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26 February 2013

By email and post

Dear Sirs,

Draft Detailed Planning Policies January 2013

This letter follows that submitted on my company's behalf by Dalton Warner Davis in March 2012 in response to your earlier Draft Sites and Policies consultation. Our company owns commercial property in the Borough.

Our main concern then was that the proposed policies governing employment premises were too restrictive, inflexible and onerous. We have now studied the latest version of the Council's proposed policies and our concerns remain.

In addition we are surprised that your draft employment policies take so little account of the significant developments in government policy on employment space and land, which have come out over the last year. Many of these are laid out in the National Planning Policy Framework, but also include the forthcoming permitted development right for change of use from office to residential.

Permitted Development

Although the final details of the new permitted development right for conversion from offices to residential will not be known until the summer, the Secretary of State informed Parliament on 6 September 2012 that such a right would be enacted - some four months before the Council's Draft Detailed Policies were published.

Merton has applied for an exemption covering three areas of the Borough. Elsewhere, presumably the right will apply. The new permitted development right, when it comes into force, will be part of the law of the land, yet draft policies DM E1,E2 and E3 take no account of it at all.

We would therefore ask the Council or the Examining Inspector to amend these policies so as to make it clear that they are entirely without prejudice to any permitted development rights which might apply to employment land or premises in the following terms:

“For the avoidance of doubt, Policies E1 E2 and E3 are not intended to restrict or remove any permitted development rights where such rights apply.”

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Conflict with the NPPF

Policies E1,E2 and E3 also pay little, if any, attention to Paragraph 51 of the National Planning Policy Framework, which states that councils “should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.”

The council may maintain, as it does in paragraph 4.30, that it is able to meet its housing target in the London Plan. However this is not to say that there is not additional identifiable need. As paragraph 2.29 accepts “research in London and in Merton shows that there is an overwhelming need in London and in Merton for all types and sizes of new homes.”

Nor is it enough simply to argue, as paragraph 2.32 does, that “it is recognized that the Council will not be able to meet all housing needs in the borough.” The NPPF makes clear (Paragraph 17) that “every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability.”

Set against this, the requirement in draft policies E2 and E3 that employment land and premises cannot be considered for conversion or change of use until they have stood empty for a minimum of 30 months can surely not be justified. We would ask the Council or the Examining Inspector to amend this period to a maximum of twelve months.

The same policies also take no account of Paragraph 21 of the NPPF which calls on local authorities to “facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.” Again, we would ask the Council or the Examining Inspector to amend policies E1, E2 and E3 to make clear that mixed use will be permitted in all cases where the site is suitable, in line with Paragraph 21 of the NPPF.

Conclusion

When the NPPF was published in March 2012 the Government said that it would allow local authorities a year to bring their plans and policies into line with it. Merton’s current exercise would have been a sensible vehicle for doing this, but – at least as far as the policies discussed above are concerned – it has not happened.

This appears to be a systemic problem with these policies and it suggests that they are inconsistent with the NPPF and other aspects of government policy, and are therefore unsound. For this reason they should not be submitted to the Secretary of State in this form, and we would urge the Council to simplify and recast them in order to ensure compatibility with national policy and law.

Yours faithfully,

Richard Ehrman,
Director