

**Your Ref:**

Local Plan Consultation – Publication (Regulation 19) Consultation  
Version

18 July 2023

**By email only:**

[localplan@richmond.gov.uk](mailto:localplan@richmond.gov.uk)

Dear Sir/ Madam,

**Representations on the Publication Local Plan (Regulation 19)**

We write on behalf of our client, Star Land Realty, to provide representations on the London Borough of Richmond upon Thames' (LBRUT) Publication Local Plan (Regulation 19). In summary, we object to draft Policy 12 as currently drafted on the basis that it does not conform with the London Plan and there is no evidence to justify a departure.

**Policy 12 'Housing Needs of Different Groups'**

This representation focusses on Policy 12 'Housing Needs of Different Groups' and the need for it to reflect the London Plan (2021) and Rectory Homes High Court decision<sup>1</sup>.

Draft Policy 12 relates to housing needs of different groups, including older persons' accommodation. Part B (1) states:

*"All residential uses are expected to contribute to the highest priority affordable housing needs as set out in Policy 11 'Affordable Housing (Strategic Policy)', and contribute to creating mixed, balanced and inclusive communities. The highest priority is for on-site general needs affordable housing."*

The London Plan (2021) is part of the LBRUT Development Plan. The Greater London Authority Act (1999) (as amended) states that in the case of a London borough, the Development Plan shall be in general conformity with the spatial development strategy.

Accordingly, the proposed requirement for all residential uses to contribute to affordable housing is not in line with the London Plan (2021) and we object to the policy as currently drafted.

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<sup>1</sup> Rectory Homes Limited v SSHCLG and South Oxfordshire District Council [2020]

Specifically, paragraph 4.13.4 of the London Plan stipulates that ‘care home accommodation’ is not subject to the requirements of Policy H13 ‘Specialist older person housing’, including the need to deliver affordable housing in line with Policies H4 and H5. This is consistent with the Rectory Homes High Court decision.

The key consideration here is that Class C2 development ‘may’ be dwellings but equally this means they may not – ultimately this will depend on the physical nature of the development (i.e. does the development include residential accommodation in the form of dwellings as part of the primary use; or is the development non self-contained and comprises personal care and accommodation as one package) and the nature of the use (i.e. are the units sold on leasehold or freehold terms or conversely, is there no choice in care provision and associated restrictions on occupation, such that the development could not be considered to be residential accommodation).

London Policy H13 deals with this issue by clearly defining care home accommodation separately to wider older persons’ accommodation products (extra care, assisted living etc.). The purpose of this is to avoid genuine care home accommodation, which has specific care requirements secured by planning condition and Section 106 obligations, being captured by affordable housing policies.

At paragraph 0.0.8 of the London Plan (2021) it is confirmed that:

*“All Development Plan Documents and Neighbourhood Plans have to be ‘in general conformity’ with the London Plan.”*

Further detail is provided at paragraph 0.0.24 of the London Plan (2021), which confirms:

*“The London Plan does not preclude boroughs and neighbourhood forums from bringing forward policies in their Development Plan Documents or Neighbourhood Plans that vary from the detail of the policies in this Plan where locally-specific circumstances and evidence suggests this would better achieve the objectives of the London Plan and where such an approach can be considered to be in general conformity with the London Plan.”*

Turning to LBRUT’s draft Local Plan, this is supported by an evidence base which has been used to inform the draft policy wording. This includes a Whole Plan Viability Assessment (2023) prepared by BNP Paribas. This assessment does not clearly provide any assessment of the viability implications of draft Policy 12 on care home accommodation or other types of housing needs of different groups. As such, the locally-specific circumstances and evidence required for any departure from the London Plan (2021) has not been provided.

On this basis, to comply with the London Plan (2021) and noting the Rectory Homes judgement, Local Plan policy should also exclude care homes from the requirement to deliver affordable housing to ensure compliancy and consistency with the London Plan and leading case law. The wording of Policy 12 Part B (1) should therefore be amended as follows (amendments in **bold**):

*“All residential uses, **excluding care home accommodation as defined within the Local Plan Glossary**, are expected to contribute to the highest priority affordable housing needs as set out*

*in Policy 11 'Affordable Housing (Strategic Policy)', and contribute to creating mixed, balanced and inclusive communities. The highest priority is for on-site general needs affordable housing."*

Supporting text paragraph 17.45 should also be amended to reflect this (amendments in **bold**):

*"However, as identified in the LHNA, the need for affordable homes remains substantial and is therefore a higher priority to those identified above. Where proposed residential provision does not itself meet the NPPF definition of affordable housing, affordable housing policy requirements as set out in Policy 11 Affordable Housing will be applicable to all site proposals for accommodation, **excluding care home accommodation**, considered under this policy and it is expected that schemes will be designed to accommodate the priority needs for affordable housing alongside other types of housing for specific groups. As set out In Policy 11 Affordable Housing the threshold approach to fast track applications providing lower levels of affordable provision in proposals to meet the needs of different groups, such as affordable student accommodation or specialist older persons housing, is not considered appropriate in the borough context given the significant land constraints and high level of general affordable housing need."*

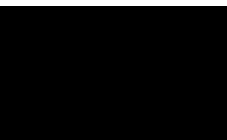
Furthermore, it is suggested that a clear definition of care home accommodation is included within the glossary which reflects the London Plan and Rectory Homes High Court Decision as follows:

*A care home (whereby affordable housing policies would not be applicable) would comprise an operational development that provides:*

- *Personal care and accommodation provided together as a package with no clear separation between the two;*
- *The person using the service cannot choose to receive personal care from another provider;*
- *People using the service do not hold occupancy agreements such as tenancy agreements, licensing agreements, licences to occupy premises, or leasehold agreements or a freehold;*
- *Likely CQC-regulated activity will be 'accommodation for persons who require nursing or personal care'.*

We would appreciate it if you could provide confirmation that the response has been received. Please let us know if you have any questions.

Yours faithfully



**Laura Jenkinson**  
**Principal**

For and on behalf of Avison Young (UK) Limited

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