

# Mayfair Neighbourhood Plan

## Westminster City Council Response

The submitted Mayfair Neighbourhood Plan demonstrates the huge amount of work that the Mayfair Neighbourhood Forum has carried out to create a plan that supports their vision for the neighbourhood. The council supports the submission of this document.

On reviewing the document, it is noted that there are three overarching issues which are not compliant with government legislation (in particular the basic conditions set out in paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) and or the Community Infrastructure Levy (CIL) Regulations 2010 (as amended)) that run through the documents. They are listed here for clarity and to minimise repetition throughout the comments.

### Repetition of City Plan, London Plan and Draft London Plan Policies

Government guidance requires Neighbourhood Plan policies to:-

*‘respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared’*

The National Planning Policy Framework reiterates this by stating in paragraph 17 that ‘neighbourhood plans should be succinct and local’. Several of the policies in the Mayfair Neighbourhood Plan repeat policies from the Westminster City Plan (2016) and the Mayor’s London Plan (2016). Further, the Mayfair Neighbourhood Plan does not make reference to the draft London Plan (2017) which went through public consultation in 2017/18. Whilst the draft London Plan is not yet adopted it has some material weight and gives a direction of travel for future regional policy with which the Mayfair Neighbourhood Plan must be in general conformity.

### Community Infrastructure Levy (CIL) and Section 106 (S106) Planning Agreements

Neighbourhood Planning provides an opportunity for local areas to specify the infrastructure that they would like to see improved and enhanced over the lifetime of a plan. Currently there are two funding mechanisms which can be used to facilitate this:

- Planning obligations (and section 106 agreements in particular) are legally binding agreements between the Local Planning Authority and land owner or developer linked to the granting of planning permission. These are site specific and directly related to the development. Typically they mitigate the impact of the development. There are legal tests and restrictions governing their use in regulations 122 and 123 of the CIL 2010 Regulations
- The Community Infrastructure Levy (CIL) is a contribution that supports the infrastructure required to support the growth of an area.

There are several policies in the plan where the distinction between the two is clouded and or the mechanism chosen is not correct for the outcome required. This needs to be reviewed and clarified given that the CIL 2010 Regulations set out different requirements for use of each of these mechanisms.

Regulation 123 restricts the extent to which section 106 agreements can be used to “pool” contributions towards the cost of infrastructure. It says that a planning obligation cannot be taken into account in taking planning decisions to the extent that

- a) it provides for the funding or provision of an infrastructure project or type of infrastructure; and*
- b) five or more separate planning obligations that—*
  - (i) relate to planning permissions granted for development within the area of the charging authority; and*
  - (ii) which provide for the funding or provision of that project, or type of infrastructure, have been entered into before the date that obligation was entered into.*

*Have been entered into on or after 6<sup>th</sup> April 2010.*

Some of the draft policies would appear to involve pooling of s106 contributions that might risk infringing this requirement.

### Policy clarity

Government guidance states that

*‘A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.’*

Many policies in the plan would benefit from amended wording to ensure clarity for application and implementation purposes. The council has suggested policy deletions where it considers the policy repeats other parts of the statutory development plan or the intended outcome of the policy cannot be achieved through the planning system.

Additionally the numbering of the policies was found to be confusing and it is suggested that a simplified format would help to make the plan easier to navigate.

Overall, the plan presents an opportunity to define and refine development proposals in Mayfair.

## **SECTION 1.1 – THE PLAN**

- Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that planning applications should be determined in accordance with the development plan unless there are material considerations suggesting otherwise. The council find the suggestion that the Mayfair Neighbourhood Plan will ‘govern the way planning decisions are taken within Mayfair’ does not accurately reflect this.

## **SECTION 1.3 – CURRENT AND EMERGING POLICY FRAMEWORK**

- Paragraph 1.3.3 should refer to the saved policies of the Westminster Unitary Development Plan (2007) and to the draft London Plan (2017)
- The reference to the draft City Plan in paragraph 1.3.9 is slightly misleading. Currently, it has no weight as it has not yet been published. It will have some weight on publication, and this will increase as it proceeds through the statutory stages to adoption.

## **SECTION 2 - TRANSFORMING PUBLIC REALM**

### **POLICY MPR - TRANSFORMING MAYFAIRS STREETS**

- The policy sets out 21 principles that developers should observe, but no indication of which are more or less important. A shorter list of specific, clearly defined, prioritised measures would help inform developers and council planning staff.
- Some of the suggested measures relate more to the management and maintenance of the public highway than the land use planning system. In most cases, new development will not present opportunities to remove redundant street furniture (paragraph b). Similarly, pedestrianisation (paragraph e) The timing of signals (paragraph d)) are matters for either the City Council or Transport for London (TfL) as the highway or traffic authority (depending on the location of the site.)
- The first bullet in paragraph d) is inconsistent with the clear priority for pedestrians in Westminster's City Plan policy S41 (Pedestrian Movement and Sustainable Transport). As it is not in conformity with a strategic policy in the development plan, it should be omitted.
- The first bullet in paragraph e) should refer to the Legible London standard. This is the pedestrian wayfinding system developed by TfL which is used London-wide to promote a clear, comprehensive and consistent approach to giving information and is dealt with in London Plan Policy 6.10B.
- The council suggest that Policy MPR2 is deleted. It appears to imply pooling of section 106 contributions. This is inconsistent with the requirements of regulation 123 of the CIL Regulations 2010 (see above).

### **POLICY MGS1 – MAYFAIRS LOCAL GREEN SPACES**

- It is important for the policy to reflect the fact that if the green spaces referred to are given protection equivalent to green belt *any* development will have to meet the relevant policy tests (see section 9 of the National Planning Policy Framework). "Local community use" is not recognised in the Use Classes Order or other planning legislation; this concept seems to deal less with the use than the identity and intentions of the user which are matters the planning system cannot in most cases address. We would suggest omission of MGS1.2 for these reasons.

### **POLICY MGS3 - EVENTS IN GREEN SPACES**

- The council consider that the intention of the policy – to control the nature of occupiers and seek to specify who can attend events – is beyond the remit of land use planning. It is accepted that events in open spaces without appropriate management can have detrimental land use impacts. The council supports clear policies setting out how these should be identified and mitigated. In accordance with general planning principles about overlaps between planning and other regulatory regimes policies should recognise, not duplicate, the policy requirements and legislation applied by the council's Events and Licensing teams.

To address this objection we would suggest re-wording the policy as follows:

Proposals for events in Mayfair's green spaces will only be permitted if the events:

- (a) Demonstrate in advance and ensure that
  - (i) There is no *permanent* adverse impact on local amenity in terms of noise pollution, visual amenity, parking and accessibility to the green space

- (ii) Adequate steps will be taken to minimise any adverse impact on local amenity, including noise and other pollution, visual amenity parking and public access to the green space”
- ~~(iii) In the case of an event which is not for a Local Community Use, the events will only be held in months of the year where public use of the green spaces is most limited~~
- (iv) The cumulative total of days during which more than 40% of the green space in question is inaccessible to the public due to the construction, occupancy and then dismantling of the structures in question are both kept to the shortest length of time reasonably necessary and also do not exceed 40 days in any calendar year.
- ~~(v) The event will be open to the public working or residing in Mayfair~~

#### POLICY MUB – URBAN GREENING

- The council consider that MUB 1, 2 and 3 are repetitive. The policy would be strengthened if condensed into one policy, which encourages development to provide green infrastructure whilst having regard to viability and deliverability.

### **SECTION 3 – DIRECTING GROWTH**

#### POLICY MSG - SUSTAINABLE GROWTH

- Mayfair is within the core CAZ designated in the City Plan. City Plan Policy S18 (Commercial Development) is clear that the whole area covered by the neighbourhood plan is suitable for commercial development. The draft London Plan (Policy SD5 Offices, other strategic function), states that offices and other CAZ Strategic function will be given great weight relative to new residential development in the West End. To ensure conformity with the strategic policies in the development plan, this principle should be recognised throughout this policy (and in MSG2 in particular).
- If the forum wishes to encourage particular types of development in specified parts of its area, it could do so in terms (by saying it is *particularly* encouraged in a given location), but it must be clear that this is not intended to restrict it elsewhere.
- There seems to be some conflict between MSG1 and MSG2 with growth being promoted across the plan area in MSG1 but in specific areas in MSG2. An explanation of growth in the local context that is consistent with City and London plans would help to clarify the policy intention

#### POLICY MTR – TYBURN OPPORTUNITY FRONTAGE

- The Tyburn Retail Frontage is an interesting initiative. It will be a challenge to create comprehensive yet interesting public realm approach whilst adapting to the scale to the existing built context. This requires further detailed analysis. We consider that the illustration on p. 31 shows an overly simplistic approach and does not add any information
- MTR1 2.1 should reference the protection of residential amenity where new commercial uses are introduced.
- MTR2.2 Suggested wording – remove ‘screening these’ as this may not be possible or even the best solution in every case.

### **SECTION 3.3 - PARK LANE**

The council supports finding ways to improve access between Mayfair and Hyde Park and the quality of the public realm in and around Park Lane. However, we have major reservations about the practicality and appropriateness of the policy on “Transforming Park Lane”.

There are currently no plans at London or Westminster level to adopt any of the options set out in paragraph 3.310. They are not mentioned in the current Mayor's Transport Strategy, or in the current or draft London Plan. They are not among the strategic transport projects for which support is given in City Plan policy S43 (Major Transport Infrastructure).

All three options are likely to have significant implications for other neighbourhoods within Westminster and neighbouring boroughs. Any proposal for tunnelling one of the carriageways is likely to involve works to the north and south of the neighbourhood area and changes to traffic management arrangements over a wide area. As such this proposal is likely to relate to land outside the neighbourhood area contrary to section 38B (1)(c) of the Planning and Compulsory Purchase Act 2004 (as amended).

The council consider that it is questionable whether seeking funding for research, modelling and development of proposals for a (currently speculative) concept of this kind would be likely to meet the statutory tests for use of planning obligations in regulation 122 of the CIL Regulation. Particularly those relating to necessity to make development acceptable in planning terms and a direct relationship to the development. The arrangement for pooling contributions suggested in policy MPL1 does not comply with the restrictions on use of planning obligations referred to at the start of this document.

Paragraph 3.3.12 gives an inaccurate impression of the extent of control the neighbourhood forum has over resources secured through either CIL or planning obligations. CIL spending decisions are made by agreement between the council and the neighbourhood forum (and other community stakeholders). Planning obligations are legally agreed between the council and the landowner /developer. It is considered misleading to talk in terms of direction. For these reasons, the council suggests omission of policy MPL1.

The council suggests having a single policy on Park Lane. It should focus on changes that are likely to be deliverable within the lifetime of the neighbourhood plan and affordable with the resources likely to be available. This could combine proposed policies MPL2 and 3 – and might include a paragraph setting out the Neighbourhood Forum's longer-term aspirations for more radical change.

## **SECTION 4 -ENHANCING EXPERIENCE: RETAIL**

There is considerable scope for consolidation of the policies in this section into a single one dealing with all aspects of retailing.

### **POLICY MR1 – RETAIL ENCOURAGEMENT AND DIRECTION**

- MR1.1 and 1.2 are inconsistent with strategic City Plan Policy S21 (Retail). This protects all retail uses throughout Westminster and the proposed exceptions allowing loss in MRL1.1(b) and MR1.2 is incompatible with this. The council suggest they are omitted.
- MR1.3 deals with internal changes to buildings, which for the most part do not require planning permission. It will therefore be unenforceable in most cases. The council suggests it is omitted.
- The council would suggest rewording MR1.1 – 1.6 into one policy that resist the loss of A1 retail subject to a marketing requirement

### **POLICY MR2 – RETAIL PUBLIC REALM IMPROVEMENT**

- This policy is essentially repetitive of MPR 1. The council suggests that these policies are merged. The reference to 'non-householder' development is unclear – is this a reference to

all commercial development, or is it also intended to cover residential development other than by householders?.

#### POLICY MR3 - OASIS AREAS

- There is an opportunity to strengthen this policy by specifically referencing opportunities for tree planting to amplify amenity value.

#### POLICY MR4 - PUBLIC CONVENIENCE

- MR4.1 is essentially repetitive of Westminster UDP policy SOC8 Public Toilets. Restricting the requirement to large retail developments in the West End it is a significantly weaker position than that of SOC8. A better approach would be to restrict the policy to the elements that are genuinely distinctive, relating to ensuring provision is accessible.

#### POLICY MR5 - SHOPFRONTS

- This policy replicates many elements of the suite of City Plan and UDP design policies. The council suggests the plan either provides an explanation of what distinctive elements are being proposed for Mayfair and why local circumstances justify this, or that the policy is deleted.

#### POLICY MR6 - CREATIVE ORIGINALS

- The policy needs to clarify that occupiers of developments cannot be protected through the planning system, only the land use. The concept of “creative original retailing” is not recognised in the Use Classes Order. The council could not prevent a shop changing from selling creative original goods to one selling more mainstream produce (a distinction it is likely to be difficult to make on the ground). In practice this policy is unenforceable and for this reason adds little to City Plan policy CM2.5. (Mayfair Special Policy Area). We would suggest it is omitted.

## **SECTION 4.2 RESIDENTIAL**

- Paragraph 4.2.1 implies that a developer would be required to produce an operational management plan to meet the requirements of the policy. There is no such requirement in MRU1. We would suggest this reference is omitted.
- No evidence is provided to justify different approaches to residential development in particular parts of Mayfair. The council does not accept the suggestion in paragraph 4.2.6 of the supporting text that West Mayfair is predominantly residential to the extent that this justifies a distinctive policy approach. The paragraph 4.2.9 reference to the difficulty of demarcating the plan area into sub areas and housing policies applying neighbourhood-wide appears to contradict policy MRU2.1.

#### POLICY MRU1 - RESIDENTIAL AMENITY

- The restriction on noise after 11pm conflicts with the council’s licensing policy ‘core hours’ which are until 23:30 Monday to Thursday and midnight on Friday and Saturday.

#### POLICY MRU2 - RESIDENTIAL USE IN MAYFAIR

- Policy MRU 2.1 is unclear and confusing. It appears to start by introducing the sub area approach that paragraph 4.2.9 says is not being applied. It is not clear what is meant by residential development “having regard” to the part of Mayfair in which it is proposed. The requirement for new residential development to “respond positively... to the particular communities which exist” is also unclear. If the policy is to be effective it is important to be clear about these matters in order to give meaningful guidance to developers and decision-makers, to be applied with any consistency, or to be monitored effectively. References that relate to responding to the character and quality are also unclear and would be more appropriate in a design policy. For these reasons we would suggest this policy is omitted.
- Policy MRU2.3 repeats the City Plan principle of protecting residential uses, however the use of the word ‘should’ is weak. City Plan policy S14 (Optimising Housing Delivery) protects

all residential uses and in order to ensure consistency with strategic policy in the development plan we would urge that the neighbourhood plan should clearly so the same. We would suggest the policy is reworded to state that:

~~“Net loss of residential units in Mayfair should~~ will be resisted.”

#### POLICY MRU3 – COMPLEMENTARY USES IN MAYFAIR

- The council suggests a single, stronger policy dealing with social and community uses that combined this policy with those parts of the more general policy MSC that are in conformity with strategic policy. We would consider that these are consolidated into a single policy.
- MRU3.2 Points (i) and (ii) are making very similar requirements and could be merged.

#### POLICY MRU - 4 CONSTRUCTION MANAGEMENT

- This policy does not clearly explain what ‘construction traffic’ means. As the policy applies to any new development, this point could helpfully be made clearer to avoid unnecessary work for small developments.
- The Code of Construction Practice is incorrectly referenced as Construction Code of Practice.

### **SECTION 4.3 COMMERCIAL**

#### POLICY MC - COMMERCIAL GROWTH IN MAYFAIR

- Policy MC2 is contrary to City Plan policy S18 (Commercial Development). It implies that loss of office floorspace to residential is more acceptable in West Mayfair than in the rest of the plan area. Policy MC2 is also contrary to City Plan Policy S20 (Office and Other B1 Floorspace) which sets out criteria for when loss of office space to residential is deemed to be acceptable. For these reasons the policy is not in conformity with a strategic policy on the development plan and we would suggest its omission.

### **SECTION 4.4 CULTURAL AND COMMUNITY**

- In para 4.4.8 the listing of the buildings mentioned in needs to be corrected as follows
  - Royal Academy - Grade 2 star.
  - Curzon Cinema – Grade 2
  - Mayfair library – not listed

#### POLICY MSC – CULTURAL AND COMMUNITY USES

- This policy is significantly weaker than City Plan policy S34 (Social and Community Infrastructure) which sets out clear protections for all such uses. In practice, given land values in Mayfair it is highly unlikely that any social/community use space lost would be reprovided locally (which is why the City Plan takes such a strong line on the issue). As drafted this policy is not in conformity with strategic policy in the development plan and we would strongly urge its omission.
- MSC2 The council does not accept that pubs are community uses, a term usually taken to refer to uses in classes C2, D1, D2 and some related sui generis uses (the definition used in the City Plan glossary). Pubs are commercial undertakings within the A4 (drinking establishment) use class and the planning; changes within this class do not require planning permission, but changes of use from A4 to D1/D2 (no residential institutions / assembly /leisure) does. Protection of pubs might belong more comfortably with the retail policies.

- Presumably change of use would be refused if both (a) and (b) were applicable not (a) or (b) as currently worded.

## **SECTION 4.5 - SHEPHERD MARKET**

The council supports the protection of Shepherd Market, but does not consider proposed policy MSM adds a level of protection over and above that given by the suite of design policies in the City Plan.

### **POLICY MSM – PRESERVING THE SPECIAL CHARACTER OF SHEPHERD MARKET**

- MSM (c) – suggested wording “ where it will not result in a *significant* increase in harm to residential *and or pedestrian* amenity.”

## **SECTION 4.6 - SERVICING AND DELIVERIES**

Policy requirements should have regard for the nature and scale of the development to avoid onerous requirements on smaller schemes. Further clarification is need with respect to the unit threshold for large scale residential and whether it would be applied to all types of commercial and retail development.

## **SECTION 5.1 DESIGN**

The Mayfair Neighbourhood Plan area is also a conservation area and has a wealth of listed buildings and structures which are supported by national legislation. Requirements for development in conservation areas and listed buildings are stringently applied across Westminster. It is considered that this policy replicates existing requirements from the statutory development plan

### **POLICY MD – - DESIGN**

- In policy MD2 it is not accurate to state that applications will be approved if a Design and Access Statement (DAS) is submitted. The DAS needs to be assessed and deemed appropriate as part of the determination of the application. Further, the requirement for supporting documents relating to the proposed design of scheme is applied borough wide and is not locally specific. Finally, the current wording in the policy implies a design designation that it does not have and we would suggest it is reworded to say: “responded to Mayfair’s ~~internationally significant~~ character and heritage...”
- MD3 provides no explanation of what the independent verification process is or how the process would work in conjunction with the planning application approval process.

## **SECTION 5.2 ENVIRONMENT AND SUSTAINABILITY**

The council supports the objectives of the policies in this section to minimise detrimental impacts of pollution and waste and to require development to mitigate for and adapt future changes in climate change. However it is extremely difficult for policies on a neighbourhood scale to deal effectively with regional issues like climate change and air quality effectively on this scale. The policies of the London Plan provide significant depth detail and evidence to support their approach which the council applies across the borough. The policies proposed in the draft replacement London Plan indicate that the direction of travel takes this even further.

The policies in this section do not present locally specific requirements. They are considered to replicate the requirements of the policies in the existing statutory development plan. It is



considered that the technical requirements in this policy should be applied in the context of the scale and nature of the development proposal. The council accepts that there will be a cumulative impact of development on the environment in Mayfair but do not consider that this suite of policies provide direction as to the measures that are appropriate for smaller schemes to minimise their impact. We would suggest that consideration is given to the scope for consolidation of these policies, focussing on those areas where a locally-distinctive approach is justified.

#### **MES1 – AIR QUALITY**

- The council is committed to the reduction of air pollution however considers that it is not possible for neighbourhood planning to appropriately deal with the requirement for the national and regional requirements. Air quality screening for minor development is considered to be onerous and undeliverable.

#### **MES2 – WASTE**

- The requirements for minor developments should reflect the scale and nature of the application.
- The promotion of bin stores on the pavement and or within shopfronts is contrary in MES2.2 City Plan and London Plan policy.
- Policy MES 2.3 cannot be applied to development (refurbishments) that do not require planning permission.

#### **MES3 – CLIMATE CHANGE ADAPTATION**

- The policy replicates much of the London Plan and other policies within the Mayfair Neighbourhood Plan on green infrastructure. References to the operation of the building should be removed as they are outside the remit of the planning system.

#### **MES4 – MATERIALS**

- The council supports the reuse of salvaged existing building materials. However the council consider that it will be unrealistic to expect building materials to be sourced in close proximity to a neighbourhood rather than the London region or the wider south east.
- References to the procurement process should be in the supporting text rather than the body of the policy.
- The plan does not provide any evidence to support the requirement to, or viability of, exceeding London Plan standards.

#### **MES5 – CARBON**

- The requirement for assessment of embodied carbon is not been supported by an evidence base or methodology for its use within planning applications.

### **Infrastructure Requirements**

The council considers that sections 6.1 and 6.2 should be shortened, particularly as the Government is currently considering changes to the CIL and planning obligations which may mean much of what is said here is rendered obsolete. We set some detailed comments out below:

- 6.1.3: the list of infrastructure on which CIL may be spent under regulation 123 of the 2010 regulations is not a policy document. It merely sets the boundary between what the council spends CIL on and what it will continue to use planning obligations for. This is an area where the government may be about to make major changes.
- 6.1.8 – it should be clarified that it is not a requirement to spend the neighbourhood portion of CIL for Mayfair in the neighbourhood. The sole requirement is that it must be spent on things that enable the neighbourhood to address the demands that development places on

the neighbourhood. It is not impossible that this may involve expenditure on infrastructure outside the boundaries of the neighbourhood.

- 6.1.9a Suggest Wording “... which the 25% of CIL receipts *may* be allocated.”
- We would suggest omission of paragraph 6.1.11.
- Section 6.2 does not adequately reflect the relevant legislation and the council’s CIL Spending Policy Statement. The section would be strengthened by prioritising the list in paragraph 6.2.4. eg urban green infrastructure over artificial trees. Further, it should be a list of infrastructure requirements rather than outcomes based.

## **Glossary**

- Green Infrastructure and Urban Green Infrastructure are both used in the document so they should be defined in the glossary.
- Heritage Review is listed in the glossary, but not referred to in the supporting text of the Building on Heritage section. It is not clear whether this work is proposed or underway and how it fits in with the council’s Conservation Area Appraisal and Audit.

## **Appendix**

- An appendix with the mapping of the other heritage constraints, listed buildings and structure, street furniture and archaeology would strengthen the plan as they directly impact on only on the green spaces but proposed development within the plan boundary. Details of the Archaeological Priority Area, which includes part of the plan boundary, should also be included.