

Submission on material change in circumstances affecting planning regime

15 June 2015

1. Introduction

- 1.1 The CMA's findings in its Private Healthcare Report ("**Report**") concerning barriers to entry in central London, particularly in relation to site availability and planning permission in central London, will require careful re-consideration following important planning policy changes proposed by Westminster City Council (WCC).
- 1.2 WCC, which oversees the planning framework for a substantial part of central London (including Harley Street and the surrounding Marylebone area), announced two important policy changes that are expected to come into force in 2016.
- 1.3 First, WCC will implement changes to the planning regime in respect of "social and community" use properties, which includes private hospital use (C2).¹ These changes include:
- (i) protecting existing hospital use floorspace by requiring that the property be initially marketed for sale within the same use category for a 12-month period;
 - (ii) encouraging new site developments within this use category;
 - (iii) specifically promoting medical and complimentary facility developments in and around the Harley Street area; and
 - (iv) designating key sites in the borough expected to deliver new social and community facilities (including public and private hospital facilities).
- 1.4 Second, following concerns about the scale of commercial to residential use 'conversions' over recent years and the consequent loss of commercial space in Westminster, WCC will implement measures to deter commercial to residential use conversions and encourage a better "mix" of uses in the borough.² This includes:
- (i) a restriction on the ability of residential developers to convert properties from commercial office use to residential use; and
 - (ii) a relaxation of the rules requiring developers to develop equivalent residential floor space (or provide a payment in lieu) to match newly developed commercial floor space.
- 1.5 The above policy changes are part of a wholesale change to the treatment of conversions of commercial / community use space into residential housing. In the case of WCC, this represents a U-turn on policies developed in the 1990s intended to preserve and foster residential development. WCC is concerned that the pendulum has swung too far in the direction of residential development and that this trend is at risk of undermining the City's role as a major centre of business use and employment.

¹ Social and Community Uses, Developing Westminster City Plan, Westminster City Plan Consultation - CMP Revision February 2014.

² Mixed Use and Office to Residential Conversion, Developing Westminster City Plan, Westminster City Plan Consultation - December 2014.

1.6 WCC is therefore embarking on a planning strategy that fosters a broad mixture of commercial and social usage, including private hospitals, which generate local employment opportunities and economic growth.

1.7 These reforms, which are expected to be implemented in 2016, have important consequences for the CMA's findings in its Report, in particular:

- **Preservation of sites with existing medical use permission** – buildings that currently hold C2 (private hospital) or D1 (outpatient/day-case) use permissions will be required to be marketed on the basis of that use category for a 12-month period at a reasonable market value, before a use conversion will be considered.
- **Improved site availability for hospital operators** – a restriction on the ability of residential developers to convert both medical and commercial use premises will deter residential developers from bidding on sites potentially available to private hospital operators seeking to enter or expand their operations.
- **More favourable planning regime** – the reforms will create a more favourable environment for private hospital operators seeking permission for medical inpatient facilities (C2) and outpatient / day-case facilities (D1).
- **Site expansion made easier** – a relaxation in the rules to develop equivalent residential floor space in proportion to new commercial floorspace means that private hospital operators will find it easier to expand existing hospital facilities (or to expand other commercial sites suitable for private hospital development) going forward.

2. The CMA's findings

Site availability

2.1 In its Report, the CMA dismissed considerable evidence put forward by HCA on the availability of suitable sites for private hospital development. This included a number of NHS hospital sites scheduled for disposal by NHS Trusts that represented ideal candidates for private hospital development. One example referred to by the CMA was the Western Eye Hospital site on Marylebone Road, which Imperial College Healthcare Trust had confirmed to the CMA would be sold on the open market.³

2.2 The CMA's dismissal was based on the following reasoning: "*As with other NHS former hospital sites, it is not certain that the site would remain as a hospital as other uses, for example housing, may be considered more attractive.*"⁴

2.3 HCA also provided marketing materials relating to a number of other sites which, at the time, represented opportunities for private hospital development. In respect of one such example, Harcourt House, the CMA wrote: "*We noted that the marketing material for one, Harcourt house, stressed the site's potential for residential development, pointing out that loss of medical use of some parts of the building may be acceptable and that residential is the priority land use there.*"⁵

³ Report, paragraph 6.75.

⁴ *Ibid.*

⁵ *Ibid.*, at paragraph 6.82.

- 2.4 In both instances, the CMA's reasoning was largely predicated on its belief that such sites were more likely to be re-developed for residential use, rather than as a hospital facility.

Planning regime

- 2.5 With regard to the planning regime, the CMA found that: "*The evidence from the small number of instances of expansion that have taken place indicated that difficulties in obtaining planning permission tended to centre around applications for change of use. This was particularly evident in the Special Policy Area around Harley Street. Where an expansion of medical facilities would reduce residential accommodation it would be necessary to arrange use swaps, which we considered it would be difficult for an entrant to execute.*"⁶
- 2.6 The CMA therefore believed that it would be overly burdensome for private hospitals to obtain appropriate planning permission to set up new facilities or expand existing facilities, particularly, where this might result in a reduction in the availability of residential accommodation.
- 2.7 In the light of the policy changes outlined below, those findings are no longer sustainable.

3. Material changes in circumstances

- 3.1 WCC is in the process of reforming their planning policy framework. The emphasis of the planning strategy is to ensure a sufficient range and mix of property uses across the borough. To that end, WCC believes that the current planning framework should facilitate greater commercial use, including hospital development, and limit the extent to which developers can convert properties for residential use.
- 3.2 The existing policy framework, in place since 1997, was intended to preserve and grow the proportion of residential property in Westminster in the light of concerns concerning the loss of residential space. Planning authorities adopted a favourable attitude to residential use conversion and implemented planning conditions intended to foster residential development. As a result of these planning conditions, commercial developments in the borough could only keep pace with and not outstrip residential development.
- 3.3 WCC has observed that a significant trend of commercial to residential conversions in recent years has unbalanced the mix of uses in parts of the borough and, in particular, led to a substantial loss in office space. WCC's position is that Westminster "*needs to grow its commercial floorspace, particularly offices, in order to remain globally competitive.*"⁷ In addition, WCC intends to foster greater social and community use developments, such as private hospitals by protecting existing properties within this use category and adopting a planning framework that is favourable to such developments.
- 3.4 Accordingly, two sets of policy changes are being consulted on:
- (i) Social and Community Uses, Developing Westminster City Plan, Westminster City Plan Consultation - CMP Revision February 2014 (the "**Social and Community Uses Reforms**", **Exhibit 1**); and

⁶ Report, paragraph 6.105.

⁷ Mixed Use Reforms, see Foreword.

- (ii) Mixed Use and Office to Residential Conversion, Developing Westminster City Plan, Westminster City Plan Consultation - December 2014 (the "**Mixed Use Reforms**", **Exhibit 2**).

3.5 The Social and Community Uses Reforms and Mixed Use Reforms are scheduled for implementation in November 2016 and March 2016, respectively. However, we understand that these policies will begin to be taken into account by WCC when making planning decisions prior to their formal adoption.

Social and Community Use Reforms

3.6 There are two important sets of changes arising from WCC's proposed Social and Community Use Reforms set out below.

(i) Promotion of new medical facility developments and preservation of healthcare floorspace⁸

3.7 Firstly, WCC will actively promote the development of social and community use sites, the use category in which private hospitals fall. The proposed policy states that: "*New social and community facilities will be encouraged throughout Westminster*".⁹ While an equivalent policy already exists, at present it only applies in respect of "large scale development sites", whereas the policy will now apply **generally** across Westminster.

3.8 Second, WCC will provide for the preservation of existing floorspace within this use class. Specifically, the policy states that "*All social and community floorspace will be protected except where existing provision is being reconfigured, upgraded, or is being re-located in order to improve services and meet identified needs as part of a published strategy by a local service provider.*"

3.9 Third, in all such cases involving the conversion from social and community provision to other uses (e.g. residential use), WCC will need to be satisfied that the overall level of social and community provision is **improved** and that there is **no demand** for an alternative social and community use for that floorspace by demonstrating that the building concerned has "been actively marketed as a social and community use for a period of not less than 12 months" at a reasonable market value. In effect, this means that an existing hospital site could not be acquired by a residential developer until it has been marketed as a hospital for at least 12 months at a reasonable price.

3.10 Fourth, a number of designated development sites located in the borough will be **required** to provide social and community facilities, including healthcare facilities, where appropriate.

3.11 Seen together, the proposed policy materially changes the landscape for private hospital operators seeking to develop new private healthcare space in the borough. Not only does it improve the likelihood of being granted planning permission (in the case of a use change), it also creates easier opportunities for site acquisitions. Taking the example of an NHS site (with an existing hospital use permission), there would be a window of opportunity in which private hospital operators are given priority to acquire such sites at a reasonable market value before other types of bidders are able to secure the property. This directly addresses concerns raised by the CMA with regard to the difficulties of competing to acquire sites alongside residential developers.

⁸ See Policy S34, Social and Community Infrastructure, Exhibit 1.

⁹ *Ibid*].

(ii) Harley Street Special Policy Area¹⁰

- 3.12 A new policy will be implemented in relation to the Harley Street Special Policy Area. WCC notes that "*Harley Street requires a special policy approach to support its function as a world renowned centre for medical excellence and specialised medical facilities. Ensuring the on-going availability of appropriate accommodation supports the continued importance of the area as a centre for medical excellence within London, and the UK.*"¹¹
- 3.13 To that end, the policy document notes "*Clinics, consulting rooms and diagnostic facilities will be protected and encouraged to ensure a range of specialisms are secured and ensure the special character and function of this area is maintained.*"
- 3.14 To achieve this, WCC are seeking to implement a policy which will encourage the development of "*[n]ew medical and complementary facilities*" and will also require that existing medical facilities, including consultation rooms and related professional and support services, are protected.
- 3.15 The proposed arrangements are similar to those for existing social and community use, in that properties must be marketed for use for 12 months before a change of use is granted. However, in this case, the property must be marketed only for "medical use" only for the initial 12 month period. It further notes that only in "**exceptional circumstances**" will a conversion to residential use be granted.
- 3.16 As a result of the above policy changes, private hospital developers in the Harley Street Policy Area can expect a favourable planning response to prospective developments and additional opportunities for site development and/or expansion.

Mixed Use Reforms

- 3.17 There are two further sets of policy changes set out in the Mixed Use Reforms that will materially affect the CMA's findings.

(i) General restriction on changes of use from commercial to residential¹²

- 3.18 Within designated areas of the borough, applications for change of use from commercial use to residential use will no longer be considered appropriate, unless the building concerned was originally built for residential use and will be substantially retained. In addition, all other changes of use from commercial to residential must provide a mix of type, size and tenure of housing that the council considers contributes to meeting Westminster's housing needs to the extent that this outweighs the contribution made by the office floorspace, particularly to meeting business and employment needs.
- 3.19 The policy makes clear that where the above requirements cannot be met, the use cannot be converted to residential.
- 3.20 The effect of such a policy, which is intended to preserve the loss of commercial space, is to deter residential developers from acquiring purpose-built commercial sites for residential conversion. Specifically, residential developers will face greater difficulties in obtaining a

¹⁰ See Policy CM2.1, Harley Street Special Policy Area, Exhibit 1.

¹¹ *Ibid*, page 14.

¹² See Policy S20, Offices and other B use business floorspace, Exhibit 2.

permission to change the use of a commercial property and will be required to meet stiff criteria concerning the nature of the housing stock to be developed.

- 3.21 As a result, commercial developers, including those instructed by private hospital operators, are significantly less likely to face competition from residential developers when acquiring suitable private healthcare premises in this part of London.
- 3.22 The policy, which introduces for the first time an element of protection for commercial/employment use in Westminster, is expected to create a relatively more favourable stance on other types of developments, including new private healthcare facilities (see above). Developers acting on behalf of private hospital operators will find it easier to identify suitable sites and face fewer difficulties in converting premises for private hospital use. Particularly given that hospital operators are perceived favourably for their contribution to the overall mix of uses within the community and for the resulting employment and economic opportunities they create.

(ii) Expansions / redevelopments of existing sites – incentivising commercial development¹³

- 3.23 As part of the policy, only those planning applications that would increase the amount of commercial floorspace by more than 30% of the original building will now require an equivalent amount of residential floorspace to be developed. Furthermore, WCC will introduce a *de minimis* provision where net increases in commercial floorspace that are less than 200sqm in the case of B Use Classes, or less than 400sqm in the case of A use classes or private D use classes, will fall outside the requirement altogether.
- 3.24 The policy change is designed to encourage the development of commercial space without the need to provide as much in the way of a mixed-use residential component as has been the case in the past. The benefit for private hospital operators, such as HCA, is that proposed site expansions of existing buildings are likely to face fewer planning obstacles.
- 3.25 Importantly, even for larger-scale developments, WCC proposes to retain the ability for developers to enter into use-swaps or make payments in lieu in order to satisfy any 'mixed use' policy conditions. In its Report, the CMA did not consider the fact that private hospital developers are able to make payments in lieu of a use swap and failed to appreciate that this is a common way for hospital developers to overcome planning difficulties.

4. Concluding remarks

- 4.1 The above policy reforms, taken together with the overall context in which they are being introduced, represent material changes in circumstances that will require the CMA to re-consider its findings on site availability and planning obstacles in central London.
- 4.2 Specifically, private hospital operators are considerably less likely to face the sort of planning obstacles identified by the CMA in its Report. Such planning obstacles were, in HCA's view, already surmountable, however, the proposed reforms would diminish their relevance. Indeed, these policy developments indicate that hospital operators can expect to encounter a favourable planning regime when submitting proposals for hospital developments.

¹³ See Policy S1 (Mixed Use in Central Activities Zone), Exhibit 2.

- 4.3 In respect of site availability, taking into account the measures intended to protect properties with existing medical use, combined with measures that will make it difficult for residential developers to acquire and convert commercial premises, the CMA's concerns relating to site availability are also diminished. The reforms are expected to generate a number of potential sites attainable by hospital operators at a reasonable market value.