

Inspectors' Matters, Issues and Questions – 3 August 2022

Matter 6: Town Centre and Employment Policies

Issue (i): Does the Plan help to create the conditions in which businesses, can invest, expand, and adapt; and ensure that established shops, facilities, and services are able to develop and modernise, and are retained for the benefit of the community? Are its policies in these terms effective, justified, and consistent with national policy?

Q1. Are policies (e.g. Policy EC13.1 (e) to (h) and Policy EC13.4 - and as set out in the concluding paragraph of page 12 of the Regulation 19 version of the Plan) and supporting text which seek to secure local employment, training and procurement opportunities in respect of development proposals “as part of the construction and end life of their development” justified, and are such items the proper subject of policies relating to the development and use of land in the area (per s17(3) of the 2004 Act)?

Council response:

- 6.1 Yes, policies (e.g. Policy EC13.1 (e.) to (h) and EC13.4) that seek to secure local employment, training and procurement opportunities as part of the construction and end life (in the case of non-residential) of major development proposals are justified and are the proper subject of policies relating to the development and use of land (per S17(3) of the 2004 Act.
- 6.2 The London Plan 2021 ([Document 0D32](#)) paragraph 2.10.2 states that regeneration and development can contribute to Good Growth (one of the London Plan's objectives) by investing in training and employment opportunities for local residents. It also cites the provision of local training and employment opportunities as one of the ways regeneration and development can tackle inequalities. London Plan policy E11 *Skills and opportunities for all* states “*Development proposals should support employment, skills development, apprenticeships, and other education and training opportunities in both the construction and end-use phases, including through Section 106 obligations where appropriate*”.

- 6.3 Policy EC13.4 and supporting text in paragraphs 13.4.3 to 13.4.5 set out the justification as how and why the council delivers London Plan Policy E11 in Merton, highlighting that while parts of the borough are affluent, there are also pockets of deprivation, higher rates of unemployment and lower skills levels. The supporting text to policy EC13.4 sets out how major developments can contribute towards increasing residents' employment opportunities and skills. It also justifies why the council proposes that this can apply to major developments in Merton, given the characteristics of development proposals regularly seen in the borough.
- 6.4 Policy E13.4 is also reasonably flexible: for example 13.4(b)(i) requires all major development to provide opportunities for local residents and businesses to “*apply for employment and other opportunities*”; and “*seeking to secure*” minimum targets for job opportunities to be advertised to local residents.
- 6.5 Guidance on how this policy can be applied is set out in the Appendices to Merton's Local Plan ([see LBM05 page 635](#)).

Q2. Following from the question immediately above, would planning obligations to secure employment and training opportunities meet relevant legislative (per Regulation 122(2) of the Community Infrastructure Levy Regulations 2010) and national policy tests (set out in paragraph 57 of the Framework)?

Council response:

- 6.6 Yes, planning obligations to secure the requirements of policy E13.4 will meet the three tests set out in Regulation 122(2) of the CIL Regulations 2010 and NPPF paragraph 57. These tests are (NPPF para 57):
- Planning obligations must only be sought where they meet all of the following tests:*
- a) necessary to make the development acceptable in planning terms;*
 - b) directly related to the development; and*
 - c) fairly and reasonably related in scale and kind to the development.*
- 6.7 The London Plan's ([Document 0D32](#)) similar policy E11 Skills and opportunities for all states specifically at part B that *Development proposals should support*

employment, skills development, apprenticeships, and other education and training opportunities in both the construction and end-use phases, including through Section 106 obligations where appropriate". As set out in the answer to Question 1 above, supporting employment through the planning system helps to tackle deprivation and reduces the need to travel.

- 6.8 As set out in Policy E13.4 and its supporting text, the policy is both practical and reasonably flexible in its application. A similar policy (DM.E4) exists in Merton's existing adopted development plan ([Document 0D26](#)) Merton's Sites and Policies Plan 2014, and has been successfully applied via Section 106.
- 6.9 In the council's experience, construction companies often welcome support in helping to source local labour, and commercial end users (particularly supermarkets and other retailers) already have recruitment systems in place to seek local staff for their stores.

Q3. Is the Council's procurement of goods and services (the approach to which is set out in Policy EC.13.4 and paragraph 13.4.12) a matter relating to the development and use of land in the area (per s17(3) of the 2004 Act)?

Council response:

- 6.10 The council has proposed a Main Modification to delete EC13.4(f) and paragraph 13.4.12 to address the issue raised above.

Proposed modification:

Policy EC13.4 Local Employment Opportunities

~~(f) Demonstrate good practice when procuring its own goods and services by following the Public Services (Social Value) Act through Merton's Social Value Toolkit~~

~~13.4.12 Our Social Value Toolkit has been designed to help council officers along with providers of council goods and services to understand what Social Value is in order to comply with legislation and be able to practically consider and achieve Social Value from commissioning and procurement activities. In doing so, we can help achieve positive outcomes and value for the Borough through the contracts we procure.~~

Q4. Differing marketing periods are set out in the Plan’s policies as part of what applicants will have to demonstrate to justify changes of use from commercial, entertainment or community uses – what is the justification for these varied marketing periods, and are any MMs necessary to ensure soundness in this regard, or in terms of effectiveness and clarity? (The Council, in undertaking to answer this question should also review whether marketing periods expressed in the policies themselves accord with those set out in the supporting text).

Council response:

- 6.11 The table below summarises the marketing periods that appear throughout Merton’s Local Plan, with reference to [Document LBM01](#) Regulation 19 submitted Local Plan.
- 6.12 The London Plan 2021 ([Document 0D32](#)) justification text for policies HC.7 *protection of public houses* E.1 *Offices* and E7 *Industrial intensification, co-location* specify a range of marketing periods, and for offices that marketing periods should be “*at least 12 months*” (London Plan para 6.1.7) with extra time specified by the boroughs.
- 6.13 Most marketing periods relating to employment land, culture, arts, public houses and leisure and entertainment facilities are for 18 months. This is justified as these types of commercial / non-residential developments can be a wide range of sizes, have fewer potential owners, lenders and operators than, say, residential uses, and changing from one operator to another can take a year including fitouts, licensing etc. The council believes that 18 months marketing strikes the right balance between providing enough time for potential occupiers to develop viable business plans and bids for the premises and allowing development to progress if there is no interest.
- 6.14 A Main Modification is proposed to amend the marketing period in Policy TC.13.9 *culture, arts and tourism development* from 30 months / 2.5 years to 18 months / 1.5 years. A Main Modification is also proposed to align the marketing period stated in the supporting text in paragraph 13.3.7 with that proposed in Policy EC13.3 *Protection of scattered employment sites*.

6.15 The marketing period for protecting corner shops is shorter, at 12 months, as there is far less variation in premises size and potential fitout, making it easier to attract interested parties.

6.16 The marketing period for social / community infrastructure is also 12 months. This is justified given that these uses can be more flexible in how and where they are located, and are often co-located with other similar community uses, to maximise reach to the local community.

Page (ref submitted doc 0D1)	Policy ref	Policy summary	Marketing duration	Justified?
439 and 441	EC13.2 (g) and supporting text 13.2.12	Upper floors in Wimbledon town centre office to residential (business locations in Merton)	1.5 years / 18 months	Para 13.2.6
447 and 449	EC13 3 (iii) and supporting text 13.3.7	Scattered employment sites	1.5 years / 18 months (proposed MM to align supporting text with policy)	Para 13.3.7
467 and 468	TC 13.7 (b)(ii) and para 13.7.6	Protecting corner / local shops	1 year / 12 months	Paras 13.7.5 and 13.7.6
470 and 474	TC13.8 (i)(i) and supporting text 13.8.17	Public house economically viable (Food and drink, leisure and entertainment)	1.5 years / 18 months	13.8.16 and 13.8.17
470 and 475	TC13.8 (j) and supporting text 13.8.21	Protection of leisure and entertainment facilities –	1.5 years / 18 months	13.8.18 to 13.8.21

Page (ref submitted doc 0D1)	Policy ref	Policy summary	Marketing duration	Justified?
		economically viable (Food and drink, leisure and entertainment)		
476	TC13.9 (e)	Protection of culture, arts or tourism venues	Main Modification proposed to change from 2.5 years / 30 months to 1.5 years / 18 months	13.9.12 to 13.9.14
488	IN14.2 (b) and 14.2.17	Viable demand for social and community infrastructure	12 months / 1 year	14.2.11 to 14.2.17

Proposed modification:

13.3.7 To demonstrate that full and proper marketing has been undertaken to justify that the employment and community uses are no longer viable, the council requires the applicant to provide Marketing and Vacancy evidence in accordance with the criteria set out in the Appendices, for a minimum of ~~30-18~~ months (~~21~~.5 years).

Policy 13.9 (e.) Supporting proposals for the change of use from culture, arts and tourist accommodation to alternative uses only if it can be demonstrated to the council's satisfaction that full and proper marketing of the site at reasonable prices for a period of ~~30-18~~ months (~~21~~.5 years) confirms the financial non- viability for these purposes, unless suitable replacement site for the culture and arts use which is of better standard and quality is provided locally; or, ii. Where it can be demonstrated that the existing tourist accommodation is no longer viable and does not provide facilities for the local community.

Q5. Is the Plan clear in terms of consistency between Policy TC13.7 and paragraph 13.7.6 insofar as expectations about marketing are concerned?

Council response:

6.17 Yes, the plan is clear in terms of consistency on marketing expectations between Policy TC13.7 (b) (ii) which states *It can be demonstrated by full and proper marketing of the site for convenience use at reasonable prices for at least 12 months (1 years) and to the council's satisfaction that there is no realistic prospect of convenience use in the future; and...* and paragraph 13.7.6 which states *"In circumstances where there are no alternative convenience shops located within 5 minutes walking distance (400 metre radius), proposals for change of use from convenience shops to those detailed in part (a) of will be permitted where it can be demonstrated to the council's satisfaction that as a result of full and proper marketing at reasonable prices for at least 12 months (1 year), that convenience retail uses are not viable. The applicant will be required to provide Marketing and Vacancy evidence in accordance with the criteria set out in the Appendices"*

Q6. Is the Plan clear and unambiguous in terms of which PTALs provide suitable locations for office development (see particularly Policy EC13.2 and paragraph 13.2.7 of the Plan)?

Council response:

6.18 The council proposes a Main Modification to paragraph 13.2.7 to provide clarity that the PTAL level should align with what is already stated in Policy EC13.2 (d).

Proposed modifications:

13.2.7 ...Across the borough, smaller offices will be supported in town centres or in areas with good access to public transport (PTAL **3 4** and above).

Q7. What is the justification for consideration of a community use prior to other ones in terms of proposals relating to scattered employment sites (Per Policy EC13.3 (iii))?

Council response:

- 6.19 The justification for considering a community use above other uses, say, residential, is that community uses are the least viable and struggle the most to access space. While community uses can occupy a variety of spaces, should there be a need for more physical space and a scattered employment site becomes vacant that is not needed for employment uses then considering community use prior to residential will help to address these needs.
- 6.20 While projects relating to community facilities in Merton's Infrastructure Delivery Plan ([Document 14D4](#), particularly chapter 8) are for investment in existing sites, it remains difficult for community uses to viably access space and it may be that across the 15-year lifetime of this Local Plan that community space is needed. This policy supports this approach.

Q8. Are the Plan's policies justified and clear in terms of how supporting or ancillary uses such as cafes, creches or gyms would be considered on employment sites, and does the Plan provide an effective basis for decision-making on such matters?

Council response:

- 6.21 Like most sites in Merton, scattered employment sites are generally small in size due to fragmented land ownership and high land values.
- 6.22 In the rare circumstances that it would be desirable for the developer to also provide ancillary development on a scattered employment site and that it would be physically and viably possible to do so, then this would be considered in line with other policies in the plan such as design, transport and sustainability. As long as the use is demonstrably ancillary to the proposed development then "change of use" policies would not apply.

Q9. As it does not appear logically possible to fulfil both criteria (a)(i) and (b)(i) of Policy TC13.7, does this provide an effective basis for decisions relating to the changes of use described in part (b) of that policy?

Council response:

6.23 The council proposes a Main Modification to policy TC13.7 to ensure it provides an effective basis for decision-making.

Proposed modifications:

Policy TC13.7 Protecting corner / local shops

...

(b) Only permitting the change of use of a corner/local convenience shops to residential where (a)(ii) and (iii) can be met and where:

- i. There are no alternative convenience shops located within 400 metres;
- ii. It can be demonstrated by full and proper marketing of the site for convenience use at reasonable prices for at least 12 months (1 years) and to the council's satisfaction that there is no realistic prospect of convenience use in the future; and
- iii. An active frontage is provided

Q10. Are policies (Policy TC13.8(i)) and supporting text (13.8.16 to 13.8.17) relating to change of use of public houses justified, and do they provide a clear, consistent, and effective basis for decisions on this matter?

Council response:

6.24 Yes, Policy TC13.8 (i) relating to the change of use of public house is justified and provides a clear, consistent and effective basis for decisions on this matter.

6.25 Policy TC13.8(i) states:

“Protection of public houses

i. Proposals that will result in the loss of a public house will only be permitted where all the following criteria are met:

- i. [proposed change to 1 for clarity.] the applicant can demonstrate to the council's satisfaction that the public house is no longer economically viable; and*
- ii. [proposed change to 2 for clarity.] there are alternative public houses located within the local area.*

- 6.26 Paragraph 13.8.16 explains how the decision-maker should consider whether there are alternative public houses in the local area, in accordance with TC13.8 (i)(2):

Protection of public houses

13.8.16. *"In instances where planning permission is required, the council will resist the loss of public houses as they serve a community role (for example, by providing space for clubs, meetings or performances) unless:*

- alternative provision is available nearby (within 800 metres); and,*
- it can be demonstrated to the council's satisfaction that the public house is no longer economically viable."*

- 6.27 Paragraph 13.8.17 explains how the decision-maker should consider whether the public house is no longer economically viable in accordance with TC13.8(i)(1), stating:

"To demonstrate a public house is no longer economically viable, the applicants:

- Would need evidence to demonstrate that the public house as a business is no longer economically viable; and*
- To demonstrate that full and proper marketing of the site at reasonable prices for a period of 18 months (1 ½ years) confirms the non-viability for these purposes. Applicants will be required to provide marketing evidence in line with the Marketing and Vacancy criteria set out in the Appendices.*