



MERTON'S DESIGN REVIEW PANEL Submission to Sustainable Communities Overview and Scrutiny Panel February 2021

1. Mitcham Cricket Green Community & Heritage takes an active interest in the future of the Cricket Green Conservation Area and its environs. We are the civic society for this part of Merton and part of the wider civic movement through membership of the national charity Civic Voice. We have been closely involved in the development of the Merton Local Plan, Borough Character Studies, the Conservation Area Appraisal and Management Plan and numerous development proposals in the area. Our approach to development and change in the area is established in the Cricket Green Charter which was refreshed in 2019 with the support of London Borough of Merton and local councillors (<https://mitchamcricketgreen.org.uk/cricket-green-charter/>). The Charter has been acknowledged in the Conservation Area Appraisal and Management Plan for Cricket Green. We have also contributed to production of the Merton Heritage Strategy as a member of the former Merton Heritage Forum. We are members of The Canons Steering Group delivering a £5m Lottery funded project and also undertake practical projects, organise walks and run Mitcham Heritage Day and Community on the Green.
2. We welcome the Panel's focus on the performance of the Design Review Panel (DRP). The DRP's effectiveness has a major influence on the quality of new development and we strongly support the contribution effective, independent design review can play to improving design quality. A DRP is most effective when it functions alongside other design management tools and processes as part of a concerted effort by a local planning authority to establish high design expectations and support their delivery. With a renewed focus on design in national policy and in the new London Plan and with a new Merton Local Plan in the pipeline it is an opportune time to refresh the approach to design review.
3. This note draws on our practical experience of working with the DRP for more than a decade and makes proposals for improving the way it works. From discussions with others involved with local planning issues we believe the matters raised go wider than the experience in and around Mitcham.
4. The DRP is currently not fit for purpose and needs significant change. Merton is unusual in not having signed up to the Mayor's [London Quality Review Charter](#) and its approach is not consistent with the approach set out in [Design Review Principles and Practice](#) (Design Council et al, 2013/19) which is recognised as the industry standard. Fundamentally, we believe the root cause of the DRP's problems stem from a deep seated culture that views the role of the DRP as a closed group of behind-the-scenes advisors that stands separate from normal standards of public scrutiny or engagement. This is evident in many of the behaviours we have seen when issues have previously been raised. This note identifies a series of practical issues with how the DRP operates, each of which needs to be addressed to overcome this fundamental problem and to achieve the changes that can make the DRP fit for purpose.
5. We identify the following issues for the Overview and Scrutiny Panel's consideration:

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Probity

6. Missing Terms of Reference – The DRP does not have any agreed Terms of Reference. We were provided with these [draft Terms of Reference](#) dating to 2006 in response to a FoI request. They are clearly inadequate, incomplete and do not address the reality of how the Panel operates (eg. Merton Council does not have a “Design Champion”, there are members whose term significantly exceeds 5 years, and the Panel does not “*maintain an overview of urban design and architecture issues and to make recommendations for action where appropriate*”).

7. Membership, recruitment and conflicts – The membership of the DRP is not published online. A FoI request for a list of members was refused. The names were only released following [Internal Review](#). The information provided in response to the FoI was just a list of names. It gives no information on which to judge the qualifications or range of skills and experience which DRP members provide. The membership of the DRP is still absent from Merton Council’s website. Publication of this basic information should be the norm, as here for [Lambeth](#). We have been unable to obtain a role profile for members. It is unclear whether or how members are openly recruited and the process of membership renewal is at best opaque. Some members of the DRP have served for at least 13 years with no evidence of any renewal process. A number of members of DRP have significant undeclared commercial interests with new development in Merton and the processes for managing these conflicts are unclear. There is no register of developments, proposals or plans in which DRP members or the organisations they work for have been involved in the past or which are ‘live’ in the borough.

8. Chairing – Merton is an extreme outlier in local government in having the Chair of its Planning Applications Committee as Chair of its DRP. This is unhealthy and unhelpful and creates the potential for reputational damage, conflicts of interest and even legal challenge. In considering whether it is appropriate to include councillors on DRP a recent GLA supported review of design review in London concluded “*Most felt that such practices should be avoided*” ([Reviewing Design Review in London](#), 2020). The situation is exacerbated by the internal rules governing potential conflicts at Planning Applications being more honoured in the breach than the observance – Part 5F of Merton’s [Constitution](#) is clear:

4.4 Members of the Design and Review Panel (D&RP) and the Planning Applications Committee (PAC)

4.4.1 It is acknowledged that some members of the PAC are also members of the above Panel and that on occasions as part of the consultation process the Design and Review Panel [sic] will consider and comment on the design aspects of a proposed application prior to the application being considered by PAC. These members may participate in the discussion at D&RP but shall not vote on any issues arising and shall formally disassociate themselves from any conclusion reached by and/or any recommendation made by the D&RP whether by vote or otherwise. This is because, as these members acknowledge when the item comes before PAC for its determination, their duty in law is to consider impartially and with an open mind all material considerations arising including those relating to design and conservation matters

4.4.2 These Members will be required to make a statement at the start of the meeting, acknowledging their obligations in these respects both at D&RP and PAC. These statements will be minuted.

9. An abbreviated form of this advice is included in all Planning Applications Committee Agendas:

Declarations of Pecuniary Interests – Members of the Design and Review Panel (DRP)

Members of the Planning Applications Committee (PAC), who are also members of the DRP, are advised that they should not participate in an item which has previously been to DRP where they have voted or associated themselves with a conclusion reached or recommendation made. Any member of the PAC who has also sat on DRP in relation to items on this PAC agenda must indicate whether or not they voted in such a matter. If the member has so voted they should withdraw from the meeting.

10. Although practice has improved marginally recently it has been a regular feature of Planning Applications Committee meetings that despite these requirements DRP members have voted on applications and have not made minuted statements at the start of the meeting. The recent permission for the expansion of Melrose School illustrates the point:

- DRP 30 July 2020 - chaired by Linda Kirby
- Planning Applications Committee 22 September 2020 - chaired by Linda Kirby – no reference in minutes to her role on DRP and clear evidence (below) of her voting (in favour)



11. We note that chairing is also sometimes undertaken by the Head of Future Merton (e.g DRP 29/5/18). An officer chairing DRP also raises significant issues about independence and impartiality.

12. Secretariat – The DRP needs a new approach to support to avoid conflicts, provide independence and ensure administrative efficiency:

- *Conflicts and independence* – The DRP is supported by a Merton Council officer who is the only member of staff employed as an “urban designer” (Paul Garrett). In this role he selects the schemes to be considered by the DRP (possibly in discussion with the Chair) and writes the official record of the meeting. Observers of DRP meetings will also see that the lead officer influences the way decisions are taken, especially in relation to the decision as to whether to record a Red, Amber or Green score. The meeting notes have been regularly criticised for providing a partial record and putting undue emphasis on some views. The same officer also provides the only professional design advice on planning applications to planning case officers. This creates conflicts for planning officer when reaching planning decisions/recommendations as they are informed by views mediated and provided by the same officer acting in two different capacities.
- *Administrative efficiency* – The public face of DRP’s operations is notoriously unreliable. Even subscribers to Merton Council’s online notification service are frequently not informed of meetings or informed at very short notice. Accessing documents online is tortuous. Links have been found to be password protected or simply not working and documents are buried deep within Merton Council’s

website requiring multiple clicks to reach them. Schemes in Conservation Areas have been notified to DRP as not being in Conservation Areas and schemes affecting nationally listed buildings as not affecting them. Officers have illegally blocked the filming of meetings and had to be reminded of public filming rights by Democratic Services.

Operations

13. Scheme selection – There is a lack of clarity over how schemes to be reviewed by DRP are selected. Some major proposals have not been reviewed, including hugely controversial plans to develop a block of flats on Metropolitan Open Land at Imperial Fields, described in excoriating terms as an “*office block in a car park*” by Merton’s design officer. We have welcomed the decision to review some schemes at our request and propose this approach is developed further. This move will be assisted if established local community groups are also notified of all pre-application discussion initiated with Merton Council. Support for greater pre-application discussion is strongly advocated in national planning policy.

14. Member selection – There are many more DRP members than attend any individual meeting. This can be a strength by allowing the experience of those attending to be tailored to address the key issues that relate to a particular scheme. There is, however, a lack of clarity over who makes the selection on who to invite and examples of important schemes where key capabilities in DRP members have not been present – e.g. DRP’s review of the proposals for a new Mitcham Bridge lacked any member with civil engineering experience despite the project being so significant as to be registered on the Infrastructure Projects Authority’s major schemes list for the country.

15. Meeting by e-mail – We were shocked to find the DRP conducting its business by email rather than Zoom following the introduction of social distancing restrictions in March 2020. The review of the development plans for the former KwikFit site on March 25 was undertaken by email. This prompted a [joint letter](#) from us and the architects for the development expressing concern that conducting design review by email works against the:

- opportunity for the applicant to explain their design thinking and answer any questions
- chance for a shared panel view to emerge through discussion
- ability to correct any misconceptions such as if the panel suggests something that has been explored and discounted
- transparency of applicants and officers hearing the panel’s view emerge during the meeting
- scope for the chair to moderate the discussion, especially if different views are expressed, or points are unclear
- process for arriving at a shared outcome (Red/Amber/Green) among independent members, leaving it to officers and members who are also responsible for advising on and determining the application
- ability of the public to observe and record proceedings in those instances where a planning application has been submitted.

16. We were reassured by the response from the Head of Future Merton that “*there was never any intention of a permanent change to e-mail reviews*” and that “*the Panel will be using Zoom to run Panel meetings in the future*”. Remarkably, despite this assurance, further email reviews have been undertaken including the plans for Mitcham Bridge. Securing access to these emails has only been possible through the use of FoI requests even where the meeting would have otherwise been held in public.

17. DRP sub-groups – The DRP’s consideration of the large scheme for 850 homes on Benedict Wharf spawned the creation of a sub-group. Details of this sub-group were not made public. It is unclear who chaired the meetings as the DRP chair was not present.

We have significant reservations about this approach which risks crossing the line between the DRP providing an independent critique and it offering coaching and support to prospective developers. If the DRP is to have different modus operandi then these should be clearly set out in the terms of reference and the same requirements for transparency and openness should apply.

18. Publication of reports – Officers have committed to providing copies of DRP reports on Planning Explorer when a planning application is submitted. This commitment is more honoured in the breach than adherence and such reports are provided only exceptionally. A number have been obtained only after FoI requests and some of these requests have been refused. The time taken to access documents via FoI also limits public access to these key documents during the period of public consultation on planning applications. It is not sufficient to rely on the applicant's interpretation of how they have responded to DRP reports when considering planning applications. All DRP reports should be published along with pre-application advice when a planning application is posted on Planning Explorer. The display materials used at DRP meeting should also be published.

19. Public attendance – We are aware that it is considered normal for DRP meetings reviewing pre-application schemes to be held in private. This is despite growing evidence of the value of early community engagement and this has strong Government support:

"Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot."

(National Planning Policy Framework, paragraph 128)

20. There is nothing to prevent Merton Council taking a lead and expecting developers to hold reviews of pre-application schemes in public and encouraging them to do this.

21. Officers have previously committed to all development being undertaken by Merton Council as the applicant being reviewed in public at pre-application stage. This is another commitment more honoured in the breach. Despite being reminded of this commitment the plans for Mitcham Bridge and the four Merantun schemes were all discussed behind closed doors.

22. Traffic lights – Merton Council is unusual in relying on a simplistic Red/Amber/Green traffic light rating to communicate the outcome of a DRP review. It is normal practice in other local authorities for Planning Application Committee members to receive the full DRP report as part of their consideration of planning applications.

23. We find the traffic light system is regularly distorted and the meeting notes frequently seek to blur the process, including describing schemes as *"almost a green"* and putting a veil over more critical comments. If a traffic light system is used then it should be used properly and schemes given only one of three ratings. No scheme is *"almost"* any of the three options.

24. In our experience are gaming the traffic light system, especially where a scheme is reviewed more than once. For example, an applicant may present their plans after receiving an Amber rating. The Panel will then give more advice and identify changes they want to see and in so doing provide a Green rating because they are of the view

that they are being listened to and changes will be made. In reality the applicant runs with the Green rating but doesn't make any changes as a result of the DRP's advice at the second meeting. The Green rating is what is seen by the Planning Applications Committee and permission is granted for an inadequate scheme.

25. Supporting measures – Design review works well as part of a package of measures intended to improve design quality. As Government policy says:

"Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for Life."

NPPF, paragraph 129

26. Merton is singularly lacking in these and makes very little use of masterplans, design statements and design codes. It also lacks any community review mechanism and does not take advantage of Building for Life.

Recommendations

27. We recommend the following proposals to the Scrutiny Panel:

Probity

- Sign up to the London Quality Review Charter
- Review and agree revised DRP Terms of Reference following public consultation and publish this at the DRP section of the council web site
- Publish details of DRP membership, including date of appointment and relevant employment, qualifications, skills and experience
- Publish a role profile for DRP members
- Undertake open recruitment for all new DRP members
- Maintain a public register of DRP members potential conflicts of interest
- Implement succession planning so that no member of DRP serves for more than five years without formal review and renewal
- Appoint an independent Chair and allow members of Planning Applications Committee to attend DRP meetings only as observers
- Provide the DRP's Secretariat from the Democratic Services Team
- Remove the dual function of an officer providing both professional design input on planning applications and servicing DRP
- Require all DRP meetings and papers to be included on Merton's email alert at least five working days before each meeting and make them accessible within three clicks
- Require all DRP reports to be signed off by an independent Chair

Operations

- Enable all established local community groups formally to propose schemes to be reviewed by DRP, supported by their automatic notification of pre-application discussions
- Recommit to holding all pre-application reviews of Merton Council's own development in public
- Introduce a presumption that reviews of all pre-application schemes will be held in public with only exceptional departures
- Require all DRP meetings to be held online or in person and never by email
- End the practice of DRP sub-groups behind closed doors and set out the DRP's modus operandi in its Terms of Reference with common requirements for transparency and openness

- Require reports of all schemes reviewed at DRP to be published on Planning Explorer at the point any subsequent planning application is registered, including where schemes have been amended. Notes of pre-application meetings should also be posted
- Publish all display material used at DRP meetings alongside meeting notes
- If the traffic light system is retained require all schemes to be rated in only one of three ways - Red, Amber or Green
- Strengthen the complementary measures to improve design quality including regular use of community-led design codes and masterplans and by introducing Community Review mechanisms
- Review the potential for establishing design review arrangements supported by an independent secretariat with DRP members in receipt of a meeting fee

28. We conclude with an extract from *Reviewing Design Review in London* prepared for the GLA and others in 2020 which resonates with many of the issues faced by Merton's DRP:

The need to be transparent and accessible

The principles of design review encompassed in *Design Review, Principles and Practice*¹ state that design review should be: independent, expert, multidisciplinary, accountable, transparent, proportionate, timely, advisory, objective and accessible. These are reinforced in the *Mayor's Design Review Charter*.

The research showed, however, that the majority of panels are not 'transparent' or 'accessible'. Whilst there were often very good reasons for being more closed in style, it is clear that there was a cost to this in the reputation of panels and to the process at large. Given that some panel hearings are already far more open than others, without obvious damage to their processes, levels of engagement or reputation, a greater degree of transparency should be the norm.

If design review is to be demonstrably seen to be conducted in the public interest, then the closed nature of many panels needs to be reversed.

The need for a learning culture

There is also a need to be less secretive and better at sharing the experiences and practices of design review between panels and across the sector. Such a learning culture will benefit everyone involved in design review. This report represents a start to that process.

A learning culture should begin by establishing robust mechanisms for securing feedback on how local design review practices are operating. Currently this is a neglected aspect of most design review services. It might include:

- i) Feedback from service users to those managing design review on their experience
- ii) Feedback to the panel members on how their recommendations are being used and on the effectiveness of the service
- iii) Feedback to the public about design review services, about the role of design review and its impact.

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