

Committee: Planning Applications Committee and Borough Plan Advisory Committee (circulation)

Date: May 2012

Agenda item: for circulation

Wards: all

Subject: Review of National Planning Policy Framework against Merton's Unitary Development Plan 2003

Lead officer: Director of Environment and Regeneration, Chris Lee

Lead member: Cabinet Members for Environmental Sustainability and Regeneration, Cllr Andrew Judge

Forward Plan reference number: N/A

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Recommendations:

- A. For planning proposals that involve the loss of open space, that the National Planning Policy Framework (in particular paragraph 74) and the London Plan 2011 (in particular policy 7.18) be recognised as having greater weight than Merton's UDP policies L5 *Urban Green Space*, and L.7 *Recreational Open Space*

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and from this date is a material consideration in making planning decisions (NPPF paragraph 212).
- 1.2. Following an initial review of the NPPF against the policies in Merton's Unitary Development Plan 2003, Core Planning Strategy 2011, South London Waste Plan 2012 and London Plan 2011 this report recommends that the provisions of the NPPF and the London Plan 2011 be given greater weight than two policies in Merton's UDP 2003 (policy L.5 Urban Green Space, and policy L.7 Recreational Open Space) when assessing planning proposals that involve the loss of open space.

2 DETAILS

Review of National Planning Policy Framework against Merton's Unitary Development Plan 2003

- 2.1. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and from this date is a material consideration in making planning decisions (NPPF paragraph 212).
- 2.2. The NPPF states that due weight should be given to policies in existing adopted development plans published before 2004 according to their degree of consistency with the NPPF (NPPF paragraph 215).
- 2.3. In practice this means that the policies in Merton's UDP 2003 can be given weight where they are consistent with the NPPF: *"the closer the policies in the plan [Merton's UDP 2003] to the policies in the Framework, the greater the weight that may be given"*.(NPPF paragraph 215)

- 2.4. Officers have undertaken an initial review of the NPPF alongside Merton's statutory development plan (Merton's Core Planning Strategy 2011, South London Waste Plan 2012, Unitary Development Plan 2003 and London Plan 2011) and consider that there are inconsistencies between the NPPF and two of Merton's UDP 2003 policies. As case law, Secretary of State and planning inspectors' decisions provide additional interpretation of the NPPF, officers will update Members with any further changes.

Results of review

- 2.5. Following an initial review of the NPPF, the policies in Merton's Core Planning Strategy 2011 and South London Waste Plan 2012 appear to be generally consistent with the NPPF.
- 2.6. However it is recommended that Policies L.5 *Urban Green Space* and L.7 *Recreational Open Space* of Merton's UDP 2003 are not consistent with the provisions of the NPPF paragraph 74 when considering developments that propose the loss of recreational open space.
- 2.7. Therefore it is recommended that the NPPF paragraph 215 should be viewed as a material consideration that outweighs Merton's UDP Policies L5 and L.7.
- 2.8. This recommended approach is also consistent with the principles set out in the Planning and Compulsory Purchase Act 2004 (section 38.5) which states that if policies within a development plan conflict to any extent, the conflict must be resolved in favour of the policies contained in the most recently adopted document.

National Planning Policy Framework – paragraphs on open space

- 2.9. The NPPF paragraph 74 states that "*Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*
- *An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
 - *The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
 - *The development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss."*
- 2.10. It should be noted that the planning proposal has to satisfy only one of the three criteria, not all three.

The Mayor's London Plan (August 2011)

- 2.11. The Mayor's London Plan 2011 is part of the statutory development plan for Merton. London Plan Policy 7.18 "*Protecting local open space and addressing local deficiency*" (section B, planning decisions) states
- 2.12. "*The loss of local protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area. Replacement of one type of open space with another is unacceptable unless and up to date needs assessment shows that this would be appropriate.*"
- 2.13. It is considered that the London Plan 2011 is not in conflict with the NPPF (paragraph 74) for planning proposals that propose development on open space as it requires at least equivalent replacement of any loss, similar to the second criterion (bullet point) of the NPPF. As set out in the Section 7 of this report, where there are conflicts between development plan policies the greater weight should be accorded to the most recently published policy, therefore in general, conflicts

between the London Plan 2011 and Merton's UDP 2003 should be resolved in favour of the London Plan as the most recently published part of the statutory development plan for Merton.

Merton's Core Planning Strategy (July 2011)

- 2.14. Merton's Core Planning Strategy 2011 Policy CS13 (a) states that Merton Council will "*protect and enhance the borough's public and private open space networks including Metropolitan Open Land, parks and other open spaces*".
- 2.15. This policy is supported by Merton's Open Space Study 2010-11, which supports the protection of open spaces in the borough.
- 2.16. Over the 15-year lifetime of Merton's Core Planning Strategy, planning applications will be submitted to the council that propose the loss of open space to other uses including housing, commercial development, community facilities and other sports and recreation activities.
- 2.17. In assessing these applications, decision-makers will be asked to consider the need to protect open space against the need for the alternative uses proposed. Prior to the publication of the NPPF on 27 March 2012, policies to guide this assessment included Merton's UDP Policies L5 (urban green space) L6 (public open space) and L7 (recreational open space). It is considered that Merton's UDP policies L5 and L7 are in conflict with the NPPF (paragraph 74) and should therefore be given no weight.
- 2.18. Once adopted (circa June 2013) Merton's emerging Sites and Policies Development Plan Document will provide the detailed planning policies that will replace any remaining policies in Merton's UDP.

Merton's UDP 2003 (policy L.5 urban green space)

- 2.19. Merton's UDP Policy 2003 **Policy L5 Urban Green Space** applies to open space where public access is restricted or not formally established.
- 2.20. It states that development on urban green spaces will only be permitted where the following criteria are met:
- (i) *the land has no significant recreational, nature conservation, social cultural or educational function or potential, no significant historical structural or amenity value and is not located in [an] area of public open space deficiency*
- (ii) *equivalent open space provision can be made available in the same locality to meet the needs as the area of the open space it will replace*
- 2.21. It is considered that the NPPF paragraph 74 is materially different to Policy L5 criterion (ii). Policy L5 criterion (ii) doesn't specify that the loss resulting from the proposed redevelopment should be equivalent or better in terms of quantity and quality unlike NPPF's paragraph 74.
- 2.22. The locational requirements between the NPPF and Policy L5 criterion (ii) are also different.
- The NPPF specifies that replacement open space should be in "*a suitable location*"; this could be anywhere in the borough which has the greatest need for more open space.
 - whereas Policy L5 states "*in the same locality*" which implies physical proximity to the original site, regardless of whether there is any need or not.

- 2.23. Therefore it is considered Policy L5 is materially different to the NPPF and therefore the NPPF has greater weight for the reasons stated in paragraphs 2.1-2.7 of this report.

Merton's UDP 2003 (policy L.7 recreational open space)

- 2.24. Merton's UDP 2003 **Policy L.7 "recreational open space"** states that the loss of recreational open space will only be permitted where:

- *sports and recreational facilities can be retained and enhanced through the redevelopment of a small part of the site and alternative provision of equivalent community value is made available.*

- 2.25. It is considered that Policy L.7 is materially different to the NPPF for the following reasons:

- NPPF paragraph 74, second bullet point (*The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location;*) does not require the decision-maker to consider whether or not the redevelopment of a small part of the site should fund the retention and enhancement of sports and recreational facilities, as policy L7 does.
- The NPPF simply requires the decision-maker to consider whether or not the loss resulting from the proposed development is being replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

- 2.26. For example, in the hypothetical case of a planning proposal to redevelop a playing field to alternative uses:

- the NPPF would support the redevelopment of the whole playing field to alternative uses as long as an alternative playing field was provided in a suitable location elsewhere that was equivalent or better in terms of quantity and quality than the original playing field.
- Merton's UDP Policy L.7 would support the redevelopment of "a small part" of the playing field to alternative uses provided that the rest of the playing field was enhanced and that "alternative provision of equivalent community value" was made available. This is a more subjective assessment than the NPPF and may not necessarily be equivalent to what was lost in terms of use, quantity or quality.

- 2.27. Therefore it is considered that, as there is a difference in requirements between Merton's UDP 2003 Policy L7 and the NPPF paragraph 74, the NPPF should be given greater materiality as the most recently published document.

3 ALTERNATIVE OPTIONS

- 3.1. Merton's UDP policy L.6 Public Open Space could be considered to have some tensions with the NPPF as it allows for development ancillary to the use of open space (for example, sports changing rooms) and gives criteria on which such ancillary development should be considered.

- 3.2. However in considering ancillary development to open space such as sports changing rooms, NPPF paragraph 70 states "*that planning policies and decisions should plan positively for the provision and use of shared space, community facilities... and other local services to enhance the sustainability of communities and residential environments*". NPPF paragraph 74, third bullet point states that existing open space, sports and recreational buildings and land including playing

fields should not be built on unless... “*the development is for alternative sports and recreational provision, the needs for which clearly outweighs the loss*”.

- 3.3. Decision-makers could consider sports changing rooms and other ancillary development under the NPPF and Merton’s UDP 2003 Policy L6, but if there is thought to be tension between the two, the NPPF should be given greater materiality as the most recently published document.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report.

5 TIMETABLE

- 5.1. None for the purposes of this report.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None for the purposes of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1 Section 38.5 of the Planning and Compulsory Purchase Act 2004 states that “if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)”.
- 7.2 The National Planning Policy Framework was published on 27 March 2012 and from this date is a material consideration in making planning decisions (NPPF paragraph 212).
- 7.3 The NPPF states that due weight should be given to policies in existing adopted development plans published before 2004 according to their degree of consistency with the NPPF (NPPF paragraph 215).
- 7.4 In practice this means that the policies in Merton’s UDP 2003 can be given weight where they are consistent with the London Plan 2011 and the NPPF: “*the closer the policies in the plan [Merton’s UDP 2003] to the policies in the Framework, the greater the weight that may be given*”.(NPPF paragraph 215)

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report

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

12 BACKGROUND PAPERS

- 12.1. Planning Advisory Service: National Planning Policy Framework self-assessment toolkit
- 12.2. National Planning Policy Framework (27 March 2012)
- 12.3. Draft National Planning Policy Framework (July 2011)

- 12.4. The Mayor's London Plan (August 2011)
- 12.5. Merton's Core Planning Strategy (July 2011)
- 12.6. Merton's Unitary Development Plan (October 2003)
- 12.7. Merton's Unitary Development Plan (October 1996)