



The Independent Examiners, Westminster City Plan
c/o Charlotte Glancy, Banks Solutions
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24 April 2020

BY EMAIL ONLY

Dear Sirs,

Westminster City Plan 2019-2040

I write on behalf of Westminster Property Association regarding the Examination in Public of the Westminster City Plan. We refer to our letter of 20 December, to the various correspondence between the City Council and Inspectors, specifically INSP 02 and INSP 03, and to the additional information that was submitted by the City Council on 31 March 2020.

Changes to social and economic context arising from Covid-19

The Association notes that it is likely that it will be some time before the hearing sessions on the plan can commence, both as a result of this additional information and the delays caused by the Covid-19 crisis.

Given this delay, the Association is seeking separate discussions with the City Council on the direction of planning and wider public policy for Westminster and central London, to consider how to respond to the current Covid-19 crisis. The Association has written to the Secretary of State in a similar vein.

The Association anticipates that the current crisis will demand a significant planning and public policy response to support the recovery of Central London from the social and economic dislocation that the Covid-19 outbreak is causing.

The City Council's key planning document for the next 20 years should acknowledge this very significant change in the social and economic context within which the plan is being prepared and seek to address it, in so far as relevant to planning.

The immediate dislocation caused will, inevitably, lead to reduced economic activity, reduced values and lower demand. It will almost certainly accelerate some structural changes that were already occurring in any case, especially around retail and town centre uses. For the plan to be relevant, this should be recognised and addressed.

We will be suggesting to the City Council that this unexpected delay in the progress of the plan, and any further consultation that may be required because of other changes that may be made to it, presents an opportunity to make targeted alterations to the plan to make sure that it is relevant, and responds, to the current circumstances

We will be suggesting that the plan should play a more active role in acknowledging the importance of supporting development, especially in commercial areas, where this will enable recovery and restore economic activity. In more challenging economic conditions, with reduced demand and lower values, developments will not be able to support the same level of planning contributions and other requirements as before. If planning policy requirements, especially around affordable housing from commercial development, are not adjusted this is likely to require the routine use of viability assessments in support of most commercial schemes. The delays and uncertainty that this will cause will significantly discourage investment. This will delay the recovery.

The plan should also provide greater flexibility on ground floor retail-type uses. Covid-19 is likely to cause a significant increase in retail vacancies linked to corporate failures and retrenchment. Vacant units can swiftly lead to a downward spiral of low footfall, declining environmental quality and further vacancy. Keeping units occupied should be the overarching priority, rather than prioritising retaining Class A1 retail uses. The protection on Class A1 retail across the city should be relaxed and any use that serves visiting members of the public and promotes the vitality and viability of centres should be acceptable in principle, subject to amenity considerations especially for evening or night-time uses.

We will also be suggesting that additional detail could also be helpfully incorporated into the plan to reflect the City Council's climate emergency, declared in late 2019, ensuring that the City has a clear and up-to-date local policy basis upon which to seek to reduce carbon emissions from new buildings. This should address Westminster's particular characteristics and pressures, such as the larger number of listed buildings and coverage of conservation areas. It should consider the appropriate balance between carbon reductions and the historic environment, especially in the relatively small-scale and incremental development that characterises much of the area's development activity.

November 2019 and March 2020 additional information

As indicated in our letter of 20 December, we have reviewed the additional information that was enclosed with the submission version of the City Plan, including the updates to the evidence base relating to viability and the additional information provided regarding financial payments in lieu.

We have attached a note setting out our interim conclusions, based upon the additional evidence made available. In summary we remain seriously concerned that the viability evidence submitted is not sufficiently robust to support the policy approach envisaged in the plan, particularly in respect of Policy 10 which seeks to secure affordable housing from commercial development. There has not been a formal consultation on the additional evidence.

The areas of concern are described in the accompanying note, but in summary:

1. We remain concerned at the small numbers of commercial development schemes that appear to have been tested.
2. The way in which Policy 10 is applied to commercial development is not explained within the viability reports prepared. Its effects are not clear and it is not clear how much affordable housing it is interpreted as requiring. In some cases, its effect appears to be counter-intuitive as provision of affordable housing appears to create additional financial value.
3. The effect of the proposed payment in lieu levels on commercial development does not appear to have been fully tested.

Our concerns described in our July 2019 review of the viability material also remain. In particular, the lack of sensitivity testing, and the testing of downside risk, that we raised in 2019 remain a concern given the rapid change in economic conditions caused by the current Covid-19 outbreak which, as noted above, is not addressed by the plan. The economic contraction anticipated clearly illustrates the need for robust downside sensitivity testing.

The updated Authority's Monitoring Report published in March 2020 illustrates the continued decline in the City's office stock, even during a period with a more supportive policy environment. The additional material published does not, otherwise, directly affect these areas where the Association has concerns.

Deferment to Supplementary Planning Documents

We note your comments regarding including detailed policy on matters related to land use swaps, housing credits, payments in lieu, affordable housing and developer contributions in supplementary planning guidance rather than within the main body of the development plan document.¹ We share this view. It is essential that the plan itself provides sufficient detail of the policy and that the effectiveness and robustness of this is tested as part of the examination.

The City Council has not responded to these questions, although we note that the updated Local Development Scheme now refers to the production of a Planning Obligations and Affordable Housing SPD. This LDS states that this:

“will supplement policies 9 (affordable housing), 10 (affordable contributions in the CAZ), 19 (education and skills), 33 (air quality) and 37 (energy) of the City Plan, and explain the relationship between CIL and s106 agreements for planning obligations. Where s106 contributions are to be sought, it will set out how these will be calculated – including for affordable housing payments in lieu; employment, education and skills initiatives; air quality mitigation; and the carbon offset fund. It will also provide further guidance on intermediate

¹ INSP02, para 19-21 & INSP03, para 5.

housing products, their acceptability, and indicative income levels for such housing, and the application of land use swaps.”

This would not address the matters raised in your letters. Matters such as the calculation of the payment in lieu of affordable housing (which Policy 10 will require in many cases) and the application of land use swaps are key aspects of the plan and the detail of policy relating to them will affect its deliverability and soundness. These matters should be dealt with within the plan so that it can function on a stand-alone basis and deliverability tested at the examination in public, rather than dealt with in future supplementary guidance.

We should be grateful if you would continue to consider this point and provide further early guidance on it, as appropriate.

Conclusion

I trust that this letter and accompanying note are helpful as you consider the next stages of the examination, including the extent to which any further changes are required, any further consultation undertaken and the Matters, Issues and Questions to be discussed at the examination.

I would restate our request that further written evidence or hearing statements should be invited prior to the hearing sessions and that the need for further consultation should be kept under review.

If it would be helpful for me to expand further on the content of this letter and note, I trust that you will contact me through the Programme Officer in the usual way.

Yours faithfully



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Westminster Property Association

Cc Ms K Hopkins – Westminster City Council
Local Plans Team – The Planning Inspectorate

Response to key issues arising from the Submission version of the City Plan

Introduction

1. This note sets out Westminster Property Association's response to:
 - a. Proposed Minor Modifications to the draft City Plan (November 2019, CORE_002);
 - b. City Plan Viability Report (June 2019, updated October 2019, EV_GEN_001)
 - c. City Plan Viability Addendum 1: 50% Affordable Housing (October 2019, EV_GEN_002);
 - d. City Plan Viability Addendum 2: Commercial mixed use (October 2019, EV_GEN_003);
 - e. WCC Payments in Lieu Approach (November 2019, EV_GEN_004); and
 - f. WCC response to question Q6 in "Appointed Inspectors Note 1 to Council Westminster Local Plan" (WCC_LETTER_004).
2. As set out in the Association's letter of 20 December 2019, the Association considers that further commentary on these proposed changes, and the additions to the evidence base, should be accepted in advance of the Examination in Public (EIP) hearing sessions.
3. The Association notes that the Inspectors have indicated that some form of comment on this information may be appropriate following the submission of additional evidence by the City Council at the end of March.^{2 3}
4. The Association also notes that a number of matters addressed in this note relate to the provision of affordable housing and development contributions, on which the Inspectors have advised the City Plan should "stand alone", with some content of possible SPDs elevated to development plan status. The Association would support incorporation of this detail into the plan and would welcome the further consultation on that content that this would entail.

Background

5. The Association's response to the Regulation 19 consultation, July 2019, clearly set out its significant concerns regarding the effect of the proposed approach to the delivery of affordable housing from commercial office development. This is a key issue, albeit probably unique to Westminster as the only planning authority seeking to secure affordable housing from commercial development in the way envisaged. The response illustrated that, in all real-life scenarios tested by the Association, the affordable housing that would be required would increase very substantially. The Association is concerned that the scale of the increase sought is such investment in the renewal and modernisation of office stock in this key market will be discouraged and that it will not be possible to end the decline in the City's office accommodation.

² WCC_LETTER_005, 3 February 2020

³ INSP3, para 2

6. The response went on to show that, notwithstanding this very substantial increase in the amount of affordable housing that would be required, its effect on the viability and deliverability of commercial development had not been robustly assessed within the Viability Review as available at that point. This was on the basis of an independent assessment of the Viability Review by the Association.⁴
7. Specifically, the Viability Review:
 - a. did not use a sufficiently wide range of development sizes, typologies and locations;
 - b. did not appropriately evidence or justify the land value benchmark for existing buildings;
 - c. included sensitivity testing solely on residential uses, and did not include any downside viability testing;
 - d. did not include formal sensitivity analysis for commercial schemes to consider changes in cost and values likely to be experienced over the Plan period;
 - e. was very limited in its analysis of commercial schemes and did not reflect the changing dynamics and development values of the various sub-markets (including the Central Activities Zone) around the City;
 - f. made unreasonable assumptions about the particular risks, motivation and required profit levels of developers active within the Central London market; and
 - g. reached conclusions that cannot be replicated even when reproducing BNP PRE's inputs.

Policy Background

8. The NPPF requires that development plan policies should “**set out the contributions expected from development.**”⁵ This includes affordable housing provision. Such policies “**should not undermine the deliverability of the plan.**”⁶
9. The Planning Practice Guidance provides additional guidance. It is clear that the role for viability assessment should be “**primarily at the plan making stage.**” Requirements should be realistic, informed by local engagement and site promoters are given the responsibility to engage in plan making.⁷
10. The PPG is emphatic on the need for “**a proportionate assessment of viability**” at a plan making stage. It indicates that, where up-to-date policies are in place, planning applications that fully comply should be assumed to be viable and it is “**up to the applicant to demonstrate whether particular circumstances justify the need for viability assessment at application stage.**” The

⁴ Westminster City Plan 2019-2040 Regulation 19: Representations on behalf of Westminster Property Association, 31 July 2019, para 6.23 and Appendix 1

⁵ National Planning Policy Framework, para 34

⁶ Ibid.

⁷ Planning Practice Guidance, 002 Reference ID: 10-002-20190509

extent to which the plan and viability evidence are up-to-date and the transparency of assumptions behind the evidence submitted are given as circumstances to be taken into account in considering the weight to be given to viability assessments at application stage.

11. The implications of the PPG for viability evidence underpinning local plans was considered by the Panel examining the submission version of the Draft Replacement London Plan (DRLP).⁸ Policy DF1 of the submission version DRLP stated:

A. **“Applicants should take account of Development Plan policies when developing proposals and acquiring land. Development proposals should provide the infrastructure and meet the other relevant policy requirements necessary to ensure that they are sustainable and to support delivery of the Plan. It is expected that viability testing should normally only be undertaken on a site-specific basis where there are clear circumstances creating barriers to delivery.**

B. **If an applicant wishes to make the case that viability should be considered on a site specific basis, they should provide clear evidence of the specific issues that would prevent delivery, in line with relevant Development Plan policy, prior to submission of an application.**

C. ...”

12. Serious concerns were raised by consultees about the drafting of this policy and the robustness of the viability evidence base underpinning the plan. In considering these comments, the Panel concluded that **“it is only where there is an up to date local plan in place supported by appropriate viability evidence, that we would expect full weight to be given to the assumption that planning applications that fully comply with all relevant development plan policies are viable.”**⁹ [our emphasis]

13. The Panel recommended that changes were made to Policy DF1, and to its reasoned justification, **“... to clarify that more detailed assessments will need to be undertaken to inform local plans; and to explain that the requirements in policy DF1 relating to site specific assessments apply where relevant policies in local development plan documents are up to date.”**¹⁰

14. These changes have been incorporated by the Mayor into the Intend to Publish version of the DRLP.

⁸ Policy DF1, Draft Replacement London Plan, Submission Version with Minor Suggested Changes, July 2018, https://www.london.gov.uk/sites/default/files/draft_london_plan_-_showing_minor_suggested_changes_july_2018.pdf, accessed 16 March 2020

⁹ Report to the Mayor of London by the Panel appointed by the Secretary of State, 8 October 2019, paragraph 86

¹⁰ London Plan Examination in Public Panel Report Appendix: Panel Recommendations October 2019, PR 54

15. This illustrates that both national policy and the emerging London Plan anticipate that detailed assessments of viability will be undertaken as part of the preparation of local plans. The Association is concerned that the assessment undertaken to date is not sufficiently detailed.

Assessment

16. The Association has reviewed the additional viability information submitted (EV_GEN 002, 003 and 004).

17. Fundamentally, the additional work undertaken on behalf of the City Council does not address the concerns identified in the Association’s previous detailed review submitted within its Regulation 19 response in July 2019. These relate to the costs and values assumed, the lack of sensitivity testing, the relatively low yields applied to new buildings¹¹ and, in particular, the low existing benchmark land values applied. These concerns are set out in detail in the Association’s July report.

18. In particular, we remain concerned about:

- a. the small number of typologies of office developments tested;
- b. The lack of transparency, and apparent inaccuracies, in the application and testing of the emerging Policy 10 (Affordable contributions in the CAZ).

19. The Association’s July report also expressed its concern about the lack of sensitivity testing for a stagnant or recessionary market does not appear to have been tested. The short to medium term market disruption caused by Covid-19 illustrates the importance of robust sensitivity testing.

20. Based on the information in the updated Viability Study, only a limited number of typologies test proposals with an office uplift in excess of 2,750sqm, at which Policy 10 would require affordable housing provision on-site.

21. These are set out below in Table 1:

Ref	Value Area	Description	B1 Uplift	WPA Comment
164	Core	ST: Office/retail on existing B8/SG	42,5 23	Appears to envisage redevelopment of Class D2 space. Relatively unusual / space protected by policy

¹¹ Low yields indicate a relatively high capital value for the building in question, as investors are willing to pay more to buy the income stream generated by the building.

99	Prime	Retail with office on existing C2	33,609	Residential-led
113	Prime	Office with resi on existing C2	33,609	Residential-led
135	Core	Resi with office on existing C2	33,609	Residential-led
62	Prime	Office - Mu with resi	32,837	
94	Prime	Retail and resi on existing office and B8	24,681	Residential and office, on relatively unusual existing B8 site
114	Prime	Office with resi on existing office and B8	24,681	
123	Core	Resi and office on existing office and B8	24,681	
134	Core	Resi with office on existing office and B8	24,681	
170	Core	Office/resi/retail on existing office/resi/retail	17,338	
115	Prime	Office with retail on existing office and retail	9,781	
125	Prime	Resi, retail, office and hotel on existing hotel and office	6,975	
33	Marylebone	Residential MU	3,537	

Table 1: Office development proposals from Viability Study

22. Of these, many test relatively unusual circumstances, for example the redevelopment of significant existing D2, B8 or sui generis uses. Such low value sites are relatively unusual, particularly in the Core and Prime areas.
23. Conversely, only **four** schemes purport to represent the redevelopment of an existing office building, to replace it with an enlarged building (three within the Prime market area). This is a significant component of the West End's office supply. These are shown in yellow in the table above.
24. This is not an appropriate range of typologies to assess the effect the proposed development policy on an office market of international, national and regional significance.
25. There is no information on the way in which the emerging Policy 10 has been applied and tested on these schemes in the updated Viability Report. The application of Policy 10 is not explained and the amount of affordable housing assumed for viability testing is not quantified or set out.
26. Typology 62 illustrates the uncertainty. This typology appears to involve the redevelopment of existing housing. It is unclear:
- whether it is assumed that 35% of the existing 7,000sqm of housing would be reprovided as affordable housing, which appears to be the requirement of Policy 9 and paragraph 9.3;
 - what **further** allocation of affordable housing has been made under Policy 9, as a result of the increase in residential floorspace;
 - what further or separate allocation has then been made under Policy 10, as a result of the increase in office floorspace;
 - whether the increase in office accommodation has included the change of use of the c. 7,000sqm of existing hotel space to office, as appears to be the intention of proposed minor modification M/H/11 to paragraph 10.5.
27. The potential complexity in applying these policies clearly and consistency supports our contention that this detail should be included within the plan and comprehensively tested as part of the plan's examination, rather than relying upon future Supplementary Planning Documents.
28. In many cases the residual land value (RLV)¹² reported by BNP PRE **increases** when affordable housing policy is applied to commercial development. This is counter-intuitive and should be explained. For example, for Typology 62, a RLV of £629,880,602 is shown for this typology allowing for 35% affordable housing from residential but with no additional affordable housing being sought from commercial development (ie, we assume, not applying draft Policy 10).¹³ Conversely, when the requirement for affordable housing from commercial development is then applied, a RLV of

¹² Residual land value is the total value of the development, less the costs associated with that development, including profit. A higher residual land value indicates, all other things being equal, a more valuable development.

¹³ EV_GEN-001 Viability Report, June/October 2019, page 47

£630,356,167, some £400,000 higher than the RLV without applying Policy 10, is then reported.¹⁴ One would expect that the RLV of the scheme that provided more affordable housing, because of applying Policy 10, would have a lower RLV as it would be less valuable.

29. The same increase in RLV where affordable housing is sought from commercial development is reported for at least Typologies 115, 125 and 170, these being the particularly relevant typologies identified above. On face value this indicates that seeking affordable housing from the commercial components of these schemes would have a beneficial effect on value; this appears counter-intuitive and requires further explanation.
30. The Viability Report may also over-value affordable housing, although it is difficult to assess this in detail as the full appraisal information is not available. The Association's own indicative modelling in its 2019 report, based on BNP PRE's own costs, values and yields, and adjusted (i) for an appropriate value for affordable housing and (ii) to ensure that these two typologies provide sufficient affordable housing to satisfy Policy 9 and Policy 10 as we under them to be applied, shows very considerable reductions in scheme residual land value compared with the BNP PRE reported outputs.
31. Both typologies would be unviable even when compared against BNP PRE's own Benchmark Land Value, which the Association considers to be too low in any case. That is, when using appropriate costs and values for two of the relevant typologies assessed by BNP (schemes 172 and 60) the value of the proposed development would no longer exceed the BNP benchmark land value and so would not be viable, notwithstanding the Association's concern that the benchmark land values used are, themselves, too low.
32. The Association has also reviewed the additional typologies assessed within the Viability Addendum Note on Mixed Use Policy.¹⁵ The Association notes that these typologies assessed are simplified. They do not address the complexities of real-life development, such as changes of use from other uses to offices, or mixed use development that includes some offices alongside other uses.
33. Again, none of these typologies assess the implications for office development within the Prime value area, which is the key component of the West End office market. Very limited information about the appraisal methodology has been included.
34. The Association again notes that the reductions in value assumed by BNP PRE do not reflect the true costs of delivering affordable housing in place of other uses within a development envelope and so it is highly likely that residual land values have been overstated, perhaps significantly.

Changes of Use

¹⁴ Ibid., page 51

¹⁵ EV_GEN_003

35. The Association notes with concern the introduction of reference to changes of use to paragraph 10.5, part of the Reasoned Justification to Policy 10.¹⁶ The Association agrees that this is, in fact, a proposed Main Modification and supports the City Council’s reclassification.¹⁷
36. Nevertheless, consultation should take place in advance of the EIP, and the effects of this change considered during the EIP hearing sessions in the light of comments received. Consultation should not only take place in a further Regulation 19 consultation after the hearing session.
37. The precise effect and meaning of this change is unclear. As drafted, it would not provide investors with clarity and certainty. In particular, it is not clear whether changes of use, in isolation (ie, where there is little or no additional floorspace proposed) would still be expected to comply with Policy 10 and make provision for affordable housing. This is likely to be impractical, as changes of use to office use without any increase in built envelope are unlikely to release, in isolation, sufficient value to be able to support the level of provision sought by Policy 10. This would therefore discourage the re-use of existing buildings for office purposes. The viability of this does not appear to have been tested.
38. Even when additional floorspace is proposed alongside changes of use, the Association is concerned that the conversion of existing floorspace to office use is unlikely to be able to support the same level of affordable housing provision as new build floorspace where there is an increase in overall area.
39. The Association has noted, above, the lack of clarity as to how proposed Policy 10 has been applied to the relevant typologies for viability testing. It is not clear in the Viability Review whether Policy 10 has been applied to include changes of use where they form part of larger scale developments. Typology 164 is a good example of a case where a substantial amount of lower value class D2 floorspace has been redeveloped for Class B1 office use, but it is unclear as to whether affordable housing was sought from the change of use as well as the additional floorspace.
40. Certainly, the effect of the policy on changes of use in isolation (ie, where there is no overall increase in area) has not been tested within the Viability Review.
41. The Association’s view is that this proposed modification should not be taken forwards. If it is, the effect and meaning of the reference to changes of use should be clarified and the effect of it on deliverability robustly tested.

Conclusion

42. The Westminster office market is of international, national and regional importance. This importance is specifically identified in adopted and emerging regional policy, which seeks to support it. Its sustained health, including reversing recent declines in office stock, as a matter of strategic importance for London and the UK economy.

¹⁶ CORE_002, Schedule of proposed minor modifications, November 2019, ref M/H/11

¹⁷ WCC_LETTER_04, Proposed Main Modification to Paragraph 10.5, ref M/H/11

43. Emerging policy that potentially adversely affects this market, include its ability to grow and make additional provision, by introducing additional constraints, should be supported by clear and robust evidence of its deliverability, proportionate to this strategic importance and in accordance with the PPG. This should include robust sensitivity testing.
44. Having reviewed the additional information provided, the Association concludes that the “proportionate” level of testing anticipated by the PPG, and by the Panel’s conclusions on Policy DF1 of the Draft Replacement London Plan, has not been undertaken.
45. Policy 10 is not currently sound as it is not justified and unlikely to be effective, as it is not based on proportionate evidence that demonstrates that it will be deliverable over the plan period.
46. The testing undertaken is not transparent, particularly in respect of the application of Policy 10, and there appear to be inconsistencies and methodological flaws in the material presented, and a lack of sensitivity testing.
47. If retained in its current form, Policy 10 is, in practice, likely to require financial viability assessment to determine the amount of affordable housing required from commercial development at development management stage, on a site by site basis.
48. The reasoned justification to Policy 14 states:
“Planning for such growth recognises that the continued loss of office stock from the city at past rates is unsustainable. This plan therefore provides stronger protection for existing office floorspace than has historically been the case, encourages its renewal and modernisation, and seeks additional provision, in accordance with recognition in the London Plan of the strategic importance of the central London office market.” [Our emphasis]
49. The recently published Authority’s Monitoring Report notes that the loss of Westminster’s office stock has continued in the 2018/19 financial year. Whilst preventing further conversion of office accommodation to hotel space by staunch the loss it will not lead to increases in supply and reverse the trajectory.
50. The approach of Policy 10, by introducing significant **additional** constraints on office supply, which have not been robustly tested and shown to be deliverable, is likely to detract from the objectives of this policy to encourage the renewal and modernisation of existing stock and additional provision. Requiring financial viability assessment at development management stage in most cases will compound this by introducing additional delay and uncertainty, at a time when there is likely to be significant uncertainty in the wider economy.
51. The Association recognises the need for commercial development to contribute to addressing the need for affordable housing. This should be on the basis of a clear policy that has been shown to be deliverable and that will not compromise achieving other strategic priorities, including the continued economic growth of the City.