

Merton Sites and Policies and Policies Plan (the plan) Public Examination

MAIN MATTERS AND ISSUES

6. **Education.** The Council proposes to delete paragraph 3.22 of the justification to Policy DM C2 which deals with the situation in which it is deemed necessary and acceptable for a school to have shared use of a nearby open space. What are the planning reasons for this proposed deletion?
- 6.1 Policy DM C2 *Education for children and young people* in **SP4.1** (Sites and Policies Plan) contains paragraph 3.22 as part of its justification.
- Where it is deemed necessary and acceptable for a school to have shared use of a nearby open space, with the school having sole access to an area during school hours, an appropriately worded legal agreement should be put in place to ensure continued access in the event of the ownership or management of the school or open space changes from that of the council.*
- 6.2 The paragraph was originally written into the Plan before Stage 4 (**SP4.1**) pre-submission consultation to try and add clarity and certainty to the Plan, and to the circumstances where planning decisions have been made which permit a school to have shared use of a nearby open space.
- 6.3 Recent changes to national legislation allow services that were previously run by the local authority to be run by other parties. For example:
- the Education Act 2010 allows for state-funded schools to be run outside local authority control (as Free Schools or Academies)
 - the Localism Act 2011 contains the Community Right to Challenge, which allows community groups and others to apply to run council services such as parks management
- 6.4 These recent changes mean that both schools and council parks and open spaces could change management or even potentially ownership from that of the council. Paragraph 3.22 was added to propose that, should a planning decision have deemed it necessary and acceptable for a school to have shared use of an open space, then a legal agreement should be put in place to confirm the exact circumstances of the use of the open space. Officers considered that such an agreement would be useful in the event of the ownership or management of the school or park changing at a later date.
- 6.5 However, in testing scenarios against this paragraph, officers did not consider some scenarios that were subsequently thought of by representors to **SP4.1** at Stage 4 (pre-submission consultation). Six representations were received at pre-submission publication (Stage 4: July-August 2013) from five different representors challenging the inclusion of this paragraph in **SP4.1**. In the Statement of Representations (**SP4.4**) these representations are numbered R003/C011; R020/C055; R020/C056; R055/C180; R060/C189 and R081/C465)
- 6.6 Subsequent dialogue in September 2013 between officers and representors is included as Appendix 1 to this statement. Representors put forward various scenarios that council officers had not thought of in relation to paragraph 3.22. Following these discussions, the council now believes that paragraph

3.22 isn't helping to create clear policies (NPPF paragraph 154) and therefore in **SP4.3** (*Sites and Policies Plan* with amendment added) the council proposes to delete this paragraph.

Appendix 1 to Main Matter 6

Correspondence on Policy C2, paragraph 3.22 (September 2013)

Extract from SP4.4 Statement of Representations:

Representation R020/C055 and CO56

Dear Sirs ,

I am responding to the invitation to submit representations on the above, and specifically para 3.22 on Page 68 of the Submission Draft Sites and Policies Plan and Draft Policies Map.

"Where it is deemed necessary and acceptable for a school to have shared use of a nearby open space, with the school having sole access to an area during school hours, an appropriately worded legal agreement should be put in place to ensure continued access in the event of the ownership or management of the school or open space changes from that of the council".

It is evident that education is undergoing a number of changes with local authority controlled schools, free schools and academies offering education to a diverse range of interests. The common denominator is that all pupils of these diverse schools are being educated in the borough and the welfare of all children must be a paramount aim of the Council, and of the UK. Policies must therefore offer some flexibility of provision for a diverse range of schools, as existing or as may develop in the future.

The policy is flawed as presented:

- 1) The Localism Act gives communities the right to challenge Councils on the management of council assets. The Council policy appears to ensure that no changes can be contemplated on open space uses and a school has rights which are placed above any other interests within a community. This appears contrary to the provisions of the Localism Act.
- 2) There is no indication of what an "appropriate legal agreement" will be in ensuring access. This might be for 9 years or 99 years.
- 3) What are school hours , between 9 and 3.30? Are Saturday matches held during school hours? The wording lacks precision in its definition of hours and duration of legal agreements.
- 4) If a school makes poor use of a nearby open space why should it continue to enjoy sole access , potentially to the detriment of the space itself, to detriment of other schools and to the use of the space by the local community.
- 5) If the reason for the insertion of this clause is to seek to provide rights for a school such as the Ursuline in its potential use of playing fields in Morley park , why is there a specific policy being written under the guise of a general policy? It is assumed this is not an intent to deliberately pre-empt any agreement on the establishment of a Community Trust . There is a proposal in discussion for a Community Trust to manage Morley Park on which the Ursuline School will be represented as a preferred user. The management of the park and the of sports facilities by the Ursuline does not require such a policy as being promoted.
- 6) The policy lacks flexibility in changing times in education and appears to protect the status quo of existing interests.

I trust it will therefore not be approved in its current wording and will not appear in Council policies.

T Edwards

Additional correspondence in September 2013 after pre-submission consultation on SP4.1

From: Tara Butler
Sent: 04 September 2013 13:17
To: T Edwards
Subject: RE: Merton Draft Sites and Policies Plan

Hi Tony,

Hope you are well and thank you for responding to this consultation.

I'd just like to get back to you to explain some of the reasons behind the insertion of paragraph 3.22 and to try and reassure you that it isn't related to Morley Park / Ursuline.

As you say, education and local authority service provision have the potential for considerable change in how they are provided, and with that comes change in legal status and ownership.

Currently the council usually owns and manages most local parks and most schools in Merton as one legal entity. Until now, if schools have shared council-owned facilities, there hasn't always been a formal agreement between the school, the council and the parks management and any other parties because the school and the council are essentially the same body.

However:

- The Education Act 2010 allows community (council run) schools and others to become academies, without having to seek permission from the council. This can involve the transfer of the school land ownership from the council to the Academy, often by long lease (125 years), sometimes by freehold. There are also other ways of setting up and operating state-funded schools that didn't exist 10 years ago, such as Free Schools
- The Localism Act 2011 allows for the Community Right to Challenge to take over council services, which mean that groups that are separate legal entities from the council could take over some services. This means that a Friends of a Park group, former council officers, a private organisation or anyone could undertake the Community Right to Challenge and potentially run council services such as parks management, planning policy etc.
- In addition, some councils are outsourcing different council departments. For example, LB Barnet's entire Environment and Regeneration department (including planning matters and parks but not schools) will be run by the private consultancy Capita. While I don't think there are plans for this in Merton right now, it is legally an option.

With all these potential variables in ownership and management that may come forward, it is our view that where a planning decision has "*...deemed it necessary and acceptable for a school to have shared use of a nearby open space, with the school having sole access to an area during school hours...*" then there should be a suitably worded agreement in place to clarify the exact situation for everybody – park users, school governors, the council, sports clubs, Friends groups etc.

Whatever agreement is drawn up would be based on the particular needs and level of acceptability identified via the planning decision. This will be different for each situation. I would imagine that the particular needs (need for access, level of access, hours involved etc) of a Special Educational Needs primary school would differ from that of a sixth form college or comprehensive secondary school. It is important to bear in mind that each exact situation would be established through the planning process and decision made for that particular application

The need for this proposed policy approach is originally based on our experience in an entirely different project. Future Merton funded and delivered project which put solar panels on different buildings, including a few council-run primary schools.

- Future Merton provided the capital,
- the (currently council run) school host the panels,
- school maintenance (including the roof and electricity issues, but not the panels) is carried out by either the school or via a contract with the council's Facilities Management team

Although in this case everyone involved was technically part of the council, we soon realised that because of the potential for Future Merton, the school, school maintenance etc. all to become separate entities during the 25 year lifetime of the solar panels, it would be important to have a legal agreement in place to give everybody certainty as to their role and investment, should own

The same situation could arise with schools and open space – council-run schools, parks and other open spaces may choose to be managed separately from the council in the future under the provisions of the Education Act and Localism Act, and in the case of schools, land ownership can also change to be an Academy. This is why I recommended the proposal in para 3.22 – to try and ensure long-term clarity should such a planning decision be made.

Tony, I hope this helps give you some background into our thinking on this point. Please don't hesitate to get in contact if you have any questions or comments. I may see you at the Raynes Park forum next week and if not, hope to see you soon.

Regards,

Tara

Tara Butler
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From: T Edwards
Sent: 05 September 2013 19:21
To: Tara Butler
Cc: N Smith; J BARNES; P Keith
Subject: RE: Merton Draft Sites and Policies Plan

Hi Tara,

Thanks for taking the time to explain the background which is obviously based on experience and the shifting sands of current education provision. This is appreciated . I have forwarded your reply to my colleagues who have been closely involved with the current discussions with the Council and the Ursuline School on the formation of a Community Trust which obviously involves the future use of POS by the school.

With 50% of schools currently advising of shortages in accommodation and with the largest birth rate since 1972 just recorded, education is in for an interesting few years ahead. I can see the need to anticipate potential changes to the provision of educational facilities.

I think the difficulty I face is the circumstance that:

- 1) a Merton school has its own premises but uses some Council owned POS for recreation and sport.

2) this school is taken over and made an Academy and there is as you say “the transfer of the school land ownership from the council to the Academy”.

3) the Academy wishes to continue to offer sport and recreation facilities for pupils on the POS land as per the current use and which remains in Council ownership

3) as this use continues to serve young people in Merton why would the Council not continue to allow pupils to access the POS facility? I can see some of the rationale for a “suitably worded agreement” but is this the same as a long lease?

I am having some difficulty in these circumstances, as it seems the Council is setting down a policy to prevent itself from denying the continued uses of Council land to an educational facility. Why would it do this? There is no suggested timescales and thus an existing school could be offered leases or rights of 99 years, or 125 years, over POS apparently with no community consultation or consideration of other relevant rights.

Perhaps this is something we can chat over at the Forum next week?

Kind regards

T Edwards

From: Tara Butler
Sent: 20 September 2013 10:13
To: 'T Edwards'
Cc: N Smith; J BARNES; P Keith
Subject: RE: Merton Draft Sites and Policies Plan

Hi Tony,

Just to say thank you to you and P for the chat outside the Raynes Park Forum last Thursday evening.

Also to confirm that following that, we will be advising councillors to delete paragraph 3.22 from *Merton's Sites and Policies Plan*.

I hope you appreciate that the paragraph was written with the best of intentions, to try and add clarity and certainty given the many options for changing circumstances that present themselves via the recent Localism and Education Acts. However, from reading the comments and listening to the scenarios you describe, it certainly doesn't seem to have achieved that and therefore we'd advise that it shouldn't be part of the plan.

Please let me know if you have any comments or questions.

Thanks

Tara

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