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# **Report to the Council of the London Borough of Merton**

**by Nicholas Taylor**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date 18 December 2018**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Merton Estates Local Plan**

The Plan was submitted for examination on 30th March 2017

The examination hearings were held between 4th and 6th July 2017

File Ref: PINS/T5720/429/7

## **Abbreviations used in this report**

CHG	Clarion Housing Group
HRA	Habitats Regulations Assessment
LDS	Local Development Scheme
MM	Main Modification
ELP	Merton Estates Local Plan
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SE	Sport England
SPG	Supplementary Planning Guidance
SPP	Merton Sites and Policies Plan

## Non-Technical Summary

This report concludes that the London Borough of Merton Estates Local Plan (ELP) provides an appropriate basis for the planning of the specific area covered by the plan, provided that a number of main modifications (MMs) are made to it. Merton Council has specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

All the MMs were proposed by the Council, amended in some cases by me, and were subject to public consultation over a six-week period. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Introduction of three new over-arching policies, setting out the vision, strategy and urban design principles for the plan;
- Inclusion within the relevant policies for each estate for re-provision of affordable housing;
- Amendments to various policies, and introduction of a new appendix, to ensure clear consistency with and cross-referencing to other parts of the development plan, including the London Plan, and with national planning policy and guidance;
- Amendments to various policies to ensure internal consistency within the plan, whilst recognising the distinctiveness of the three estates and providing the appropriate balance between certainty and flexibility;
- Deletion of 'Further guidance' and incorporation of its content where appropriate within each policy or its Justification;
- Deletion, or inclusion in a more appropriate way, of references to locations and issues outside the plan boundary; and
- Clarification that part 4 of the plan sets out information to support submission of applications for planning permission.

## Introduction

1. This report contains my assessment of the ELP in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (NPPF) (paragraph 182) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The London Borough of Merton Pre-Submission Estates Local Plan, submitted in March 2017, is the basis for my examination. It is the same document as was published for consultation between December 2016 and February 2017. It should be noted that, since then, the Council has published several "rolling" versions of the plan, incorporating its own proposed, successive additional modifications. Where these are not incorporated within, or superseded by, MMs, I consider that they do not affect the soundness of the plan and I have

not commented upon them in this report. Any such additional modifications are a matter for the Council on adoption of the ELP.

### **Main Modifications**

3. In accordance with section 20(7C) of the 2004 Act, the Council requested that I should recommend any MMs necessary to rectify matters that make the plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1, MM2, MM3** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report and in the light of those I have made limited amendments to the detailed wording of some of the main modifications. None of the amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. Where necessary I have referred to these amendments in the report.

### **Policies Map**

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, although the plan itself contains numerous maps and diagrams, the only proposed change to the formal policies map is the definition of the boundaries of the three separate and distinct areas covered by the plan within the Borough. Consequently, the MMs do not have any direct implications for this change to the policies map.

### **Assessment of Duty to Co-operate**

6. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation. The boundaries of the three areas covered by the ELP are drawn tightly round three separate and distinctive housing estates in different parts of the Borough: Eastfields, High Path and Ravensbury.
7. Each estate predominantly comprises former local authority housing which has been transferred to the Clarion Housing Group (CHG), a registered housing provider, through a Stock Transfer Agreement which carried with it certain obligations. The Council has collaborated with and consulted residents, CHG, statutory consultees and other stakeholders on strategic and other matters concerning the future of the estates and on the preparation of the ELP.
8. Overall, taking account of the type and content of the plan and its limited geographical coverage, I am satisfied that where necessary the Council has

engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.

## Assessment of Soundness

### Main Issues

9. The ELP is intended to guide the regeneration, in whole or in part, of the three estates, with the aim of creating well designed, high quality neighbourhoods. As submitted, it is structured around sets of policies for each estate, covering similar topics and following a common format. Additional sections of the plan cover common themes, such as key drivers, vision, design requirements and delivery, implementation and monitoring, together with supporting material in three appendices.
10. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified two main, cross-cutting issues upon which the soundness of the Plan depends. Broadly, these relate to issues concerning the overall plan and those concerning the policies specifically relating to each of the three estates. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

**Issue 1 – Whether the plan, in respect of its vision, strategy, urban design focus and certain matters common to all three estates, has been positively prepared, is justified, effective and consistent with national and local policy and guidance?**

#### *Relationship with the wider development plan*

11. Regulations 8 (4) and (5) require that the plan should be consistent with other parts of the development plan. The ELP's subject matter – three geographically separate estates, islands, as it were, within the borough, but inextricably linked in terms of their regeneration – poses challenges with regard to the purpose, structure and clarity of the plan. The Council sees it as largely a design-led document, intended to set out a distinctive vision to guide place-making in each estate, whilst providing an appropriate degree of flexibility to developers. However, as a statutory local plan, it is more than a series of masterplans or design briefs and seeks to provide clear policies governing the regeneration process.
12. As submitted, the ELP is unsound in that it fails to clearly articulate its relationship with the wider development plan in all respects, including where reliance is to remain with policies in other plans. This is more complex here because not only the Mayor's London Plan but also the Council's borough-wide Core Planning Strategy and its Sites and Policies Plan (SPP) will also continue, until replaced, to wash over the ELP plan area. Whilst it would be unrealistic to expect full cross-referencing in every ELP policy, a number of changes throughout the plan are necessary to address this issue where clarity of interpretation is particularly important. Specifically, the problem is addressed by **MM1**, which expands the contextual information in the Key Drivers section, and by **MM30**, which introduces a new Appendix 4, containing a table of cross-references between each ELP policy and the other significant parts of the development plan.

## *Vision*

13. The ELP aims to set out a holistic vision of the creation of new, sustainable, liveable neighbourhoods, with a high standard of housing and design. This is translated into more distinctive visions for each of the estates. However, there is a disconnect between the visions and the suites of policies for each estate, which deal separately with discreet and relatively detailed matters such as townscape, movement and access, land use and environment. The inclusion of numerous maps, diagrams and visualisations of examples of potential future forms of development dilutes the clarity of the visions and complicates the status of various elements of the plan, to the extent that the effectiveness, and therefore soundness, of the ELP is undermined. This is remedied by **MM2**, which brings together the material expressing the visions, clarifies its status and ensures internal consistency within the plan, in a new over-arching Policy OEP1 Vision. I have made a minor change to the wording of the MM as published for consultation, by adding clearer reference to protection and enhancement of heritage in the vision for Ravensbury.

## *Strategy*

14. There are references in various parts of the document to the policy, economic, social and practical rationale behind the regeneration of the three estates. The context is that, although each estate is physically very different, CHG is the predominant landowner and, to date, developer, driving regeneration in partnership with the council, local communities and others. Although the economic basis for regeneration of the three estates is closely integrated, it is expected that development will proceed in phases and that there will be a need to keep this under review and provide for flexibility during the 10 – 15 year life of the overall programme and the plan. This fundamental underlying rationale and approach is not sufficiently clearly reflected in policy. **MM3** addresses this shortcoming by introducing a new Policy OEP 2 Strategy.
15. I have considered whether the quantum, density and mix of housing are sufficiently clear, whilst providing for appropriate flexibility and remaining consistent with the remainder of the development plan. The areas covered by the ELP are small in relation to the Borough but can be considered large sites, presenting opportunities to address regeneration in a variety of ways. The basic aim of the plan is to create high quality neighbourhoods, avoiding, in the council's words, the mistakes of the past. New Policy OEP 2 makes clear that complete regeneration (which in this context means substantial demolition and redevelopment) of Eastfields and High Path estates and partial regeneration of Ravensbury estate is proposed. The overall number of dwellings required to be provided in each estate can and should be determined in accordance with the development plan as a whole, without the need for specific targets, ranges or minima/maxima in the ELP. Policies<sup>1</sup> for each estate, as amended, confirm that the London Plan density framework is to be applied flexibly.
16. Policy OEP 2 explicitly states that affordable housing will be provided on a phase by phase basis, having regard to prevailing need, viability and policy. However, **MM8**, **MM16** and **MM24** amend Policies EP E4, EP H4 and EP R4

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<sup>1</sup> EP E4, EP H4 and EP R4

respectively, to, among other things, qualify this to make clear that existing numbers of affordable homes will be re-provided. These changes are necessary to provide an appropriate degree of certainty regarding minimum levels of affordable housing and, to the local communities in particular, reassurance on this important matter, whilst continuing to ensure that a review mechanism will address changes in need and viability over time. I have slightly changed the wording of **MM16** from the consultation version in order to achieve consistency between the three policies but, in so doing, I have retained the term "affordable homes" as it is more straightforward and consistent with London-wide and national policy and guidance than "habitable rooms or floorspace". For the same reasons, I have also changed **MM3** from the consultation version to clarify the wording regarding phasing and review of affordable housing provision.

### *Urban design*

17. Much of the thrust of the ELP, spread among numerous policies for each estate, is concerned with securing good urban design. The submitted plan brings together a number of important urban design principles in the introductory section and a further section, Part 04, towards the back of the document sets out Design Requirements for Planning Applications. This fragmented and overlapping coverage gives rise to potential for contradiction and uncertainty as to what constitutes policy and its relationship with the remainder of the development plan. The effectiveness of the plan is undermined as a result. Together, two MMs are necessary to rectify these shortcomings. **MM4** inserts a new over-arching Policy OEP 3 Urban Design. Amongst other things, the policy more clearly ensures that a comprehensive approach to equalities, disability, inclusive design and accessible environments, in accordance with paragraphs 57, 58, 61 and 69 of the NPPF, together with the need to design against crime and for community safety, is given due emphasis. I have added brief references, to better reflect the importance of heritage, to the consultation version of the MM.
18. Furthermore, **MM29** clarifies that Part 04 is essentially setting out information required to support planning application submissions, complementing the council's validation checklist and addressing inconsistencies with ELP and other development plan policies. Important clarification is also added regarding the potential impact of development on the Wimbledon Common and Richmond Park Special Areas of Conservation.

### *Further guidance*

19. Throughout the submission ELP, almost all policies are followed by "Further guidance". As written, the effectiveness of the policies is undermined by uncertainty as to whether this further guidance constitutes policy or is part of the Justification of the policies. This problem is addressed within **numerous MMs**, described under Issue 2 (below), by in most cases recasting the content of the further guidance as part of the policies' Justification.

### *Plan boundaries*

20. The plan boundaries are very tightly drawn around the three estates. However, there are numerous instances throughout the plan where policies seek to require action or compliance concerning locations or issues outwith the plan areas. Such an approach causes uncertainty, not least for applicants and communities, as to which policies apply and creates or risks conflict between the ELP and the remainder of the development plan. Moreover, those with an interest in land or development outside the plan areas may not be fully aware of the ELP's implications. **A number of MMs** address the problem by deleting the relevant reference or amending it to make clear that it is providing contextual information which may have implications for development within the plan areas.

### *Overall*

21. To conclude, with the relevant MMs as set out above, the plan is sound with respect to its vision, strategy, urban design focus and certain other cross-cutting matters.

### **Issue 2 – Whether the policies for the three individual estates have been positively prepared, are justified, effective and consistent with national and local policy and guidance?**

#### *Townscape - Policies EP E1, EP H1 and EP R1*

22. These policies refer to Eastfields, High Path and Ravensbury respectively. In the first and last cases, the policies' effectiveness and consistency is undermined by confusing duplication and lack of clarity within the policy, particularly in the light of the introduction of new Policy OEP 1 Vision. **MM5** and **MM21** address this shortcoming, together with the further guidance and plan boundary issues referred to in paragraphs 19 and 20 above, which are also addressed by **MM13** in the case of policy EP H1. MM21 differs slightly from the consultation version in order to better reflect the importance of Ravensbury's heritage setting.

#### *Street network and Movement and access – Policies EP E2, EP E3, EP H2, EP H3, EP R2 and EP R3*

23. Although the subject matter of these policies is closely related, it is not sufficiently clear that the street network policies are concerned essentially with urban form but not vehicular movement and access. Moreover, further issues of clarity and consistency, whilst providing appropriate flexibility, undermine the policies' effectiveness to varying degrees. In the case of EP R2 and EP R3 in particular, concerning the Ravensbury estate, there is insufficient emphasis on the need to deter crime and promote community safety, having regard to Planning Practice Guidance (PPG). There are a number of instances across all six policies where requirements are placed on developers with regard to locations and issues outside the plan boundaries. These problems and the further guidance issue, referred to previously, are remedied by **MM6, MM7, MM14, MM15, MM22** and **MM23**.



*Open Space and Landscape – Policies EP E5, EP E7, EP H5, EP H7, EP R5 and EP R7*

24. The subject matter of these two sets of policies is also related but, as submitted, their content does not sufficiently clearly distinguish between open space and landscape matters, or provide appropriate degrees of flexibility in all aspects, consistent with the NPPF, PPG and other parts of the development plan. This results in overlap and lack of clarity, particularly with regard to trees and domestic gardens. The three open space policies are not fully consistent with the London Plan and the Mayor's Supplementary Planning Guidance (SPG) for Play and Informal Recreation. Nor do they fully address the implications of development for the provision of indoor and outdoor sports facilities, having regard to Sport England's (SE) Planning for Sport Aims and Objectives. **MM9, MM17** and **MM25** address these shortcomings by deleting content related to trees and gardens, whilst inserting appropriate references to the London Plan, Mayor's SPG and SE guidance.
25. **MM11, MM19** and **MM27** amend policies EP E7, EP H7 and EP R7 respectively, to insert content related to trees and gardens, deleted from the policies referred to above. In doing so, with a small change to MM19 from the consultation version, the wording regarding trees is made more concise, so as not to be overly detailed and prescriptive and to be internally consistent and consistent with Policy DM 02 of the SPP. The requirement for appropriate provision of private garden and/or amenity space to all new dwellings (houses and flats), with regard to relevant standards and the character of the development, is consistent with Policy DM D2 of the SPP.

*Environmental Protection – Policies EP E6, EP H6 and EP R6*

26. These policies cover a variety of matters and suffer from a number of shortcomings. The treatment of flood risk is inconsistent with the evidence base for each estate, the London Plan and national policy and guidance, particularly in the application of sequential and exception tests to development proposals.
27. Furthermore, across the three policies, the coverage of sustainable energy requirements is neither effective nor consistent with the remainder of the development plan or national policy and guidance.
28. Amendment of the policies is also necessary to ensure that the approach to development construction working method statements and construction logistics plans, together with site waste management plans, is appropriate and proportionate to the scale and nature of proposals and anticipated impacts, whilst being consistent with the London Plan and SPP Policy DM D2.
29. In the case of Policy EP H6, amendment is also required to remove references to policy concerning trees which overlap and conflict with other ELP policies to which I have previously referred. All of the above shortcomings are addressed by **MM10, MM18** and **MM26**.

*Building heights – Policies EP E8, EP H8 and EP R8*

30. Amendment of Policies EP H8 and EP R8 is necessary in order to ensure clarity and remove internal inconsistencies, whilst allowing appropriate flexibility. These shortcomings, together with further guidance and plan boundary issues

across all three policies, are remedied by **MM12**, **MM20** and **MM28**. I have changed the wording of MM20 from the consultation version in order to better express the general approach to building heights in more sensitive parts of High Path.

### *Overall*

31. In conclusion, with the relevant MMs as set out above, the policies for the three individual estates are sound.

## **Public Sector Equality Duty**

32. In examining the ELP, I have had regard to equality principles in compliance with s.149 of the Equality Act 2010. One tangible outcome of this is **MM4**, which concerns the new over-arching Policy OEP 3 Urban Design and which is described in more detail in paragraph 17, above.

## **Assessment of Legal Compliance**

33. My examination of the legal compliance of the Plan is summarised below.
34. The ELP has been prepared in accordance with the Council's Local Development Scheme. Consultation on the ELP and the MMs was carried out in compliance with the Council's Statement of Community Involvement. Sustainability Appraisal has been carried out and is adequate.
35. The Habitats Regulations Assessment, December – February 2016 identifies European Sites at Wimbledon Common and Richmond Park as having the potential (due to proximity) to be affected by development within the plan areas. It concludes that the ELP's policies, both in themselves and in combination with other plans, strategies and programmes, will not have an adverse effect on either of these sites, provided that any individual proposals which are likely to have a significant effect are subject to appropriate assessment. This requirement, which is consistent with other parts of the development plan, is specifically addressed by **MM29**.
36. The ELP, taken as a whole, includes policies designed to secure that the development and use of land in the plan areas contribute to the mitigation of, and adaptation to, climate change. This is particularly evident in Policies EP E6, EP H6 and EP R6, which concern environmental protection, including, among other matters, flood risk, sustainable drainage and sustainable energy. Accordingly, the ELP satisfies this statutory objective.
37. Subject to the recommended MMs, the ELP is in general conformity with the spatial development strategy (The London Plan). Since the close of consultation on the MMs, the Mayor of London has published a draft new London Plan for consultation. As this consultation has only recently begun, this emerging plan has not had a significant bearing on my report.
38. Overall, therefore, subject to the recommended MMs, the ELP complies with all relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## Overall Conclusion and Recommendation

39. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
40. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that, with the recommended main modifications set out in the Appendix, the Merton Estates Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Nicholas Taylor*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.

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