

Inspectors' Matters, Issues and Questions – April 2022

Matter 1: Is the Plan legally compliant, have the relevant procedural requirements been met and has the Duty to Co-operate (DtC) been discharged?

(NB: the extent to which the Plan is in general conformity with the London Plan will be addressed, as relevant, in subsequent matters, as will the Plan's approach to climate change)

Issue (i): Has the DtC been discharged?

Q1. Has the Council maximised the effectiveness of the Plan by engaging constructively, actively and on an ongoing basis with all relevant organisations on any strategic matters in accordance with the DtC?

Council response:

- a. Yes, the council has made every effort to obtain the necessary cooperation on strategic cross boundary matters through active and sustained engagement from the outset of plan preparation. We have actively engaged and consulted with the relevant stakeholders (prescribed bodies), neighbouring local authorities and formal partnerships (including those not subject to the Duty to Cooperate requirements) by way of one-to-one meetings (in person and virtual), joint evidence base working and early and on-going discussions on policy development in accordance with the DtC. [Merton's Duty to Cooperate Statement \(Document 0D13\)](#) sets out the engagement the Council undertook. This is supplemented by the following Statements of Common Ground submitted to the Examination as part of LBM01 on 2nd March 2022.
- b. Statement of Common Ground: Merton Council and GLA dated March 2022 ([Document 0D13a](#))
- c. Statement of Common Ground: Merton and Wandsworth Councils dated March 2022 ([Document 0D13b](#))
- d. Statement of Common Ground: Merton and Croydon Councils dated March 2022 ([Document 0D13c](#))
- e. Statement of Common Ground: Merton and Sutton Councils dated March 2022 ([Document 0D13d](#))
- f. Statement of Common Ground: Merton and Royal Borough of Kingston upon Thames ([Document 0D13e](#))
- g. Statement of Common Ground: 2019 correspondence between Merton and other local authorities on housing matters ([Document 0D13f](#))
- h. Statement of Common Ground: Merton Council and Transport for London dated March 2022 ([Document 0D13g](#))

- i. Statement of Common Ground: Merton Council and Environment Agency (submitted separately to LBM01 March 2022) ([Document 0D13h](#))

Q2. Have there been timely, effective and conclusive discussions with key stakeholders and prescribed bodies on what the Plan should contain?

Council response:

- j. Yes, the council believes effective and conclusive discussion of the contents of the Plan with the prescribed bodies and key stakeholders took place. The details of which can be found in Merton’s Statement of Consultation ([Document 0D8](#)), the Duty to Cooperate ([Document 0D13](#)) and additional Statements of Common Ground 0d13a to 0D13h, submitted as part of [LBM01](#) on 2nd March 2022. Joint working with prescribed bodies will continue throughout the examination in public and beyond. The council will continue to monitor its duty to co-operate activities.

Q3. What are the relevant strategic matters that have arisen through the preparation of the Plan (defined as matters having a significant impact on at least two planning areas⁹)?

Council response:

- k. The strategic matters that have arisen through the preparation of the Plan are set out in Merton’s Local Plan Duty to Co-operate Statement and Statements of Common Ground 2021 ([Document 0D13](#)) (Additional Statements of Common Ground submitted as part of [LBM01](#) and added as Documents 0d13a to 0D13h under “examination documents from the council”).
- l. Section 3, ‘prescribed bodies cooperation and outcome for strategic cross boundary matters’ sets out each of the main strategic and/or cross boundary themes which were identified through the process together with any specific outcome from the process.
- m. Strategic matters identified were housing, transport, economic growth, flooding risk management, regeneration of Morden town centre, travel and transport, green infrastructure and climate change.

⁹ S33A (4) of the Planning and Compulsory Purchase Act 2004

Q4. What were the results of cooperation with others and are there any outstanding issues?

Council response:

- n. The Council does not consider there to be any outstanding strategic matters which would fall within the scope of the Duty to Co-operate which have not already been addressed. The Duty to Co-operate ([Document 0D13](#)) has been supplemented by further correspondence received after the Regulation 19 Publication Draft Local Plan consultation from neighbouring boroughs and the Greater London Authority ([0D13a – 0D13h](#)) submitted as part of [LBM01](#).

Q5. How does the Plan address any cross-boundary issues that have emerged as a result of engagement with prescribed bodies?

Council response:

- o. The council has addressed cross boundary issues that have emerged as a result of engagement with prescribed bodies in the ways set out in the Duty to Cooperate ([Document 0D13](#)) and additional Statements of Common Ground 0d13a to 0D13h, submitted as part of [LBM01](#).

Q6. How does the Plan align with those of adjacent boroughs?

Council response:

- p. As London boroughs, Merton's Local Plan and those of adjacent boroughs has to be in general conformity with the London Plan. The Council engaged with neighbouring boroughs on cross boundary issues and aligned matters where necessary with each borough. For example, engagement with the London Borough of Wandsworth has resulted in alignment of the Policies Map for the Wandle Trail around the Merton Wandsworth border. This is set out in detail in [Document 0D13b Statement of Common Ground Merton Wandsworth dated March 2022](#) submitted as part of [LBM01](#).

Q7. Have any substantial concerns been raised in terms of compliance with the DtC?

Council response:

- q. No substantial concerns were raised in terms of compliance with the Duty to Co-operate.

Issue (ii) does the Sustainability Appraisal (SA) comply with the requirements of the 2004 Act, the Strategic Environmental Assessment Directive (SEA Directive) and the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations)?

Q1. Has the SA process complied with the requirements of the SEA Directive and the SEA Regulations?

Council response:

- r. The council believes the SA has complied with SEA Directive and the SEA Regulations. This is outlined in the following:
- [Sustainability Appraisal \(SA\) incorporating Strategic Environmental Assessment \(SEA\) for the Local Plan Submission including proposed amendments November 2021 Revised](#) – updated as Document 0D5i.
 - [Sustainability appraisal of Merton's Local Plan stage 3 Reg 19 July 2021 \(0D3\)](#).
 - [Stage 2a sustainability appraisal of Merton's Local Plan November 2020-February 2021 \(0D16\)](#)
 - [Sustainability Appraisal incorporating Strategic Environmental Assessment \(SEA\) November 2018 \(Stage 2\) \(0D17\)](#)
 - [Sustainability appraisal scoping report of Merton's Local Plan 2018-2019 \(0D18\)](#).

Q2. Is the approach to SA compliant with the advice set out in the PPG10 and based on an appropriate methodology?

Council response:

- s. Yes, the SA process has complied with each of the stages (or 'tasks') of SA set out in national planning practice guidance and has taken an appropriate approach. The council considers the SA to be based on an appropriate methodology. The process started early in the plan making process and the council undertook early consultation with the key stakeholders (Environment Agency, Natural England and Historic England) and other stakeholders to determine what should be consulted in identifying the issues that the assessment must cover.
- t. The SA assesses the 'likely significant effects' of the plan, focusing on the environmental, economic and social impacts of the Plan.

Q3. Has the SA process been genuinely iterative and carried out in step with the stages of plan preparation?

Council response:

- u. Yes, the SA process has been genuinely iterative and carried with the stages of plan preparation. As set out in the following SAs:

- [Sustainability Appraisal \(SA\) incorporating Strategic Environmental Assessment \(SEA\) for the Local Plan Submission including proposed amendments November 2021 Revised](#) – updated as Document 0D5i.
- [Sustainability appraisal of Merton's Local Plan stage 3 Reg 19 July 2021 \(0D3\)](#).
- [Stage 2a sustainability appraisal of Merton's Local Plan November 2020-February 2021 \(0D16\)](#)
- [Sustainability Appraisal incorporating Strategic Environmental Assessment \(SEA\) November 2018 \(Stage 2\) \(part of 0D17\)](#)
- [Sustainability appraisal scoping report of Merton's Local Plan 2018-2019 \(0D18\)](#).

Q4. Are the alternatives considered by the SA sufficiently distinct to highlight the different sustainability implications of each, particularly in terms of different growth scenarios?

Council response:

- v. The SA report (stage 2) ([Document 0D17](#)) established the strategic approach for the Local Plan by way of developing strategic alternatives and the drivers for growth.
- Option 1: Focus on regeneration: Continue to develop and grow within town centres.
 - Option 2: Focus on public transport: Develop and grow within areas of good transport links
 - Option 3: Focus on renewal: Develop and grow in areas of deprivation
 - Option 4: Allow the market to lead (Laissez faire approach): No Local Plan
- w. The SA/SEA report found that option 4 was not viable, likely effects to be negative in relation to all of the SA objectives. It found options 1 and 2 had positive effects on the social and economic objectives as development would be focused near to, or accessible from, the main areas where existing jobs, services and facilities are generally located. Option 3 had largely positive effects on the social objectives in areas of housing and potential job creation and opportunities. This provided the context of growth scenarios.
- x. The Council considers the options laid out above do provide scenarios for growth.
- Option 1 would mean that growth would solely be in Wimbledon, Morden and Mitcham only.
 - Option 2 would mean growth only in Wimbledon, Morden, Mitcham and Raynes Park.
 - Option 3 would mean focusing growth solely in Mitcham, Morden and Colliers Wood neighbourhoods.
- y. With the backdrop of limited amount of suitable land, environmental constraints such as flooding and green infrastructure designations it limits the prospects of exploring more growth scenarios. The Plan has identified growth areas (mainly in town centre locations with other centres making a suitable small scale

contribution. The main area of growth will come from our Opportunity Area (designated in the London Plan), which captures Wimbledon, Colliers Wood, South Wimbledon and Morden centres. Identified key development sites (sites allocations) and regeneration areas such as Morden regeneration zone will contribute to the growth.

- z. As stated in Sustainability appraisal of Merton's Local Plan Reg19 incorporating proposed modifications (updated as [Document 0D5i](#) under “examination documents from the council”) ([Document 0D5](#)), Para 8.4:

The need for local authorities to be in conformity with national and regional planning policies sets the context of planning policies at a local level. Thus, in turn can limit the reasonable alternative(s) a borough can pursue. Any deviation from national and regional policy must be supported by robust evidence, which shows a just reason for the deviation

Q5. Is there clear evidence to indicate why, having considered reasonable alternatives, the Plan’s strategy is an appropriate one?

Council response:

- aa. Yes, there is clear evidence to indicate that the Plan’s strategy is an appropriate one, having considered reasonable alternatives. A SA is only required to consider reasonable alternatives. It must be noted that the Plan must be in general conformity with the London Plan; this in itself restricts the reasonableness of options available.
- bb. The SA scoping report ([Document 0D18](#)) identified the issues in Merton in the context of environmental, social and economic matters. It was informed by the most up-to-date data. This work formed the SA Assessment Framework and decision-making criteria, which lead to developing the SA objectives. It’s these objectives that were used to assess the Local Plan. It also established the strategic approach for the Local Plan. The Local Plan’s Chapter 1b Good Growth and the urban development objectives and vision illustrates the important role the SA has played in influencing and shaping the Local Plan.
- cc. The Sustainability appraisal of Merton’s Local Plan Reg19 incorporating proposed modifications (updated as Document 0D5i under “examination documents from the council”) ([Document 0D5](#)), provides the detailed reasonable alternatives to the Plan’s strategy. It is supported by a number of assessments like the Habitats Regulation Assessments, the need to be in general conformity with the London Plan and comments received by the GLA and key stakeholders. In addition, Sustainability appraisal of Merton’s Local Plan Reg19 incorporating proposed modifications (updated as Document 0D5i under “examination documents from the council”) ([Document 0D5](#))

Para 16.15 states that *A fundamental aspect of developing local planning policies is having robust local evidence; this includes research and feedback to public*

consultation. The council produced a number of evidence-based studies, some on their own and some in collaboration with other councils and collaborated with other boroughs or other government bodies. The development of this research considered alternative options and the findings from this research and consultation feedback informed policy direction, site-specific allocations and land designations.

Q6. Does the Sustainability Appraisal Supplementary Report¹⁰ provide a robust assessment of the Council’s proposed MMs, including any implications of the proposal to amend the plan period?

Council response:

- dd. Yes. The Sustainability appraisal of Merton's Local Plan Reg19 incorporating proposed modifications (updated as Document 0D5i under “examination documents from the council”) ([Document 0D5](#)), Sustainability appraisal of Merton’s Local Plan incorporating proposed modifications dated 02 March 2022 ([0D5i](#)) provides an assessment of the proposed MMs. With its submission on 20th May in responding to the Inspectors’ Matters, Issues and Questions, the council is providing a a Sustainability Appraisal for all Main Modifications This provides a robust assessment of the council’s Main Modifications, including any implications of the proposal to amend the plan period.

Q7. Does the SA take account of all types of heritage asset, including landscapes, parks and gardens, and has it adequately considered the implications of the Plan’s policies and allocations for the historic environment?

Council response:

- ee. Yes, the council has adequately considered the implications of the plan’s policies and site allocations for the historic environment and it takes account of all types of heritage assets, including landscapes, parks and gardens.
- ff. The sustainability appraisal has been subject to consultation with statutory consultation bodies (Historic England, Natural England the Environment Agency). The SA considers the impact of the Plan takes account of all types of heritage assets, including by SA objective S05 which states:

Heritage (including architectural and archaeological heritage): To conserve and enhance the existing historic environment, including sites, features, landscapes and areas of historical, architectural, archaeological and cultural value in relation to their significance and their settings. In addition to the requirement in the SEA Regulations 2004 Schedule 2 (6)

¹⁰ Document reference: 0D5i

(Part k) Cultural heritage, including architectural and archaeological heritage
 (Part l) Landscape.

- gg. The council has proposed a Main Modification to the Local Plan 19.1 (submitted as part of [OD4i within LBM01](#) on 2nd March 2022) which demonstrates that all types of heritage assets are monitored.

Extract from proposed main modification 19.1:

Local Plan Monitoring Framework

<u>Thematic area</u>	<u>Monitoring indicator</u>	<u>Target (if applicable)</u>
<u>Heritage (including architectural and archaeological heritage)</u> <u>To conserve and enhance the existing historic and built environment, including sites, features, landscapes and areas of historical, architectural, archaeological and cultural, through high quality design and protection of open space, valued views and historic assets.</u>	<u>Number of heritage assets on Historic England’s Heritage at Risk Register.</u>	<u>A reduction in the number of heritage assets on the Heritage at Risk register.</u>

To ensure that the monitoring of the Sustainability Appraisal reflects the full extent of Sustainability Objective S05, the council proposes a modification to the heritage row within Figure 10 “local plan monitoring indicators of [OD3 Sustainability Appraisal of Merton’s Local Plan stage 3 Regulation 19](#) to be consistent with the Local Plan Monitoring Framework proposed in MM 19.1.

Issue (iii) Is the Plan supported by a robust approach to Habitats Regulation Assessment?

Q1. How was the HRA carried out and was the methodology appropriate, including the approach to screening out of policies?

Council response:

- hh. For information, the council's HRA and the responses to these questions continue to use the term "European sites" for consistency, having considered the regulatory changes that came into force in January 2021 following the UK's departure from the European Union. This is detailed in the council's response to Question 6 below.
- ii. The methodology used for Merton's Local Plan HRA is considered to be appropriate and in line with regulations and guidance. The HRA was carried out in line with government regulations and in consideration of the NPPF, [NPPG \(guidance on the use of Habitats Regulations Assessment\)](#) and case law.
- jj. The HRA was undertaken with regard for best practice and recent case law, in particular the 'People over Wind' and 'Holohan' rulings from the Court of Justice for the European Union.
- kk. Due to the "People over Wind" ruling the Screening stage of Merton's HRA did not rely upon avoidance or mitigation measures to draw conclusions as to whether the Local Plan could result in 'likely significant effects' on European sites, with any such measures being considered at the Appropriate Assessment stage as relevant.
- ll. Merton's HRA fully considered the potential for effects from the Local Plan on species and habitats, including those not listed as qualifying features, to result in secondary effects upon the qualifying features of European sites, including the potential for complex interactions and dependencies in line with the Holohan ruling.
- mm. In addition, Merton's HRA considered the potential for offsite impacts, such as through impacts to functionally linked land, and/ or species and habitats located beyond the boundaries of European site, but which may be important in supporting the ecological processes of the qualifying features. As stated in Section 2 of Merton's HRA, it was agreed with Natural England that 15km is a suitable catchment to identify HRA designated sites as the effects of the Local Plan can go beyond its boundary.
- nn. Using this buffer, two sites were identified as relevant for Merton's Local Plan. One is within the borough boundary, Wimbledon Common, and the other is Richmond Park whose closest point from Merton's borough boundary is c1km away and whose furthest point is around 4 km away in the London Borough of

Richmond.

- oo. As also stated in Section 2 of Merton’s HRA, beyond these two sites there are several sites outside London such as the Thames Basin Heaths, the Windsor Great Park and the Mole Gap to Reigate Escarpment which are on the edge of or beyond the 15km buffer and are too far away to be considered relevant. Therefore, the potential impacts of the Plan were screened against the conservation objectives of Wimbledon Common and Richmond Park.
- pp. Sections 3 and 4 of Merton’s HRA set out the information used in reaching conclusions about likely significant effects; section 5 considered the identification of other plans and projects which may have “in combination” effects and Section 7 sets out the screening stages against the council’s Local Plan policies, sites and land designations.
- qq. The council believes the methodology is appropriate including the approach of screening out policies.
- rr. Section 6 of the HRA set out the screening approach used to determine the ‘likely significant effects’ of Merton’s Local Plan will be undertaken. A ‘traffic light’ approach was used to record the likely impacts of the policies and site allocations on European sites and their qualifying habitats and species, using the colour categories shown below and the categorisation of the potential effect of the policies on the European Sites matrix found in figure 11.

Category		Category A: no negative effect
A1		Policies that will not themselves lead to development e.g. because they relate to design or other qualitative criteria for development, or they are not a land use planning policy.
A2		Policies intended to protect the natural environment, including biodiversity.
A3		Policies intended to conserve or enhance the natural, built, or historic environment, where enhancement measures will not be likely to have any negative effect on a European Sites.
A4		Policies that positively steer development away from European Sites and associated sensitive areas.
A5		Policies that would have no effect because no development could occur through the policy itself, the development being implemented through later policies in the same plan, which are more specific and therefore more appropriate to assess for their effects on European Sites and associated sensitive areas.
Category		Category B: No significant effect
B		Effects are trivial or ‘de minimis,’ even if combined with other effects.
Category		Category C: Likely significant effect alone
C1		The option, policy or proposal could directly affect a European Sites because it provides for, or steers, a quantity or type of development onto a European Site, or adjacent to it.

C2	The option, policy or proposal could indirectly affect a European Site e.g. because it provides for, or steers, a quantity or type of development that may be very close to it, or ecologically, hydrologically, or physically connected to it or it may increase disturbance as a result of increased recreational pressures
C3	Proposals for a magnitude of development that, no matter where it was located, the development would be likely to have a significant effect on a European Site

- ss. The majority of the policies were found to be A1 or A4, which ‘screens’ the policy out. In other words the policy does not specify any allocations or activities with the potential for effects on European sites. Housing and employment allocations are not within the 15km catchment area of a protected site, or a policy acknowledges the need to respect and enhance landscape character and reduce climate change impacts.
- tt. The HRA found that the Plan will not lead to adverse effects on the integrity of European sites either alone, or in combination with other plans and projects. None of the area visions or site allocations within Merton’s draft Local Plan are likely to have any significant discernible adverse impact therefore, with the exception of stage 2 (Appropriate Assessment and ascertaining the effect on site integrity) and stage 3 (mitigation and alternative solutions) of the HRA process are not considered necessary.

Q2. Is the HRA robust and does the Plan include all the recommendations identified as necessary to ensure compliance with the Regulations?

Council response:

- uu. The council believes the HRA (Document [0D12](#)) is robust and the Plan includes all the recommendations identified as necessary to ensure compliance with the Regulations. The Council did seek advice, guidance and consulted with Natural England who did not highlight any issues with compliance with the Regulations.

Q3. Have any concerns been raised regarding the HRA and if so, what is the Council’s response to these? How has Natural England been involved and are they satisfied with the content of the Plan?

Council response:

- vv. The council is not aware of any concerns regarding the HRA. Natural England has been involved with the development of the Plan. They have been involved in the development from the Call of sites stage to the Reg19 stage. At the Reg19 stage we received correspondence from [Natural England dated 21st September 2021](#). Stating ‘*Natural England have no comments to make on this consultation*’.

Q4. Overall, have the requirements of the Conservation of Habitats and Species Regulations 2017 been met?

Council response:

- ww. The Habitats and Species Regulations 2017[1] require an assessment of any plans which are likely to have a significant effect on any protected European sites for example Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar wetland sites. This requirement includes strategic plans with an impact on land use.
- xx. For Merton the protected sites are Wimbledon Common, Putney Heath and Richmond Park as set out in the HRA (Document [0D12](#)). The HRA considers whether the plan would adversely affect the integrity of the protected sites in terms of conservation objectives in combination with other plans or projects. The HRA considered recreation and urbanisation such as visitor and recreational pressure, air pollution, non-physical disturbance (noise, vibration and light) and water quantity and quality. The HRA found no significant adverse impact of the Plan in terms of conservation objectives. It identified that a number of mitigation measures outside of the Plan currently in force contribute to reducing and/or minimising adverse impact such as Bye Laws, the Environmental Protection Act 1990 and other Council powers.

Q5. Is the approach to HRA legally compliant having regard to the Court of Justice of the European Union's judgement on People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)?

Council response:

- yy. Yes, the approach to the HRA and the decision to screen out a full 'appropriate' assessment on the Plan is still considered legally compliant having regard to the EU Court of Justice's (EUCJ) decision in the case of 'People Over Wind, Peter Sweetman v Coillte Teoranta (case C-323/17). The Court of Justice of the European Union (CJEU) held that any measures intended to avoid or reduce the harmful effects of a project on a site should not be considered at the screening stage. The CJEU said that to do so would compromise the practical effect of the Habitats Directive in general. It also noted that the purpose of the assessment stage could be undermined and circumvented if this occurred.
- zz. Although the term 'mitigation measures' is not referenced in the Habitats Directive, the CJEU noted that it should be understood as meaning measures that are intended to avoid or reduce the harmful effects of the proposed project on the site concerned. The European Court of Justice (ECJ) interpreted this to mean that if a project is likely to have a significant adverse effect on a European site, it should be subject to an appropriate assessment, regardless of any

proposed mitigation measures intended to avoid or reduce the identified harmful effects of the development.

- aaa. While the overall effect of this ruling is that many plans and projects which would not have previously required a full HRA may now be required to undertake one, the key question is to consider is what aspects, if any, of the proposed plan or project count as 'mitigation measures' (i.e. with respect to reducing or avoiding significant impacts on the relevant protected habitats) and what aspects can be considered to be a central part of the plan or project being proposed. A recent UK High Court ruling in August 2018 (R (on the application of Langton) v Defra (EWHC 2190 Admin) confirmed that conditions on badger cull licences were not 'mitigation measures' and therefore could be considered for the purposes of habitats screening.
- bbb. The crucial questions are to determine whether the plan or project in question firstly, has "*an adverse effect on the integrity of the site*". The secondly "*what will happen to the site if this plan or project goes ahead; and is that consistent with 'maintaining or restoring the favourable conservation status' of the habitat or species concerned?*"
- ccc. The council consulted on the HRA at each consultation stage with Natural England on the Plan (including policies and site allocations). Natural England did not raise any issues or concerns with the Council's findings of the HRA.
- ddd. The council considers none of the emerging policies or proposed site allocations in the Plan, contain any aspects that could reasonably be identified as a 'mitigation measure' which has been specifically designed to avoid or eliminate potential significant effects on the relevant habitats arising from the implementation of the Plan. However, we acknowledge that certain policy criteria may help to reduce potential impacts, this is an integral part of the proposed Plan and are not included with the intention of mitigating significant impacts on protected habitats.

Q6. Are any adjustments required to the HRA approach as a result of the changes¹¹ to the Habitats Regulations 2017, pursuant to the UK's exit from the European Union, which came into force on 1 January 2021?

Council response:

- eee. No, the council does not consider that any of the following changes to the Habitats Regulations 2017 which came into force on 1 January 2021 require adjustments to Merton's overall HRA approach.
- fff. HRA refers to the assessment of the potential effects of a development plan on one or more sites afforded the highest level of protection in the UK: Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). These used to be classified under European Union (EU) legislation; since 1 January 2021

¹¹ More detail on this is available here: <https://www.gov.uk/government/publications/changes-to-the-habitatsregulations-2017>

these are protected in the UK by the Habitats Regulations 2017 (as amended).

- ggg. Although the EU Directives from which the UK's Habitats Regulations originally derived are no longer binding in the UK, the Regulations still refer to the lists of habitats and species that the sites were designated for, which are listed in annexes to the EU Directives:
- SACs are designated for particular habitat types (specified in Annex 1 of the EU Habitats Directive) and species (Annex II).
 - SPAs are classified for rare and vulnerable birds (Annex I of the EU Birds Directive), and for regularly occurring migratory species not listed in Annex I.
- hhh. The term 'European sites' was previously commonly used in HRA to refer to 'Natura 2000' sites and Ramsar sites (internationally designated under the Ramsar Convention). In January 2021 government published "[changes to the Habitats Regulations 2017](#)" which sets out the differences between the 2017 Regulations and the post-Brexit situation:
- References to Natura 2000 in the 2017 Regulations should now refer to the '*national site network*'.
 - The national site network includes existing SACs and SPAs and new SACs and SPAs designated under these Regulations.
 - Ramsar Sites (also known as designated Wetlands of International Importance) do not form part of the national site network. Many Ramsar sites overlap with SACs and SPAs and may be designated for the same or different species and habitats.
- iii. Although Ramsar sites do not form part of the new national site network, the government's January 2021 policy paper confirms that all Ramsar sites remain protected in the same way as SACs and SPAs. NPPF paragraph 181 states "*The following should be given the same protection as habitats sites:*
- (a) *Potential Special Protection Areas and possible Special Areas of Conservation*
 - (b) *Listed or proposed Ramsar sites; and*
 - (c) *Sites identified, or required, as compensatory measures for adverse effects on*
 - (d) *Habitats sites, potential Special Protection Areas, possible Special Areas of*
 - (e) *Conservation, and listed or proposed Ramsar sites.*"
- jjj. Legally, HRAs are not required for other nationally designated wildlife sites such as Sites of Special Scientific Interest or National Nature Reserves. Many HRAs, including Merton's HRA [Document 0D12](#), for plans and projects that are prepared on either side of the January 2021 changes coming into force, use the term 'European sites' rather than 'national site network'. As set out above, this does not change the overall approach to the HRA.
- kkk. It is proposed to add an Informative to Merton's HRA [Document 0D12](#) to this effect. The informative is contained as Appendix 1 to this matter.

Issue (iv) Has consultation on the Plan been carried out in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations) and the Council’s Statement of Community Involvement (SCI)?

Q1. Has the production of the Plan followed the SCI? Has consultation on the submitted plan been adequate?

Council response:

III. Yes, the production of the Plan has followed the SCI (0D33 and 0D34) and adequate consultation has been carried out on the submitted plan. All consultations have been guided by the council’s SCI ([Document 0D33](#)), and Merton’s Statement of Community Involvement revisions to the Statement of Community Involvement during COVID-19 pandemic ([Document 0D34](#)) therefore adhering to any ongoing restrictions brought about by Government legislation and regulations relating to the outbreak of the Covid-19 pandemic at the time of any consultation.

Q2. Have the publication, advertisement and availability of the Plan followed the procedures set out in the 2004 Planning and Compulsory Purchase Act and the Town and Country Planning (Local Planning) (England) Regulations 2012?

Council response:

mmm. Yes, the council followed the procedures set out in the 2004 Planning and Compulsory Purchase Act and the Town and Country Planning (Local Planning) (England) Regulations 2012. All local planning authorities (the council) are required under section 18 (1) of the Planning and Compulsory Purchase Act 2004, to prepare and maintain a SCI.

Covid-19 pandemic

nnn. The council reviewed and updated the SCI ([Document 0D33](#)) and produced a temporary SCI ([Document 0D34](#)) following the government’s introduction of the following temporary regulations and updated planning guidance to allow councils more flexibility in how they publicise planning applications and consult or notify people in the plan making process:

- Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020
- Amendment to the ‘Consultation and pre-decision matters’ section of the Planning Practice Guidance (PPG)
- Amendment to the ‘Neighbourhood Planning’ section of the PPG
- Amendment to the ‘Plan making’ section of the PPG

Q3. Can it be demonstrated that the Plan has been shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees¹²?

Council response:

- ooo. Yes, it can be demonstrated that the Plan has been shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees. This is set out in the Statement of Consultation (Document [0D8](#)).
- ppp. The Plan's preparation started in 2017. Call for sites (Stage 1) public consultation took place between October 2017 and January 2018. Over 1,000 responses were received.
- qqq. The stage 2 draft Local Plan ([Document 0D17](#)) (Regulation 18) public consultation took place between October 2018 and January 2019. It contained draft policies, potential sites for allocation and land designations (e.g. town centre boundaries) Approximately 240 respondents raised over 1,500 separate points.
- rrr. The council decided to carry out another Regulation 18 consultation for the following reasons:
- More sites were submitted at Stage 2 and the council wanted to give everyone the opportunity to comment on the newly submitted sites.
 - The new London Plan (and the associated strategic policies and housing targets) was still in draft.
- sss. The stage 2a draft Local Plan ([Document 0D16](#)) (second round of Regulation 18) public consultation took place between 13 November 2020 to 1 February 2021 and responses were accepted after this date. In total 254 valid responses were received raising more than 3,000 points.
- ttt. Full details of the Local Plan consultation are outlined in Merton's Statement of Consultation (Document [0D8](#)). The council's Local Plan webpage [here](#) with the responses we received at each stage.

¹² Per paragraph 16(c) of the Framework

Q4. Reference has been made in the representations of interested parties to difficulties with accessing consultation documents, including the SA, online. What steps did the Council take to ensure that documents were available in an accessible way and that adequate time was given to interested parties to absorb these?

Council response:

uuu. As set out in paragraphs 3.6 and 3.7 of Merton's Statement of Consultation (Document [0D8](#)) Stage 2a consultation (second round of Regulation 18) took place from 13th November 2020 to 1st February 2021 and was conducted entirely online due to the COVID19 restrictions in place at the time and in line with the amended SCI ([Document 0D34](#)) Although the consultation finished on 1st February 2021, the council continued to accept responses after this date in recognition of the difficult situation people were going through with COVID-19 and that the sustainability appraisal was not visible online without a password until 4th January 2021.

Issue (v) To what extent has the production of the Plan complied with the Council's published Local Development Scheme (LDS)?

Q1. Does the scope of the submitted Plan accord with the description of it given in the Council's LDS?

Council response:

vvv. Yes, the council believes the submitted Plan accords with the description given in the council's LDS including the amendments made on [7th July 2021 full council meeting](#). Recommendation b of the committee reports states:

(b) Agree the timetable for production set out in section 5 of this report, which will amend Merton's Local Development Scheme.

Para 5.3 states: *This report proposes a minor amendment to Merton's Local Development Scheme to have the following timetable:*

- *1st February 2021 – Stage 2a consultation finishes, consider comments*
- *Summer 2021 (to start between July and September for six weeks) – pre-submission publication*
- *Autumn (Quarter 3) 2021 – submission to the Secretary of State for independent examination*
- *Winter (Quarter 4) 2021-22 – adoption (this date will be governed by the Planning Inspectorate and the length of the examination)*

Q2. Has the production of the Plan followed the LDS, and is the LDS up to date?

Council response:

www. Yes. The Merton Councils LDS is up to date. An updated LDS was agreed and approved at [full council](#) on 7th July 2021 reflecting the adjustment to the timetable of the Plan. The Council has noted that the incorrect LDS was submitted to the Planning Inspector in December 2021 and will be submitting the approved LDS (Appendix 2 to this Matter) and links to the Cabinet decision notice.

Issue (vi) In preparing the Plan has the Council discharged its Public Sector Equality Duty¹³?

Q1. Is the Equalities Impact Assessment adequate and robust in terms of its methodology and conclusions?

Council response:

- xxx. Yes, the Council believes the Equalities and Diversity Impact Assessment (Document [OD10](#)) is adequate and robust in terms of its methodology and conclusions.
- The Plan has been assessed at each stage against the Protected Characteristics and amendments have been made accordingly to the Plan, in conformity with national and regional planning policies and comments received during public consultations.
 - The EDIA decision making criteria framework was developed based on known data available and known barriers on each Protected Characteristics groups.
 - The framework helped in the development of the Equality Objectives
 - The EDIA identifies which of the Plan's policies contribute to meeting the Equality Objectives.
 - The EDIA acknowledges a number of approaches in the Plan that will contribute to having a positive impact on the Protected Characteristics such as sustainable travel, supporting infrastructure, health and wellbeing and delivering well designed and resilient neighbourhoods.

Q2. In preparing the Plan has the Council given due regard to the need to:

a. eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equalities Act 2010 (as amended) (the 2010 Act)?

Council response:

- yyy. Yes. In the carrying out of public functions/consultations the council had due regard to the matters mentioned in Section 149 subsection (1) of the Equality Act 2010. All consultations were transparent and open to all. The Plan will have a positive impact in helping to eliminate unlawful discrimination, harassment and victimisation of Merton's diverse communities. This can be seen in a number of policies throughout the Plan, as shown by the examples below.
- zzz. The Chapter 01b. Good Growth seeks to: *Create safe and secure environments for all especially for women, children and the elderly and reduce opportunities for crime and antisocial behaviour using Secure by Design.* This is embedded in the design policies.

¹³ Provided by s149 of the Equality Act 2010 (as amended)

- aaaa. The Plan seeks to build strong inclusive communities in keeping with the London Plan Good Growth Objectives.
- bbbb. Strategic policy HW10.1 Health (including mental health) and Wellbeing (part i) . *Ensuring that our neighbourhoods are inclusive and accessible for all and encourages social interaction.* Furthermore, the policy states very clear that every community has its own context and aspirations for the future. In creating a 20-minute neighbourhoods, it will be based on what the local diverse community (including children and young people, ethnic minorities and disabled people) wants.
- cccc. Policy No. H11.1 Housing choice requires proposals for new homes including new build schemes and redevelopment proposals to be well designed and located to create socially mixed, inclusive and sustainable neighbourhoods.
- dddd. Strategic Policy D12.1 Delivering well designed and resilient neighbourhoods seeks to create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. Para 12.2.3 states: *It is important that our urban environments are inclusive, publicly accessible, inviting and easy to understand.*
- eeee. The Plan recognises the importance of social and community infrastructure provides opportunities to develop strong and inclusive communities, contributing to social integration and the desirability of a place. As seen in policy IN14.2 Social and community infrastructure.
- ffff. Also, the Plan acknowledges the importance of parking for people with disabilities within Policy T16.4 Parking and Low Emissions Vehicles. The Plan adopting a number of approaches such as Healthy Street, dementia friendly design and 20 minutes neighbourhoods which will directly and indirectly eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equalities Act 2010 (as amended) (the 2010 Act) and build strong and inclusive borough.

Q2b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it¹⁴?

- gggg. Yes. The Plan will have a broad and positive impact on advancing equality of opportunity, for the benefit of all. The Plan seeks to address the needs of people who have traditionally faced discrimination or received less favourable treatment

¹⁴ For the purposes of the 2010 Act “protected characteristics” are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

based on their Protected Characteristics. This is achieved by a number of policies in the Plan building on Chapter 01.b of the Plan and the London Plans Good Growth policies.

- hhhh. Chapter 01b. Good Growth and throughout the Plan seeks to promote 'good growth' in line with the London Plan's Policy GG1 Building strong and inclusive communities. Furthermore, the Plan acknowledges and incorporates the Sustainable Development Goals (SDGs) with in the Plan. SDGs set ambitious targets to create transformative social, economic and environmental improvements by 2030. They provide an integrated framework covering a number of themes including addressing inequalities, poverty, decent work and economic growth, good health and wellbeing, and gender equality. In addition, the Plan seeks to improve issues related to socio-economic disadvantage, health inequalities, child poverty, community safety and social mobility i.e. bridging the gap between the levels of deprivation and prosperity in the borough.
- iiii. As well as housing policies which will secure a range of housing opportunities for families, the elderly, people with disabilities, gypsies and travellers. Other policies in the Plan contribute:
- Policy No. H11.1 Housing choice
 - Policy No. H11.2 Housing Provision Policy No.
 - H11.4 Supported care housing for vulnerable people or secure residential institutions for people housed as part of the criminal justice system.
 - Policy No. H11.5 Student Housing, other housing with shared facilities and bedsits
 - Policy No. H11.6 Accommodation for Gypsies and Travellers
 - Policy T16.4 Parking and Low Emissions Vehicles – ensure parking facilities are provide within development proposals.
 - Strategic Policy D12.1 Delivering well designed and resilient neighbourhoods seeks to create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Q2c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it?

- jjjj. Yes, the council in preparing the plan, has given due regard to fostering good relations and promoting understanding between people who share a protected characteristic and others.
- kkkk. Preparation of the Plan has provided opportunities for different groups and interested parties to participate in the process, to encounter diverse points of view and to contribute to the outcome. For example, as set out in the Statement

of Consultation (Document [0D8](#)) Table 1, paragraph 3.65 etc, different techniques were used to engage primary aged schoolchildren to help ensure that the views of people with different ages were able to participate in public life. Monitoring and review of the Plan will provide further ongoing opportunities for all to participate.

Q3. How have equality issues been addressed in the Plan?

Council response:

III. The Plan has addressed equality issues throughout the Plan for example:

mmmm. Chapter 01.b says that design must consider safety and security, layout and orientation, public realm, social inclusion and environmental health impacts such as noise and air quality to ensure we are creating healthy neighbourhoods, which are accessible for all.

Creating a safe and inclusive environment for all

- 1.92. Chapter 12 Places and spaces in a growing borough – a number of policies seek to address Merton’s equality issues. These include, Ensuring high quality design for all developments Policy D12.3.
Part (h) states that *Ensure the highest practical standards of access and inclusion and be accessible to people with disabilities.*
Part (m). *Provide layouts that are safe, secure and take account of crime prevention and are developed in accordance with Secured by Design principles.*
Part (p) *Ensure that the traffic and construction activity do not adversely impact or cause significant inconvenience in the day to day lives of those living and working nearby, and do not harm road safety or significantly increase traffic congestion.*
- 1.93. Policy D12.2 Urban design (public realm) seeks to create well-designed places create a strong sense of community and improve the social and emotional wellbeing of those who use it and ensure local resilience to the impacts of climate change such as flooding (from all sources), overheating and subsidence.
Part (d) *Ensure that the form and layout of new development should be street-based with clearly identifiable publicly accessible streets defined by buildings that front the street and maximise the number of entrances onto the street.*
Part (n) *Ensure it is accessible, inclusive, child friendly and intergenerational. It must enable an active lifestyle by designing walkable and attractive public realm and encouraging active modes of transport.*

Part (p) *Contribute to a safe, attractive, uncluttered, co-ordinated public realm that enhances the site's setting and connection with the surrounding neighbourhood.*

Part (s) *Measures such as designing out crime, anti-terrorism, dementia friendly, green infrastructure and to help manage flood risk should be actively considered at the earliest stage of planning the public realm depending on the location, scale, and setting of the development.*

Part (t) *Consider the benefits of inclusive and diverse site specific temporary and long term public art works that enhance local character and develop a sense of place.*

Part (u) *Consider the management of the public realm to provide access needs of all of Merton's communities, including the particular needs of people with disabilities.*

Access to jobs and training

- 1.94. Strategic policy EC13.1 Promoting economic growth and successful high streets. Part (a) *Supporting development that raises and sustains the number and range of jobs increases the diversity of businesses and reduces carbon emissions where it meets other policies in this plan.*

Part (e) *Strengthening the pathways through education and learning into jobs and careers for residents, supporting employment and training schemes to maximise local employment opportunities and help address skills deficits, including in green skills.*

Part (f) *Encouraging employer participation and investment in skills.* Part (h) *Requiring developers and applicants on major sites to support the recruitment of local residents and businesses as part of the construction and end life of their development.* Table 16.1: Indicative list of transport schemes set out projects that will create safe and accessible space from improvement to public realm to step free platforms at stations.

Addressing fuel poverty

- 1.95. Policy CC2.4 *Low Carbon Energy* aims to ensure electrification of heat is part of development proposals. The electrification of heat will likely play a major role in decarbonising heat. As well as becoming a lower carbon energy source with the decarbonisation of the national grid, electricity also provides air quality benefits. The policy aim is to minimise high energy bills for future residents, and to mitigate the risk of fuel poverty.

Address inequalities in health

- 1.96. Strategic policy HW10.1 Health (including mental health) and Wellbeing. Part (e) *Working with Alzheimer's Society, Merton Dementia Action Alliance and other partners to make Merton a Dementia Friendly borough, helping all those living with dementia in the borough in line with the Mayor's ambition to make London a Dementia Friendly city.*

1.97. *Improving the public realm in accordance with the Healthy Streets Approach and Active. Part (h) Design principles to provide an improved network of safe and convenient pedestrian and cycle routes that enable healthy and active travel choices, especially in areas identified as Air Quality Focus Areas in Merton's Air Quality Action Plan. Part (i) Ensuring that our neighbourhoods are inclusive and accessible for all and encourage social interaction.*

1.98. Access to housing including affordable:

- Policy No. H11.1 Housing choice
- Policy No. H11.2 Housing Provision
- Policy No. H11.4 Supported care housing for vulnerable people or secure residential institutions for people housed as part of the criminal justice system.
- Policy No. H11.5 Student Housing, other housing with shared facilities and bedsits
- Policy No. H11.6 Accommodation for Gypsies and Travellers

Matter 1 - Appendix 1

INFORMATIVE TO MERTON'S HABITATS REGULATIONS ASSESEMENT

On 1st January 2021 changes to the Habitats Regulations 2017 came into force. These changes reflect the UK's departure from the EU. More information can be found here: <https://www.gov.uk/government/publications/changes-to-the-habitatsregulations-2017>

The Council does not consider that these changes affect the overall approach to Merton's Habitats Regulations Assessment (HRA).

HRA refers to the assessment of the potential effects of a development plan on one or more sites afforded the highest level of protection in the UK: Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

These used to be classified under European Union (EU) legislation; since 1 January 2021 these are protected in the UK by the [Habitats Regulations 2017 \(as amended\)](#).

Although the EU Directives from which the UK's Habitats Regulations originally derived are no longer binding, the Regulations still refer to the lists of habitats and species that the sites were designated for, which are listed in annexes to the EU Directives:

- SACs are designated for particular habitat types (specified in Annex 1 of the EU Habitats Directive) and species (Annex II).
- SPAs are classified for rare and vulnerable birds (Annex I of the EU Birds Directive), and for regularly occurring migratory species not listed in Annex I

The term 'European sites' was previously commonly used in HRA to refer to 'Natura 2000' sites and Ramsar sites (international designated under the Ramsar Convention). Government's January 2021 publication "[changes to the Habitats Regulations 2017](#) sets out the differences between the 2017 Regulations and the post-Brexit situation:

- References to Natura 2000 in the 2017 Regulations should now refer to the '*national site network*'.
- The national site network includes existing SACs and SPAs and new SACs and SPAs designated under these Regulations.
- Ramsar Sites (also known as designated Wetlands of International Importance) do not form part of the national site network. Many Ramsar sites overlap with SACs and SPAs and may be designated for the same or different species and habitats.

Although, Ramsar sites do not form part of the new national site network, the government's January 2021 paper confirms that all Ramsar sites remain protected in the same way as SACs and SPAs.

The [National Planning Policy Framework](#) (published July 2021) paragraph 181 states *The following should be given the same protection as habitats sites:*

- (f) *Potential Special Protection Areas and possible Special Areas of Conservation*

- (g) Listed or proposed Ramsar sites; and*
- (h) Sites identified, or required, as compensatory measures for adverse effects on*
- (i) Habitats sites, potential Special Protection Areas, possible Special Areas of*
- (j) Conservation, and listed or proposed Ramsar sites.*

Legally HRAs are not required other nationally designated wildlife sites such as Sites of Special Scientific Interest or National Nature Reserves. Many HRAs, including Merton's HRA, that were prepared for plans or projects developed on either side of the January 2021 changes continue to use the term 'European sites' rather than 'national site network' for consistency during HRA preparation. As set out above, this does not change the overall approach to the HRA.

Matter 1 – Appendix 2

LDS UPDATE, FULL COUNCIL REPORT, JULY 2021

Committee: Council

Date: 7th July 2021

Wards: All

Subject: Merton's Local Plan and Policies Map – submission to the Secretary of State

Lead officer: Director of Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Housing, Regeneration, and the Climate
Emergency Councillor Martin Whelton

Contact officer: Future Merton Strategic Policy Manager, Tara Butler

Recommendations:

That, following consideration by Cabinet and the Borough Plan Advisory Committee, Council resolve to:

- A. submit Merton's Local Plan and Policies Map to the Secretary of State for independent examination. This would be preceded by a statutory six-week consultation period between July and September 2021.
- B. Agree the timetable for production set out in section 5 of this report, which will amend Merton's Local Development Scheme.
- C. delegate authority to the Director of Environment and Regeneration, Chris Lee, in consultation with the Cabinet Member for Housing, Regeneration and the Climate Emergency Councillor Martin Whelton for changes to the documents between 23rd June 2021 and the receipt of the Planning Inspector's final report:

-
- (i) to approve alterations to the plans for submission to the Secretary of State for independent examination and as necessary throughout the examination process arising from matters including responses to pre-submission public consultation, national or regional policy changes, additional relevant evidence and matters arising from the independent examination.
 - (ii) to consider and approve officers' response to comments received at the pre-submission public consultation, and associated alterations to the plans for their submission to the Planning Inspector via the Secretary of State.
-

NOTE FOR APPENDICES

For the purposes of the council meetings, the Local Plan is not fully formatted.

High quality formatting of the Local Plan, including final numbering and referencing, will take place after full council on 7th July 2021 using specialist software. By formatting the Local Plan after the committee cycle this means that amendments made at committee can be easily integrated into the Local Plan. Referencing will also take place at the same time as formatting.

The Local Plan and Policies Map is produced in PDF format for the purposes of Cabinet and Council meetings. If councillors would like to see a more detailed map of any part of the borough for the Policies Map, officers can produce close up maps on request.

To save on paper, for the purposes of the council meetings the Local Plan and Sustainability Appraisal will be available online and will be printed in paper copies on request to officers. Paper copies will also be available at the meeting venue.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. Merton's *Local Plan* is the detailed development plan for Merton, containing the overall borough-wide planning strategy and detailed planning policies and allocates sites for new development.
- 1.2. Merton's Policies Map is being revised at the same time, which will designate land for specific uses, such as open spaces, town centre boundaries, neighbourhood parades and nature conservation.
- 1.3. Once adopted, the plans and the map will be the main reference point guiding planning decisions in the borough, replacing Merton's *Sites and Policies Plan 2014* and Merton's *Core Planning Strategy 2011*.
- 1.4. The new Local Plan was started in late 2017; it has been prepared in line with statutory regulations, informed and improved by a total of nine months of public consultation, local and national research and the latest data from a variety of sources. The plans are in general conformity with the Mayor's London Plan 2021 and the National Planning Policies Framework 2019.
- 1.5. This report recommends that Cabinet recommends that council resolves to
 - submit the *Local Plan* and Policies Map to the Secretary of State for an examination in public by an independent Planning Inspector. This is preceded by pre-submission public consultation.
 - Agree the timetable for production set out in Section 5 of this report, which will amend Merton's Local Development Scheme.
 - delegate amendments to the documents that arise between 23rd June 2021 and the receipt of the Planning Inspector's final report to the Director of Environment and Regeneration, Chris Lee, in consultation with the Cabinet Member for Housing, Regeneration and the Climate Emergency, Councillor Martin Whelton.
- 1.6. On 22nd June 2021, Merton's Cabinet resolved the recommendations in this report. The Borough Plan Advisory Committee considered this report at their meeting on 1st July 2021. As this is after the despatch for full council, the Borough Plan Advisory Committee's recommendations will be reported separately to full council.
- 1.7. Councillors at Cabinet on 22nd June 2021 received an appendix containing a version of the Local Plan including an error relating to the planning policy on building heights in Colliers Wood. In March 2021 Merton's Borough Plan Advisory Committee and the Cabinet Member for Housing, Regeneration and the Climate Emergency resolved to recommend that the wording relating to building height in Colliers Wood be amended to clarify that the existing Britannia Point should remain the pinnacle building in terms of height. This amendment was made by officers but unfortunately, due to officer oversight, Cabinet were sent a version of the Local Plan with incorrect wording. This has been corrected for the Borough Plan Advisory Committee and Council; appendix 1 to this report contains the correct wording

which is incorporated in Chapter 3 – policy N.3.1 “Colliers Wood” and referred to in relevant Colliers Wood site allocations “*Colliers Wood town centre may be an appropriate location to accommodate higher density development including tall buildings. Britannia Point should remain the pinnacle building in the centre in terms of height. This can then form the basis for a coherent group of buildings that relate well to each other in terms of scale, massing, form and architecture. New buildings must be designed, orientated and laid out within the site and within the context of nearby buildings and structures to mitigate the potential for uncomfortable wind conditions at ground level, which would particularly affect pedestrians and cyclists*”. Officers would like to apologise for the mistake in the wording sent to Cabinet.

2 DETAILS

- 2.1. Every borough should have an up-to-date development plan to guide planning decision in their area. Currently (May 2021) Merton’s statutory development plan is:
- The Mayor’s London Plan 2021
 - Merton’s Estates Local Plan 2018 (only for Eastfields, High Path and Ravensbury)
 - Merton’s Sites and Policies Plan 2014
 - The South London Waste Plan 2012 (currently being revised and only for planning applications for waste management facilities)
 - Merton’s Core Planning Strategy 2011
- 2.2. It is important that Merton has a Development Plan that is based on the most-up-to-date research for the borough, the most recent consultation feedback and is in conformity with the National Planning Policy Framework 2019 and the Mayor’s London Plan 2021.
- 2.3. Without up-to-date planning policies, the NPPF and other material considerations can be used to guide local planning decisions, rather than adopted local council policy. This means that local issues may not be able to be adequately considered in decision-making, especially at planning appeals.

Summary of overall strategy

- 2.4. The overall strategy and many of the amendments to it has arisen out of community consultation feedback, local Merton evidence and national / London-wide planning policies. The objectives have been reordered following consultation feedback.
- 2.5. Tackling the causes of climate change and its effects – Merton has adopted a Climate Change Strategy and Action Plan in 2020. The Local Plan has made tackling the causes of climate change and managing its effects one of the key strategic priorities and it is now embedded throughout the plan. This was strongly supported by responses at public consultation early in 2021 from all across the borough.
- 2.6. Recovery and resilience following Covid19 – the pandemic is changing the way we live our lives: where and how we want to work, shop, socialise, live and travel. It has also had a devastating effect on local businesses and jobs, and has rapidly accelerated changes to our high streets that had already started pre 2020. Together with other council strategies, projects and investments, the Local Plan is supportive of measures to embed recovery and improve the borough’s resilience.
- 2.7. Places for people – this objective ensures Merton can meet its needs for new homes, including affordable homes, of the types and sizes for different households

is a key part of Merton's Local Plan. This will be coupled by working with the voluntary sector, businesses, the NHS, Met Police, Transport for London and other partners to deliver social and community services, both by providing new infrastructure and repurposing under-used spaces. Other council strategies and projects – such as the emerging Housing Strategy and the Neighbourhood Fund for community infrastructure levy – contribute to this objective.

- 2.8. Good growth – the council wants to create the conditions for growth that helps with economic recovery and one of the Local Plan's objectives is ensuring it takes place in the most appropriate and sustainable locations. The council also wants to guide the benefits of this growth to meet the needs of Merton's communities and enhances the borough's unique character and appearance, thus achieving positive social, environmental and quality of life objectives as well.
- 2.9. Place plans and the 20-minute neighbourhood – promoting healthy streets through boosting local businesses and high streets, reducing pollution and supporting walking and cycling will all help to create a local neighbourhood where residents can access the services they need within 20 minutes of their home. The new Local Plan will draw these considerations into planning decisions.

New planning policies

- 2.10. The *Local Plan* contains new planning policies including
- policies to support delivering the boroughs' commitment to net zero carbon by 2050, including on smaller sites
 - detailed policies to guide planning applications for new homes, particularly affordable homes and associated infrastructure such as schools, crèches and other community facilities. This includes re-introducing the requirement to collect contributions towards affordable homes from smaller developments as well as large ones
 - policies to encourage walking and cycling, to manage parking and to consider the transport impacts of new development;
 - policies to protect open spaces, nature conservation areas and trees;
 - Policies to support our high streets, town centres and other business areas, including considering
 - policies to enshrine the importance of design considerations in new development, including high quality urban design, managing heritage assets and a specific approach to inform planning applications for tall buildings and basements;
 - policies to help mitigate flood risk, pollution and to improve the energy efficiency of new buildings, including seeking to retain and use additional funding from development to improve local community buildings.

Allocating sites to accommodate growth

- 2.11. The Local Plan allocates sites for new development. Every borough does this about every 10 years. It assists greatly with knowing where development might happen over the following 10 years, helping councils, their public sector partners, businesses and others recognise in advance where new homes and business opportunities might be, and plan for their investment as necessary.
- 2.12. In 2018 sites in the plan were proposed by a wide variety of organisations including private sector landowners, local residents, the council, the NHS, Transport for

London and local community groups. Since then, officers have investigated each of these sites, undertaken the necessary research including three rounds of public consultation totalling nine months to help inform potential development scenarios.

Designating land for specific uses

- 2.13. The council has undertaken a very extensive review of the whole of the borough's area – regardless of ownership - to identify where specific land use designations should apply and to record these on a map, known as the Policies Map. Once adopted, the Policies Map 2021 will replace Merton's Policies Map 2014, illustrating where specific planning policies apply in the borough, for example where open space is protected in Merton, where are the boundaries of Merton's town centres, what parts of Merton are nature reserves and where industrial areas are.
- 2.14. These designations include:
- Town centre boundaries and industrial areas
 - Metropolitan open land and other open spaces
 - Cycling and walking routes
 - Sites of Importance for Nature Conservation
 - Designations relating to the historic landscape including conservation area boundaries, archaeological priority zones and ancient monuments.
- 2.15. We would like to thank all the consultation responses we have received from individual residents, community groups and other Merton organisations on the policies map. Local people have a forensic and in-depth knowledge of their local area and it is thanks to them taking the time to engage with and improve the Local Plan, for example in mapping the specific boundaries of individual open spaces or defining borough wide cycling routes.

Delegated powers

- 2.16. To ensure that the *Local Plan* and Policies Map can be delivered efficiently and effectively between pre-submission publication (July 2021), through the public examination to the receipt of the Inspector's final report, officers are seeking delegated powers in consultation with Members to make changes needed to the document.
- 2.17. Guidance is clear that the council should consider the plans sound once it has decided to publish them in advance of submitting them to the Secretary of State. However, it is recognised that during the next five months, changes to the plans may be required, for example to update facts, improve clarity, usability and formatting, and to fix errors.
- 2.18. Government has introduced some significant changes to the planning system, including the expansion of what can be built without the need for planning permission (i.e. via permitted development rights or "prior approval"). More amendments to planning matters are proposed, including a Planning Bill and a new NPPF 2021. Government is also due to announce new building regulations, which may have a bearing on planning policies. Factual updates may be necessary to ensure that Merton's *Local Plan* and Policies Map remain up to date during the six-month examination period.

- 2.19. It is recommended that the Council agree that authority be delegated to the Director for Environment and Regeneration, in consultation with the Cabinet Member for Environmental Sustainability and Regeneration to approve these alterations.

3 ALTERNATIVE OPTIONS

- 3.1. The main alternative option is not to submit the plans to the Secretary of State. This is not recommended for the following reasons:
- 3.2. An up-to-date plan prepared using local evidence and guided by community consultation, is the most appropriate guide for local planning decisions. Merton's Core Planning Strategy is 10 years old and some of the information it relies on is more than 20 years old (e.g. Census 2001). The older the plan, the easier it is to challenge whether or not the all of the policies it contains conform to the National Planning Policy Framework. The NPPF states that, in the case of out of date local planning policies, the NPPF can be used as a material consideration to guide planning decisions in the borough instead of the local plan. This takes decision-making away from what is important locally.
- 3.3. The *Local Plan and Policies Map* makes the most effective use of up-to-date available evidence. Evidence that is more than 3 years old is considered out of date and is more easily subject to challenge by those objecting to the plan, either at examination or for planning applications.
- 3.4. Merton had prepared a wealth of evidence to support Merton's Local Plan, including a green infrastructure study 2020, a playing pitch strategy 2019, an indoor sports facility study 2020 a local plan viability study 2020, a housing delivery study 2021 and a strategic flood risk assessment 2020. <https://www.merton.gov.uk/planning-and-buildings/planning/local-plan-research> In total, preparation of evidence to support these plans, including community consultation, cost close to £750,000.
- 3.5. Not progressing with the plan at this time may mean revising this evidence, incurring significant additional costs.
- 3.6. In considering this issue, officers have also considered whether or not to pause work on Merton's emerging Local Plan in the light of government's proposed changes to the planning system and plan-making; officers are not currently recommending this approach. The reasoning for this is set out in more detail in Section 10 "risk ,management and health and safety implications" of this report.
- 3.7. Another alternative option is not to recommend delegating decisions to the Director in consultation with Members during the examination process and instead to require amendments to be considered via the councillor committee process. This approach is not recommended due to the significant amount of time it would add to the examination process, the committee cycle taking at least six weeks.
- 3.8. Once the plan has been submitted to the Secretary of State, the Planning Inspector manages the timetable for at least the next 12 weeks before, during and after the examination hearings. To ensure that Merton can respond to the Inspector's requests in an efficient and timely manner, it is recommended that decisions are delegated to the Director in consultation with Members. The Planning Inspector's fees are approximately £1,000 per day for each day of the hearing so this approach will also help to save resources.
- 3.9. There are also alternative options around amending or removing one or more of the policies, sites or land designations from within the plan.

4 CONSULTATION UNDERTAKEN OR PROPOSED

Consultation undertaken

- 4.1. Plan preparation started in 2017. Community feedback is vital to preparing a local plan and three different stages of public consultation have been carried out, totalling over nine months of engagement:
- 4.2. **A “call for sites” Stage 1 public consultation** took place between October 2017 and January 2018. This was the first stage, asking general questions about what sites or what policies the Local Plan might contain. Over 1,000 responses were received; far more than previous Local Plan consultations.
- 4.3. **A Stage 2 draft Local Plan public consultation** took place between October 2018 and January 2019. It contained draft policies, potential sites for allocation and land designations (e.g. town centre boundaries) Approximately 240 respondents raised over 1,500 separate points. The feedback we received was reported to Merton’s Borough Plan Advisory Committee in March 2019 (see link to report: <https://democracy.merton.gov.uk/documents/s26977/04%20BPAC%20Local%20Plan%20and%20FW%20masterplan%20summary%20of%20consultation%20responses%20Mar2019.pdf>)
- 4.4. All responses received to each stage of the consultation are also available online (with personal details removed) www.merton.gov.uk/newlocalplan
- 4.5. **A Stage 2a draft Local Plan public consultation** took place between 13th November 2020 to 1st February 2021. As set out in the report to the Borough Plan Advisory Committee in October 2020, Merton’s Local Plan stage2a public consultation was conducted entirely online due to Covid19 restrictions. In line with the Coronavirus Planning Regulations, Merton’s Statement of Community Involvement was amended to reflect this.
- 4.6. Although the consultation finished on 1st February 2021, the council continued to accept responses after the consultation date in recognition of the difficult situation people are going through with Covid19 and that the sustainability appraisal document was not visible without password protection online until 4th January 2021 due to an IT issue.
- 4.7. All of the consultation responses have been considered and the plan has been amended accordingly at each stage. The plan is accompanied by a Statement of Consultation, setting out what people and organisations told us about the plans, and what actions have taken place as a result of their comments.
- 4.8. During the course of the plan’s preparation, officers have proactively engaged with community groups, other infrastructure providers, businesses and their representatives, landowners and developers, and councillors representing most of the borough’s wards.
- 4.9. If the plan is resolved by councillors for submission to the Secretary of State, then it will be published for six weeks between July 2021 and September 2021 for local communities, businesses, landowners and any other interested parties to comment on the final plan. These comments, together with the final plan and associated supporting documents, would be submitted to the Secretary of State and be examined in a public hearing by an independent planning inspector.

5 TIMETABLE

Next steps

- 5.1. In July 2019 Merton’s Cabinet resolved to amend the timetable for producing a Local Plan (known as Merton’s Local Development Scheme)

- 5.2. As set out in Merton's Local Development Scheme 2019-22 the proposed timetable for the production of the Local Plan is:
- 1st February 2021 – Stage 2a consultation finishes, consider comments
 - Spring 2021 – pre-submission publication
 - Summer (Quarter 3) 2021 – submission to the Secretary of State for independent examination
 - Winter (Quarter 4) 2021 – adoption
- 5.3. This report proposes a minor amendment to Merton's Local Development Scheme to have the following timetable:
- 1st February 2021 – Stage 2a consultation finishes, consider comments
 - *Summer 2021 (to start between July and September for six weeks)* – pre-submission publication
 - *Autumn* (Quarter 3) 2021 – submission to the Secretary of State for independent examination
 - Winter (Quarter 4) 2021-22 – adoption (*this date will be governed by the Planning Inspectorate and the length of the examination*)
- 5.4. The minor amendment to the timetable takes account committee cycles.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The financial resources for preparing the Local Plan have been from within existing resources, supplemented by successful bids to external resources such as the Mayor of London's Homebuilding Capacity Fund.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Town and Country Planning (Local Development)(England) Regulations 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 have both informed the statutory procedure to be followed before a Local Plan is submitted to the Secretary of State for independent examination. The Local Plan has been prepared in conformity with both sets of regulations as and when they applied.
- 7.2. Failure to adhere to the statutory procedure or a lack of robust evidence to support the plan may result in legal proceedings to challenge the validity of the plan.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. An Equalities Impact Assessment has been prepared in conjunction with Merton's Local Plan.
- 8.2. The plans have also been informed by an ongoing Strategic Environmental Assessment and Sustainability Appraisal, prepared in parallel with each stage of

the plan and used to ensure that the plans deliver social, economic and environmental benefits equally. Some of the objectives that the plans have been appraised against relate to improving community cohesion.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The Met Police have been engaged in all stages of the preparation of Merton's Local Plan, and have made representations on several issues.
- 9.2. The Sustainability Appraisal, prepared in parallel with each stage of the plan to ensure that the plans deliver social, economic and environmental benefits assesses the plans against objectives to reduce crime and the fear of crime.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. There are several risks to the Local Plan project and a risk log is kept and regularly updated to help manage risks.
- 10.2. **Decision-making on related projects** – in June and July 2021 the council is considering a number of strategies and projects that help to deliver the policies within the Local Plan. These include supplementary planning documents (e.g. the Borough Character Study, Small sites toolkit, air quality guidance) or decisions that influence placemaking, resilience and the creation of new homes (e.g. Clarion Stock Transfer Agreement decision; Merton's Housing Strategy; Merton's Neighbourhood Fund). Decisions on each of these projects will influence the success and speed at which the Local Plan can be delivered.
- 10.3. **Risk on up to date Local Plan** - as set out in Section 3 of this report, there is a risk that planning decisions will be challenged where decision-makers are using a development plan that is more than 10 years old as the policy basis for planning decisions. There is also a risk that decision-makers in Merton will be expected to use the NPPF to guide detailed local planning decisions.
- 10.4. There is also a risk identified in not having an up-to-date Local Plan on the ability of the council to successfully bid for funding for new local infrastructure. If the new infrastructure is to be delivered through the planning system, the council's ability to successfully deliver this may be called into question if the plan it is using to determine planning applications is more than 10 years old.
- 10.5. On 19th January 2021, the Housing Minister made a written statement to the House of Commons to set out the importance of maintaining progress to get up to date local plans in place, reiterating government's deadline of December 2023 for this. It stated that is critical that work should continue to advance Local Plans through to adoption by December 2023 to help ensure that the economy can rebound strongly from the COVID-19 pandemic.
- 10.6. **Risk (and opportunity) of new planning system** – government has consulted on a Planning White Paper, new draft National Planning Policy Framework and made it clear that they intend to introduce a new planning system during this parliament. Some of this requires primary legislation and may take some time to establish; the Queens Speech on 11th May 2021 announced a forthcoming Planning Bill.
- 10.7. Officers have considered whether to advise councillors to wait until the new planning system is established or continue to develop Merton's Local Plan. At the time of writing (June 2021) officers consider that work should continue on the pre-submission local plan. Considerations on this have been the considerable time and effort Merton's communities have taken in helping to shape the draft Local Plan; government's deadline of December 2023 for all authorities to have an up to date

local plan in place and the dates of some of Merton's current statutory planning documents and the resources used to support the draft local plan.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1: Merton's Local Plan and Policies Map - submission version
- Appendix 2: Merton's sustainability appraisal of Merton's Local Plan and policies map

To save paper, these documents are available online for everyone to view and will be printed for councillors on request by contacting the FutureMerton team on 020 8545 3837 or future.merton@merton.gov.uk

12 BACKGROUND PAPERS

- 12.1. Written Ministerial Statement January 2021 <https://questions-statements.parliament.uk/written-statements/detail/2021-01-19/hcws720>
- 12.2. Government letters to Chief Planning Officers <https://www.gov.uk/guidance/planning-guidance-letters-to-chief-planning-officers#section>
- 12.3. NPPF 2019 and 2021 draft <https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- 12.4. MHCLG Planning for the future 2020 <https://www.gov.uk/government/publications/planning-for-the-future>
- 12.5. Legislation relating to the preparation of Local Plans