

**PLANNING APPLICATIONS COMMITTEE**  
**16<sup>th</sup> July 2020**

<u>UPRN</u>	<u>APPLICATION NO.</u>	<u>Item No:</u> <u>DATE VALID</u>
	(A) 19/P4046	11/12/2019
	(B) 19/P4047	11/12/2019
	(C) 19/P4048	11/12/2019
	(D) 19/P4050	11/12/2019
<b>Site Address/Ward:</b>	<p>(A) Farm Road Church, Farm Road, Morden, SM4 6RA / St Helier</p> <p>(B) Elm Nursery Car Park, London Road, Mitcham / Figges Marsh</p> <p>(C) Car Park, Raleigh Gardens, Mitcham / Cricket Green</p> <p>(D) Development Site North of 11 to 17 Madeira Road, Mitcham / Cricket Green</p>	
<b>Proposal:</b>	<p>(A)            DEMOLITION OF EXISTING CHURCH BUILDINGS AND ERECTION OF A FOUR STOREY DEVELOPMENT COMPRISING 15 SELF-CONTAINED UNITS (9X 1B AND 6X 2B UNITS), AND ERECTION OF 3 x THREE STOREY DWELLINGHOUSES (1X 5B AND 2X 4B); PROVIDED WITH ASSOCIATED CYCLE PARKING, REFUSE STORES, PARKING BAYS AND LANDSCAPING.</p> <p>(B)            ERECTION OF A FIVE STOREY BUILDING TO CREATE 21 NEW RESIDENTIAL UNITS. COMPRISING OF ONE AND TWO BEDROOM APARTMENTS, ASSOCIATE CYCLE PARKING, DISABLED PARKING BAYS AND PUBLIC REALM ENHANCEMENTS.</p> <p>(C)            REDEVELOPMENT OF EXISTING CAR PARK TO ALLOW FOR THE ERECTION OF A PART FIVE, PART SIX STOREY DEVELOPMENT COMPRISING 36 SELF-CONTAINED UNITS (29X 1B AND 7X 2B); WITH ASSOCIATED CYCLE PARKING, REFUSE STORE, 3X DISABLED PARKING BAYS AND LANDSCAPING.</p> <p>(D)            ERECTION OF A THREE STOREY DEVELOPMENT COMPRISING 11 SELF-CONTAINED UNITS (7X 1B AND 4X 2B), AND ERECTION OF 7 X THREE STOREY</p>	

TOWNHOUSES (4B); WITH ASSOCIATED CYCLE PARKING, REFUSE STORES, 4 X PARKING BAYS (2 DISABLED BAYS) AND LANDSCAPING.

**1. Introduction.**

- 1.1 This report supplements the reports on the agenda for the 4 planning applications listed above. It has been drafted in light of matters unique to the 4 applications which have all been submitted by Merantun Development Limited a Council-owned development company, set up to accelerate the delivery of much needed homes. While each application should be considered on its merits the issue of tenure and affordable housing delivery is embedded in the financial assessment of the 4 schemes as a unified development package.
- 1.2 Merantun Development Limited is one of a number of emerging Council-owned development companies, set up to accelerate the delivery of much needed homes. The company was incorporated to deliver a mix of housing on small sites that would contribute to Merton's housing targets and generate a revenue return to the Council's general fund. In London, many other boroughs have set up similar companies including Lambeth (Homes for Lambeth), Croydon (Brick by Brick), Ealing (Broadway Living), Barking & Dagenham (BeHere) as well as Islington, Camden, Hounslow and Newham.

**2. Proposals.**

- 2.1 The four development schemes, submitted by Merantun Development, have come forward to be considered by the Local Planning Authority as a single linked development programme in terms of its viability assessment for the delivery of affordable housing.
- 2.2 The provision of dwellings on all four sites are as follows:  
Farm Road: The proposal consists of 18 new homes – 15 apartments, and 3 houses. The apartments are for private rental, and the houses are for market sale.  
Elm Nursery: The proposal consists of 21 new homes, all of which are apartments for affordable rent.  
Raleigh Gardens: The proposal at consists of 36 new homes, all of which are apartments for the private rental sector.  
Development at Madeira Road: The proposal consists of 18 new homes, 7 of which are houses for private sale and 11 of which are apartments for the private rental sector.

The Madeira Road scheme, like the Farm Road scheme, comprises a mixture of Build to Rent (BtR) flats and houses for sale in the open market, whereas the Raleigh Gardens scheme comprises solely BtR flats. Affordable Housing, in the

form of Affordable Rented flats, will be provided at the Elm Nursery site, which comprises 21 flats, all of which will be Affordable Rented. This amounts to a proposal of 22.5% of the total number (93) of homes on the four sites.

The Build to Rent homes will be self-contained and will be owned and managed by Merantun.

Tenure	Elm Nursery	Raleigh Gardens	Farm Road (Application Site)	Canons Place	Total Homes (% based on units)	
Social/Affordable Rent	21	-	-	-	21 (22.5%)	
Intermediate Housing	-	-	-	-	0 (0%)	
Market Housing (Build to Rent)	-	36	15	11	62	72 (77.5%)
Market Housing (For Sale)	-	-	3	7	10	
Total	21	36	18	18		
Total Number of homes					93 homes in total	

### 3. **Planning policy.**

#### **London Plan (2015/16).**

Policy 3.11 Affordable Housing Targets states that the Mayor will and Boroughs should maximise the affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of the Plan. The plan seeks 60% of the affordable housing provision to be for social/affordable rent and 40% for intermediate rent or sale

#### **The draft New London Plan (2019/20)**

The following policies are considered to be the most relevant in the determination of this planning application.

Policies H5, H6 and H7 Affordable Housing sets an overall target of 50% of new homes to be affordable with a 35% threshold approach where schemes providing 35% affordable housing can be 'fast tracked' and do not require a viability assessment.

Policy H13 - Build to Rent housing

Policy H13 of the Draft London Plan is supportive of Build to Rent housing products provided certain criteria (as identified in Part B of the policy) are met. These criteria include the following:

- the development has at least 50 units;
- the homes are held as Build to Rent under a covenant for at least 15 years and a clawback mechanism is in place that ensures there is no financial incentive to break the covenant;
- all units are self-contained and let separately; and
- longer tenancies (three years or more) are available to tenants with break clauses for renters which allow the tenant to end the tenancy with a month's notice any time after the first six months.

### **Merton Core Planning Strategy (2011)**

Policy CS 8 Housing Choice seeks to ensure the provision of a mix of housing types and tenures at a local level and aims for a borough-wide affordable housing target of 40%.

### **Merton Sites and Policies Plan (2014)**

The relevant policies from the Sites and Policies Plan are as follows:  
Policy DM H3 Support for Affordable Housing seeks to secure affordable housing in accordance with Core Planning Strategy Policy CS 8 with a tenure split of 60% social and affordable rent and 40% intermediate rent or sale

### **Merton draft New Local Plan**

*Build to Rent schemes are a form of purpose-built long term rented accommodation in-block ownership and management, which could help to accelerate the supply of homes and support labour market mobility.*

*Draft policy H4.7.*

Build to Rent schemes must meet the draft London Plan policy H13. The supporting text to the policy identifies that Build to Rent schemes must provide at least 50 units in accordance with the requirements of draft London Plan policy H13.

### **Merton Strategic Housing Market Assessment (July 2019)**

Merton's Strategic Housing Market Assessment (July 2019) (SHMA) highlights that the Build to Rent sector provides the opportunity for good quality, well managed rental accommodation that is purpose built and provides the opportunity to boost overall housing delivery, as it does not compete directly with traditional housing development schemes which are built for sale.

## **4. Planning considerations – Tenure mix and affordable housing.**

- 4.1 To provide context to the assessment below; across the last three years (2015 – 2018), in Merton an average of 14% of all new homes delivered within the borough that have been affordable. This is significantly below the target 40% set out within the Core Strategy and Local Plan, demonstrating a significant undersupply of affordable housing.
- 4.2 In terms of affordable housing tenure, in the year 2017/18, Merton delivered only 7 social rented units, with the remainder of affordable housing being

intermediate or affordable rented tenures. This equates to only 8% of all affordable housing within the borough being delivered at social rent levels, and only 1% of all new homes delivered within this period. This demonstrates that Merton are failing to achieve its desired affordable housing tenure split with the majority of affordable housing delivered within an intermediate tenure and extremely low social rented units.

- 4.3 Officers would note that on medium sized proposals (schemes of 10-30 units) successfully delivering affordable housing is particularly challenging with an apparent absence of interest from Registered Providers in taking on a small number of units within a scheme. The Merantun approach combining a number of medium sized sites to achieve a larger overall quantum of development (93 units) has the potential to overcome this issue.
- 4.4 The approach to modelling viability has examined individual sites and the sites as a whole acknowledging that the tenure mix proposed to be delivered by the Applicant relates to four sites in the borough with a shared affordable housing strategy. The tenure arrangements require assessment against adopted policy and in the case of the affordable element require scrutiny in terms of viability and whether the proposals offer the best output in terms of affordable housing.

#### Build to rent.

- 4.5 Build to Rent is a relatively new type of housing product in London but is supported by emerging policy at both the local and strategic level.
- 4.6 Across all four sites there will be a total of 62 Build to Rent units which will all be retained and managed by the Applicant. The proposals would provide a portfolio of over 50 Build to Rent units with a unified management. It is considered that the proposed Build to Rent units should be considered acceptable in principle.
- 4.7 The proposals will therefore exceed the minimum requirement of 50 units to be considered Build to Rent in accordance with the emerging policies in the draft Local Plan and draft London Plan. Across the sites the proposals would deliver good quality new dwellings for the rental market within accessible and sustainable locations and meeting an identified need within Merton's SHMA.
- 4.8 Officers consider that the other relevant criteria from draft policy H13 can be secured (where relevant) via an appropriate legal mechanism.

## **Affordable house, build to rent and viability assessment**

- 4.9 In seeking affordable housing provision the Council's policies note that it will have regard to site characteristics such as site size, site suitability and economics of provision such as financial viability issues and other planning contributions. The package provides an opportunity to assess combinations of tenure arrangements both at a site level and collectively. The applicant proposes a linked delivery plan in terms of viability and the provision of on-site affordable housing
- 4.10 The viability of each site has been appraised separately in Bespoke Property Consultant's assessment, but the conclusion of each viability report also refers to the overall viability of the four sites taken together. This four site scheme, when viewed in its entirety, has an affordable housing provision of 22.5% of the 93 units and, therefore, is only one unit less than the policy compliant figure of 22 affordable rented units".
- 4.11 The Council appointed an independent assessor to review the applicant's Financial Viability Assessment put together by its advisors Bespoke Property Consultant. A summary of the assessors conclusions are as follows:

### Farm Road:

In summary we can conclude that the proposed BtR/market sale development does not generate any surplus over the Benchmark Land Value to fund affordable housing on site or to provide any financial contribution. However, the Build for Sale alternative, were it to be pursued, would derive a land value that would closely match, but still be slightly below, the Benchmark Land Value.

### Madeira Road:

In summary we can conclude that the proposed BtR development does not generate any surplus over the benchmark land value to fund affordable housing on site or to provide any financial contribution. Even the Build for Sale alternative, were it to be pursued, would still have a residual land value below the benchmark land value and, therefore, would not be able to viably support any affordable housing on the site.

### Elm Nursery Car Park:

In summary we can conclude that the proposed Affordable Rented development provides 100% Affordable Housing. The Build for Sale alternative, were it to be pursued, would have a residual land value below the Benchmark Land Value but with no affordable housing.

### Raleigh Gardens Car Park:

In summary we can conclude that the proposed BtR development does not generate any surplus over the benchmark land value to fund affordable

housing on site or to provide any financial contribution. However, the Build for Sale alternative, were it to be pursued, would derive a land value that closely matches the Benchmark Land Value, but again with no significant surplus to viably support any affordable housing.

- 4.12 Advice from the independent assessor is as follows:  
Based on our understanding of the local market and desktop research of comparable developments recently sold in the postcode area, we therefore conclude that the values assumed by the Applicant are reasonable. We have therefore applied the Applicant's proposed values as part of our viability testing.
- 4.13 In performing this assessment, the assessors have considered the assumptions used in the Applicant's RLV calculation and how they compare to industry benchmarks and current economic factors and evidence. Whilst there are some variations in the inputs and assumptions applied, the overall conclusion is aligned to that of the applicant. The assessors therefore recommend that Merton Council seeks the 22.5% affordable housing proposed by the Applicant on the Elm Nursery site based on 21 homes for London Affordable Rent (13 x 1 bed flats and 8 x 2 bed flats) secured via a s106 agreement linking all 4 sites.
- 4.14 The independent assessors recommend that Merton apply the viability review mechanisms at early and late stages of development, as outlined within the Draft London Plan and Mayor's Affordable Housing and Viability SPG. In accordance with the SPG, specific provisions should be included for the Build to Rent homes including clawbacks (i.e. the appropriate clawback amount will be the difference between the total value of the market rent units based on the viability assessment at application stage) and a covenant that the homes are Build to Rent for at least 15 years.
- 4.15 Although the examination of the viability appraisal demonstrates that higher affordable housing target cannot be delivered across the four sites, the proposed 22.5% offer of Social/Affordable Rent generally provides a policy compliant level of social/affordable rented units (i.e. just under 60% of 40% of total units). As such, it is only the intermediate housing which is not being provided across the sites.
- 4.16 Overall, the proposed 22.5% affordable housing offer (100% Social/Affordable Rent) will assist in meeting the identified affordable housing demand in the borough. The independent review confirms that no further affordable housing could reasonably be delivered across the four sites without severely compromising the deliverability of the schemes. The need for social housing is considered to outweigh the need to deliver intermediate housing, and make a contribution to a tenure type where there has been under-delivery of social housing within Merton.
- 4.17 Viewed as a package of proposals in terms of its delivery of different tenure arrangement and in particular that of social rented housing it is considered that the proposals collectively fulfil the objectives of both local and metropolitan planning policies and guidance.

**5 Delivery mechanism including planning conditions and legal undertakings.**

- 5.1 The relationship of Merantun (a private limited company registered with Companies House) to Merton Council, which has set up Merantun, is such that it presents challenges in terms of the format of any legal undertaking or other mechanism to regulate the development so as to deliver the package of all 4 proposals comprehensively along with the provision of affordable housing and any other planning benefits.
- 5.2 Advisors for the applicant consider that there would not be any impediment to them entering into a Section 106 legal agreement with Merton Council. Officers have however sought advice from the Council's Legal services.
- 5.3 Section 106 obligations have to be entered into by the landowner of the property concerned, which is frequently not the applicant for planning permission, and it is established that where a local authority is also the landowner it cannot make an agreement in its two capacities as property owner and local planning authority. Although a local authority performs many different functions it is one corporate body and the basic legal principle is that an individual entity cannot make a contract with itself.

Options.

- 5.4 An option is that Merton could consider a Grampian condition linked to the subsequent completion of section 106 immediately following the land transfer - linked to a restriction on the Land Register restricting registration of the purchasers title until the Council have certified the section 106 has been completed. A condition could be imposed on the planning permission that precludes a material start being made until an obligation or other arrangement agreed with the Council (this in practise means an agreement under section 106 and section 16 of the 1974 Act) has been completed.
- 5.5 An alternative might be that the planning authority simply requires a section 106 agreement, and as the Council is also the local planning authority and cannot contract with itself, so there is a "shadow section 106 agreement" in place following the grant of planning permission. A shadow section 106 is a non-legal document but is an indication of what is expected by the council as a local planning authority in satisfying the conditions of the planning permission so referring to a non-legal document is difficult. The shadow section 106 would be the form of section 106 agreement that would be signed up to if the council sold to a developer so that the developer built out and completed the development.
- 5.6 Notwithstanding the above, officers are of the view that a suitable and binding legal mechanism can be configured and that the absence of this being fully resolved with the applicant at this time should not be an impediment to members resolving, if they are so minded, to approve the 4 schemes.

## **6 Summary and Conclusions.**

- 6.1 The proposals collectively provide a diverse tenure mix including tenures supported by both adopted and emerging policies.
- 6.2 Collectively the proposals would deliver a quantum of social rented affordable housing for which there is a both a measurable need and which has been challenging for the Council to secure delivery, at a level comparable with the percentage of units for such a tenure that would normally be required in order to address policy requirements were all the sites to be considered together.
- 6.3 The 4 applications have been submitted as a single linked development programme. The viability appraisal has been independently assessed and the level of affordable housing to be delivered is the maximum that can be delivered while ensuring the package of 4 schemes remains viable.
- 6.4 When viability is modelled for individual sites the schemes would be likely to fail to deliver affordable housing.
- 6.5 A suitable legally binding mechanism is required in order to ensure delivery and while not fully resolved this should not impede determination of the applications.

### **Recommendations.**

- 1. Affordable housing and tenure mix:**
  - That the approach to delivery be supported in order to deliver affordable housing.**
- 2. Other planning matters:**
  - See individual reports.**

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