



The Planning Inspectorate

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# Report to City of Westminster Council

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date 28 June 2016**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

## **REPORT ON THE EXAMINATION OF THE MIXED USE REVISION TO THE WESTMINSTER CITY PLAN**

Document submitted for examination on 30 November 2016

Examination hearing held on 9 March 2016

File Ref: PINS/X5990/429/7

## **Abbreviations Used in this Report**

CAZ	Central Activities Zone
GLA	Greater London Authority
HRA	Habitats Regulations Assessment
LDS	Local Development Scheme
MM	Main Modification
MUR	Mixed Use Revision to the Westminster City Plan
NPPF	National Planning Policy Framework
SA	Sustainability Appraisal
SCI	Statement of Community Involvement

### **Non-Technical Summary**

This report concludes that the Mixed Use Revision to the Westminster City Plan provides an appropriate basis for the planning of the City providing modifications are made to it. Westminster City Council has specifically requested me to recommend any main modifications necessary to enable the plan to be adopted. All of the modifications were proposed by the Council and I have recommended their inclusion after considering the representations from other parties. The Main Modifications can be summarised as changes required to make the Mixed Use Revision effective.

## Introduction

1. This report contains my assessment of the Mixed Use Revision to the Westminster City Plan (MUR) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first the duty to co-operate and then whether the Plan is sound and compliant with the legal requirements. The National Planning Policy Framework (NPPF) (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The Council produced a Submission Draft in November 2015 but for reasons previously given<sup>1</sup> and as confirmed throughout the process, the basis for my examination is the Publication Draft of July 2015.
3. In accordance with Section 20(7C) of the 2004 Act the Council requested that I recommend any main modifications needed to ensure that the MUR satisfies the requirements of the Act and is sound. As well as dealing with the main matters relating to soundness the report also explains also why Main Modifications are necessary. These are identified in bold (**MM**). The Appendix contains them in full and all relate to matters that were discussed at the examination hearing. Following this, the Council prepared a schedule of proposed main modifications and produced an addendum to its integrated impact assessment. The schedule was the subject of public consultation between 20 April and 5 June 2016. I have taken account of the consultation responses in coming to my conclusions in this report

## Assessment of Duty to Co-operate

4. The MUR primarily relates to development within the Core Central Activities Zone (CAZ), Opportunity Areas and Named Streets as designated on the Policies Map of the City Plan. These will be referred to as the core commercial areas throughout the report. The strategic importance of the CAZ as a whole is recognised in The London Plan 2015 and it covers parts of 7 central London Boroughs. Changes to the policy approach in Westminster are therefore likely to have a significant impact on at least two planning areas particularly given the scale of commercial activity in the City.
5. The Council has provided details about the ways in which it has engaged with the bodies prescribed in Regulation 4 of the Town and Country Planning (Local Plans) (England) Regulations 2012<sup>2</sup>. These include the Greater London Authority (GLA) and English Heritage as well as neighbouring Boroughs. There are also a number of cross Borough partnerships in place including the West End Partnership which brings together key public and private stakeholders.
6. No adverse comments have been made by any organisations in this respect and no objections have been made on the basis of a failure to co-operate. Overall I am satisfied that the Council has engaged constructively, actively and on an on-going basis. Therefore in accordance with Section 20(5)(c) of the

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<sup>1</sup> EX/02 Preliminary Matter 22 December 2015

<sup>2</sup> Section 5 of MU/SD/2C

2004 Act the duty imposed by Section 33A in relation to the preparation of the MUR has been complied with.

## **Assessment of Soundness**

### **Main Issue**

7. Taking account of all the representations, written evidence and the discussions that took place at the examination hearing I have identified one main issue upon which the soundness of the Plan depends.

### **Whether the Mixed Use Revision (MUR) is consistent with national policy, whether the balance between commercial and residential uses is justified and whether the MUR will be effective**

8. The impetus for the MUR's preparation arises from the growing concern about the loss of office accommodation in Westminster. This equates to almost 410,000 sq m in the 10 year period from 2005/06 to 2014/15 with a further 350,000 sq m of development under construction involving office losses. This trend has been particularly significant since 2010/11 with offices being replaced by housing. As a result the proportion of offices in the Core CAZ compared to overall floorspace has declined to 44% from a peak of 51% after 1996. The context is that Westminster has about 9 million sq m of offices.
9. A healthy vacancy rate is generally held to be about 8% in order to allow choice and availability for those wishing to relocate. Across the West End office sub-market as a whole this figure was as low as 2.7% in October 2015<sup>3</sup> and there is 9 months of supply based on current take up. The picture across Westminster alone is no different. One of the aims of the MUR is to reverse these office losses to deliver the business floorspace that is needed.
10. At the same time it seeks to retain the policy of securing a mix of uses within the main commercial parts of the City. This has been successful in the past in securing a diversity of activities, including residential, which contribute in a major way to the complex mosaic of uses which comprises the unique character of the area. So in favouring office development this on-going aim should not be lost sight of. Nevertheless the MUR marks a significant shift in policy away from actively promoting residential development.
11. In order to achieve its intended purposes the MUR contains revisions to the policy for mixed use development to allow a greater amount of new floorspace to be created before equivalent residential accommodation is required. It also introduces a presumption against the loss of existing offices to housing.
12. Given the make-up of Westminster applying the MUR to the core commercial area is apt. This is because locations outside them but within the CAZ have a less commercial character and Policies S8, S9 and S10 of the existing City Plan indicate that new commercial uses will not generally be appropriate. These designations will nevertheless be reviewed in due course. Whilst there are sub-markets within Westminster there is insufficient evidence that holistic policies for the City as a whole are fundamentally flawed.

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<sup>3</sup> MU/EB/14

*Balance between residential and commercial uses*

13. The NPPF confirms that the Government is committed to securing economic growth in order to create jobs and prosperity. It is not stretching things too far to say that Westminster is an economic powerhouse and an international destination of which the office sector is an important part. Because of its size the area is valuable to the country as a whole and its global competitiveness. The diversity of the office uses present which include creative industries and the benefits of agglomeration were particularly stressed at the hearing. Furthermore, it is a pre-eminent location because of the proximity of high quality shopping, hotels and cultural attractions. There is no other place in the United Kingdom quite like it.
14. Therefore because of the major significance of office floorspace in Westminster the aim of seeking to reverse the recent trend of a reduction in supply is broadly justified. The aim is to incentivise the delivery of additional floorspace whilst at the same time protecting the existing stock to meet what was described as the "insatiable demand" for offices. Without such steps the opportunities for businesses to locate in Westminster would be diminished which, in turn, would hamper the effective functioning and growth of the commercial area. This could lead to potentially harmful 'knock-on' effects both for the capital and beyond. Indeed, the Mayor of London's Central Activities Zone Supplementary Planning Document records the concern that the sustained loss of offices could erode the strategic offer of the CAZ<sup>4</sup>.
15. Nevertheless the NPPF also seeks to boost significantly the supply of housing and expects that the full, objectively assessed needs for market and affordable housing are met as far as is consistent with its other policies. Historic housing completions from office loss schemes in the core commercial areas amounted to 1,851 units between 2005 and 2015 or about 25% of the total across the City. Therefore the MUR is likely to have some consequences in this respect.
16. However, the annual average housing target to 2025 of 1,068 homes in The London Plan 2015 took account of likely policy changes to prevent housing gain from office losses. Therefore in future the impact of the MUR may not be as marked as past data might suggest. Furthermore, there is already a very significant amount of housing 'in the pipeline'. As at November 2015, there were 3,429 homes under construction with a further 2,070 homes not started.<sup>5</sup> Looking further ahead there are other measures that could assist in increasing housing supply including Housing Zones, the Council's own housing renewal programmes, greater densities and smaller flat sizes. Some of these will require policy changes through further revisions to the City Plan which are contained within the Local Development Scheme.
17. Overall there is no evidence to dispute the contention that meeting the housing target is challenging but deliverable. Therefore the impact of the MUR in this respect would not undermine the overall delivery of market housing.
18. Westminster is one of the most expensive places in the country to rent or purchase a home and so the need for affordable housing is acute. The City Plan indicates that an additional 5,600 social units are required annually to

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<sup>4</sup> MU/EB/08

<sup>5</sup> MU/EB/1

meet demand. However, over the last 10 years completions total 1,482 affordable units or about 20% of overall housing provision. Policy S16 sets an aim that more than 30% of new homes should be affordable.

19. In terms of the likely impact of the MUR, 164 affordable units over the last 10 years arose from office losses in the core commercial area and during the same period some £6.8 million was received as payments in lieu from this source. Furthermore it is estimated that changes to the mixed use policy would affect potential receipts to the Affordable Housing Fund by about £2.5m to £3m per annum in the context of a total of about £34m per annum. Therefore, there would be an impact on the delivery of affordable housing both directly but, to a greater extent, indirectly.
20. However, provision within the core commercial areas equates to only 11% of the total of affordable units. Therefore the areas affected by the MUR are not the main source of supply. Furthermore, the intention is for additional market housing to make up for any shortfall caused by the MUR as referred to above. If that is achieved then the application of Policy S16 would lead to a similar outcome in terms of affordable housing. There is therefore no reason why the policies in the MUR should have a disproportionate effect on affordable as opposed to market housing.
21. Overall the MUR will have a 'dampening' effect on the provision of new housing in certain circumstances. However, the overarching need to meet the annual housing target in The London Plan would remain. The buoyancy of the market and initiatives envisaged by the Council to increase supply provide confidence that the MUR, in itself, would not be bound to cause an under-provision. In any event, the importance of the office market in Westminster is so great that favouring that sector is appropriate at the present time.
22. Therefore the balance between commercial and residential uses is justified. There is already anecdotal evidence that the changing policy approach has caused some developers to re-think and re-work schemes to give greater emphasis to new commercial floorspace rather than solely residential. Furthermore, it is consistent with national policy and with The London Plan. In this regard the GLA has confirmed that the MUR is in general conformity.

*Policy S1 (Mixed Use in the Central Activities Zone)*

23. Policy S1 of the existing City Plan provides, amongst other things, that where the proposal would increase the amount of commercial floorspace by 200 sq m or more, the provision of an equivalent amount of residential floorspace will be required on-site, subject to certain caveats. The MUR revises this policy by exempting developments within the core commercial areas which are less than 30% of the existing floorspace or less than 400 sq m whichever is the greater. This would include schemes that just involve a change of use. Above those levels a complicated series of triggers apply to determine the amount of residential floorspace required to accompany net gains in Class B1 floorspace and the location and manner of its provision.
24. In broad terms the effect of the MUR should be to encourage office development to take place because the requirement for commensurate residential accommodation is less onerous. It has general support from the

development industry and is worthy of endorsement as a suitable policy response. It also contains a range of means to provide residential floorspace including on and off-site, by mixed use credits under new Policy CM47.2 or by financial contributions. The detailed mechanisms of the policy will therefore be critical to its success.

25. In this regard the testing undertaken indicates that the main thresholds of 30%, 50% and 400 sq m should provide sufficient 'uplift' to incentivise office development. It follows the principle that viability improves with additional floorspace and allows for a 30% 'discount' of the existing building floorspace. Development in excess of 50% above the existing building is expected to follow the 'cascade' approach. Given the larger returns on investment associated with such schemes there is more opportunity to be prescriptive but the policy nevertheless allows for flexibility if provision in a certain way is not appropriate or practical. An exception to this is that in the Victoria and Paddington Opportunity Areas the required residential floorspace will be provided within those areas within rather than outside them. This is compatible with the focus on new development in those areas as set out in Policy 2.13 of The London Plan. There is also likely to be more scope for additional residential uses within Opportunity Areas to contribute to the creation of new mixed use neighbourhoods.
26. Where the floorspace increase is between 30% and 50% of the existing building it is a matter for the appellant's discretion as to how residential is provided. There is concern that this will lead to single use developments in areas like Fitzrovia but there is no strong evidence to this effect. In any event, in the larger schemes (above 50% increase) floorspace would be expected to be provided at the site or in its immediate vicinity in the first instance. So mixed use developments are still part of the equation but the policy reflects the justifiable pre-eminence given to office developments.
27. However, adjustments are required to Policy S1 to give clarity about how it will work and that it relates to all uses (**MM1**). The Policy Application also needs to be changed to ensure that the outcomes are not distorted by proposals involving changes of use of existing buildings but limited new floorspace. In addition, it should recognise that it may not be feasible to provide small amounts of residential floorspace that are technically required by the policy. This should ensure that it operates in a proportionate way. To be effective the wording about incremental extensions should be altered to put the onus on applicants to demonstrate that the scale of development has not been deliberately set to avoid policy requirements (**MM2**).
28. The policy also contains criteria to be applied to developments involving a change from office to residential or the replacement of offices with residential that are acceptable under Policy S20. Subject to certain exceptions increases in floorspace of more than 400 sq m should be accompanied by an appropriate or equivalent amount of commercial and/or social and community uses. The purpose of this part of the policy is to further the variety of uses that characterises Westminster, to maintain its vibrancy and to complement the desire to have activity at ground floor level in particular.
29. This is a justified objective and the policy contains some flexibility. However, clarity is required and the meaning of "appropriate" should be further defined



**(MM1)**. I therefore recommend the modifications proposed to this part of the policy in the interests of effectiveness.

*Policy S18 (Commercial Development)*

30. This sets the overall approach to commercial development and has a target of 77,000 new jobs. The indications are that this is achievable but employment growth should not be limited to that figure. Translating this into a quantum of floorspace will enable effective monitoring to occur. A few residential enclaves remain within the core commercial areas. In order that their character and function stay distinct it should be confirmed that commercial encroachment is not appropriate. Main modifications in these respects are therefore warranted and recommended accordingly (**MM4 & MM5**).

*Policy S20 (Offices and other B1 Floorspace)*

31. The MUR introduces a broad presumption against the loss of offices to residential in the core commercial areas. The wording indicates that moving from office to residential will only be acceptable where the benefits outweigh the contribution made by the existing floorspace taking account of various factors. In this way, it is sufficiently flexible to take account of future changes in the fortunes of the office market given the possibility of economic fluctuations. The policy could also allow for the release of office floorspace should there be a glut within one of the office sub-markets. At the same time, the intent of the policy is clear. Furthermore, it is a justified response to the urgent need to address the reduction in office accommodation. The areas beyond the core commercial areas do not generally have the same character and office releases here will support housing delivery.

32. However, the construction implies a closed list of criteria which should be avoided, the wording of the detailed provisos should be altered to make them more explicit and further clauses should be added to acknowledge instances where heritage or townscape considerations could prevail. Changes to this end are therefore required to achieve soundness (**MM6 & MM7**).

*Other policies*

33. Other changes are required to the supporting text to Policy S14, Policy S34, Policy CM41.1 and Policy CM47.2 in order to provide clarity in certain respects and to ensure consistency with the approach of the MUR as a whole (**MM3, MM8, MM9, MM10, MM11 & MM12**). However, the exact role of the West End as an entertainment venue is not the focus of the MUR so that retaining Policy S6 in relation to the Stress Area does not affect its soundness.

*Monitoring*

34. The monitoring framework generally contains clear and adequate mechanisms for monitoring the policies of the MUR but omits overarching indicators regarding the delivery of commercial and office floorspace in the core commercial areas. This should be rectified to ensure effectiveness (**MM13**).

*Conclusion*

35. Subject to the main modifications referred to above, I therefore conclude that the MUR is consistent with national policy, that the balance between commercial and residential uses is justified and that it will be effective.

**Assessment of Legal Compliance**

36. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

<b>LEGAL REQUIREMENTS</b>	
Local Development Scheme (LDS)	The MUR is identified in the approved LDS of March 2015 <sup>6</sup> and has been prepared in accordance with it.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in June 2014 <sup>7</sup> and consultation has been compliant with its requirements, including that on the proposed main modifications.
Sustainability Appraisal (SA)	SA has been carried out as part of the Integrated Impact Assessments <sup>8</sup> and is adequate.
Habitats Regulations Assessment (HRA)	The Appropriate Assessment Screening Report <sup>9</sup> indicates that an Appropriate Assessment is not necessary. Natural England has raised no objection.
National Policy	The MUR complies with national policy except where indicated and main modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	The MUR complies with the Act and the Regulations.

**Overall Conclusion and Recommendation**

37. The Plan has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. However, the Council has requested that I recommend main modifications to make the Plan sound and capable of adoption. I conclude that with the main modifications set out in the Appendix the Mixed Use Revision to the Westminster City Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*David Smith*

INSPECTOR

This report is accompanied by the Appendix containing the Main Modifications.

<sup>6</sup> BMU/EB/02

<sup>7</sup> BMU/SD/2D

<sup>8</sup> MU/SD/2E

<sup>9</sup> BMU/SD/03