

2 March 2018  
New London Plan  
GLA City Hall  
London Plan Team  
Post Point 18  
FREEPOST RTJC-XBZZ-GJKZ  
London SE1 2AA

Dear Sir / Madam,

**THE LONDON PLAN – DRAFT FOR PUBLIC CONSULTATION DECEMBER 2017  
ELYSIAN RESIDENCES**

Introduction

Elysian Residences (Elysian) is a UK company whose sole business is the development and operation of assisted / independent housing with integrated care. The company aims to provide older people with an aspirational and fulfilling lifestyle, providing a supportive dynamic environment which minimises the impact of limitations as residents grow older.

Elysian developments are specifically designed for older people looking to downsize. Their design is of a high quality and aspirational so residents want to move into them, with over 20 design features which enable each residential unit to adapt over time to meet residents' limitations and healthcare needs, with integrated nursing care at every community. The Elysian Residences business model does not require any public subsidy.

Elysian Residences' developments provide a solution to two of the largest short-term and long-term problems facing the UK, namely:

- Helping to deliver housing, through releasing underutilised family housing stock. When downsizing, the release of the family housing that has often been locked up for a decade or more, has a multiplying effect through the housing supply chain; and
- Reduction in cost of an ageing population. It is estimated that there is a reduction of 30% on the demands placed on the local NHS, from the residents living in one of these communities.

Further details of Elysian and their elderly housing product is provided at Appendix 1.

Draft London Plan Policy H15 – Specialist older persons housing

We object to the current formulation of draft policy H15. Part (C) of policy H15 is unsound and should be deleted from the policy.

The reasons for our objection may be summarised as follows:

- The draft seeks to influence by policy what is a purely legal consideration, namely the proper use classification of extra care and similar accommodation. This is wholly inappropriate.
- In any event the draft policy advances a conclusion which is contrary to both case-law and a wealth of previous appeal decisions.
- The critical factors to distinguish whether a use is C2 or C3 are the nature, level, and frequency of care provided, and the level of facilities available both in the units themselves or communally. The degree of self-containment is not a critical factor.
- Draft policy H15 appears to be no more than a pretext for extracting affordable housing contributions from extra-care facilities normally and correctly judged to be within Use Class C2. Such facilities should not be required to make a contribution towards affordable housing

The Draft London Plan (Draft policy H15 C) states:

*“Sheltered accommodation and extra care accommodation is considered as being in Use Class C3. Residential nursing care accommodation (including end of life/ hospice care and dementia care home accommodation) is considered as being in Use Class C2.”*

Paragraph 4.15.3 of the supporting text states that:

*“sheltered accommodation and extra care accommodation should be considered as C3 housing”*

It defines extra care accommodation as follows:

*“extra care accommodation (also referred to as assisted living, close care, or continuing care housing) is self-contained residential accommodation and associated facilities, designed and managed to meet the needs and aspirations of older people, and which provides 24-hour access to emergency support. A range of facilities are normally available such as a residents’ lounge, laundry room, a restaurant or meal provision facilities, classes, and a base for health care workers. Domiciliary care will be available to varying levels, either as part of the accommodation package or as additional services which can be purchased if required.”*

The nature of the use and the classification of its use class is a matter of law. Policy has no part to play in that determination. It is therefore inappropriate for policy to seek to categorise particular types of use as being (in this case) either Use Class C2 or C3. If as a matter of law, a particular type of use falls within Use Class C2 then it does not become a use within Class C3 merely because policy asserts that it does.

In addition – and without prejudice to this overriding contention – the conclusion which the draft policy reaches is contrary to case-law and to the weight of Secretary of State or Inspectors’ appeal decisions. The rationale for the draft policy appears to rely upon the criterion of self-containment as being the overriding factor. In our submission, the critical factors are instead the nature, level and frequency of care provided and the level of facilities available (both internal to the units and communal facilities).

A very recent example of a contrary appeal decision (22 January 2018 – decision letter enclosed at Appendix 2) was by inspector Michael Boniface, where he allowed an appeal in Sidmouth, East Devon, by Pegasus Life for an:

*“assisted living community for older people comprising extra care units, staff accommodation and communal facilities, including a kitchen, restaurant/bar/café, a well-being suite comprising gym, treatment rooms and pool, a communal lounge and storage facilities; car parking for residents, visitors and staff of the assisted living community; comprehensive landscaping comprising communal and private spaces; and associated groundworks.”*

The Inspector considered the nature of the whole proposal as part of his assessment of the case; noting that although the 113 extra care apartments would be self-contained with their own front doors, private spaces and facilities they would be accessed from communal spaces and also highlighted the large amount of communal facilities which would be on offer:

*“Each apartment would include a range of specialised features and adaptations such as wheelchair accessible doors, electric sockets, level threshold showers and a 24 hour emergency alarm system. All of these features are likely to improve the safety and comfort of the intended occupants and would not necessarily be found in other housing stock”*

He further acknowledged that these facilities such as physiotherapy suite and hydrotherapy pool would be aimed at supporting independent living in a social and safe environment and that they would also be open to the general public to encourage interaction with the outside world:

*“Importantly, this is also a level of provision that is likely to exceed that expected in other residential environments, though some flatted development might incorporate some facilities.”*

The S106 provided includes a restriction of occupation to those over 60 years of age and in need of at least 2 hours of personal care per week established by a health professional. A definition of personal care was proposed and was criticised by the Council as being too broad. The Inspector disagreed and stated that:

*“Whilst many of the activities listed might be taken for granted by most people, every one of them is likely to become more challenging in advancing years. Many residents might only require relatively limited personal care, perhaps the minimum amount of 2 hours per week, but there are also likely to be many who require substantially more than this. Furthermore, the age restriction associated with the development is such that the need for personal care will inevitably increase for many people with age. I accept that not all people will require the same level of care at the same point in their life, but what is important is that care is available to meet their individual needs as and when the time comes. That is what the scheme seeks to provide.”*

Care was proposed to be provided through an off-site CQC registered domiciliary care agency and there would be an on-site care manager. The Inspector concluded that:

*“Neither the fact that care would be provided by an agency or that they would not be permanently based on the site weighs against the proposal in my view, nor does it indicate that the scheme is more akin to a dwelling house than a residential institution.”*

The conclusions reached by the Inspector are very useful in differentiating Extra Care C2 proposals from C3 general housing developments:

*“For all of these reasons, it is clear to me that the development is offering much more than a dwelling house. Independent living accommodation is one element of the scheme but that would be provided alongside a range of communal facilities that are inextricably linked to an expected way of life. The scheme is designed to meet the needs of the target occupants and facilitate assisted living as well as social well-being and interaction with the outside world. Care would also be provided, specifically tailored to the needs of the occupant. Whilst some primary occupants of the development might, upon taking up residence, require only the minimum level of personal care there is likely to be a mix of care needs at any one time and those with limited need may well require additional care in the future.*

*I can see no justification for disaggregating different elements of the proposal or seeking to separate the individual apartments from the remainder of the scheme.... There is a clear functional relationship between the residential units and the wider assisted living complex and facilities in this case, which are interdependent on one another.... All of this leads me to conclude that the proposed development is properly to be considered a C2 Use”*

This appeal clearly demonstrates the consideration of use class and the level of information which can be required to demonstrate that extra care units fall within Use Class C2 and that they therefore should not be required to offer affordable housing contributions.

It is also relevant to note that the Inspector was presented with the Mayor of London’s 2016 SPG (even though plainly it does not apply in Devon) and was unpersuaded by the arguments made there about the types of extra care facilities that should be classified as C3.

In light of these considerations, draft London Plan policy H15 C cannot be justified. We would therefore request that Part C of the policy is removed in its entirety along with the definitions in paragraph 4.15.3.

Part B of draft Policy H15 states that,

*B Specialist older persons housing (Use Class C3) should deliver:*

- 1) affordable housing in accordance with Policy H5 Delivering affordable housing, and Policy H6 Threshold approach to applications.*

Notwithstanding the points made above about the soundness of Part C of the policy, an extra care residential use of this nature should not be required to make a contribution towards affordable housing because its primary purpose is to provide “care” rather than residential accommodation. The draft definitions of specialist older persons housing explain that a significant portion of the floorspace is used for care and communal facilities,

*“...such as a residents’ lounge, laundry room, a restaurant or meal provision facilities, classes, and a base for health care workers.”*

It is therefore unrealistic to apply the same affordable housing policy to specialist older persons housing as standard residential.

A further point we would like to challenge is the definition of residential nursing care accommodation which states that,

*Care homes are unlikely to provide more than 80 bed spaces in total.*

The number of bed spaces is not a relevant test as to whether the use falls under Class C2 or Class C3 for example the appeal decision referred to above was for a scheme including 113 apartments. We therefore propose that this is removed from the definition.

### Summary

We would welcome the opportunity to work with the London Plan team as part of the preparation of the New London Plan and any other emerging policy documents which include recognition of elderly housing. If you require any additional information then please contact Mark Curry