## Sustainable Communities Overview & Scrutiny Panel

## 22 February 2022

Wards: Borough-wide

## Review of Merton's Design Review Panel

Lead officer: Chris Lee, Director for Environment & Regeneration

Lead member: Cllr Martin Whelton, Cabinet Member for Housing, Regeneration and the Climate Emergency

Contact officer: Paul Garrett, Urban Designer and DRP lead, Future Merton

**Recommendations:**

A. That the Panel note the progress made on the review of DRP and the consultation undertaken with the panel members.

B. That the Panel agree the draft Code of Conduct for DRP – to be agreed subsequently by Cabinet.

C. That the Panel endorse the key changes and way forward for DRP set out in sections 2.13-2.41 of the report – to be agreed subsequently by Cabinet.

| 1 | PURPOSE OF REPORT AND EXECUTIVE SUMMARY |
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1.1.     On 23rd February 2021, officers presented to the plan, a summary of the planned review of Merton's Design Review Panel (DRP). Members of the Sustainable Communities Overview & Scrutiny Panel agreed that;

1.2.     The review of DRP will provide a new code of conduct for all DRP members and would include key changes to the structure and operations of the panel.

1.3.     The transition to virtual meetings has worked well and is preferred by officers, panel members and applicants. This has also allowed for recordings to be uploaded to the Council's You Tube channel (for non-pre-app items that are reviewed in public)

1.4.     The review would also include an improved a method of recruitment and a recruitment pack which is along the lines of those produced by the private providers and other design review panels.

1.5.     Officers in Future Merton committed to bringing the review back to scrutiny following consultation with DRP members. This report provides the panel with an update and direction of travel prior to any decision making on the future operations of Merton's DRP.

| 2 | DETAILS |
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**Background**

2.1.     Merton's Design Review Panel was set up in 2007 by the then Design Champion Councillor John Bowcott.  At this time Panels were just emerging as a tool councils could use to help improve design quality.  **Appendix 1** is the presentation given to the Sustainable Communities Overview & Scrutiny

Panel on 23 February 2021 and outlines much of this and the proposed way forward with the review of the Design Review Panel (DRP).

2.2. On 16 April 2021 officers first consulted Panel members on proposed changes to the operation of the DRP. The documents outlining the proposals which were sent to Panel members are at **Appendices 2, 3 and 4**. In February 2021 data on the Panel was only available until the end of 2019. This has now been updated.

2.3. The Merton DRP has been running continuously for 15 years. It has undertaken 302 reviews for 195 different sites. Proposals for 110 of these 195 sites (56%) have now been implemented, are under construction or have been adopted. Reviews give a RED, AMBER or GREEN verdict and the distribution of verdicts: is Red = 59 (21%), Amber = 151 (53%), Green = 74 (26%).

**Policy Context for Design Reviews**

2.4. The policy context has changed considerably since 2007. Instead of changing incrementally over the years, the Panel now needs to make more fundamental changes. The policy context is set out in the presentation at **Appendix 1**.

2.5. The key documents are the National Planning Policy Framework (NPPF) which requires access to design review; The London Plan 2021 which gives a more significant role for design review; The London Design Review Charter 2022 (formerly the London Quality Review Charter); Reviewing Design Review in London (research leading to the Charter); and from Design Council/CABE: Design Review Principles and Practice. Weblinks for these documents are included as background papers at the end of this report.

2.6. A summary of the key themes that have evolved as design review became established and enshrined in planning policy are that there is increased public interest and scrutiny in design review; private companies offer design review services, design review has become the norm for most London boroughs and it is accepted and generally valued by the development industry and councillors; design review has become more professional and well organised with most panels paying panellists and charging applicants for design review services

**DRP Review 2021**

2.7. When viewed against the current policy context, the Merton DRP needs reviewed in order for it to meet the principles and practice set out by Design Council/CABE and in the new London Design Review Charter. The Panel lacks a comprehensive terms of reference, has no written code of conduct and has no formalised recruitment process. It does not publish annual reviews of its work and does not say who its members are. Although the panel is considered by the council to operate effectively in its interaction with the planning applications process.

2.8. The objectives of the review are to amend the operation of the panel to ensure it operates in accordance with current policy context and guidance and can confidently adopt the London Design Review Charter. Appendices 2, 3 and 4 outline in more detail the proposals put forward for consultation. They are set out below, in summarised form, as detailed in Appendix 2.

<u>**Key Changes**</u>

- **Format, Charging and Payment.** The council will introduce charging for applicants and payment for reviewers and three review formats – Workshop, Full and Desktop.

- **Design Expert Chair.** The council will appoint a design expert chair and deputy chairs as set out in the approved recruitment process.

- **Membership & Review**. The council will refresh membership periodically in order to maintain a workable pool of members with an appropriate and relevant mix of expertise, and this will be undertaken by the Future Merton team and Panel Chair as set out in the approved recruitment process.

- **Recruitment.** The council will set out a process for recruitment and use it to re-appoint the whole DRP membership according to the newly agreed formal, code of Conduct and new Terms of Reference.

- **Terms of Reference & Code of Conduct.** The Council will produce a new, up to date Terms of Reference and Code of Conduct.

<u>**Operational Changes**</u>

- **Timing and number of reviews and reviewers.** Reviews will take place during the working day with a maximum of three reviews per meeting, and a reduction in the number of reviewers, to five plus the Chair.

- **Meeting format.** The meeting format for a full review will be changed so that reviews for each proposal will take one hour. This will consist of a five minute briefing by the case officer/panel administrator, a 15 minute presentation by the applicant, a 30 minute review session and a 10 minute summary and verdict administered by the chair. Workshop and chair's reviews will have their own formats and chair's reviews are likely to be shorter. The agenda and format for each item will be agreed beforehand by the chair and administrator based on the nature of the proposal.

- **Web-based meetings.** All full reviews will be held by electronic means using the Zoom application or similar. They will include the administrator and an additional staff member to manage the meeting. A separate protocol on how this will be done will be included in the terms of reference. The council will also use other means of holding meetings as and when considered suitable, including e-mail and face-to-face meetings. Workshop meetings will be held face-to-face when possible as this involved a smaller number of people and is more practical.

- **Notes of Meetings.** As set out in the proposed Code of Conduct, notes of Panel meetings will be written as a collective view of the Panel as a whole, which represents an objective summary of the review and is signed off by the Chair. This is in accordance with good practice, and how other independent companies such as Design SouthEast, DC CABE and Frame operate. It provides applicants with clear and unambiguous guidance, and guards against cherry picking by applicants and grandstanding by reviewers.

- **Permanent Members.** The practice of permanent reviewers who attend all meetings will be discontinued.

- **Verdict**. The current Red-Amber-Green verdict given at the end of DRP meetings will be changed to a four-stage verdict, namely Red – Amber (towards Red) – Amber (towards Green) – Green.

- **Scheme Identification.** A new more structured procedure will be set up to identify proposals suitable for review. All pre-applications, when they are received, will be marked as either suitable or not suitable for design review based on a set of agreed parameters.

- **Timing of reviews.** Proposals at application stage will not be reviewed unless they have previously been reviewed at pre-application stage. Proposals will not be reviewed until after a pre-application meeting has taken place.

- **Review as part of the Planning Process.** Panel members' comments should sit within the planning policy context. All internal officer comments – where they exist – will be included in the information pack for reviewers

- **Public Realm Schemes.** Major public realm and highways projects proposed and implemented by the council will be reviewed by the DRP at development stage in the workshop format. A schedule of planned projects will be produced and appropriate schemes selected for review.

- **Planning Policy Documents.** Design related planning policy documents produced by the council will be reviewed by the Design Review Panel at an appropriate time in their consultation process.

- **DRP Webpage.** The DRP Webpage will be updated. It will include downloadable copies of the new Code of Conduct, Terms of Reference and Member profiles and a fuller explanation of what the Panel is and does. It will be redesigned to automate and make more efficient the process for applicants submitting documentation for reviews. As the DRP is not a council committee, the DRP webpage will be the single point of contact for all DRP matters.

- **Review.** The working of the Panel will be reviewed annually in the form of a short annual report. To help in this, forms will be produced to aid presentations and provide feedback and for other purposes where deemed beneficial.

2.9.     A draft Code of Conduct and Recruitment Process have also been prepared and were consulted on. These are detailed at Appendices 3 and 4 respectively

**Consultation Response**

2.10.    The response rate from Panel members has been good. Out of 20 Panel members, 15 have provided a response. The responses ranged from a few sentences to several pages of views. The full responses are included at **Appendix 5**.

2.11.    Generally speaking, a strong majority of Panel members were in support of the majority of the proposals. There was only one respondent whose views were markedly different and contrary to other responses. Whilst there were

many valid points made by this respondent, a number of the key views were contrary to good practice. However, some of the underlying reasoning was sound and has been taken on board in the proposals.

2.12. Rather than go into detailed analysis of the pros and cons of all respondents comments and attempt to summarise these, this report uses the structure of the consultation document and its headings to describe to readers how the proposals have changed or otherwise, based on respondents views. This is set out in the next section below.

### The Proposals – the way forward

2.13. **Format, Charging and Payment.** The proposals to charge applicants and pay Panel members will remain. A suggested pricing arrangement is included at **Appendix 6**. This is based on a thorough survey of the arrangements in other London Boroughs. The remuneration for Panel members is nominal and very similar across London. The charging for applicants varies widely and the figures are set at the lower end of the range.

2.14. The Panel often reviews smaller proposals and this is seen by Panel members as a good thing. It has been suggested that smaller scale proposals should either not be charged or be charged less. This is considered a good idea and suitable amendments will be made to either lower prices for smaller schemes or set a quantitative threshold below which there will be no charge. This may have financial implications for the cost of the Panel, which are discussed in Section 6 below.

2.15. The three proposed review formats will remain. See below regarding use of online meetings in this respect.

2.16. **Design Expert Chair.** The majority of respondents supported this, and it is good practice for a range of reasons set out in Reviewing Design Review in London. It is also proposed that the Chair write the review notes. However a few points were raised regarding this. It was considered important that the Chair's views did not dominate the notes and that the role of the chair should ensure a rounded view of the comments of the Panel as a whole. This is a valid point and will be written in to the role of the Chair in the code of conduct and recruitment process. There was also a point about the awareness of the DRP by elected members so it is recommended that the role of the Chair will include guidance on their relationship with the Chair of the Planning Applications Committee.

2.17. **Membership & Review.** No changes are suggested to the proposals. They set out a more structured and formal approach which will need to be adhered to. A written plan with timetable for different types of membership reviews should be prepared as a reminder to officers.

2.18. **Recruitment.** Proposals for this were well supported with only a few comments for minor changes to qualifications. The proposals will be written up into a full recruitment pack similar to those used by private design review companies.

2.19. **Terms of Reference and Code of Conduct**. This was also well supported by respondents. Some comments have been made regarding some details

which will be added and the document clarified and simplified where possible.

2.20. **Timing and number of reviews and reviewers, and meeting format.** With the use of Zoom, meetings now take place during the day and this is supported by almost all respondents. Remuneration will help to maintain good attendance, which inevitably slips when the day job takes precedence. There was no objection to reducing the number of reviewers at meetings. However, many respondents expressed concern about the short amount of time given to reviews compared to other Panels, where there were usually conducted site visits and only one scheme was reviewed at a time.

2.21. As a result, some changes are suggested to the consulted proposals. Part of what is valued by Panel members is that smaller schemes are reviewed, and the Panel has worked very efficiently in undertaking over 300 reviews in 15 years, an average of 20 per year. Small development sites are the norm in Merton and it is these sites that the council is reliant on to achieve its housing targets. They are often on difficult sites and it is important that design quality and scrutiny is high. The recently adopted Small Sites Toolkit is evidence of the importance of these sites.

2.22. Meetings will take place during the day. The time available for each review will be extended to 1.5 hours with a maximum of 2 reviews per sitting. Case officers will be expected to attend and summarise the issues from a planning perspective. Organised site visits only really work well when only one scheme is reviewed per meeting, so an alternative is proposed. It is proposed that Panel members should visit the sites themselves independently and that the applicants should also present their own virtual site visit. This increases flexibility for panel members, applicants and takes less time out of the day.

2.23. The proposals did not fully address the scheduling of meetings. Bi-monthly meetings with pre-prepared attendance lists are not very responsive to applicant needs (especially when paying) and do not always ensure the right skill set for assessing specific schemes (though tis is more difficult when meetings review more than one scheme). There needs to be more flexibility regarding this within the resources of the council. It is therefore recommended that the Panel will 'ghost schedule' one meeting per month and populate this with schemes as they become available for review.

2.24. Meeting attendees should also be decided suitable to the schemes being reviewed in terms of skill set, so it is proposed to decide attendees on a meeting by meeting basis. This is only likely to work well with a significantly larger Panel membership of approximately 30 members. This is similar to how many other panels work.

2.25. This approach will also be influenced by the proposal to have three different types of review and whether these are held online or in person. This is just another variable that makes the previous forward programming approach impossible to retain. An example might be that in one month there may be three schemes that each require a different format of review. These will need to be scheduled efficiently in terms of both officer time and applicant convenience. Other proposed changes to the DRP are therefore important

in making it more efficient to administer, not least more structure and automation through the DRP website.

2.26. **Web-Based meetings.** In general the respondents felt that the transition to web-based meetings via Zoom had worked well, but it was felt that there were also clear benefits to face to face meetings. It would also be difficult to organise workshop style meetings electronically. There were also clear benefits with Zoom including no need to find venues so meeting dates could be more responsive, the easy use of PowerPoint style presentations, panel attendance flexibility and the ability to record application reviews and post directly onto the council YouTube channel. It is recommended that for main reviews, Zoom would remain the main method of conducting a review. Workshops would need to be face to face, which is something that may now be possible with the gradual lifting of coronavirus restrictions. Chair's reviews could also remain on Zoom. However, it is proposed to keep this arrangement under review and move to live meetings where possible and if venues can easily be found.

2.27. **Notes of Meetings.** The proposals were generally viewed positively though there were some reservations about the current arrangements that could be addressed more effectively. These revolve around how the notes are prepares, who prepares them and how they are approved.

2.28. A council officer (historically the Panel Administrator) makes notes during the meeting and writes them up, distributing them to panel members for comment. Amendments are made at the discretion of the officer in consultation with the chair and distributed as final notes. If there are any conflicting comments or concerns about proposed changes, the officer consults the chair to arrive at the final version.

2.29. There is concern that is not wholly appropriate and that there is a conflict of interest when the officers involved in writing the notes also comment on the same proposals as the council's design officers. It is easy to address this if the chair is a design expert and panel member as proposed.

2.30. Rather than the chair just 'signing off' the notes, it is proposed that, in conjunction with a clear description of the role of the Chair, the Chair be responsible for preparing their own notes, writing the draft notes, consulting panel members on draft notes, deciding on what changes to make, finalising the notes and distributing them to the panel and applicants. The officers administering the panel will also write notes and give them to the Chair – much as a panel member currently summarised the review verbally for the administrator – in order to aid the chair, given that he/she/they will also be taking part in the review and managing the meeting. Written guidance will also be prepared on how notes are to be written and structured.

2.31. **Permanent members.** There were no objections to ending this practice. It has already ended, essentially by consent and there have been no calls for its return.

2.32. **Verdict.** There has been no clear call for removing the verdict rating, even though Merton is almost unique in London in using it and it is not seen as necessary for good practice. However, respondents have suggested changes and some have agreed with the proposal. What is clear is that

some respondents feel the current system needs refinement and there is some agreement that the amber rating needs changing. There was a suggestion for a points system. What is clear is that some change is needed and the system needs to be simple and easy to use. Therefore the proposed change is recommended to remain and be kept under review.

2.33.   **Scheme identification, public realm and policy document reviews.** There were few comments on this, but it was recommended that the process and criteria for scheme selection needed to be written and clear. This will be done. There was support for the review of public realm and policy documents, however it needs to be made clear that the type pf planning policy documents reviewed should be limited to only those that sit below and support the statutorily prepared Local Plan.

2.34.   **Review as part of the planning process**. This was accepted by all respondents except one, who felt that the Panel ought to comment if they felt planning policy was wrong and needed changing. Whilst useful in terms of input into the preparation of a Local Plan, this is not considered appropriate practice for a DRP.

2.35.   **DRP webpage.** There was little response on the proposals regarding the webpage. However, this section did include reference to the status of the DRP and how public it should be. Some members expressed concern about public attendance affecting what Panel members would say and about intrusion in general.

2.36.   The proposals for the webpage itself are primarily to achieve more efficient management of the Panel so it can operate more effectively and introduce the proposed changes without becoming too time consuming and expensive. to operate. They are also about using it more effectively to add more information about how it operates. This should demonstrate that it is operating appropriately according to the Nolan Principles and the Design Council/CABE guidance. The proposed changes have started but stalled. It is clear that to make the most effective use of the webpage, it will need to be redesigned significantly and this will have a particular cost implication.

2.37.   **Panel Status.** Proposal regarding this are included in Appendix 2 under the *DRP Webpage* title and are reiterated here to better explain the proposals. Responses did not show opposition to the proposals, although there was an aspiration that the Panel notes be as available as possible. The proposals are reiterated and clarified here for members benefit.

2.38.   There is confusion as to whether the Panel should operate as a council committee or not. It is clear from all the documentation and guidance provided on the operation of panels, that this is not the case. It is recommended that this is agreed by the council. Given this, the DRP webpage should be the single point of contact for all DRP matters. Given this, and the other proposed scheduling changes to meetings, DRP meetings should not be posted on the council calendar of meetings and the system of alerts on ModernGov stopped. When the DRP webpage is updated, alerts can be provided for this webpage.

2.39.   A change to the proposals is that the DRP webpage and its administrators will be responsible for making notes publicly available when planning

applications are received.  This will still require some internal administrative changes.  It is felt that this will be more effective.  The practice of pre-application notes confidential is proposed to remain.

2.40.    The council has in the past advised on the recording of meetings, stating that there should be no objection to public attendance and recording of reviews for proposals at the planning application stage.  It is proposed that this approach is modified.  As the public and other interested bodies have no role in taking part in the review process, there is little reason for them to attend if they can view a recording of the meeting.  This approach has been necessary since the coronavirus required online meetings. The practice now is that public observers can attend Zoom reviews with video and audio muted.  Recording is done by the panel administrator and the footage uploaded to the council YouTube DRP page.

2.41.    It is recommended that the procedure is changed for all meetings, whether web-based or in-person.  The point of public accessibility as that the public can see how the review went and have a set of the notes.  It is not therefore necessary for the public to attend any meeting if a recording of it is posted on YouTube.  Therefore, responsibility for recording of in-person meetings for planning application stage reviews should be with the council and the panel administration.

2.42.    **<u>Next Steps</u>**

2.43.    Subject to the views of the Sustainable Communities Overview & Scrutiny Panel (and PAC) Officers shall seek Cabinet approval to endorse the relevant changes required to bring the Design Review Panel up to date and in line with the London Design Review Charter and relevant best practice as outlined in para.2.5 of this report.

## 3    ALTERNATIVE OPTIONS

3.1.    Keep DRP in house – as is (free) but with new terms of reference etc.  This is a possibility but it would not be in accordance with best practice and would hamper efforts to recruit quality reviewers and maintain a high level of attendance

3.2.    To adopt only a selection of the proposed changes propose in this report, based on the committees preferences.  This again would be a possibility. However the ability to successfully implement some changes will be hampered due to the fact that one change often relies on other changes. See point above regarding charging.

3.3.    Not to provide a DRP service at all – its discretionary, but a much valued part of Merton's planning process and has been beneficial in raising the quality of planning proposals in the borough. The service is also welcomed by members of Planning Applications Committee.  Technically it is discretionary but in practice the NPPF states LPAs must have access to design review services.  Therefore one way or another, the needs to be some form of design review service available to the council.

## 4    CONSULTATION UNDERTAKEN OR PROPOSED

4.1.    Please see paragraph 2.2 and Appendices 2, 3 and 4 for details of the consultation undertaken and feedback received.

4.2.    Public consultation is not envisaged as the recommendations and changes are an internal operational matter.

## 5    TIMETABLE

5.1.    Subject to the views of the panel, a report will be presented to the next available Cabinet to approve the changes to DRP. This is now likely to be after the local elections in May 2022.


## 6    FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1.    In order to effect the changes there will be an increase in officer time, which will mean less time able to be spent on other tasks for the period taken to implement the changes.

6.2.    There will be a financial cost if the proposed changes to the webpage are to be implemented effectively.  Although initial work has started on this, it is recommended that a dedicated IT resource is needed to make these changes and this will be funded from existing Future Merton budgets.

6.3.    Reducing charges and making some reviews free to applicants will have a financial implication.  This is difficult to assess as there is no control over what suitable pre-applications come to the council.  Any amendments to the proposed charging will aim to retain a surplus which will cover this and existing officer time in running the Panel.

6.4.    **Appendix 6** is based on 3 reviews per meeting.  However, a range of scenarios were tested.  This set the fees such that even if there were only one item on the agenda, the income from the applicant would always exceed the costs of paying the reviewers.  Fees are based on this and a detailed study of other boroughs fees and costs.  Whilst some boroughs may set fees to provide a surplus to account for officer time in running the Panel, this has not been specifically accounted for in the proposed fees for Merton which are based on cost-recovery rather than profit.

6.5.    Proposals to lower fees for smaller schemes or make some free will clearly have financial implications as it is not proposed to not pay panellists for some meetings and pay them for others.  This can be investigated further, but the overall aim shout be to have a clear, fair and easy to understand charging regime.  The suggestion of lower fees is based on not wanting to have smaller developers refuse to go to review on cost grounds.  The likelihood of this will be investigated before the fees are finally set.

## 7    LEGAL AND STATUTORY IMPLICATIONS

7.1.    The draft code of conduct will be reviewed by Legal services as part of the Cabinet papers.

## 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 purpose of this report

**10      RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1.    None for the purpose of this report

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

- **Appendix 1:** Presentation given to Sustainable Communities Overview & Scrutiny Panel on 23rd February 2021.

- **Appendix 2:** List of Proposed Changes, as circulated to DRP members on 16 April 2021.

- **Appendix 3:** Proposed Code of Conduct, as circulated to DRP members on 16 April 2021.

- **Appendix 4:** Proposed Recruitment Process, as circulated to DRP members on 16 April 2021.

- **Appendix 5:** Responses to the Panel Member consultation started on 16 April 2021.

- **Appendix 6:** Proposed review formats and charging arrangements.

**12      BACKGROUND PAPERS**

12.1.    23 February 2021 presentation to Sustainable Communities Overview & Scrutiny Panel.
https://democracy.merton.gov.uk/documents/s37502/DRP%20Review%20Scrutiny%2023022021%20FINAL.pdf

12.2.    National Planning Policy Framework, para. 129
https://www.gov.uk/government/publications/national-planning-policy-framework--2

12.3.    New London Plan, Policy D4 https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan

12.4.    The London Design Review Charter The London Design Review Charter | London City Hall

12.5.    The London Quality Review Charter
ggbd_london_quality_review_charter_web.pdf

12.6.    Reviewing Design Review in London 60. Reviewing design review (in London) – Matthew Carmona (matthew-carmona.com)

12.7.    Design Review Principles and Practice Design Review: principles and practice | Design Council

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