

# LB Merton Local Plan Review Examination (Matter 3)

**Our ref** 65071/01/MS/JHo  
**Date** 16 May 2021  
**On Behalf of** St William LLP

**Matter 3 Does the Plan include policies designed to secure that the development and use of land contributes to the mitigation of, and adaptation to, climate change? And are the climate change aspects of the plan consistent with national policy, in general conformity with the London Plan, justified and effective?**

**Issue (i):**

Do the climate change policies of the Plan ensure that the development and use of land contributes to the mitigation of, and adaptation to, climate change, and are they consistent with national policies, in general conformity with the London Plan, justified and effective?

(No specific response to Question 1)

**(2) . The ‘Merton Local Plan Housing Viability Study’ (the Viability Study) notes of the Plan’s climate change policies that “where viability is already on the margins, other policy requirements may need to be reduced to compensate for these costs”, and that “in lower value areas, there would be a trade-off of circa 10% affordable housing to accommodate the higher climate change costs”. Against this background, are the climate change policies of the Plan in general conformity with Policy DF1(D) of the London Plan insofar as it expects development plans, when setting policies seeking planning obligations, to apply priority to affordable housing and public transport improvements? Is any deviation from this aspect of the London Plan justified?**

- 1.1 No. The London Plan is clear under Policy DF1 part D that “*in situations where it has been demonstrated that planning obligations cannot viably be supported by a specific development, applicants and decision-makers should firstly apply priority to affordable housing and necessary public transport improvements.*” The policy then states that following this that applicants and decision-makers should recognise the role that large site can play in delivering health and education infrastructure and the importance of affordable workspace and culture and leisure facilities. There is no reference to climate change. Further, NPPF para 34 and the PPG (ID: 61-048-20190315) are clear that contributions expected from development including the levels of affordable housing and other infrastructure should not undermine the deliverability of the Plan. Notwithstanding this, it is unclear how the Council has taken on board the two quoted references above in the Plan itself. The Plan does not appear to acknowledge this in the affordable housing policies, or the climate change policies and the Council does not

acknowledge it within the Council's note on Viability Testing (Ref 2D47)<sup>1</sup> or its Draft Planning Guidance to support Merton's Draft Climate Change Policies – October 2021 (Ref 2D45)<sup>2</sup>. If there is a deviation, then this has not been justified.

(No specific response to Questions 3 and 4)

## Strategic Policy CC2.1

**(5) Are the Council's climate change policies sufficiently focussed on outcomes, and would they be flexible enough to enable site-specific solutions that would deliver effective outcomes in these terms, but which may not include measures advocated by the Plan?**

- 1.2 The Council's climate change policies are focussed on outcomes. However, they are not sufficiently flexible to enable site-specific solutions that would deliver effective outcomes on the plan's own terms. Limiting the freedom to deliver the most suitable and effective long term carbon/sustainable strategies for larger brownfields sites can be problematic, particularly at former utility sites such as a former Gas Works where there are complex site constraints as well as significant abnormal costs (more so than with other brownfield sites) associated with the delivery of high quality, design-led placemaking. It is clear from the policies that the Council is focussed on meeting its zero carbon target, to the extent that Policy CC2.1, CC2.2, CC2.3, CC2.4, CC2.5 and CC2.6 require **all** development to meet the requirements within the policies. There are no exceptions and there is no recognition that there can be circumstances where it may not be viable for some of the measures to be implemented. This in turn may prevent developments from coming forward or may reduce some of the public benefits that development is able to offer in order to satisfy the policies. As developers are increasingly focussed on maximising their own net zero requirements there will be development coming forward that exceeds the requirements set out in the policies over the plan period, these can offset developments which are unable to meet the specific requirements but are able to deliver other climate change related benefits for example. A more flexible approach would better help meet the Council's zero carbon target.
- 1.3 Policy CC2.2 requires a significantly higher reduction in CO2 emissions than set out in Part L of the Building Regulations 2013. This applies to all development even where there may be existing physical site conditions which require extensive remediation work and associated costs which make delivering viable development challenging. By way of example, Policy allocation Mi16 Mitcham Gasworks requires the redevelopment of a former gas works which has high associated costs to deliver much-needed new housing. Meeting the current carbon targets adds to the costs as it will require a short term solution to be able to meet the requirements or an offset payment that is higher than suggested in the London Plan 2021. Flexibility should be applied for development where it requires costly remediation works to ensure that they are able to come forward and to ensure that they are able to consider long term solutions that may not meet the

<sup>1</sup> Merton Local Plan climate change policies – A note on viability testing (Available at <https://www.merton.gov.uk/system/files/2D47%20Merton%20Local%20Plan%20climate%20change%20policies%20%E2%80%93%20note%20on%20viability%20testing.pdf>)

<sup>2</sup> Merton Planning Guidance to support Merton's Draft Climate Change Policies 2021 (Available at [https://www.merton.gov.uk/system/files/2D45%20Merton%20planning%20guidance%20to%20support%20Merton%27s%20Draft%20Climate%20Change%20Policies%202021\\_o.pdf](https://www.merton.gov.uk/system/files/2D45%20Merton%20planning%20guidance%20to%20support%20Merton%27s%20Draft%20Climate%20Change%20Policies%202021_o.pdf))

specific policy requirements but will deliver other benefits that will benefit the Council's climate change requirements in the longer term.

- 1.4 Whilst the Council's viability report<sup>3</sup> does not specifically assess the proposed climate change policies against scenarios where development requires extensive decontamination, such as policy allocation MI16 Mitcham Gasworks, paragraph 7.8 of the report specifically states *"There may be instances when viability issues emerge on individual developments, even when the land has been purchased at an appropriate price (e.g. due to extensive decontamination requirements that cannot be passed back to the landowner). In these cases, some flexibility may be required subject to submission of a robust site-specific viability assessment."* We note paragraph 2.2.21 of the supporting text to Policy CC2.2 references the ability to demonstrate what can be viably achieved through the submission of a viability assessment, where a developer contends the policy requirements, however this is not positively worded and is not within the policy itself.
- 1.5 Policy CC2.4 is also overly prescriptive and does not allow any flexibility. The provision of gas boilers alongside other forms of heating or as part of a wider district heating network, for example, can significantly reduce carbon emissions to assist with meeting the requirements set out in policy CC2.2 for example. A site-specific solution here could continue to meet the aims of the Council and achieve its ultimate outcomes.
- 1.6 The policy is not in general conformity with the London Plan which requires a lower target emission reduction beyond Building Regulations and does not advocate the ban of gas boilers. For examples, paragraph 9.3.3 of the London Plan acknowledges that gas engine CHP's offer opportunities to transition to zero carbon heat sources. The London Plan offers a degree of flexibility which is not within the submitted Local Plan.
- 1.7 Flexibility should therefore be applied to the Council's climate change policies to allow site-specific solutions that meet the Council's required outcomes and objectives. This would enable the policies to be effective in line with NPPF para 35 c) and ensure that the Climate Change policies are deliverable.

(No specific response to Questions 6 and 7)

**(8) Is Policy CC2.1 clear in terms of how development proposals would be assessed against its criteria, and what information might be necessary to demonstrate compliance with them?**

- 1.8 No. The policy is ambiguous and does not set out how development proposals would be assessed. The policy uses terms such as 'minimise' and 'maximise' however there is no information setting out what would be required to demonstrate compliance. The supporting text appears to set out the justification for including climate change policies within the Local Plan but it does not provide further guidance setting out how development should respond to policy CC2.1. There is no reference to part b on the circular economy, part d on maximising green infrastructure or on part e for example within the supporting text.
- 1.9 The policy is therefore not clearly written or unambiguous (as required by NPPF para 16 d), and it is not clear how a decision maker should react to development proposals. It is thus ineffective

<sup>3</sup> BNP Paribas Real Estate (2020) Merton Local Plan Housing Viability Study (Available at <https://www.merton.gov.uk/system/files?file=merton20local20oplan20housing20viability20study202020.pdf>)

and further guidance should be included to ensure there is less ambiguity and the policy is deliverable.

## **(9) Is Policy CC2.1 consistent with the Framework, and the London Plan?**

- 1.10 No. Policy CC2.1 requires ‘all development’ to meet the criteria set out within the policy and there is no flexibility for development that is not able to meet the policy. For example, part a. of the policy would require all developments to “*maximis[e]... low carbon heat and local renewable energy generation*”, whereas Paragraph 155 a) of the Framework states, in relation to increasing the use and supply of renewable and low carbon energy and heat, as per part a. of Policy CC2.2, that plans should “*provide a positive strategy for energy from these sources, that maximises the potential for **suitable development***”. The reference to “*suitable development*” implies that not all developments are suitable to help increase renewable and low carbon and heat and this should be recognised within policy CC2.1. Similarly, the policy requires “*all development*” to “*maximise energy efficiency*” which goes beyond the Government’s current approach to Building Regulations in the context that the NPPF states: “*Any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards.*” (NPPF para 154 b).
- 1.11 Policy CC2.1 also contradicts the London Plan 2021 by requiring that “*all development*” should meet the criteria set out in the policy. The London Plan references the need for “major development” to comply with its key climate change policies such as SI2, SI3 and SI4 rather than “all development”.
- 1.12 By way of example, in respect of policy allocation Mi16 Mitcham Gasworks, the owner of the site - St William (part of Berkeley Group) - is going beyond Government requirements by compiling a zero carbon transition plan for each of its new developments to enable the homes to operate at net zero carbon by 2030. However, there must be recognition in policy CC2.1 that not all development is capable of accommodating measures that maximise energy efficiency, low carbon heat and local renewable energy generation and there are circumstances where there are genuine viability issues limiting this ability, despite best intentions. The development of a former gas works, for example, provides major challenges that need to be addressed and policy needs to include wording to allow for a level of flexibility, so that the most appropriate solutions can be delivered on a site by site basis, ensuring the optimum reduction in carbon emissions is reached. The evidence base of the plan does not demonstrate that the policy requirement set by Policy CC2.1 to sites such as Mitcham Gasworks – with its type of challenges – is effective in the sense of NPPF para 35 c) that it would be deliverable over the plan period.

## **(10) Is it clear how a decision-maker should react to paragraph 2.1.10 in terms of the requirement that “development must therefore be fit for the future (i.e be ultra energy efficient and climate resilient, and maximise low carbon and renewable energy)”? Is the approach justified, and if so would this aspect be more suited to policy wording than supporting text?**

- 1.13 The terms ‘ultra-energy efficient’ and ‘climate resilient’ are not defined within the plan, meaning it would be difficult to determine whether an application satisfies these requirements. Without a definition, the terms are open to interpretation making the policy insufficiently clear and unambiguous. The plan does not set out a process or methodology for demonstrating how an applicant has considered that it has maximised low carbon and renewable energy in an application resulting in potential ambiguity in decision making, conflicting with NPPF para 16

d). The introduction of definitions and a methodology would reduce ambiguity and make the policy effective.

## Policies CC2.2 and CC2.4

**(11) The differences between the Plan and the London Plan approaches to achieving net-zero carbon emissions are outlined in paragraph 2.1.18 of the Plan. Is the Plan in general conformity with the London Plan in these regards, and is the difference of approach robustly justified?**

- 1.14 The London Plan sets a minimum site target reduction beyond Building Regulations, however, the Council's proposed requirements far exceed the London Plan's requirements. Whilst it is understood that the Council wishes to achieve its net-zero carbon target, the London Plan policies are up to date and the Plan should conform to the London Plan if it is to be found sound. The London Plan set its policy requirements to be consistent with its strategy for the delivery of new homes in each Borough; if the Council applies its policy for Merton too rigidly, it would not be internally consistent with the basis on which the London Plan set its objectives for Merton, undermining housing delivery and not being in conformity with the London Plan. Instead, the proposed policy targets should be considered as aspirational alongside mandatory targets consistent with those of the London Plan (if indeed there is any need to duplicate London Plan policies).
- 1.15 In terms of justification, the Council appears to be relying on the recommendations from the Committee on Climate Change (2019) report<sup>4</sup> and the London Energy Transformation Initiative (2020) report<sup>5</sup>, both of which are not specific to the Council. If the Council proposes to deviate from the London Plan, it would need to be justified by an evidence base document assessing existing development and future development within Merton to determine what carbon reduction is required specifically for Merton and the basis on which it is deliverable. No such evidence exists; the difference of approach is not therefore robustly justified.

(No specific response to Question 12)

**(13) Is Policy CC2.2 (a) clear in terms what is meant by "any future locally derived methodology", and is requiring development to accord with an as yet uncertain, and unexamined requirement justified?**

- 1.16 No. We note, however, that the Council has sought to remove this through its proposed main modifications to the Plan<sup>6</sup> dated 28 March 2022, which we agree with.

(No specific response to Questions 14 and 15)

**(16) What is the justification for the on-site CO<sub>2</sub> reduction targets set out for the various types of developments given in the table in Policy CC2.2?**

- 1.17 Whilst this is for the Council to answer, we note that Council's justification is set out within the supporting text accompanying Policy CC2.1 and Policy CC2.2 and is set out within its note on viability testing<sup>1</sup>. It appears to be based on the Etude et al (2020) *Towards Net Zero Carbon* –

<sup>4</sup> Committee on Climate Change "UK Housing fit for the future? 2019 (found here <https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf>)

<sup>5</sup> London Energy Transformation Initiative (2020) (found here [https://b80d7a04-1c28-45e2-b904-e0715cfac93.filesusr.com/ugd/252d09\\_3b0f2acf2bb24c019f5ed9173fc5d9f4.pdf](https://b80d7a04-1c28-45e2-b904-e0715cfac93.filesusr.com/ugd/252d09_3b0f2acf2bb24c019f5ed9173fc5d9f4.pdf))

<sup>6</sup> oD4aii Proposed Main Modifications to Merton's Local Plan, dated 28 March 2022 and oD4ii Merton's Local Plan incorporating proposed modifications dated 28th March 2022

*Achieving greater carbon reductions on site: The role of carbon pricing*<sup>7</sup> report which was also used to test a series of options within the Council's Viability Study<sup>3</sup>. Importantly this report is not specific to Merton and does not consider the Council's individual situation in relation to development and climate change.

1.18 (No specific response to Question 17)

**(18) Footnote 3 of Policy CC2.2 refers to the minimum improvement beyond Part L of the Building Regulations 2010:**

**a. Does Policy CC2.2 accord with the Government's policy for national technical standards?**

1.19 No. PPG Paragraph 012 Reference ID: 6-012-20190315 states that local planning authorities can set energy performance standards that are higher than building regulations but only up to the equivalent of Level 4 of the Code for Sustainable Homes. The energy requirement for Level 4 of the Code for Sustainable Homes is approximately 20% above current Building Regulations. The Council is proposing a 60% reduction in CO<sub>2</sub> which is approximately three times higher than Level 4 of the Code for Sustainable Homes. It does not therefore accord with the Government's policy for national technical standards. It is not therefore consistent with the Framework.

**b. Is the statement "When new Building Regulations are updated we will seek to apply an equivalent standard against the new Building Regulations" justified, and unambiguous? Is this statement in general conformity with the London Plan in these regards, insofar as that policy refers to review of the relevant policy thresholds should Building Regulations be updated? Is the text of the footnote internally consistent with paragraph 2.2.8 of the Plan?**

1.20 This statement is not justified and is ambiguous. An equivalent standard appears to mean the equivalent reduction above the new Part L Building Regulations 2021 which would have a major impact on new development within Merton. The new Part L Buildings Regulations 2021 are expected to be an approximately 31% reduction on current Building Regulations 2013, meaning the current wording of the statement could allow the Council to request a 91% reduction on current Building Regulations when they are adopted. This would stop some new developments coming forward and make many proposed developments unviable and the plan ineffective.

1.21 The statement is not in general conformity with the London Plan as London Plan footnote 152 states that if Building Regulations 2013 are updated, the policy threshold will be reviewed. It does not confirm what the threshold will be or what form the review would be, but it does mean that any changes will not be automatic. The current wording of the statement by the Council could be read to apply as soon as the new Building Regulations are updated without any review or consultation.

**c. Are any MMs needed to cover the 2021 update to Approved Document L of the Building Regulations, the requirements of which take effect on 15 June 2022?**

1.22 Yes. MMs are needed as the current policy wording will be out of date. If footnote 3 of policy CC2.2 is not amended and the new Part L Building Regulations 2021 come into effect, then the

<sup>7</sup> Etude et al (2020) Towards Net Zero Carbon – Achieving greater carbon reductions on site: The role of carbon pricing (Available at: <https://www.haringey.gov.uk/environment-and-waste/going-green/reducing-co2-emissions>)



carbon reduction requirements could change significantly. MMs are needed to give clarity and ensure the policy is up to date when adopted.

(No specific response to Question 18 d.)

**(19) What is the justification for setting a different carbon offset price to that included in the London Plan? Is the Plan justified in deferring any changes to its carbon offset price to “future guidance” or is this more properly a matter for monitoring and review of, and if necessary updates to, the relevant development plan policies?**

- 1.23 This should be subject to monitoring and review of, and updates to the relevant plan policies. The price is more than three times that of the London Plan with little justification and any certainty over what the offsite funds will pay for. The Council’s justification is set out Merton’s note on viability testing<sup>1</sup> and in the supporting text. However, we note that the Council is basing its offset price on the Etude et al (2020) report<sup>7</sup>, which concludes that Local Authorities require at least £300.00 per tonne to achieve at least a 60% and 50% improvement against Building Regulations 2013. However, the report was not commissioned specifically by the Council and is not specific to the borough. We note the Council’s Climate Strategy and Action Plan (2020)<sup>8</sup> and the Council’s Climate Delivery Plan Year 2<sup>9</sup>, set out broad targets but they do not reference the proposed offset price and how it will be used or explicitly what projects it will contribute towards to in order to reduce carbon emissions across the borough.
- 1.24 Whilst we recognise the Council sought viability advice in relation to the proposed rate itself, as set out in the Council’s note on viability testing<sup>1</sup>, none of the scenarios tested relate to the development of complicated brownfield sites such as a former gas works. Paragraph 7.8 of the Viability Study, as discussed under question 5, is also therefore relevant to the proposed carbon offset price and Merton should recognise this within the policy.
- 1.25 There is limited justification for the proposed price and the policy is not in line with para 35 b) of the NPPF.

**(20) Is it clear how a decision-taker should react to viability issues related to the climate change policies from the text set out in the plan at paragraph 2.2.21, and would it be clear when and how costs of independent viability assessments would be sought, and what the justification for this might be? Would the matters set out in the paragraph be more appropriately included in development plan policy?**

- 1.26 It is not clear what is required and the paragraph is vague. This would be more appropriate as a development plan policy with supporting text setting out what is required. The inclusion of this as policy would give Policy CC2.2 more flexibility which could help more appropriate solutions to be delivered on site.

(No specific response to Questions 21 to 24)

<sup>8</sup> Merton Council (2020) Merton’s Climate Strategy and Action Plan (available at: <https://www.merton.gov.uk/planning-and-buildings/sustainability-and-climate-change/climate-emergency>)

<sup>9</sup> Merton Climate Delivery Plan Year 2 (Available at <https://democracy.merton.gov.uk/documents/s45104/Climate%20Delivery%20Plan.pdf>)

**(25) Does the installation of gas boilers come within the scope of development and use of land, and is the restriction on this activity sought by Policy CC2.4 therefore justified or effective?**

- 1.27 No. Gas boilers are normally installed internally and form part of the operational part of the development rather than the development itself. The installation of a gas boiler is not considered development in accordance with the relevant provisions of the Town and Country Planning Act 1990 as amended and does not therefore require planning permission. The provision of gas boilers would not normally be determined under the planning process, similarly to white goods and utilities for example. For this reason, gas boilers do not come within the scope of development and should not be restricted as part of the Local Plan.
- 1.28 The provision of gas boilers is addressed through the Building Regulations 2013 and there is currently no national regulation on gas boilers being banned. In fact, in the new Part L Building Regulation 2021, gas boilers are explicitly permitted. The policy would therefore contradict with the existing Building Regulations 2013 and the new Part L Building Regulations 2021. The restriction of gas boilers through planning policy is therefore not justified.
- 1.29 If it was considered to fall within the scope of development (i.e. potentially through a specific building or an energy centre housing gas boilers), paragraph 34 of the Framework states that Plans can set contributions expected from development (including infrastructure) but when doing so, should not undermine the deliverability of the Plan. A blanket ban on gas boilers would not necessarily achieve the low carbon strategy as proposed by the Council and would impact on viability on many brownfield sites, overburdening sites and rendering them unviable. The ban could therefore undermine the deliverability on the Plan. The ban from 2023 is not in line with the Framework nor is it in line with the London Plan 2021.
- 1.30 (No specific response to Questions 26 to 34)
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