

## Appeal at 265 Burlington Road, LB Merton

### Position Statement – Draft London Plan and Housing Supply

8<sup>th</sup> January 2021

1. This Position Statement (PS) has been prepared on behalf of the Appellant and in relation to the above to set out their position in respect of the following:
  - a. An update on the publication of the draft London Plan; and
  - b. The Council's housing supply.

#### Draft London Plan

2. On the 21<sup>st</sup> December 2020, the Mayor wrote to the Secretary of State (SoS) confirming that he has approved the Publication version of the draft London Plan. The letter confirms that the Mayor intends to adopt/ publish the London Plan on the 1<sup>st</sup> February unless directed not to do so by the SoS. A link to the letter is provided below, which will also be provided as a core document.

[https://www.london.gov.uk/sites/default/files/secretary\\_of\\_state\\_for\\_housing\\_communities\\_and\\_local\\_government\\_21\\_12\\_20.pdf](https://www.london.gov.uk/sites/default/files/secretary_of_state_for_housing_communities_and_local_government_21_12_20.pdf)

3. It is important to note some of the statements made within that letter and we would particularly draw attention to the following:

*"I welcome your sense of urgency in getting my London Plan published and acknowledgement that this would help families and businesses in London. These reflect my own concerns as I have set out in correspondence to you on a number of occasions since March 2020. Publishing the London Plan will also provide much needed certainty to landowners and developers at this difficult time for the whole country, and be a strong foundation on which the recovery from the pandemic can be built."*

4. It is clear from the above paragraph that both the Mayor and SoS recognise the urgency of adopting the plan, we therefore consider it highly likely that it will be adopted on the 1<sup>st</sup> February, if not before, particularly given that the Mayor has largely followed the directions made by the SoS.

5. We would also draw attention to the following paragraph which notes that London Borough's are 'embedding' the increased housing targets in Local Plan's, which we have referred to within evidence.

*My Plan is underpinned by the concept of Good Growth – growth that is socially and economically inclusive and environmentally sustainable. This is fundamental to London's recovery from the pandemic and addressing the considerable challenges of the climate emergency and biodiversity crisis. This Plan represents a 23 percent increase in housing targets from the current Plan, a step-change in housing delivery that, despite the delays, is already being embedded in Local Plans.*

6. Taking account of the above, we would re-iterate what has been set out in evidence, that even on the Council's case, once the London Plan has been adopted, it will not have a five-year land supply and paragraph 11d of the NPPF would be engaged. The Appellant's case is that this is the position even before that point.
7. Links are provided below to the Publication version of the London Plan and the Schedule of Modifications (which are also to be added to the core documents list).

[https://www.london.gov.uk/sites/default/files/the\\_publication\\_london\\_plan\\_2020\\_-\\_clean\\_version\\_0.pdf](https://www.london.gov.uk/sites/default/files/the_publication_london_plan_2020_-_clean_version_0.pdf)

[https://www.london.gov.uk/sites/default/files/plp\\_2020\\_schedule\\_of\\_modifications.pdf](https://www.london.gov.uk/sites/default/files/plp_2020_schedule_of_modifications.pdf)

## **Housing Supply**

8. The Council sent its latest position to the Appellant regarding housing supply mid-afternoon on the 6<sup>th</sup> January. Unfortunately, that has not allowed the Appellant sufficient time to review the information and engage in further dialogue with the Council ahead of the stipulated deadline. The Appellant has therefore set out its position in response to the following documents provided by the Council:

- Supplementary Statement On Housing Supply: Further Evidence Provided To The Appellant; and
- Merton 5 Year Supply Jan 2021 Update.

9. The Council's Supply Update says that its supply has reduced yet again and now stands at 4,056 homes.
10. Whilst the information provided within the Supplementary Statement is helpful and does narrow some of the issues, the Appellant remains concerned about two areas which are considered in turn below.

## Committee Refusals

11. The Appellant has set out in evidence that a large proportion of schemes (3X%) were refused against officer advice since October 2019 last year and therefore an approval rate should be applied. The Council has not done this for the reasons it sets out in paragraph 3.11 of its Supplementary Statement.
12. However, the Appellant maintains that an approval rate should be applied for the following reasons.
13. Firstly, it is relevant to note the increase in refusal rates of major developments from October 2019, because at that stage planning applications (particularly those referable to the GLA) were being assessed against the draft London Plan, which sought a step change in housing delivery, the threshold approach to affordable housing, requiring 35%, and the optimisation of land.
14. It is therefore not surprising to see that the refusal rate of applications by the Council's committee increased at that stage which is why we consider it a relevant factor. Clearly, future applications will be designed to meet the draft/ new London Plan and based upon the Council's track record.
15. Secondly, the Council claim that many of these applications either related to sites that already benefitted from planning permissions or the Council's refusal was overturned at appeal.
16. In relation to sites that already have permission, it is the Appellants experience that developers will only do that if the original permission is not deliverable for whatever reason, such as viability. The Council have not provided specific examples of any sites that benefit from a planning permission, where a revised application has been submitted which has then been subsequently refused and they have gone on to deliver the original permission.

17. Secondly, in relation to appeals, the Council note that where the applicant has gone on to pursue an appeal only one scheme has been subsequently dismissed. The Council have shown in their table 3.2 that 90% of the schemes that they refuse that go to appeal are subsequently granted planning permission, which is an alarming rate of appeals being overturned.
18. Notwithstanding the above, in the Appellants view, neither of these two situations would meet the 'deliverability' tests set out within the NPPF or PPG. The Council cannot include sites/ permissions within their supply if there are concerns about their viability or deliverability. Similarly, it cannot rely on the appeal process to overturn refusals made by the Council and such sites should be removed from the Council's supply until the outcome of the appeal is known.
19. In respect of schemes submitted on sites that already have planning permission, as set out above, it is the Appellants experience that developers do not continue to pursue costly and risky planning permissions unless there are deliverability and/ or viability issues associated with the original permission. One of the criteria set out in paragraph a) of Annex 2 of the NPPF is that schemes need to be viable. If the Council cannot demonstrate that they are, then the deliverability tests have not been met.
20. The refusal rate of schemes on sites that already benefit from permission therefore remains relevant.
21. In relation to the schemes that are refused by the Council and then go to appeal, again, the Appellant considers this to be relevant because it does call into question the deliverability of the development and significantly delay when a scheme may start on site falling outside of the period for the five years supply.
22. At paragraph 3.11 the Council say that applying an approval rate based upon the proportion of major schemes refused is inappropriate because major schemes can be 12 homes or 250+ homes. The Appellant acknowledges this, but if one looks at the refusal rate on a unit basis the Council's position is even worse. The table provided on table 36 to 40 of the Appellants planning evidence shows that the Council refused major schemes providing a total of 1,618 homes and approved schemes totalling 285 homes (a mere 15%).

23. Clearly this is a relevant factor and it cannot be ignored that the Council's committee have been refusing such a significant number of new homes against officer advice. This must be factored into assumptions about the Council's supply.

24. We note the statement made at paragraph 3.4 of the Council's Supplementary Statement, which says:

"We also note that Merton's Planning Applications Committee substantially changed in December 2020."

25. It isn't entirely clear what is meant by this statement and the Council may wish to clarify, but the inference is that they acknowledge the Planning Committee has been changed because it was refusing acceptable schemes, which has resulted in the Council now not being able to demonstrate a five-year land supply.

26. At paragraph 3.9 the Council state that over a five-year period, the Council has refused 16% of its major applications. The Appellant is willing to compromise and adopt this as a reasonable delivery rate, although we consider this to be an optimistic position given the recent refusal rate by the Council's planning committee.

27. Applying a 16% reduction to the Council's supply of sites that do not have permission results in a reduction of 93 homes from its supply ( $945-360 \times 16\% = 93.6$ ). This would give the Council a supply of 3,960 homes. We acknowledge this isn't precise given that major applications schemes can range dramatically in size, but in the absence of a more scientific alternative, we consider this to be a reasonable approach.

## Deliverable Sites

28. Turning to the list of sites provided by the Council, we have reviewed these and comment on each in turn where we consider the deliverability tests required by Annex 2 of the NPPF have not been met.

29. The table below focuses on sites that do not yet have planning permission. Annex 2 of the NPPF requires that for such sites to be considered deliverable clear evidence needs to be provided that housing completions will begin on site within five years.

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No.	Site/ Units	Appellant Comment
5.	Eastfields Estate/ 33 units assumed	The site has outline planning permission but reserved matters have not yet been submitted. Information provided by the Council suggests that reserved matters will not be until later in 2021 but have provided no detail to show progress and evidence to support the assumed programme. The units should be removed from the Council's supply.
6.	Brown and Root Phase 2/ 100 units assumed.	The site is at pre-app and the Council have indicated that it has been presented to the DRP. The minutes of the DRP meeting which considered the proposal in November 2020 show that the scheme received a 'Red' verdict. No further information has been provided by the Council to show that this level of delivery is likely to be supportable/ deliverable and therefore we do not consider it appropriate to include within the Council's supply.
8.	Morden Town Centre Regen Phase 1/ 100 units	These sites are Council owned so we assume that they will be sold to a developer to bring them forward. No evidence has been provided on the current status of these sites and progress towards a planning application. We note that these are allocated within the 2014 Development Management Plan, and in each case assume delivery between 2017 and 2024. Given the very early stages of the sites progression and the limited progress made to date, the clear evidence has not been provided to include these sites within the Council's five-year supply.
13.	Volante, Summerstown 46-76	<p>DaviesMurch are the agents for this site, which benefits from an extant permission of 93 homes, which has not yet been implemented, although it is in the process of being implemented.</p> <p>A revised application has been submitted for 105 homes but the GLA have a standing objection on viability grounds which is preventing the scheme from proceeding. At this stage it is unclear what the outcome of this application will be. We therefore consider that it is not at a stage</p>

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		that can be relied upon for the Council's five-year supply and that the 93 unit scheme should be used, reducing the Council's supply by 12 homes.
14.	Eddie Catz/ 100	The site is at pre-app and the Council have indicated that it has been presented to the DRP. The minutes of the DRP meeting which considered the proposal in August 2020 show that the scheme received a 'Red' verdict. No further information has been provided by the Council to show that this level of delivery is likely to be supportable/ deliverable and therefore we do not consider it appropriate to include within the Council's supply.
19.	Battle Close/ 75 homes	This is a Council owned site which is to be disposed to a developer. This has not yet happened and no clear evidence has been provided to show these units can be delivered within the assumed timetable as required by Annex 2 of the NPPF. These units should be removed from the Council's supply.
23.	Wimbledon Chase Station/ 62 units	DaviesMurch are the planning agents for this site and we have already confirmed to Merton that it is unlikely the residential units will be delivered within the next five years. The scheme is complex and, requires approval from Network Rail at various stages of the process. Furthermore, the scheme has been designed to be phased to build a new station before work can commence on the housing element. It is therefore unlikely that the housing will be delivered within five years. Revised pre-app proposals are currently being prepared and it is expected that these will be submitted to the Council in the Spring. Furthermore, this scheme has also received a Red verdict from the Council's DRP. These units should be removed from the Council's five-year supply.
24.	Worsfold House, Church Road/ 60 units	This is a Council owned site which it is looking to dispose of. It has only carried out 'soft-market testing' but no details of evidence that homes will be delivered within five years. This should be discounted from the Council's five-year supply.

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25.	Chaucer Centre, Canterbury Road/ 60 units.	This is a Council owned site which it is looking to dispose of but is subject to relocation of existing tenants. No details have been provided about the timetable for relocation nor evidence to support the delivery of units. This should be discounted from the Council's five-year supply.
29.	Birches Close, Mitcham/ 40 units	This is a Council owned site which it is looking to dispose of to a developer but no details have been provided in relation to timescales or progress. This should be discounted from the Council's five-year supply.
35.	Former Barclays, Morden Road/ 26 units	This site has recently been refused permission. Applicants have indicated that they are looking to resubmit in 2021 but they have not yet engaged with pre-app or a formal application. This site should be removed from the Council's five-year supply.
37.	Gifford House/ 24 homes	This is a Council owned site which it is looking to dispose of to a developer but no details have been provided in relation to timescales or progress. Also, redevelopment relies on relocation of existing tenants and no details have been provided in relation to this. This should be discounted from the Council's five-year supply.
52.	Amity Grove/ 12 homes	This is a prior approval application that was granted in January 2018. The regulations require that such applications should be completed within three years. No details have been provided to confirm work will be completed by January 2021 and therefore this should be removed from the Council's supply.
54.	Second Floor Offices/ Durham House/ 11 homes	This is a prior approval which the Council acknowledge was due to lapse at the end of 2020 but has been given an extension until May 2021. Given that the requirement of the regulations is that such applications must be completed within three years and the Council has not provided evidence that development has commenced, these units should be removed from the Council's supply.
55.	Wilson Hospital/ 11 homes	This is a Council owned site with disposal to a developer planned for 2022. No evidence has been provided to demonstrate that the homes can be delivered on site within five years. These units should be removed from the Council's supply.



56.	London Road, Mitcham/ 11 units	This is a Council owned site which it is looking to dispose of to a developer but no details have been provided in relation to timescales or progress. Also, redevelopment relies on relocation of existing tenants and no details have been provided in relation to this. This should be discounted from the Council's five-year supply.
70.	Neba House/ 8 units	This is a prior approval which the Council acknowledge was due to lapse at the end of 2020 but has been given an extension until May 2021. Given that the requirement of the regulations is that such applications must be completed within three years and the Council has not provided evidence that development has commenced, these units should be removed from the Council's supply.
101.	Durnsford Road/ 5 units	Outline planning permission granted in August 2020. No details have been provided as to progress with approval of reserved matters and therefore this does not meet the tests set out in paragraph 007 of the Housing Supply and Delivery section of the PPG. These units should be removed from the Council's supply.

30. Taking account of the above, the Appellant considers that the Council has not provided the clear evidence required by Annex 2 of the NPPF that housing will be delivered on these sites within the next five years and there a total of 750 homes should be removed from its assumed supply.

31. Of these 750 homes, 262 units are within three pre-application schemes that are currently being progressed but all of them have received 'Red' verdicts from the Council's design review panel, which is somewhat ironic given the stress that the Council is placing on this issue at the appeal.

32. 381 units are within land that is currently owned by the Council which they intend to bring to market but no details have been provided about development partners nor any evidence that demonstrate that these sites will deliver housing within five years, despite the Council being uniquely well placed to provide such detail.

33. Taking account of the above, the Council's supply would reduce from 4,056 to 3,306. The implications of this in terms of proportion of its five-year supply is shown below (note that the 5% buffer has been included within the numbers provided below):

- Council's current position: assumes a requirement of 411 homes per year over five years (i.e. 2,158 requirement) would give them 153% supply or 7.65 years supply;
- Alternative position: the Council's former position, assumes a requirement of 411 homes for the first year of supply and then 918 homes following adoption of London Plan (i.e. 4,287 requirement) would give them 77% supply or 3.85 years supply; and
- Appellant position: assumes a requirement of 918 homes required for all five years (i.e. 4,820 requirement) would give them 68% supply or 3.45 years supply.

## Summary of Housing Supply

34. Above we have set out the Appellants concerns in relations to the Council's approach to housing supply in relation to committee refusal rates and the lack of any detailed evidence supporting its supply of sites that don't have permission.

35. We would note that if the Inspector agrees with our approach in relation to discounting the sites that don't yet have planning permission, then the concerns about committee approval rates would fall away as many of those sites have been discounted from the supply. However, if the Inspector finds that the Council has provided sufficient evidence to support its supply, then we would ask that the committee refusal rate is applied. We have set out both scenarios below so it's impact on the Council's supply can be seen.

### *Impact on supply – committee refusal rate (reduction of 93 homes and supply of 3,960 homes)*

- Council's position assuming 411 homes per year over five years (2,158 requirement) would give them 183% supply or 9 year supply;
- Alternative position assuming 411 homes for first year of supply and then 918 homes following adoption of London Plan (4,287 requirement) would give them 92% supply or 4.6 years supply; and
- Appellant position assuming 918 homes required for all five years (4,820 requirement) would give them 82% supply or 4.1 years supply.

*Impact on supply – lack of credible evidence to support supply on non-permissions sites (reduction of 712 homes)*

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- Council's current position: assumes a requirement of 411 homes per year over five years (i.e. 2,158 requirement) would give them 153% supply or 7.65 years supply;
- Alternative position: the Council's former position, assumes a requirement of 411 homes for the first year of supply and then 918 homes following adoption of London Plan (i.e. 4,287 requirement) would give them 77% supply or 3.85 years supply; and
- Appellant position: assumes a requirement of 918 homes required for all five years (i.e. 4,820 requirement) would give them 68% supply or 3.45 years supply.

End.