

EXAMINATION OF THE MERTON LOCAL PLAN

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GUIDANCE NOTE FROM THE INSPECTORS: STAGE 2 HEARINGS OCTOBER 2022

Purpose

1. This note provides information about the Examination of the Merton Local Plan (the Plan) and is intended to assist with its efficient running. It also assists those who have made representations on the Plan as part of the pre-submission consultation processes and those who wish to appear at the hearing sessions. It concerns procedural and other aspects of the examination process.
2. The term “Examination” refers to the whole process during which the Inspectors consider the Plan. It started with the submission of the draft Plan by the Council to the Planning Inspectorate and ends when the Inspectors’ Report is formally submitted to the Council. Therefore, the Examination process has already started.
3. This note accompanies the publication of the Matters, Issues and Questions (MIQs) which the Inspectors have set out following their initial appraisal of the Plan and the submitted representations. A *provisional* hearing programme is also published alongside this note. Hearings on the Plan are being held in two stages – the deadlines and other dates in this document relate to the second stage of hearings to be held in **October 2022**.
4. Annex A contains a list of relevant publications.

Role of the Inspectors

5. The Inspectors appointed to hold the Examination are R J Aston BSc (Hons) DipTP MRTPI and GJ Fort BA PgDip LLM MCD MRTPI. They have four main roles:
 - To consider whether the Plan has been prepared in accordance with the Duty to Cooperate as required by the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011.
 - to consider whether the Plan meets the legal requirements of the Planning and Compulsory Purchase Act 2004 as amended, and also whether it meets the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012;

- to consider whether the Plan is sound; and
 - to carry out the Examination with the objective of contributing to the achievement of sustainable development as set out in section 39 of the Planning and Compulsory Purchase Act 2004.
6. If the Inspectors consider that the Plan has shortcomings with respect to legal compliance and/or soundness, the Council may request them to make such modifications to the Plan as are necessary in order to rectify these shortcomings. Such changes are known as “Main Modifications” (MMs) and are those that tend to affect the substance or application of policies and which the Inspectors consider to be necessary to achieve soundness or regulatory compliance.
 7. One aspect of a plan’s legal compliance which the Inspectors have no discretion to remedy through the recommendation of MMs is the Duty to Cooperate. This is because the Duty to Cooperate is relevant to the preparation of plans, a phase of the plan-making process which concludes on submission of a plan to the Secretary of State. Put plainly, if the Duty to Cooperate has not been met, a plan will fail.
 8. Changes may be suggested by the Council and others during the course of the Examination to address legal compliance or soundness matters. Indeed, the Council has prepared a table of proposed modifications, which in some instances seeks to address matters arising from representations. As the Council has already requested that the Inspectors recommend any main modifications to the Plan necessary to make it legally compliant and/or sound the Inspectors will consider the Council’s table of modifications and other relevant changes suggested during the course of the Examination on this basis. The Council should keep the table of proposed modifications up to date with any further suggested changes which may arise through the Examination.
 9. It is important to emphasise that the task of the Inspectors in examining the plan is one of ensuring adequacy and not perfection – in short if Inspectors find elements of the Plan to be sound as submitted, they have no discretion to recommend MMs that would improve the Plan or make it ‘more sound’. For example, if an alternative version of a policy is put forward, the Inspectors cannot recommend it as an improvement if the Plan is already sound in that respect.
 10. There is a distinction between main and additional modifications. Additional modifications are those such as factual updates or corrections to spelling or grammar that have no material bearing on the soundness or legal compliance of the Plan. Additional modifications such as these are matters for the Council and not relevant to the Inspectors’ examination of the Plan. In short, the Inspectors do not have the power to recommend, and will not therefore concern themselves with, any additional modifications.
 11. **Soundness** - The soundness of the Plan is based upon the four criteria set out in the National Planning Policy Framework (the Framework), namely that the draft Plan is: positively prepared, justified, effective and consistent with national policy. Paragraph 35 of the Framework gives more detail on these criteria as follows:

- a. **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
 - b. **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
 - c. **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
 - d. **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.
12. Further details of the examination process are set out in the Planning Inspectorate’s publication ‘Procedure Guide for Local Plan Examinations’. See Annex A for details of how to access this document.

The Examination Process

13. The starting point for the Examination is that the Council has submitted what it considers to be a sound and legally compliant plan. Those seeking changes must demonstrate why the plan is unsound by reference to one or more of the tests of soundness, and/or identify any issues of non-compliance with legal requirements. Unresolved issues concerning soundness or legal compliance may be addressed through discussion at the Examination hearings and/or through consideration of written representations.
14. The Inspectors have identified Matters for consideration, Issues on which the soundness of the Plan depends and Questions which the Council will be asked to respond to (MIQs). Representors may also submit responses to the questions relevant to their representations by the deadline, and in the format, set out in this note.
15. The Inspectors will aim to work with the Council and the other Examination participants in a positive, proactive, and pragmatic manner. They will examine the soundness of the whole Plan, having regard to the representations submitted, rather than just the objections made. The hearing process is informal with Inspector-led “round table” sessions addressing particular topics, rather than the more formal, traditional format of a public inquiry.
16. After the hearings have closed, the Inspectors will prepare a report for the Council with conclusions and recommendations. The report will deal with broad issues, and not with individual representations. If the Inspectors find the Plan to be legally compliant and sound in all respects, the report will recommend its adoption. If it is found that the Plan is legally non-compliant or unsound in any respect, the Inspectors can recommend MMs to make it compliant and sound, where specifically requested to do so by the relevant planning authorities. In the case of the Plan, the Council has confirmed that they wish the Inspectors to recommend MMs, if they consider these to be necessary.

17. If MMs are proposed, further consultation will need to take place so that the rights of interested parties are not prejudiced. Where appropriate, MMs may also need to be covered by a revised Sustainability Assessment and have regard to the Habitat Regulations. The Council may then, if it so wishes, formally adopt the Plan, incorporating the recommended MMs.

Programme Officer

18. The Programme Officer (PO) for the Examination is Ms Carmel Edwards. Ms Edwards acts as an impartial officer of the Examination, under the direction of the Inspectors, and is not an employee of the Council. Ms Edwards' contact details are included in the banner heading of this note.
19. Ms Edwards' main tasks are to liaise with all parties to ensure the smooth running of the Examination, to organise the Hearings Programme, and to ensure that all documents received both before and during the hearings are recorded and distributed. Copies of all the Examination documents, including the representation forms and further written submissions, will be available in the Examination Library. Any other procedural questions or other matters that you wish to raise prior to the hearings should be directed through Ms Edwards rather than the Council.

Representations

20. Representations have been received on the Regulation 19 version of the Plan. These have been published on the Examination website at the following addresses:

<https://www.merton.gov.uk/planning-and-buildings/planning/local-plan/newlocalplan/stage-3-responses>
21. The Inspectors will take account of all written representations as well as those delivered orally during the hearing sessions. Both have equal weight. Those who simply wish to rely on their previous submissions need take no further action; they can rely on what they have already submitted in writing. Although all of the hearing sessions will be open for the public and press to observe, the right to participate in a hearing extends only to those who propose changes to the Plan at the Publication (or Regulation 19 stage) in order to make it sound and legally compliant. This is one of the differences of the examination process compared to other planning procedures.
22. There is no need for those supporting the Plan to take part in the hearings. However, if anyone wants to make a further written submission supporting their position, it should be focussed on the Matters identified for the relevant hearing sessions set out in the MIQs document, which this Guidance Note accompanies.
23. As set out above, whether views are expressed in writing or orally they will carry the same weight and the Inspectors shall have equal regard to views expressed by both methods. Attendance at a hearing session will only be useful if you need to participate in a discussion concerning the soundness or legal compliance of the Plan. Notwithstanding any indications that may have previously been made about attendance at the hearing sessions, anyone who

has a right to be heard and considers it is necessary for them to participate at a hearing session should confirm their interest in attending indicating which of the matters they wish to discuss.

24. **Should you wish to participate in any of the hearing sessions, please advise the Programme Officer of your intention to do so by close of business on Monday 19 September 2022.** Those who wish to proceed by written means can rely on what they have already submitted or submit further representations (in accordance with the timetable and format for hearing statements set out below), if considered necessary.
25. In some circumstances, it may be appropriate for participants to reach an agreed position with the Council and to set this out in a Statement of Common Ground. Such a Statement might contain the suggested wording for any MMs that the parties consider to be necessary to achieve soundness or legal compliance, and which they wish the Inspectors to consider. Such statements of common ground should be received by the PO **a minimum of 5 working days before the relevant hearing day.**

Hearing Statements

26. The Council should produce a hearing statement for each of the Main Matters listed in the MIQs. Where the Council considers that suggested MMs contained in the submitted table adequately address issues and questions this should be set out clearly in the relevant hearing statements. Were the Council to consider further alterations to be needed to address the MIQs this should be reflected in the relevant statement, and included in an updated suggested MMs table, which should be published alongside the statements to facilitate discussion at the hearings.
27. Other representors can submit statements, but it is not a requirement to do so. Any written statements should be made in response to the specific MIQs which the Inspectors have set out and should be sent to the PO by **close of business on Monday 19 September 2022.** This deadline relates to the receipt of both paper and electronic copies. Representors should provide focused statements, which concentrate on responding to the matters, issues and questions of relevance to them.
28. Representors are also welcome to comment on new evidence which may have arisen since their original representations were submitted as part of their written statements – including any changes to the Plan that have been suggested by the Council since the start of the Examination and included in documents which are available on the Examination website. Any statements received in accordance with the timetable will be placed on the Examination website.
29. Annex B sets out the requirements for the presentation of all statements. Its provisions should be read and implemented to avoid statements being returned due to non-compliance. Please note that the 3,000-word limit applies to statements provided by representors – however, as the Council has to respond to all issues and questions relevant to each matter they may exceed this word limit where absolutely necessary.

30. Essentially, the Inspectors need to know the following from those representors submitting further written statements:
- What part of the Plan the representors consider to be unsound or not legally compliant;
 - Which soundness tests or legal requirements the Plan does not meet;
 - Why it fails these tests (highlighting the key parts of your original representations, as relevant);
 - How the Plan could be made sound;
 - Any modification and/or wording that you might suggest to make the plan sound or legally compliant.

Hearings

31. The hearings will open at **10.00 hours on Tuesday 4 October 2022** at Merton Civic Centre, London Road, Morden SM4 5DX. The hearings could involve a blend of in-person attendance and participation via video conferencing software where necessary. Arrangements will also be in place for people to observe the sessions.
32. Further addenda to this Guidance Note may be produced closer to the opening of the hearing sessions to cover the protocols and procedures specific to any video-conferencing elements which may be used in the hearings.
33. The hearings will provide a setting for dealing with issues by way of a discussion led by the Inspectors. Those attending may bring with them professional experts. Barristers and/or solicitors (if present) will be treated as part of a professional team – there will be no formal presentation of evidence or cross-examination.
34. The purpose of the hearings is to concentrate on the Inspectors' MIQs. The discussion will focus on the Inspectors' questions together with any additional points raised by the written statements. Agendas and further session-specific guidance documents may be produced by the Inspectors to facilitate discussion, if they consider such material to be necessary. The Inspectors will be conducting the hearings in a pragmatic and solution-orientated manner and expect participants and observers to assist them in this task by being cooperative and respectful to others involved in the Examination.
35. The discussion will be structured around the Matters, Issues and Questions relevant to that particular hearing session. The emphasis will be on testing for soundness and legal compliance. Those present will be asked to introduce themselves. The Inspectors will usually begin a hearing session by asking the Council to open and outline its position – followed by the Inspectors questions on this. Participants will then be invited to make their contributions. The hearings will progress with the Inspectors drawing those present into the discussion in such a way as to enable them to gain the information necessary to come to a view on the relevant matters. It is not an opportunity simply to repeat a case already set out in written representations elsewhere. In some instances, the Inspectors may make a few brief comments on the matters which they want to be covered, then invite individuals to

make their contribution in response to the points they have raised. In others, the Inspectors may invite participants to give a general overview of their position on an aspect of the Plan.

36. Where there are a large number of representors who wish to speak on the same matter the Inspectors may ask for spokespersons to be nominated to participate in the hearing session. All participants will have an equal chance to speak.
37. There will be an opportunity within the discussion to ask questions of the Council where appropriate – albeit discussion should be channelled through the Inspectors. No more evidence should be submitted once the hearing session has closed unless the Inspectors expressly invite or allow it. The Inspectors will conduct a short, focussed series of hearings which, in turn, will lead to a short, focussed report.

The Evidence Base (Core Documents) and Examination Library.

38. The Council has prepared a list of the core documents which are available in the Examination Library. As each written submission is received it will be added to the evidence base, as will any other new evidential documents which the Inspectors have accepted. These documents may be accessed via the Examination website, which will be regularly updated. The Examination website address is:

<https://www.merton.gov.uk/planning-and-buildings/planning/local-plan/newlocalplan/local-plan-submission/local-plan-examination>

Site visits

39. The Inspectors may wish to visit certain sites or areas before, during, or after the hearings. These visits are usually unaccompanied unless access to private land is required.
40. Following discussions at the hearings, and their observations of sites from publicly accessible viewpoints, the Inspectors consider that access to private land would be useful, and are thus proposing accompanied (or access required) visits to the following sites:
 - Mi14 - United Westminster Schools Site
 - Wi3 - The All-England Lawn Tennis Club
41. For accompanied site visits, the Inspectors will have to be accompanied by a representative of the Council and the site owner. Interested parties may attend, subject to the agreement of the relevant site owners. It is important to note that the purpose of such visits is for the Inspectors to see relevant features of sites and their surroundings. Site visits do not therefore provide opportunities for discussion of the merits of allocations, or the soundness of the Plan more generally, which are matters for consideration at the hearings. Having said this, the Inspectors may ask factual questions about the site during the visit. Further details of any accompanied site visits, including the timing for these, and the arrangements for those wishing to attend, are to be published in a separate document on the examination website. If access can be safely facilitated to a site without necessitating anyone other than the Inspectors to be present, and interested parties do not wish to attend, 'access required'

site visits could be arranged. The protocol for any such visits would be covered in the separate note on site visit arrangements, which is to be produced in due course.

Closing remarks

42. The Inspectors urge everyone to:
- Make the best use of the remaining time before the start of the hearing sessions to ensure statements are submitted on time.
 - Ensure that the timescales and deadlines are adhered to as otherwise Examination attendance may have to be rearranged or curtailed.
 - Be aware of the Examination documents, the supporting evidence, and any other relevant material produced by the Council.
 - Focus on the Inspectors' 'Matters, Issues and Questions' document and the Framework soundness criteria.
 - Check the website regularly and/or be in contact with the PO – particularly in terms of any updates to the hearing timetable.

Closing the Examination

43. The Examination will remain open until the Inspectors' final report is submitted to the Council. However, no further representations or evidence will be accepted after the respective hearings have closed, unless the Inspectors specifically request it. Any late and/or unsolicited material will be returned. Any queries regarding above, or Examination proceedings more generally should be directed to Ms Edwards via the contact details set out above.

R J Aston
INSPECTOR

G J Fort
INSPECTOR

3 August 2022

ANNEX A - List of relevant legislation and guidance

Legislation

The Planning and Compulsory Purchase Act 2004

The Localism Act 2011

The Town and Country Planning (Local Development) (England) Regulations 2012 (as amended)

Government Policy and Guidance

National Planning Policy Framework

<https://www.gov.uk/government/publications/national-planning-policy-framework--2#history>

National Planning Policy for Waste

<https://www.gov.uk/government/publications/national-planning-policy-for-waste>

[Planning Policy for Traveller Sites](#)

<https://www.gov.uk/government/publications/planning-policy-for-traveller-sites/planning-policy-for-traveller-sites>

Planning Practice Guidance (web-based resource)

<https://www.gov.uk/government/collections/planning-practice-guidance>

Guidance from the Planning Inspectorate

Procedural Practice in the Examination of Local Plans 7th Edition can be found at:

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>

Planning Inspectorate's local plan website:

<https://www.gov.uk/guidance/local-plans>

Guidance on taking part in local plan examinations:

<https://www.gov.uk/guidance/taking-part-in-local-plan-examinations>

Examination and Evidence Base Documents

The Examination web site can be found at:

<https://www.merton.gov.uk/planning-and-buildings/planning/local-plan/newlocalplan/local-plan-submission>

ANNEX B - FORMAT FOR STATEMENTS

1. Please send, where possible, e-mailed electronic versions of all Statements and Appendices to the PO (in PDF format). **All statements should clearly set out who is submitting the statement, including the respondent's reference number, and which matter it relates to.**
2. The Inspectors emphasise the need for succinct submissions with the avoidance of unnecessary detail, repetition, and replication of the original representations.
3. It is the quality of the reasoning that carries weight not the bulk of the documents. There is no need for verbatim quotations from sources, national policy or guidance. It is vital that the fundamental elements are set out clearly and succinctly – the hearing sessions are not the place for surprise contributions.
4. Statements should not be longer than **3,000 words** for each Matter addressed. Any printed statements should be prepared on A4 paper, stapled and hole punched. Any oversized plans or diagrams should be folded to A4 size and listed as Appendices.
5. Supporting material in the form of appendices to statements should be limited to that which is essential. Any appendices should have a contents page and be paginated throughout. Whilst the word limit does not include text in appendices, the aim of succinctness should be respected. Anyone submitting appendices should indicate in their statement which parts they are especially relying upon.
6. **A separate statement should be submitted for each Main Matter covered. Multiple Main Matters should not be combined into a single statement.** Each statement should specifically address questions covered within an individual Main Matter. This will assist distribution, publication and understanding during the Hearing Sessions.
7. All participants must adhere to the timetable for submitting statements. Late submissions and additional material will not be accepted since this can cause disruption and result in unfairness. If material is not received by the stated deadlines, the PO will assume that original representations only are being relied upon.
8. Statements are to be received by the PO by close of business on **Monday 19 September 2022.**
9. **It is stressed that this deadline refers to the receipt of both electronic and paper copies of statements.**
10. Any paper copies of statements should be addressed to the PO at the following postal address: Ms Carmel Edwards, Programme Officer, Merton Civic Centre, London Road, Morden SM4 5DX.