

## Examination of the Merton Local Plan

### Preliminary Matters for the Council 28 January 2022

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Inspectors appointed by the Secretary of State

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Dear Ms Butler,

1. Following our preliminary appraisal of the Merton Local Plan and its supporting evidence, we set out below general matters and points of clarification. In order to provide clarity and potentially narrow down the focus of the examination, the Council is asked to provide a response to the following (where indicated), with reference to the main relevant evidence. We are inviting contributions from the Council only at this point, and do not expect any written evidence to be provided from other parties at this juncture, except where otherwise expressly stated. Those with a right to be heard in the examination will be given sufficient opportunity to provide further representations at the relevant stages, which will include any comments on the outcomes of the actions taken by the Council in response to this letter.
2. Aside from our comments on procedure, all the matters set out below are of a general nature, but nevertheless relate to the soundness or legal compliance of the submitted plan, and in some cases may require modifications to be proposed, or additional items of evidence to be produced. It is therefore prudent to set them out at this early stage to assist the progress of the examination. We may raise further issues following consideration of any responses that you make to this letter and/or as a result of examining the documents already submitted in greater detail.
3. Your help with the items set out below will greatly assist us in our task of setting out the matters, issues and questions that we wish to address through the examination which, if necessary, will be considered at the hearings sessions.
4. A brief but complete reply would be appreciated and should be sent to the Programme Officer (PO) by **close of business on 2 March 2022**. The reply should set out where you may require additional time to complete tasks and what the likely timescales of such action would be. If anything is not clear or if further explanation is required of what is being requested, then please contact us via the PO.

5. The procedural aspects of the examination will follow the Planning Inspectorate's 'Procedure Guide for Local Plan Examinations' (the Procedure Guide) – a copy of which has been included on the examination website.

### Scope of the Examination

6. The starting point for our examination is the Regulation 19 version of the Local Plan, which was subject to public consultation. We note that, following the Regulation 19 stage, the Council has suggested some changes, some of which it considers to be necessary to address perceived soundness or legal compliance issues (which are contained in '0D4a Proposed Main Modifications to Merton's Local Plan').
7. Main Modifications (MM) can only be made to development plan documents where they are necessary for soundness and/or legal compliance, and only where they are recommended by Inspectors appointed to examine them. Moreover, such MM would be subject to public consultation at the appropriate point of the examination, in accordance with the arrangements set out in Section 6 of the Procedure Guide. Whilst we note that the Council's suggested MM have been the subject of Sustainability Appraisal, it appears that they have not been publicly consulted on. We would be grateful if the Council could confirm whether our understanding of the position in terms of public consultation is correct.
8. We can only recommend MM if asked to do so by the Council (per s20(7C) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act)). We would remind the Council that any formal request for us to recommend MM should be made before consultation on them begins. With this in mind, the Council may wish to make such a request in their response to this letter.
9. It is important to note that in examining the plan for soundness and legal compliance that our task is one of adequacy, not perfection. In short this means that if we were to find aspects of the plan as submitted to be sound, we have no discretion to recommend MM to those aspects in order to make them 'more sound'. Accordingly, we will consider the Council's suggested MM on this basis.
10. There are transitional arrangements in place relating to how national policy relating to First Homes is to be considered in the examination of Local Plans, as set out in the 'Affordable Homes Update Written Ministerial Statement' (the WMS) of 24 May 2021. Moreover, a new version of the National Planning Policy Framework (the Framework) was published in July 2021. To assist our understanding of the implications of these matters, we would be grateful if the Council could supply us with the publication date for the Regulation 19 version of the Local Plan, as this is not immediately apparent from our initial reading of the document. We return to aspects relating to the Framework, and the WMS in further detail below.

## Plan period and strategic policies

11. The Framework requires strategic policies to look ahead over a minimum 15-year period from adoption (at paragraph 22). The Local Plan contains strategic policies and covers the period 2021/22 to 2035/36 (as indicated in Figure 4.2.1 of the plan). However, the plan is unlikely to be adopted until 2022/2023, as hearing sessions would need to avoid the London pre-election period (see also the paragraphs on hearing arrangements, below).
12. The Framework also expects (at paragraph 20(a)) that strategic policies, amongst other things, should make sufficient provision for housing. However, we note that Policy H11.2 of the Local Plan, which sets out the housing requirement, has not been identified as a strategic policy.
13. In light of the above, we would welcome your initial views on the implications of these matters, and whether further MMs might be needed to secure compliance with national policy in these terms, and in the interests of the Local Plan's effectiveness and positive preparation. In framing an answer to the above, you may wish to consider whether the submitted evidence base sufficiently covers any necessary extension to the plan period, or whether further work might be needed in these regards.

## Duty to Co-operate

14. Details of the steps taken to meet the duty in s33A of the 2004 Act are set out in the Council's '0D13 Duty to Co-operate Statement'. It is clear from Section 4 of 0D13 that a number of statements of common ground (SoCG) are still in draft form and being worked on. These documents are integral to the assessment of legal compliance and therefore we urge that these statements are finalised, signed and submitted as a priority and placed on the examination website. We set out below further considerations that would be particularly relevant to any SoCG entered into at this stage with the Greater London Authority (GLA).
15. Moreover, we note the summary of engagement with other local planning authorities in relation to the ability or otherwise of their areas to accommodate some of Merton's housing needs, (at paragraphs 3.7ff of 0D13). However, documentary evidence, such as minutes of meetings and letters, relating to these discussions does not appear to have been supplied. Again, we would appreciate copies of the relevant correspondence with other local planning authorities to be made available, albeit redacted in accordance with the Council's procedures relating to data protection, as soon as is practicably possible.

## Housing Delivery Test Results 2021

16. The Department of Levelling Up, Housing and Communities published the Housing Delivery Test (HDT) Results on 14 January 2021 - which indicate that Merton's HDT Measurement of delivery over the relevant period is 80%. The Council will be aware that paragraph 74(c) and footnote 41 of the Framework state that where delivery falls below 85% of the housing requirement, a 20% buffer should be applied when establishing whether a sufficient five year supply

of deliverable housing sites exists.

17. Whilst we note that the figures included in the HDT Results differ from the Council's assessment over the same period (included in Graph 2.1 of '11D10 Merton's Housing Delivery Test Action Plan'), we would welcome your views on the implications of the above considerations for the housing supply aspects of the Local Plan. You may also wish to reflect on whether any MMs may be required to achieve consistency with the Framework (paragraph 68(a) and footnote 34), insofar as it requires planning policies to identify a supply of specific, deliverable sites for years one to five of the plan period, with an appropriate buffer.

#### National Planning Policy Framework

18. The revised Framework was published on 20 July 2021 but, as set out above, the date that the Local Plan was published is unclear. Consequently, it may be appropriate for the Council to undertake a check (if not undertaken already), to confirm that the plan is consistent with the latest version of the Framework. The Council should supply us with the suggested wording for any MM which may be needed as a result. As a minimum, proposed changes should ensure that any references to superseded versions of the Framework, and out-of-date paragraph numbers should be updated as appropriate.

#### General Conformity with The London Plan 2021

19. The provisions of s24 of the 2004 Act require the Local Plan to be in general conformity with the London Plan and for an opinion on general conformity to be requested from the Mayor of London.
20. GLA's letter dated 6 September 2021 sets out the Mayor's main areas of concern in these regards, which the Council has subsequently sought to address in the proposed changes contained in 0D4a. However, there are other points raised in the GLA's response where it is not clear whether they are pursued as matters of non-conformity or mere comments or advice.
21. We consider that further clarification of the GLA's position would be helpful at this stage, including in respect of the proposed MM contained in 0D4a, and whether they would satisfactorily address the issues of general conformity raised. This clarification would best be contained in a single comprehensive and up-to-date SoCG between the Council and the GLA, which should also highlight whether any areas of disagreement remain.

#### First Homes

22. National policy on First Homes is set out in the above-referenced WMS. The way that this topic will be considered in the examination is dependent on whether the Local Plan is subject to the transitional arrangements set out in the WMS, a matter that will be clearer to us once we have received confirmation of the plan's publication date.

23. Nevertheless, we note that paragraph 11.1.4 of the Local Plan refers to First Homes and indicates how Policy H11.1 could deliver these in line with the national policy expressed in the WMS.
24. In light of the above we would welcome your initial views on whether the Local Plan would accord with national policy in respect of First Homes in a brief topic paper. This should also cover whether the Local Plan is internally consistent on this issue when the contents of paragraph 11.1.9 are considered together with those of paragraph 11.1.4. The topic paper should provide a representative sample of hypothetical development scenarios, to test how the plan would fulfil the requirement for the minimum of 25% of all affordable housing units on site to be First Homes, and whether 10% of the total number of homes on a site would be available for affordable home ownership (per paragraph 65 of the Framework). The topic paper should also include the justification for any deviation from national policy in these regards. We would also appreciate the Council's view as to whether submitted evidence relating to the viability of the provision of affordable housing adequately covers the position relating to First Homes, or whether additional work may be required on this matter.

### Employment

25. The Framework makes clear (at paragraph 20(a)) that strategic policies should make sufficient provision for employment uses. Moreover, the preparation of policies should be underpinned by relevant and up-to-date evidence (per paragraph 31 of the Framework). Planning policies should set criteria, or identify strategic sites, for local and inward investment to meet anticipated needs over the plan period (per paragraph 82(b) of the Framework). In order for a plan to meet the soundness test relating to positive preparation it should provide a strategy which, as a minimum seeks to meet the area's objectively assessed needs (paragraph 25(a) of the Framework).
26. Policy E4 of the London Plan sets out that a sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions should be provided and maintained taking into account *strategic and local* employment land reviews, industrial land audits and the potential for intensification, co-location and substitution. In development plans, boroughs should designate and define detailed boundaries and policies for Locally Significant Industrial Sites (LSIS) in policies maps justified by evidence in *local* employment land reviews (per Policy E6 of the London Plan) , and this should be based on evidence in *strategic and local* demand assessments (per paragraph 6.6.1 of the London Plan) (with our emphases).
27. Moreover, paragraph 025 of the Planning Practice Guidance (PPG) on Housing and economic needs assessment makes it clear that a local planning authority preparing strategic policies will need to prepare a robust evidence base to understand existing business needs. Advice in the Procedure Guide (at paragraph 1.12) indicates that evidence base documents, especially those relating to development needs and land availability, that date from two or more years before the submission date may be at risk of having been overtaken by events, particularly as they may rely on data that is even older.

28. The submission version of the Local Plan is accompanied by the London Industrial Demand Study (13D1) (the Demand Study), and the London Office Policy Review (13D3) (the LOPR) – both of which date from 2017 – and appear to us to be clearly strategic rather than local in the context of the above-cited London Plan policies.
29. Against this background, we would welcome the production of a topic paper drawing together the justification for the employment aspects of the plan, and highlighting its consistency with the Framework, particularly in regard to the above-referenced respects, and its general conformity with the London Plan in employment terms. The paper should cover the justification for the reliance on strategic rather than local level studies. In addition, the justification for any alterations to Strategic Industrial Land (SIL) or LSIS boundaries, which are proposed in the Local Plan (referenced in paragraph 13.1.11 of the Local Plan) and the extent to which such alterations are in general conformity with the London Plan should be covered, alongside consideration of whether such alterations are clearly expressed in Policy Ec13.2.
30. Moreover, we would welcome the Council's initial view as to whether the evidence base in these regards remains sufficiently up-to-date in the context of the above-referenced policy and guidance, taken together with changing circumstances since the production of the Demand Study and the LOPR.
31. In light of the challenging housing requirements pertaining to the Borough, the topic paper should also explain the extent to which the consideration of any release of industrial land in order to achieve wider planning objectives could be facilitated through the processes of industrial intensification, co-location and substitution set out in Policies E4, E5 and E7 of the London Plan; and whether there is scope for selected parts of SILs or LSISs to be consolidated or appropriately substituted. The topic paper should also consider the extent to which a carefully co-ordinated plan-led approach to deliver an intensification of industrial and related uses in consolidated SIL or LSIS to facilitate the release of some land for a mix of uses including residential has been considered (per paragraph 6.7.2 of the London Plan).

### Town Centres

32. The Local Plan contains strategic and other policies relating to town centres including a number of site allocations. The Framework establishes that strategic policies should set an overall pattern of places and make sufficient provision for retail, leisure, and other commercial development (at paragraph 20).
33. In these and other regards, the preparation of policies should be underpinned by relevant and up-to-date evidence (per paragraph 31 of the Framework), which is integral to the soundness consideration of whether plans are justified (per paragraph 35(b) of the Framework). Moreover, planning policies should allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking *at least 10 years ahead* (per paragraph 86(d) of the Framework with our emphasis).

34. Policy SD7 (B) of the London Plan requires Boroughs to support the town centres first approach in their development plans by assessing the need for main town centre uses, considering capacity and forecast future need; and by allocating sites to accommodate identified need within town centres, considering site suitability, availability, and viability.
35. We note that we have been supplied with the London Town Centre Health Check Analysis (13D3) (2018). However, we would welcome your views, in the form of a topic paper, on how this evidence base has underpinned the policies and allocations in the plan, and to what extent the approach complies with the national and London Plan policies referenced immediately above. Moreover, for the reasons set out above in respect of employment policies, we would welcome the Council's views as to whether the Town Centre evidence base remains sufficiently up-to-date.

### Sustainable Travel

36. For the 'Indicative list of transport schemes' listed in Table 16.1 on page 580 of the Local Plan, we would appreciate submission of a table which clarifies the status of these schemes, including the planning position, level of funding committed and anticipated delivery timescale. The table should be supported by documentary evidence where relevant and available, and you may also wish to point to material already provided such as '16D1 The Merton Local Implementation Plan', and '14D4 The Infrastructure Delivery Plan' in your response. Where possible, SoCG on specific items with the relevant transport bodies and any other parties with an interest in the delivery of specific sites should be produced.

### Supplementary Planning Documents

37. Several policies require developments to meet requirements contained in supplementary planning documents (SPDs) or similar pieces of guidance. These and other pieces of guidance are not development plan documents (DPDs) and thus do not have the statutory force conferred on local plans by virtue of section 38(6) of the 2004 Act. Moreover, unlike local plans, SPDs are not subject to independent examination.
38. Whilst the Framework (in the Glossary) is clear that SPDs are capable of being material considerations, the PPG on Plan-making (paragraph:008) sets out that they should build upon and provide detailed advice or guidance on policies in an adopted local plan; and that as they do not form part of the development plan, they cannot introduce new policies into a development plan.
39. It follows that those policies in the Local Plan which require proposals to be in accordance with SPDs are unlikely to be justified, or in line with the legislative definition of local plans given in Regulations 2 and 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations). Consequently, we ask whether you could assess the wording of policies contained in the Local Plan, in the light of the above considerations.

40. Following your considerations in this regard, we would welcome any suggestions for MM, which, whilst making appropriate reference to relevant SPDs and related guidance, are clear about their legitimate status in providing guidance on the implementation of the Local Plan's policies.

### Housing Supply

41. We will send under separate cover via the PO a 5 Year Housing Land Supply pro-forma, requesting information for every site that the Council assumes will contribute to the supply. Your response should include clear evidence on the planning status of sites, delivery intentions, site assessment work undertaken, viability, availability, infrastructure provision, and interdependencies with other proposals.

42. The Information supplied is intended to assist us in our task of assessing whether sites are 'deliverable' for the purposes of the Framework, in the interests of the efficiency of the examination process – and the work should be ready in good time so that it can be adequately discussed and tested at the relevant hearing sessions, and should be made available on the examination website. The information supplied should be capable of being readily updated during the course of the examination. Any implications of the Crossrail 2 programme on any Raynes Park sites anticipated to yield housing in the first five years of the plan period should be clearly articulated in your submissions on this matter (see paragraph 17.5.7 of the Local Plan). Also any implications of the HDT results mentioned above should be reflected in your response.

### Monitoring

43. As submitted, aside from references to the Annual Monitoring Report (for example, at paragraphs 1.1.20 and 11.2.9), it is unclear what monitoring arrangements will be in place for the Local Plan. Amongst other things, monitoring would be used to gauge the effectiveness of policies and would also help to inform the review process required by Regulation 10A of the 2012 Regulations, and outlined further in the Framework (at paragraph 33), and is thus integral to the overall soundness of the Local Plan.

44. It therefore follows that changes should be made to the Local Plan to ensure effective monitoring, and we would welcome your suggestions as to how this could be achieved. Any suggested MM should include relevant and measurable indicators, alongside actions that might be necessary as a result of under-performance against these. Your response should also include the wording of any specific monitoring policy that might be needed to ensure effectiveness in these terms.

### Hearing Sessions

45. We note that any hearing sessions would have to avoid the pre-election period in London, and that the earliest opportunity to conduct them would likely be



sometime in May. Given the scope of the plan, it is likely that the hearing sessions will be conducted in blocks, with Stage 1 hearings considering strategic matters such as the legal compliance of the plan, the housing requirement, climate change, the approach to Metropolitan Open Land, and tall buildings policies, alongside some of the larger site allocations; before moving on to more detailed matters at Stage 2. Topics discussed at Stage 2 would likely entail an assessment of how the proposed housing supply would meet the requirements identified, include more detailed discussions of specific sites, and cover detailed development management aspects of the plan.

46. As set out in the Procedure Guide, staging hearings in this way is common for plans of this type, and can help with the overall efficiency of the examination. This is particularly relevant in cases where the initial set of hearings may identify a requirement for further work or for potential amendments to strategic components, which would then form the context for the examination of aspects of the plan to be considered at a subsequent stage. The precise content of hearing sessions is as yet to be determined, but this will be firmed up in due course and in the light of the Council's response to this letter.

47. We will continue to work with you to arrange suitable dates for hearing sessions, which will be published and notified in the usual way once agreed.

#### General Matters relating to the pre-election period

48. We would welcome the Council's view whether any actions it might have to take in response to this letter, might be restricted were they to take place during the pre-election period. Similarly, your view as to the appropriateness of the publication of our Matters, Issues and Questions, and of any hearing statements that are submitted in response to these, during that pre-election period would also be welcomed.

#### Superseded policies and the adopted development plan

49. Regulation 8(5) of the 2012 Regulations requires DPDs to make clear which policies are superseded. However, it is not abundantly clear which adopted policies are superseded by the Local Plan. Please could you make available suggested MM (e.g. a table in the Local Plan showing which development plan policies it would supersede) to ensure the effectiveness and regulatory compliance of the Local Plan in these regards.

50. You should also consider whether the status of the Estates Local Plan (adopted February 2018) is accurately reflected in the Local Plan's introduction (paragraphs 1.15ff).

## Examination Library

51. We would appreciate confirmation from the Council that all documents and evidence that should be in the examination library have been included. We have picked up several references to documents in the Local Plan that do not appear in the library itself, and it would be useful for these, or relevant links to them to be uploaded as soon as possible. We will send our list through to the Council via the PO.

## Conclusion

52. This letter should be published on the examination website in the usual way, as should your response and related material.

53. As set out above, we would welcome the Council's initial response to these matters by **close of business on 2 March 2022**. Any responses that could be supplied in advance of this deadline would be welcome, and we would appreciate an indication of whether some elements of the letter could be dealt with more quickly than others.

54. In summary, the Council's response to this letter should cover the following items, and indicate where further time may be required to complete certain tasks, and the likely timescales for those actions:

- a) Confirmation of whether the Council's suggested MM, contained in document 0D4a have been the subject of public consultation (see paragraph 7);
- b) A view on whether the Council wish, at this stage, to request us to recommend MM in accordance with the procedure outlined in s20(7C) of the 2004 Act (see paragraph 8);
- c) Confirmation of the publication date of the Local Plan (see paragraph 10);
- d) Your view on the implications of any changes to the plan period, and whether Policy H11.2 should be identified as strategic (see paragraphs 11 to 13);
- e) The submission of signed SoCG and other documentary evidence in relation to the Duty to Cooperate (see paragraphs 14 and 15);
- f) Your view on the implications of the latest HDT results (see paragraphs 16 and 17);
- g) Your initial view on the implications of the publication of the latest version of the Framework (see paragraphs 18 to 21);
- h) The submission of a signed SoCG with the GLA covering the parties' positions on the suggested MM contained in document 0D4a (see paragraphs 19 to 21);
- i) The production of a topic paper on the Local Plan's approach to First Homes (see paragraphs 22 to 24);
- j) The production of a topic paper on the employment aspects of the plan covering the points set out in paragraphs 25 to 31 above.
- k) The production of a topic paper on the Local Plan's approach to town centres covering the points set out in paragraphs 32 to 35 above;

- l) The provision of supporting information in respect of the indicative list of transport schemes included in Table 16.1 of the Local Plan (see paragraph 36);
- m) A review of the Local Plan's approach to SPDs and related guidance taking into account the points raised in paragraphs 37 to 40;
- n) The information relating to housing sites expected to contribute to the Borough's five-year supply set out in paragraphs 41 and 42 above;
- o) Aspects relating to monitoring of the plan (see paragraphs 43 to 44);
- p) Your view on whether activity relating to the examination might be restricted during the pre-election period (see paragraph 48 above);
- q) Actions related to identifying superseded policies, and the status of the Estates Local Plan (see paragraphs 49 and 50);
- r) Inclusion of relevant documents in the Examination Library – (see paragraph 51).

55. If you require any further clarification from us on any of the matters identified in this letter, please do not hesitate to contact us via the PO.

Yours sincerely,

*R J Aston*

*G J Fort*

INSPECTORS