

Inspectors' Matters, Issues and Questions – 3 August 2022

Matter 10: Biodiversity and Trees

Issue (i): Is the Plan sufficiently positively prepared, effective, and consistent with both the London Plan and national policy in its approach to biodiversity?

Q1. Subject to the Council's proposed modifications, is Policy O15.3 consistent with national policy? Does it provide an unambiguous approach such that it is clear how a decision maker should react to a development proposal that may impact on biodiversity and/or geodiversity?

Council response:

10.1 Yes, with the proposed modifications below, Policy O15.3 is consistent with both national policy and the London Plan and provides a clear approach for decision making on any development proposals that may impact on biodiversity and/or geodiversity.

10.2 NPPF 174 sets out that policies should protect and enhance valued landscapes, sites of biodiversity or geological value and soils, and minimise impacts on biodiversity. NPPF 179(a) also requires plans to identify, map and safeguard local habitats and the hierarchy of designated sites and promote the conservation, restoration and enhancement of priority habitats.

10.3 Policies O15.3(a), (b) and (c) make it clear that the council will protect 'Sites of Recognised Nature Conservation Interest', protect populations of protected species, priority habitats and priority species, and secure measures that enhance nature conservation value.

10.4 'Sites of Recognised Nature Conservation Interest' is defined in the Glossary ([Document 0D1](#)). An additional modification has been proposed to Policy O15.3(a) and (b) to change the first letters from lower case to upper case. This is to improve clarity and to clearly indicate that the term is defined in the glossary.

10.5 As set out in paragraph 15.3.3 and in the glossary, all Sites of Recognised Nature

Conservation Interest are illustrated on the Local Plan Policies Map ([Document 0D2](#)). These sites are also listed in tabular format in the Appendices (pages 597-602) ([Document 0D1](#)) as Sites of Special Scientific Interest (SSSI), Sites of Importance for Nature Conservation (SINCs)(of Metropolitan, Borough or Local importance), Local Nature Reserves and Green Corridors. These tables and maps are clear and comprehensive in distinguishing between the hierarchy of international, national and locally designated sites.

10.6 NPPF 174(d) states that policies should minimise impacts on and provide net gains for biodiversity. Policy O15.3(d) is clear that development will be required to contribute to net gains in biodiversity through the incorporation of relevant features. A modification is proposed with additional text on watercourses and natural banks, refer to Question 2 below for further details. The supporting text in paragraphs 15.3.18 - 15.3.21 provides further guidance on how developments can achieve biodiversity net gain.

10.7 London Plan Policy G6 requires plans to use up to date information to identify SINCs, areas of deficiency in access to nature and to seek the protection and conservation of priority species and habitats outside the SINC network. Informed by the Green Infrastructure Study (Document 15D1), Policies O15.3(a), (b), (c) and (f) address these points.

10.8 The council proposes a modification to the Appendix on page 597, to make it clear that Wimbledon Common is both a SSSI and a Special Area of Conservation (SAC). This is necessary for clarity and accuracy and for consistency with national policy.

10.9 With regards to the part of the question about decision making, Policy O15.3 and the supporting text clearly set out the requirements when proposals come forward that may impact on biodiversity and geodiversity. This includes identifying sites for protection, through the policy and Policies Maps and clearly setting out the biodiversity mitigation hierarchy. The supporting text also provides further guidance on what is expected to be submitted for ecological surveys, biodiversity net gain and deficiency in access to nature.

Proposed modifications:

Appendix – Nature Conservation

These areas of SSSI, SINCs and Local Nature Reserves are illustrated on the Policies Map.

Sites of Special Scientific Interest ('European Sites') and Special Areas of Conservation (SAC)

Site	Name	Area
<u>SSSI and SAC</u>	Wimbledon Common	Wimbledon

Q2. Are the Council's proposed modifications to Policy O15.3 necessary to make the plan sound and, if so, would it be effective in doing so? What is the justification for restoration of natural banks and a 10-metre buffer where development is adjacent to, or includes a river?

Council response:

10.10 Yes, the council considers that the proposed modifications to Policy O15.3 are effective and necessary to make the plan sound.

10.11 In response to the Regulation 19 Local Plan, the [Environment Agency responded](#) with the following request:

We welcome how the new local plan explains how Biodiversity Net Gain (BNG) is expected to be applied. We recommend updating this to specify that Biodiversity Net Gain must include an improved river corridor if there is a river on / adjacent to the site. We recommend a 10 metre buffer where this is possible, and restoring natural banks and processes to the watercourse where this is feasible.

10.12 Through recent correspondence with the Environment Agency, the wording of

the proposed modification has been further reviewed and altered, to ensure that Policy O15.3(d) more accurately reflects the Environment Agency response, and up to date information made available to the Environment Agency.

- 10.13 It should be noted that this modification was originally an additional modification. However, on reflection, it has been moved to a main modification, as it is necessary to make the plan sound, based on effective joint working with the Environment Agency.
- 10.14 It is the council's view that the proposed modification is effective and would help make the plan sound, as this modification has been made through joint working with the Environment Agency.
- 10.15 The additional wording is necessary and justified because a natural buffer zone adjacent to rivers helps restore the natural river corridor and processes, improves connectivity for biodiversity, creates additional conveyance capacity during flood events and allows maintenance access, where required.

Proposed modifications:

Policy O15.3 Biodiversity and Access to Nature

We will:

- d. Require development to contribute to net gains in ~~B~~biodiversity by incorporating features such as green roofs and walls, soft landscaping, bird and bat bricks and boxes, habitat restoration, tree planting and expansion and improved green links. Where development is adjacent to or includes a watercourse, natural banks and processes should be restored with a 10m buffer.

Q3. Is the supporting text sufficiently clear and unambiguous in respect of consideration of best practice guidance for biodiversity net gain? Are the Council's proposed modifications in this regard necessary to make the Plan sound and, if so, would it be effective in doing so?

Council response:

- 10.16 Yes, with the proposed modification below, the supporting text to Policy O15.3 is clear in providing further guidance on biodiversity net gain.

- 10.17 The Environment Act was enacted in November 2021, with a new British Standard BS8683:2021 Process for designing and implementing Biodiversity Net Gain, also introduced in 2021.
- 10.18 In their [Regulation 19 response](#), the Environment Agency recommended that references are made to the relevant guidance and legislation regarding biodiversity net gain.
- 10.19 The proposed modification below has been revised and updated to make reference to The Environment Act 2021 and the new British Standard, and to reflect further conversations with the Environment Agency.
- 10.20 The modification is considered necessary; it is effective and would help make the plan sound, as it has been made through joint working with the Environment Agency.
- 10.21 It should be noted that this modification was originally an additional modification. However, on reflection, it has been moved to a main modification, as it is necessary to make the plan sound, based on effective joint working with the Environment Agency.

Proposed modifications:

(new paragraph after 15.3.21) [The Environment Act 2021 introduces mandatory net biodiversity gain for all development from 2023. Applicants should refer to \[Natural England guidance\]\(#\), \[British Standard BS8683:2021: Process for designing and implementing Biodiversity Net Gain\]\(#\) and the latest version of the \[DEFRA biodiversity metric\]\(#\).](#)

Q4. Does the Plan's guidance on securing swift bricks (at paragraph 15.3.19) as part of an overall approach to Biodiversity Net Gain provide a clear and effective basis for decision-making on this issue?

Council response:

10.22 Yes, with the proposed modification below, paragraph 15.3.19 provides a clear and effective basis for decision-making on swift bricks as part of delivering biodiversity net gain.

10.23 The NPPG, para 009 Natural Environment ([Document 0D23](#)), is clear that biodiversity should be embedded as a key consideration in policy and decision making.

10.24 The text in paragraph 15.3.19 provides supporting information for Policy O15.3(d), which requires development to contribute to net gains in biodiversity. This is in accordance with NPPF 179(b) ([Document 0D20](#)), which requires plans to identify opportunities to secure net gains for biodiversity.

10.25 The response from the [Wimbledon Swift Group at Regulation 19 stage](#) provided further details on guidance that is available for developers to refer to when preparing their applications. It is agreed that the inclusion of these links in the supporting text would provide useful guidance for developers looking to install swift bricks as part of their developments and will assist in decision-making.

Proposed modifications:

15.3.19. Development, particularly for new and replacement buildings and extensions to buildings, should utilise opportunities to attract new species to a site. This can include the incorporation of artificial nest boxes and bricks in buildings to provide nesting and roosting opportunities for birds, including species under threat such as swifts, house martins, swallows and house sparrows, and where appropriate, bats. Swift bricks integrated into new buildings are preferred, as these are suitable for multiple bird species. As outlined in the NPPG 2019 (para 023) these relatively small features can achieve important benefits for wildlife. Applicants will be expected to provide details of such features as part of planning applications and should refer to best practice guidance when designing a development, including that prepared by the Chartered Institute of Ecology and Environmental Management (CIEEM) and the Swift Conservation Organisation.

Q5. Is Policy O15.4 consistent with legislative arrangements relating to the making of Tree Preservation Orders and trees in conservation areas and in terms of considerations relating to their subsequent protection?

Council response:

- 10.26 [Government guidance](#) on Tree Preservation Orders (TPOs), identifies the following relevant legislation: Part VIII of the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation)(England) Regulations 2012.
- 10.27 Upon review of the TPO legislation and the policy wording in Policy O15.4, the council proposes a modification to Policy O15.4(e). This modification removes wording that was essentially repeating the TPO legislation, and is necessary for clarity in the policy and to avoid any confusion between planning application requirements and other legislative arrangements.
- 10.28 Additional supporting text is also proposed to be added to paragraph 15.4.5, to provide references to the TPO legislation.
- 10.29 These modifications are required for clarity, to ensure the plan is justified and ensure the policy is consistent with government guidance on TPOs.
- 10.30 With these modifications, the council considers that Policy O15.4 is consistent with legislative arrangements relating to the making of Tree Preservation Orders and trees in conservation areas and in terms of considerations relating to their subsequent protection.

Proposed modifications:

Policy O15.4 Protection of Trees

- e. Only permit development if it will not damage a protected tree or a tree of significant amenity value. ~~-or destroy any tree which:~~
- ~~i. Is protected by a Tree Preservation Order;~~
 - ~~ii. Is within a conservation area; or~~
 - ~~iii. Has significant amenity value~~
- f. Only support development that involves the removal of a tree when:
~~However, development may be permitted when:~~
- ~~iv.~~ The removal of the tree is necessary in the interest of good arboricultural practice; or
 - iiiv. The benefits of the development outweigh the tree's amenity value.

g. In circumstances where f) ~~e)~~ iv. or iiiv. applies, suitable high-quality re-provision of equal value must be provided on site. Where on site provision is demonstrably not possible, as agreed with the council, a financial contribution of the full cost of appropriate re-provision will be required.

Supporting text

15.4.5 We will use the existing planning mechanisms including Tree Preservation Orders and Conservation Area designations to protect existing trees on private land. Applicants should refer to the laws and guidance on Tree Preservation Orders, including Part VIII of the Town and Country Planning Act 1990, the Town and Country Planning (Tree Preservation)(England) Regulations 2012 and government guidance on Tree Preservation Orders and trees in conservation areas. These links provide the necessary information and requirements on trees that have Tree Preservation Orders and trees within conservation areas.

Q6. Is Policy O15.5

Q6a. sufficiently clear as to what ‘Urban Greening’ is; and is it sufficiently clear and unambiguous in terms of language such as ‘strongly encourage’?

Council response:

- 10.31 Yes, ‘Urban Greening’ is defined in the Glossary of the Plan ([Document 0D1](#)) with the same definition as in the London Plan ([Document 0D32](#)). An additional modification has been proposed to Policy O15.5(a) to change the first letters from lower case to upper case. This is to improve clarity and to indicate that the term is defined in the glossary. This modification is shown below, for reference.
- 10.32 A further modification is proposed to Policy O15.5(c) to clarify that the inclusion of Urban Greening in all developments will be supported. The modification is required for clarity and to ensure the plan is justified.
- 10.33 Policy O15.5(c) is considered necessary, given that urban greening is one of the key action areas identified in the Merton Climate Action Plan ([Document 2D1](#)) to help mitigate the impacts of climate change. In addition, a large proportion of housing that will come forward in the Local Plan period will be delivered on small sites, and therefore supporting the inclusion of urban greening on all sites will help to boost the borough’s green infrastructure. As mentioned in the supporting text, further guidance for small sites is provided in the Merton Small Sites Toolkit 2021 ([Document 12D2](#)).

Proposed modifications:

Policy O15.5 Urban Greening

a. Require major developments to incorporate Uurban Greening through site and building design, by:

...

c. Strongly ~~encourage~~ support the inclusion of Uurban Greening for all other development in Merton.

Q6b. Is the approach to ‘urban greening’ consistent with that of the London Plan on this subject, and is any divergence justified?

Council response:

10.34 Yes, Policy O15.5 sets out urban greening requirements, in line with London Plan Policy G5(A)([Document 0D32](#)).

10.35 London Plan Policy G5(B) states that:

Boroughs should develop an Urban Greening Factor (UGF) to identify the appropriate amount of urban greening required in new developments. The UGF should be based on the factors set out in Table 8.2, but tailored to local circumstances. In the interim, the Mayor recommends a target score of 0.4 for developments that are predominantly residential, and a target score of 0.3 for predominantly commercial development (excluding B2 and B8 uses).

10.36 As stated in paragraph 15.5.2, the London-wide UGF will be used for this Local Plan, with further Merton-specific UGF models to be developed once the GLA supplementary guidance has been published.

10.37 In September 2021, the Mayor of London published the [draft Urban Greening Factor London Plan Guidance \(LPG\)](#) for consultation. This document included a number of welcomed clarifications on how the UGF should be applied to mixed use developments, small sites and phased developments, in addition to a UGF calculator. However, at the current time, no further updates have been provided

by the GLA on this guidance document. The consultation summary has not been published and the LPG has not yet been adopted by the GLA.

10.38 Therefore, the council considers that it is appropriate and justified for Policy O15.5 to refer to the London Plan Policy G5 requirements, in relation to urban greening. The supporting text is clear that the council will develop further local guidance on urban greening in due course, once the Mayor has finalised the London-wide guidance.