearings I have identified a number of main issues on which the soundness of the Plan depends. These are dealt with below.

Issue 1 – Relevant policies in the London Borough of Merton Core Planning Strategy (the Core Strategy) require the provision of a minimum of 4,800 houses in the Borough up to 2026 (Policy CS 9), support the provision and improvement of infrastructure (Policy CS 11), encourage the increased provision of the overall number and range of jobs (Policy CS 12), seek to protect and enhance the Borough's public and private open space network (Policy CS 13) and seek to ensure that development is designed to respect, reinforce and enhance the local character of the area (Policy CS 14). To what extent does the Plan assist in achieving these aims?

Housing

11. While the Core Strategy sets a target of 4,800 houses at a rate of 320 dwellings per annum (dpa) in the Borough that target is likely to rise – with the emerging London Plan Further Alterations setting a target of 411 dpa from 2015 onwards. If the 320 dpa figure is applied up to 2015 and the 411 dpa figure is applied beyond, this gives a target of 5,801 dwellings. Given that 931 dwellings have already been built up to 2013 this gives a residual figure of between 3,869 dwellings (4,800 – 931) and 4,870 dwellings (5,801 – 931) up to 2026.

³ SP4.11. Duty To Cooperate Statement. Paragraphs 4.6 & 4.7.

12. The most obvious way in which the Plan helps deliver this housing target is by allocating sites, in whole or in part, for residential development. Of the 46 sites allocated in the Plan, 44 would include some residential development. These allocated sites are expected to contribute some 1,400 homes. The deliverability and developability of these sites has not been seriously challenged. While this figure would make a significant contribution to meeting the existing and emerging housing targets, it amounts to approximately one third of those targets, leaving the question of how the remaining two thirds of the dwellings required would be provided.
13. The undisputed evidence is that there is a realistic prospect of these being provided on windfall sites. Historically Merton has a good record of meeting its housing targets⁴ and over the period 2001-2009 some 60% of residential completions were on windfall sites. The latest projections indicate that the Council will meet its annual target (existing and emerging) over the next 5 years.
14. The evidence is, therefore, that the Council will meet its existing and emerging housing targets with the sites allocated in the Plan playing a significant role in this.

Infrastructure

15. Development in Merton is not reliant on the delivery of any single major piece of infrastructure such as a hospital or a road. The allocated sites will nonetheless place demands on transport and utility providers such as Thames Water and the National Grid but where particular problems or issues are anticipated these are highlighted in the Plan.
16. Furthermore the Plan allocates a number of sites which are themselves capable of providing infrastructure. Examples of this are Site 20 Wilson Hospital and Site 21 Birches Close, both of which are allocated for community use including healthcare and education.
17. While the Council considers that its need for primary school places can be met through the expansion of existing premises its latest assessments⁵ indicate that the need for secondary school places will require both the expansion of existing schools and the provision of new ones. To that end three sites are identified in the Plan (Site 08 Leyton Road, Site 17 Worsfold House and site 36 Chaucer Centre) each of which could deliver educational facilities.
18. The Plan also contains a range of policies intended to support infrastructure provision such as policies DM R1, DM R2, DM R4, DM C1 and DM C2. I am satisfied, therefore, that the Plan does support and encourage the provision of infrastructure.

⁴ SP 5.64 Authority's Monitoring Report 2012-2013. Table 4.3, page 22.

⁵ SP 5.9 Merton Draft School Places Strategy Report 2013 and SP5.9a Merton Draft School Places Strategy Report 2013 and Merton Draft School Places Strategy Report – Appendix.

Jobs

19. While the Plan proposes the retention of a number of existing employment sites it does not allocate new ones. The reason for this is that while the latest evidence supports the improvement in the quality of existing employment sites it indicates that the quantity of industrial floorspace is likely to fall over the Plan period⁶. However, the Plan contains a range of policies to guide and inform development in town centres (Policies DM R1 to DM R7) and to guide and support business and job opportunities across the Borough (Policies DM E1 to DM E4). In this manner I am satisfied that the Plan encourages the increased provision of the overall number and range of jobs.

Public and Private Open Space

20. The Plan contains a range of policies aimed at protecting and enhancing public and private open space in the Borough such as Policies DM D1, DM D2, DM O1, DM O2 and DM T1. The Policies Map also includes a number of open space designations.
21. The suggestion was made that Policy DM O2a, which aims to protect the integrity of green corridors, should explicitly refer to the rear gardens of residential properties. However, rear gardens are subject to permitted development rights and development in them is already covered by Policies CS13 e and DM D2 a8 which, amongst other things, seeks to conserve and enhance the biodiversity of gardens. While it is undoubtedly the case that, when considered en masse, rear gardens form a substantial network of open space it is unclear how effective or necessary an additional reference to them as part of the green space network would be.
22. It was also suggested that rather than requiring replacement planting of a similar or greater value, Policy DM O2e should require any replacements to match the combined age of the trees lost. I do not think this would be justified. I consider that the policy as worded is an adequate way of securing suitable replacement or mitigation and, where possible, net gains in biodiversity. It thus meets the aims of the Core Strategy and the Framework⁷.
23. I am satisfied, therefore, that the Plan will help assist in the protection and enhancement of public and private open spaces in the Borough.

Design and Character

24. The Plan includes a number of policies dealing with design and character, such as Policies DM D1, DM D2 DM D3, DM D5 and DM D6. The suggestion was made that these policies, particularly Policy DM D2a, lay too much emphasis on design respecting rather than enhancing the existing character of the area and thus encourage pastiche rather than innovation. I do not agree. I see

⁶ SP 5.20. Merton Economic and Employment Land Study 2011. Paragraph 11.8.

⁷ SP3.2 Merton Core Planning Strategy. Policy CS13g8. National Planning Policy Framework, paragraph 109.

nothing in the wording of the policy, with its references to appropriate architectural forms, languages, detailing and materials and to complementing and enhancing the character of the wider setting, which would necessarily stifle innovation, attempt to impose particular architectural styles or frustrate high quality design.

25. Other Policies, while not dealing directly with design and character, have implications for these matters insofar as they apply to particular parts of the Borough. For example Policy DM R1aii and DM R1c make, amongst other things, provision for development with a floorspace of up to 1,000sqm in Wimbledon Village. However, Wimbledon Village is characterised by the narrowness of its shop frontages and a unit with a floorspace of 1,000sqm could lead to the amalgamation of frontages creating broad, bland units.
26. This was not the Council's intention but it accepted that the Plan was open to such an interpretation. The Plan was thus ineffective and hence unsound. It proposes, therefore, to remedy this unsoundness by way of Main Modifications (MM1 to MM4) specifying that the amalgamation of frontages in Wimbledon Village would be resisted. With this in mind I am satisfied that the Plan will help respect, reinforce and enhance the local character of the Borough.

Issue 2 – Is the Council's assessment of the accommodation needs of Gypsies and Travellers, its judgement that there is no need to identify new sites to make provision for public pitches and its judgement that none of the sites allocated in the Plan are deliverable or developable as sites for private pitches, based on robust evidence?

Background

27. The Core Strategy states that the Council will carry out a local assessment of needs for Gypsy and Traveller accommodation and that any additional pitches required will be delivered either through this plan (the Plan), through an Action Area Plan, through the Council's asset management or through windfall sites.⁸
28. The Council has carried out its local assessment of such need⁹ and concluded that there is a requirement for 4 public pitches and 2 private pitches. Given the number of people currently living on pitches who have expressed a wish to move to 'bricks and mortar' accommodation and the number of pitches that historically become available for re-letting, the Council concludes that the re-letting of vacant pitches will provide for the requirement for public pitches without the need for additional sites. In other words, it can meet the assessed need for public pitches through the management of its existing assets. The soundness of this approach depends on the robustness of the Council's assessment of need, something that will now be considered.

⁸ SP3.2. Merton Core Planning Strategy. Paragraphs 18.51 and 18.53

⁹ SP5.61. Accommodation Needs Assessment of Gypsies and Travellers in Merton.

Assessment of Need

29. It should be said at the outset that the concern here is with the assessment of need for residential pitches. The undisputed evidence is that there is no need for additional transit pitches or plots for Travelling Showpeople¹⁰.
30. There are Gypsies and Travellers who live in 'bricks and mortar' accommodation in the Borough and those who live on the Brickfields Road site, the only Gypsy and Traveller site in the Borough. In order to contact members of the gypsy and traveller community the Council arranged a Research Event (a cultural variety show) in conjunction with a local Gypsy and Traveller group. At this event a questionnaire survey was carried out to assess the accommodation needs of the settled Gypsy and Traveller population. In order to contact the latter group, consultations were carried out with the Brickfield Road residents to assess their accommodation needs. Account was also taken of other information including the Council's Waiting List for Gypsy and Traveller accommodation.
31. It was suggested that this approach lacked rigour, that it did not pay sufficient heed to the concept of 'psychological aversion', that it underestimated the number of people moving out of 'bricks and mortar' accommodation, that it overestimated the number of people wanting to move in to 'bricks and mortar' accommodation and that the Council's Waiting List was not accurate.
32. Dealing with these points in turn, it is undoubtedly the case that a more formal venue than a cultural variety show event could have been used to carry out the questionnaire, that the questionnaire could have contained more and different questions and that the interviews with the Brickfield Road Residents could have been carried out in a more structured manner. But in devising its approach the Council had to strike a balance between obtaining information and maximising participation from a community which is unwilling to engage directly with 'officials' let alone answer lengthy questionnaires.
33. I consider that the approach used - with an informal event, a short questionnaire and, insofar as the Brickfield Road residents were concerned, a reliance on the results of interviews rather than questionnaires when residents refused to answer questionnaires – struck a sensible balance between the requirement to obtain sufficient information and the need to ensure that a wary group of people actually took part in the survey. The questions asked are all relevant to assessing the need for accommodation, the response rate obtained is comparable with that achieved in other surveys of this type and there is no evidence to indicate that this information was not collected in a professional manner. I consider, therefore, that the Council's assessment of the need for Gypsy and Traveller accommodation is reasonably rigorous.
34. Turning to the question of 'psychological aversion to bricks and mortar'

¹⁰ SP5.61. Accommodation Needs Assessment of Gypsies and Travellers in Merton. Appendix III.

accommodation', this concept is recognised in Government Guidance¹¹ and supported by research¹² although its applicability in London has been questioned¹³. There is, however, no guidance as to how it can be proven in strategic research. Consequently the Council did not include any questions relating directly to it but relied on the answers to an open ended question about the problems of living in 'bricks and mortar' to deal with this point. This is a pragmatic approach and the Council has not, therefore, ignored or paid insufficient heed to the concept of psychological aversion.

35. As to the suggestion that the Council has underestimated the numbers wanting to move out of - and overestimated the numbers wanting to move into - 'bricks and mortar' accommodation, this is based, broadly speaking on concerns that the Council ignored or filtered out a number of responses and that the data it obtained was ambiguous and open to interpretation. Dealing firstly with the 'filtering out' point, the principal reason for such filtering as did take place was to exclude respondents who did not provide a verifiable address in the Borough. This is reasonable, in a survey designed to establish the accommodation needs of Merton residents.
36. Turning to the question of interpretation - the data obtained from the questionnaire¹⁴ is clearly open to interpretation. In arriving at its assessment of need, the Council relied principally on those who gave the lack of pitch provision as the answer to a question asking people to specify why they were not currently living on a site. Less weight was given to the response to a 'rating' question asking people to rate the importance of living on a site. So, for example, it would be possible for a respondent to rate living on a site as essential but because he or she had not given any reason for not actually doing so at present, they were not treated as being in need of a pitch.
37. In a number of instances the Council was able to point to particular reasons, such as ill health, as to why particular respondents were not considered to be in need of a pitch. More generally, however, it made the point that there is a difference between an opinion as expressed in a response to the 'rating' question referred to above and a need as expressed in response to the more specific question. In its view the latter response provides a firmer basis for assessing accommodation requirements. This is an approach the Council is entitled to take and I do not consider that it results in a systematic underestimation of the numbers who wish to move out of 'bricks and mortar, accommodation.

¹¹ Gypsy and Traveller Accommodation Needs Assessments: October 2007, paragraph 15.

¹² HD9. Working with Housed Gypsies and Travellers: A Good Practice Guide, page 13 and HD10 We Are Londoners Too, page 8.

¹³ SP5.61. Accommodation Needs Assessment of Gypsies and Travellers in Merton. Paragraphs 3.4 and 3.16.

¹⁴ SP5.61. Accommodation Needs Assessment of Gypsies and Travellers in Merton. Appendix I & HD6, Main Matter 3, Tables H.61 and H.62.

38. The data obtained from the survey of Brickfield Road residents¹⁵ is similarly open to interpretation but in this instance that information is heavily redacted because only fifteen households are involved and to protect their privacy information about personal circumstances cannot be revealed. However, the Council confirmed at the Hearings that this necessarily confidential information, such as ill health and an inability to pay heating bills, was an important part of its assessment of the number of people who would be willing to move into 'bricks and mortar' accommodation.
39. Although the Council's assessment on this matter is disputed there is no evidence, beyond the anecdotal, to gainsay it. Moreover, the relatively high figure the Council has arrived at is consistent with the fact that most of the people on Brickfield Road are elderly and most of them live alone. In such circumstances it is credible that a significant proportion should be considering a move to 'bricks and mortar' accommodation and I do not consider that the Council has overestimated this.
40. Dealing now with the Council's Waiting List, while the point was made that this list could be compiled in a more open and transparent manner –a point disputed by the Council - no substantial evidence was brought forward to support the claim that it was inaccurate.
41. I consider, therefore, that the Council has carried out a reasonably robust assessment of the need for Gypsy and Traveller Accommodation and there is no need, as was suggested at the Hearings, to prepare a fresh assessment using as its starting point the Gypsy and Traveller Accommodation Needs Assessments: October 2007, a document the Council now regards as being out of date.

Public Pitch Provision

42. As has already been established, the results of the Council's assessment of accommodation needs has led it to conclude that, as far as public pitch provision is concerned, the need over the next 10 years can be met through re-lets with vacancies being generated by current residents at Brickfield Road moving into 'bricks and mortar' accommodation. I see nothing unbalanced in this approach. It was common ground at the Hearings that 'bricks and mortar' accommodation has a role to play in providing for the needs of Gypsies and Travellers. If, as it does, the evidence indicates that the need can be met on existing pitches then there is no requirement for new pitches to be provided.
43. There are of course many demands on the 'bricks and mortar' accommodation in the Borough. The Council confirmed at the Hearings that it is moving towards the adoption of a revised housing allocation scheme under which it would create a special quota for the re-housing of Gypsies and Travellers into 'bricks and mortar' accommodation. In this way the Council proposes to ensure that priority is given to moving residents at Brickfield Road off the site

¹⁵ SP5.61. Accommodation Needs Assessment of Gypsies and Travellers in Merton Appendix II & HD6, Main Matter 3, pages 4 – 6.

while ensuring an equitable approach to others in priority housing need. I consider, therefore, that the Council's conclusion that there is no need to identify new sites in order to make provision for public pitches over the next 10 years is well founded.

Private Pitch Provision

44. As has already been established the Council has identified a need for two privately owned pitches over the next 10 years from people who currently own 'bricks and mortar' homes. The Plan is required to identify specific deliverable and developable sites to meet this requirement¹⁶. However, the Council has concluded that none of the sites allocated in the Plan are deliverable or developable for private pitches¹⁷ and is working with the people in question to see how their requirements can be met. This raises the questions of how robust the Council's assessment of these sites is and what precisely the Council is doing to meet this acknowledged need?
45. There was some discussion at the Hearings about the suitability of the criteria used by the Council in assessing these sites, were they right, for example, in saying that a number of these sites were too small? However, for the most part, the Council's assessment was not that these sites were unsuitable but that, unlike developments such as affordable housing, care homes and student accommodation, the provision of Gypsy and Traveller accommodation on them was not financially viable and hence the sites were neither deliverable nor developable for that purpose. This conclusion was not seriously disputed.
46. While it was suggested that a number of these sites should be allocated as 'possible' Gypsy and Traveller sites this option is not open to the Council as in order to be allocated such sites must be, or have a reasonable prospect of becoming, viable. I consider, therefore, that the Council's assessment of these sites is reasonably robust.
47. As to the question of what the Council is doing to meet this acknowledged requirement for private pitches, it confirmed at the Hearings that because only two families are involved and because it is in touch with each of them, it is able to take an approach that is tailored to their particular needs. Discussions indicate that these families have no immediate need for pitches, that they are looking at sites outside Merton as well as within it and that they would favour a site which, unlike the allocated sites, is not in the built up area. The Council is also discussing issues relating to how such provision could be financed with the households concerned.
48. There is no guarantee that such an approach will be successful but in my view it has a greater chance of success than allocating sites for Gypsy and Traveller Accommodation when the evidence is that this is not a viable proposition and that the potential sites that have been identified would not necessarily meet

¹⁶ Planning Policy for Traveller Sites. Paragraph 9 and footnotes 7 and 8..

¹⁷ SP5.61 Assessment of Site Allocations for the Potential to Provide Gypsy and Traveller Accommodation.

the particular needs of the people involved. In these particular circumstances I, like the Council, consider that the specific needs of the people involved would best be met through a collaborative working, something the Council confirmed it is willing to continue to devote resources to.

49. However, while the Plan takes a reasonable approach to the provision for currently identified needs for Gypsy and Traveller accommodation this only covers the next 10 years. Where possible the Plan should identify sites or broad locations for beyond that period¹⁸. Moreover, the current assessment of need for such accommodation is only a snapshot at a point in time and while the Plan makes clear that this assessment will be reviewed on a five year rolling basis it does not say when the next assessment will occur or what will happen if the need for further pitches is identified. In this respect the Plan is not justified or effective and hence is unsound.
50. The Council proposes to remedy this by way of MM5 which confirms that the next Borough wide assessment will take place in 2016 and should this reveal a further requirement for pitches over and above that already identified the Council will consider reviewing the Plan to support such provision. I consider that this would provide sufficient assurance that if the need for more pitches is established in the future then it will be dealt with.

Conclusion

51. From the evidence before me I consider that the Council has gone to considerable lengths to collect data on the accommodation needs of Gypsies and Travellers and has tailored its approach to ensure that as far as possible it has made contact with a section of the community that can be hard to reach. It has carried out this process in a diligent and professional manner and it has interpreted the data collected in an even handed way with no evidence of bias or discrimination.
52. I am satisfied that this evidence provides a robust basis for the assessment of the need for Gypsy and Traveller accommodation for the next ten years, for the conclusion that none of the sites identified in the Plan are deliverable or developable for private Gypsy and Traveller accommodation and, subject to the Main Modification referred to above, for the approach to meeting the need for public and private pitches set out in the Plan.

Issue 3 – Is Policy DM F1, which indicates that 'more vulnerable development' may be acceptable in the functional floodplain, consistent with national policy and guidance as set out in the National Planning Policy Framework and in associated guidance?

53. Preserving the functional floodplain is a key aspect of the National Planning Policy Framework and associated guidance. That being so the inclusion within Policy DM F1 of a general statement to the effect that on previously developed sites other matters could outweigh need to preserve the functional floodplain,

¹⁸ Planning Policy for Traveller Sites. Paragraph 9b.

is at odds with this aspect of national policy and hence unsound.

54. Clearly there are complex decisions to be made in the Borough where there are a number of previously developed sites within the functional floodplain and where the availability of sites in areas with a lower risk of flooding is limited. In such a situation the Council wishes to ensure that the appropriate redevelopment of such sites is not ruled out.
55. To that end the Council, in agreement with the Environment Agency, has proposed Main Modifications (MM6 and MM7) which set out firstly, that a developer of such a site must show that the development could not be located on land at less of a risk of flooding, secondly, that the benefits of the development outweigh flood risk and thirdly, that it can be demonstrated that the development itself will be safe from flooding and that the risk of flooding elsewhere will either not be increased or will be reduced.
56. While these modifications do not rule out the possibility of development in floodplain they are in line with the National Planning Policy Framework and indeed confirm that the contents of that document and of relevant guidance will be taken into account. They would, therefore, remedy this element of unsoundness in the Plan.

Issue 4 - Paragraph 2.42 of the justification to Policy DM H3 sets rent caps on affordable rents. Is this generally consistent with the approach taken in the London Plan?

57. Paragraph 2.42 of the justification to Policy DM H3 includes reference to specifying that average rent levels across all bed sizes should not exceed 65% of market rent. The London Plan¹⁹ on the other hand, emphasises that the priority for affordable housing is maximising supply and increasing delivery and states that affordable rent should be no more than 80% of market rent – a definition that it takes from the glossary to the National Planning Policy Framework. The Plan is, therefore, out of step with the London Plan and with the National Planning Policy Framework and hence unsound.
58. The Council proposes to remedy this element of unsoundness by way of a main Modification (MM8) deleting reference not only to a 65% rent cap but also to any suggestion that in dealing with individual planning applications it might require affordable rents to be below 80% of market rent.

Issue 5 - Paragraph 3.22 of the justification to Policy DM C2 deals with the situation in which it is deemed necessary and acceptable for a school to have shared use of a nearby open space. Is this paragraph justified?

59. Recent changes in legislation mean that services such as parks and schools which were previously owned and run by the Local Authority could in the future be owned and run by other parties. The intended purpose of paragraph 3.22 was to ensure that if this happened, existing arrangements

¹⁹ As altered through the Revised Minor Early Alterations. Document SP2.2.

under which, say, a school made use of a park, would be safeguarded. It has, however, been pointed out that this paragraph could be interpreted as meaning that a school's rights to make use of an open space are placed above the rights of any other parts of the community.

60. The Council now accepts that while this paragraph was well intentioned and intended to bring clarity it has failed to do this. Moreover, it seeks to deal with a matter better dealt with in a legal agreement than a planning document. It is therefore unjustified and hence unsound. This unsoundness would be remedied by deleting the paragraph in question as proposed by the Council in MM9.

Issue 6 - The Council's Call for Sites Consultation (SP4.20) yielded a number of sites which, together with additional sites that emerged, were assessed by the Council. Most of these sites were ultimately allocated in the Plan as suitable for various uses but a number of them were excluded. This prompts two questions. Why have certain sites been excluded from the Plan and are the sites allocated in the Plan suitable for their allocated uses?

Excluded Sites

61. For the most part the decision to exclude sites has not been challenged. Indeed only one excluded site (Site 38 Byegrove Road, Colliers Wood) has been suggested for designation in the Plan. However, the Council's undisputed evidence is that the site is and will remain an operational pumping station for the lifetime of the Plan; that its development potential is constrained by its position in the flood plain and the presence of high voltage transmission lines; that the site is designated as Metropolitan Open Land and Green Corridor; and that the proposal to designate it as a Major Developed Site within the Metropolitan Open Land has no support in the National Planning Policy Framework or in the London Plan. For these reasons I conclude that the decision not to designate this site in the Plan is justified.

Site 1. Hartfield Road Car Park

62. This site is allocated for a variety of uses including community use (Use Class D1), culture, leisure and entertainment (Use Class D2) and hotel use (Use Class C1). While such a range of uses would permit the replacement of the Civic Hall in Wimbledon Town Centre it does not actively promote it. It was suggested that in this respect the Plan failed to take a lead, to plan positively, to support the provision of community and leisure facilities and to encourage cultural activities.
63. However, while plans should be aspirational they should also be realistic and in this instance there is no firm evidence of a demand for a Civic Hall. Moreover, if such evidence is produced in the future such a facility could be provided under the terms of the existing policy. There is, therefore, no need for the Plan to refer specifically to the suitability of this site for a significant public community hall and cultural facility.

Site 16. Wimbledon Library

64. In the Plan it is proposed that the Library be retained and improved with residential development taking place on part of the site. This provoked widespread local opposition on the basis that this was seen as opening up the possibility of the substantial commercial redevelopment of the site and the loss of the library. Although this was not the Council's intention it accepts that this proposal does not have the clarity required of it ²⁰ and is hence unsound. This unsoundness would be overcome by removing this allocation as proposed in MM10.

Site 35. Mitcham Fire Station

65. The Fire Station consists of an appliance hall at ground floor level where the fire engine, or fire appliance as it is more correctly called, would have been stored and some ancillary rooms. At first floor level is what would have been dormitory or residential accommodation with a separate access.
66. The site is allocated in the Plan for various community uses including a theatre together with a range of other uses including residential use. In other words the Plan takes a flexible approach to the development of this site. It has been suggested on the one hand that the building as a whole should be allocated for theatre led development while on the other hand it is suggested that it be allocated as a whole for residential development.
67. Dealing with the 'theatre led' approach first, evidence was put forward to indicate that the building was suitable for this purpose with the appliance hall providing space for the auditorium; that it was well located for such a use being reasonably close to bus and tram routes; that the lack of on site parking was not a drawback; that outside London, Fire Stations have been converted to such uses; and that individuals associated with the proposal to convert Mitcham Fire Station to such uses have a successful track record on similar schemes elsewhere in London.
68. There is no reason to dispute this evidence though it is relevant to note that joint guidance produced by English Heritage and the London Fire Brigade on London's Historic Fire Stations favours the retention of upper floors of such buildings in residential use.
69. Similarly, insofar as the residential use of this site is concerned, it is not disputed that the site is in a suitable location, there is a demand for such a use and the building is suitable for conversion to such a use. Once again, however, it is relevant to note that the joint guidance referred to above favours retaining the form of the appliance bay and its associated rooms – something that would not typically be associated with residential development.
70. The question was raised as to whether the London Fire Brigade, the building's owner, was obliged to get full market value when disposing of the site or whether it could dispose of it for a lesser value. The London Fire Brigade was

²⁰ National Planning Policy Framework. Paragraph 154 refers to Local Plans providing "...clear policies on what will be provided and where."

firmly of the former view²¹. This is not a matter for me to decide particularly as the promoters of the 'theatre led' approach confirmed that such a use would be able to compete with open market prices for the site.

71. None of these various arguments amount, however, to a compelling reason why the Council should alter the flexible approach taken in the Plan to the future development of this site. It does not require all of the allocated uses to be delivered and accepts that in practice it is likely that only one or two of them will be. However, I see no reason why the Plan should close down the options for the site by specifying that it either be developed solely for a theatre led development or solely for housing.
72. On a different point it was suggested that the Plan should look not just at Mitcham Fire Station in the isolation but also at the wider 'island site' within which it sits. Clearly the wider area has its merits, it is in a conservation area, the Fire Station itself is locally listed as is the adjacent Vestry Hall, it is situated opposite the Grade II listed Mitcham Parish Rooms and adjoins the Cricketers public house where planning permission has recently been granted, subject to a s.106 agreement, for residential use²².
73. I accept that in such areas the whole is greater than the sum of the parts but the Plan is principally concerned with allocating uses to buildings and sites whose futures are undecided. For the most part the future of these other buildings, unlike that of the Fire Station, are not in doubt and, therefore, have no need of an allocation. Consequently I see little to be gained by consideration being given in the Plan to the wider area in which the Fire Station sits. That said, the Council confirmed at the Hearings that any planning application on the Fire Station site would be considered in its wider context.

Site 37. Wimbledon Greyhound Stadium

Background

74. This site is allocated in the Plan for the intensification of sporting activity (D2 Use Class) with supporting enabling development. Developments that facilitate more sporting activity may be enabled by more viable uses. In other words the Plan takes a flexible approach to this site and allows for a wide variety of alternative uses.
75. Two particular uses, a scheme for a football stadium plus enabling development and a scheme for the retention of a greyhound stadium plus enabling development, were pressed with particular vigour at the Hearings. However, it was made clear to all parties at those Hearings that it is not the role of the Examination to hear detailed evidence about, or come to a conclusion on, which of these schemes was the more suitable or viable. Nor

²¹ HD5. London Fire Brigade's interpretation of Circular 06/03 and the Local Government Act 1972.

²² HD15. Planning reference 13/P1077.

would it be appropriate for me to assess any documents submitted in support of particular schemes on the site or comment on the approach the Council will take to determining any planning applications of the site. Rather the purpose of the examination was to establish whether the Plan in general, and the proposals for this site in particular, are sound.

76. It was common ground at the Hearings that the site is suitable for the intensification of some form of sporting activity. It has operated as a sports and leisure venue for almost 100 years; there are no more suitable or deliverable sites in the Borough; there is a will to develop the site for such a purpose as evidenced by the two schemes mentioned above, one of which is being promoted by the current owner of the site; and such a proposal would be in keeping with the general character of the area.

Constraints

77. It is acknowledged in the Plan that the site has constraints with flooding and transportation being given particular mention at the Hearings. However, I see no reason why each and every policy in the Plan, the Core Strategy, the London Plan and in the National Planning Policy Framework which deal with such matters need be referred to in the section of the Plan dealing with the Greyhound Stadium. Such documents are intended to be read as a whole and in conjunction. As to the suggestion that the Plan should give more detail as to how these constraints should be overcome, it is sufficient for it to state that they must be managed and met rather than specifying how they be managed and met.

Retention of Greyhound Stadium

78. One of the principal points of contention between the promoters of the alternative schemes for the site was whether or not the Plan, which at present would allow for either option, should specify that a greyhound stadium be retained so as not to harm the site's function as a cultural and sporting facility – functions which Policy 4.6 of the London Plan seeks to support and enhance.
79. The Mayor's position on this point has evolved as the Plan has progressed. In 2012, initial responses from the Mayor's office supported the Council's preferred use²³. Then in 2013 the Mayor supported the retention of a greyhound stadium where feasible²⁴. However, subsequently and shortly before the Hearings he modified his position to say that "...while the retention of a greyhound stadium use at the site would be ideal, the intensification of a sporting use at the site in the form of other financially viable stadia uses, where feasible, would ultimately be acceptable in strategic planning terms."²⁵ At the Hearings correspondence was produced in which it was stated that "The Mayor has always been of the opinion that Wimbledon Stadium should remain

²³ SP4.6. Statement of Consultation Submission. Page 2-233.

²⁴ SP4.12. Mayor's letter of 27 September to Merton Council. Matters 5&7/RO27 GLA Mayor's Letter to the Programme Officer dated 13 December 2013.

²⁵ Letter from the Mayor to Merton Council. 8 January 2014. Site 37/RO27 GLA

a greyhound racing venue. However, if this is not viable, he would accept the site being used for other stadia-based sport, as long as it is in line with strategic planning policy.”²⁶

80. The situation is, therefore, that while the Mayor is variously saying that the retention of a greyhound stadium would be ideal or even that such a stadium should be retained if it is viable, he is not saying that the Plan must specify this. He is acknowledging that other financially viable stadia-uses could be acceptable in strategic planning terms – in other words they could, amongst other things, be consistent with Policy 4.6 of the London Plan.
81. The situation is that the Council is faced with two competing schemes on this site each of which has its supporters in the local community. Time will tell whether either of these schemes is viable or suitable on this site. I see no compelling planning reason at this time why the Plan, which at present allows for either, should seek, in effect, to favour one rather than the other. I do not, therefore, consider it necessary for the Plan to specify that a Greyhound Stadium should be retained on the site.

Enabling Uses

82. Although the Plan refers to sporting activity on the site being enabled by more viable uses it does not specify their type or scale. This is understandable. While, in the current market, the most likely enabling uses are residential and retail, this could change over time. Moreover, while the Council is clear that it would not support substantial out of centre retail uses on the site it is not possible, without having carried out sequential tests and impact assessments, to establish the precise nature of the retail development that would be acceptable. Similarly for residential development, the amount that would be acceptable will vary according to the design and layout of particular proposals.
83. It was suggested that industry and warehousing would be suitable forms of enabling development on the site. While the Council acknowledged at the Hearings that such uses would be suitable, it questioned whether they would be viable. The demand for such uses in the Borough has been low for a number of years, particularly for large sites such as the Greyhound Stadium. While there is a demand for better quality small units the Council considers this would best be met by improving existing sites rather than allocating new ones. Against this background there would be little justification for specifying that the site be allocated for employment uses.
84. As currently worded, the Plan could be interpreted as delegating the decision on what enabling development will be acceptable to a Supplementary Planning Document. This is not the Council's intention as the allocation of sites and policies for their development cannot be delegated to such documents. To that extent the plan is unjustified and thus unsound. The Council, therefore, proposes a Main Modification (MM11) which removes this element of

²⁶ HD1. E mail from the Mayor's Press Officer to the Racing Post.

ambiguity and hence unsoundness.

Site 41. Kingston Road opposite Lower Downs.

85. There is no dispute that this site, which is in a primarily residential area, is suitable for the residential use for which it is allocated in the Plan and that it is deliverable as such – indeed a planning application for residential use has been submitted to the Council²⁷. It is, however, suggested that the Plan should refer to the possibility of widening the footway in the vicinity of the pedestrian/cycle crossing near the site.
86. This is a matter of detail which would normally be dealt with, if appropriate, in determining any planning application on the site. Indeed the evidence at the Hearings was that in the current planning application it is intended to set aside a strip of land for such a widening. This is not, therefore, something that need be dealt with in the Plan.

Site 48. Land at Bushey Road.

87. This site is designated as a Locally Significant Industrial Site in Policy CS12cii) of the Core Strategy which seeks the retention and improvement of such sites so that they contribute towards business, industrial, storage and distribution functions.
88. In response to marketing evidence submitted by a former owner of the site it is proposed in the Plan to widen the possible use of the site to allow for an employment led mixed use scheme which, in addition to B1(b) and B1(c) uses would allow for bulky goods retail (A1), car showroom use and a school use.
89. It has been suggested that the range of uses permissible on the site be further widened to allow for the enhancement and expansion of retail uses in the area. Indeed a planning application has been received on a portion of the site consisting in part of the retention of employment uses and in part of the development of bulky goods retail and fashion retail.²⁸ This application has yet to be determined.
90. However, in the representations made on the Plan no substantial evidence has been put forward to justify the provision of retail uses, over and above those already referred to in the Plan, on this out of centre site. I consider, therefore, that the Council has responded positively to the evidence that has been put forward and there is no justification for the further expansion of retail uses on this site.

Site 70 Haslemere Industrial Estate.

91. This site is one of the scattered employment sites in the Borough which it is

²⁷ HD15. Planning Reference 13/P4133.

²⁸ Planning Reference 13/P1802.

Council policy to protect and improve²⁹. In its current use the site is dependent on large delivery vehicles which are ill suited to the access roads which run through residential areas with on street parking. In the Plan the site is proposed for business/light industrial uses or a suitable employment led development. The Council's priority is to increase jobs on the site with possible developments including community led employment schemes such as gyms.

92. While the designation in the plan does not rule out residential use it does not explicitly mention it. The question was raised at the Hearings as to whether it should. Clearly there is a degree of dissatisfaction in the local community with the existing access to the site and the possibility of imposing width restrictions has been considered in the past. While this approach was rejected, the evidence is that if such restrictions were successfully imposed in the future they could render the site unviable in its current use.
93. However, while this indicates that the current uses on the site may be unviable in the longer term it does not indicate that the site would be unsuitable for the range of uses suggested by the Council, uses which could involve the use of smaller delivery vehicles. I consider that the Council's aim of maintaining and improving the employment potential of this site is well founded and see no reason why this need preclude the provision of some residential development on the site. There is, therefore, no overriding reason why the allocated uses on this site need refer specifically to residential development.

Other Matters

94. The Plan proposes to retain the existing green corridor designation on land at Rookwood Avenue and add an open space designation. No significant objections were raised to this approach.

Assessment of Legal Compliance

95. 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 Sites and Policies Local Plan (the Plan) is identified within the approved LDS (September 2012) which sets out an expected adoption date of February 2014. There will be some delay in the Plan's adoption but its content and timing are generally compliant with the LDS.
Statement of Community Involvement (SCI) and	The SCI was adopted in 2006 and consultation has been compliant with the requirements therein,

²⁹ SP3.2. Merton Core Strategy. Policy CS 12ciii

relevant regulations	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 September 2013 sets out why AA is not necessary.
National Policy	The Plan complies with national policy except where indicated and modifications are recommended.
London Plan	The Plan is in general conformity with the London Plan
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations.	The Plan complies with the Act and the Regulations.

Overall Conclusion and Recommendation

96. The Plan has a number of deficiencies in relation to soundness and 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.
97. 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 Merton Sites and Policies Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

R J Yuille

Inspector

This report is accompanied by the Appendix containing the Main Modifications

Appendix – Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text, or by specifying the modification in words in italics.

The page numbers and paragraph numbering below refer to the submission local plan, and do not take account of the deletion or addition of text.

Page	Policy/ Site	Proposed Modifications	Report Ref
14	DM R1: Location and scale of development in Merton's town centres and neighbourhood parades	<p>a) Supporting proposals:</p> <p>i: In Wimbledon, Mitcham, Morden and Colliers Wood (upon designation as a District Centre) for development that provides a range of unit sizes, including small (floorspace generally below 280sqm), large (floorspace generally between 280sqm and 1,000sqm) and major town centre type uses (generally floorspace over 1,000sqm).</p> <p>ii: In the designated local centres of Arthur Road, Motspur Park, North Mitcham, and Raynes Park <u>and Wimbledon Village</u> for development up to 1,000 sqm per unit of floorspace for town centre type uses. The council will resist major increases (above 1,000 sqm) in town centre type use floorspace in local centres unless it contributes to the council's regeneration objectives.</p> <p><u>iii: that do not amalgamate existing ground floor shopping frontages in Wimbledon Village local centre so as to result in a large unit (with a floorspace of 280sqm or more).</u></p>	MM1
14	DM R1: Location and scale of development in Merton's town centres and neighbourhood parades	<p>c) Maintaining and enhancing the range of unit sizes available in Merton's town centres, by resisting the amalgamation of existing units in Wimbledon, and Colliers Wood and Wimbledon Village unless it contributes to the council's regeneration objectives.</p>	MM2

Page	Policy/ Site	Proposed Modifications	Report Ref
16	DM R1: paragraph 1.11	Wimbledon Village has more of a niche/specialist role and a unique character. To retain and reinforce its character and offer, it is considered that the amalgamation of existing ground floor units <u>frontages facing Wimbledon High Street, Church Road and Ridgway</u> that would result in a large unit (with a gross floorspace of 280 sqm or more) would be inappropriate, having regard to the existing scale and character of the area. Merton's Annual Shopping Survey shows that the average ground floor unit size of existing town centre types uses in Wimbledon Village is less than 100sqm gross floorspace, thus the amalgamation of existing units that would result in a ground floorspace over 280 sqm would be quite large for this area. <u>While amalgamation of unit frontages would be inappropriate, use of upper floors within the same frontage or use of the rear of the premises may be acceptable to deliver town centre type uses above 280sqm.</u>	MM3
16	DM R1: paragraph 1.12	Local centres complement Merton's main town centres. As detailed in Merton's Core Planning Strategy, local centres support development that provides local services and enhances the area's character. Development that provides a major increase (over 1,000 sqm) of town centre type uses will not be supported in <u>the</u> local centres <u>of Arthur Road, Motspur Park, North Mitcham and Raynes Park</u> , unless it contributes to the council's regeneration objectives.	MM4
48	Position statement – meeting government guidance on the accommodation needs of gypsies, travellers and travelling showpeople Paragraph 2.11	The council will continue to review Gypsies and Traveller accommodation needs in collaboration with stakeholders including, local Gypsies and Travellers communities, neighbouring boroughs and Registered Providers. This review will be on a five year rolling basis and should a need arise during the local plan period the council will work with its partners in addressing these needs. <u>This review will be on a five year rolling basis with the next Borough wide assessment taking place in 2016. Should this reveal a further requirement for pitches over and above that already identified the Council will consider reviewing the Plan to support this provision.</u> Any proposals for new Gypsy and Traveller sites will be assessed against the criteria set out in Policy CS10 (Accommodation for Gypsies and Travellers) of Merton's Core Planning Strategy.	MM5

Page	Policy/ Site	Proposed Modifications	Report Ref
122	DM F1: Support for flood risk management Policy Aim	To mitigate the impact of flooding in Merton, in line with the National Policy Planning Policy Framework (NPPF 2012) and associated national guidance , the Flood and Water Management Act 2010, Flood Risk Regulations 2009, The Water Framework Directive, the council's duty as Lead Local Flood Risk Authority and Merton's Local Flood Risk Management Strategy.	MM6
124	DM F1 Support for flood risk management	<p>Flood Zone 3b</p> <p>The functional floodplain will be protected by not allowing any form of development on undeveloped sites unless it:</p> <ul style="list-style-type: none"> • classed as 'water compatible' • For development of 'essential infrastructure' which has to be located in a flood risk area and where no alternative locations are available, should be developed safely, without increasing flood risk elsewhere and where possible reduce the flood risk overall. <p>The council will only support redevelopment of existing developed sites if there is no greater flood risk than currently exists to the re-development or wider community.</p> <p>Developments classed as 'more vulnerable' which are considered key to the delivery of the boroughs wider aims may be acceptable provided that it can be demonstrate that the wider economic, environment and outweighs the designation of Flood Zone 3b and robust flood risk mitigation measure are installed that will result in an overall flood risk reduction for the area and it surrounds, as advised by the E.A.</p> <p>In accordance with the NPPF if, following the application of the Sequential Test, it is not possible, consistent with the wider sustainability objectives, for development to be located in flood zones with lower probability of flooding:</p> <ul style="list-style-type: none"> • The developer must demonstrate that the development provides a wider social, environment, and economical benefit to the wider community that outweighs the flood risk, as informed by the SFRA and, • Submit a site specific flood risk 	MM7

Page	Policy/ Site	Proposed Modifications	Report Ref
		<p><u>assessment which must demonstrate that the development will be safe for the life time of the build taking into account vulnerability of it users, without increasing the risk to the development and surrounding area; and where possible will reduce flood risk overall.</u></p> <p>Basements, basement extensions and conversion of basements to a 'higher vulnerability' classification or self-contained units will not be permitted by the council.</p>	
55	DM H3: Support for affordable housing paragraph 2.42	<p>There is a wide variation in market rents in Merton. Homes with a rent of up to 80% of market rent could prove unaffordable to applicants in housing need, particularly those needing family-sized homes. In dealing with individual planning applications the council will have regard to Merton's Housing Strategy, and Merton's Interim Policy Statement on Affordable Rent (07 November 2011) and the Council's draft Tenancy Strategy (November 2012). In accordance with Merton's Housing Strategy, the council will only support new housing schemes in Merton where average rent levels across all bed sizes do not exceed 65% of market rent, unless registered providers can demonstrate exceptional circumstances. Affordable rent levels for any bed size must not exceed 80% market rent or 65% for larger homes with three or more bedrooms. Affordable rent for all re-let conversions should not exceed 65% of market rent.</p>	MM8
68	DM C2: Education for children and young people paragraph 3.22	<p>Where it is deemed necessary and acceptable for a school to have shared use of a nearby open space, with the school having sole access to an area during school hours, an appropriately worded legal agreement should be put in place to ensure continued access in the event of the ownership or management of the school or open space changes from that of the council.</p>	MM9
337	Site 16 Wimbledon Library / Marlborough Hall	Remove this site from the Plan.	MM10
349	Site 37 Wimbledon Greyhound	Allocated use: Intensification of sporting activity (D2 Use Class) with supporting enabling development.	MM11

Page	Policy/ Site	Proposed Modifications	Report Ref
	Stadium	<p>Developments that facilitate more sporting activity may be enabled by more viable uses, subject to meeting planning policy, evidence and consultation.</p> <p>This site must be delivered via a site-specific planning brief (Supplementary Planning Document) to ensure the delivery of sporting intensification and six weeks of community consultation on proposals.</p> <p><u>The Council expects applicants to engage with the local community before submitting their applications. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.</u></p>	