

Stone Planning Services Limited

Ref: SPS/0377

Date: 25th March 2024

Forward Planning,
Crawley Borough Council,
Town Hall,
The Boulevard,
Crawley
RH10 1UZ.

Dear Sir/Madam,

Crawley Local Plan Main Modifications Representations 2024

Stone Planning Services is appointed by Charterpoint Group Limited to consider the Main Modifications to the Crawley Local Plan. Charterpoint has considerable experience nationwide in the procurement and delivery of C2 Residential Care Homes. They have delivered C2 Residential Care Homes across the country.

These representations relate to MM30 and MM41. Both of which relate to Policy H5 - Affordable Housing.

Background

The Icen North West Sussex Housing Needs survey (2017) which forms part of the evidence base to the Plan shows that Crawley is anticipated to have a 62.5% increase in the percentage of population on the over +65 year old category. Growth in this age category accounts for 35% of the total projected change. It is a growth of 9,600 people aged over 65 (2019-39). Table 62 shows that there will be an increase of 68% in residents with dementia and an increase of 63% in residents with mobility problems.

At 10.25 it concludes there is a need for 168 units of accommodation (not dwellings) per 1,000 residents over 70 with 56% in the market sector.

At 10.42 - 10.44 it states:

" it is however important to recognise that the viability of extra care housing is different from general mixed tenure development schemes, not least as there are typically significant levels of communal space and on-site facilities; higher construction and fit out costs; and slower sales rates as there are less off plan sales. There are also practical issues associated with how mixed tenure schemes may operate. The council need to consider these issues in crafting policies."

It can be difficult in some circumstances for developers of specialist housing for older persons to compete with other developers for land. To support a delivery of specialist accommodation, it may be appropriate for the councils to consider making specific land allocations for specialist housing for older persons within new local plans.

Ultimately for the purpose of seeking affordable housing we would recommend the council in developing new planning policies consider the specific viability of extra care housing schemes as part of preparing viability evidence within the plan making process."

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Whilst this is specific to Extra Care housing the principles equally apply to Residential Care Home provision.

It is clear that there will be an increasing need for accommodation for the elderly over the Plan Period. Residential Care Homes are an important typology within the C2 Use Class. The Local Plan must be positively prepared and effective in setting out policies to ensure delivery of this typology. In its proposed form it is not and is unsound.

Main Modifications MM30 and MM41

We consider that there is a fundamental misunderstanding with regard to the different accommodation typologies that fall within Use Class C2 which has resulted in Main Modifications and hence Policy H5 having a very negative impact on delivery.

It is important to understand the difference between Extra Care Housing and Care Homes.

Extra care housing is housing with care primarily for older people (but not exclusively) where occupants have specific tenure rights (see below) to occupy self-contained dwellings and where they have agreements that cover the provision of care, support, domestic, social, community or other services.

It is private accommodation and is available for rent, shared ownership or sale. You have your own front door so you can control who comes in and when. Couples and friends can stay together.

In care homes, residents have their own bedrooms not self-contained dwellings, otherwise the remaining space is predominantly communal. Whilst people living in residential and nursing care homes have their care provided by the care home staff, extra care residents are not obliged, as a rule, to obtain their care services from a specific provider. That said, other services (such as some domestic services, costs for communal areas including a catering kitchen, and in some cases some meals) will be built into the charges residents pay.

Unlike care homes, occupants of Extra Care housing units have security of tenure and housing rights afforded by their occupancy agreements and cannot be required to move, unless in breach of the occupancy agreement.

A fundamental feature of housing with care is that it is a housing model. Whilst on-site services may – and indeed should be – coordinated effectively, legally, the housing is a separate entity from the care – if it were otherwise, schemes would be liable to registration as care homes. In extra care schemes, the housing provider/scheme owner is merely facilitating a domiciliary care provider to enter the premises and residents have to pay separately for care.

In extra care schemes only the care provider is regulated by the Care Quality Commission (CQC) in respect of the care they provide - the building and its operator are not regulated by CQC. In care homes, the building has to be registered by CQC and the care provider's activities are regulated by CQC.

We object to the Council introducing an affordable dwelling requirement on C2 Residential Care Homes. This is a contradiction in itself. All new Residential Care Homes provide

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residents with a bedroom and en-suite. They do not have space for cooking, recreation, interaction with other residents, exercising etc. They are not dwellings.

The new C2 Residential Care Homes have communal areas for socialising, reading, watching tv, dining areas, cinema, hairdressers. Meals are cooked in a central kitchen by staff and served to residents in communal dining areas. C2 Care homes units are essentially bedrooms not separate dwellings.

Residential Care Residents are on average over 80 years old and an average stay is 18 months.

The Council refers to the Rectory Homes v SoS High Court decision. That decision related to 'the erection of a Housing with Care development'. It provided Extra Care. In those circumstances each resident would live in a very different environment to a C2 Residential Care Home.

Paragraph 5 of the judgement stated:

" The appeal scheme would provide 78 units of residential accommodation. Each unit would have its own front door, between one and four bedrooms, a living room , bathroom and kitchen allowing for independent living . . . "

Paragraph 53 of the judgement states:

"It has become well established that the terms "dwelling" or "dwelling house" in planning legislation refer to a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence . . . "

We acknowledged that a scheme of that nature would create 78 self-contained dwellings. A 78 bed C2 Residential Care Home is very different in nature.

As stated above residents in a C2 Residential Care Home have limited private facilities - a bedroom and en-suite bathroom. They do not have private facilities for 'day to day domestic existence'. Meals, recreation, socialising are undertaken in communal areas.

We consider that the Council has misinterpreted the judgement. Bedrooms/en-suites in a C2 Residential Care Home are not dwelling houses. In the Extra Care sector, the situation is very different. C2 Residential Care Homes should be exempt from affordable housing.

The GLA topic paper: Specialist Older Persons Housing was published in November 2017. At paragraph 2.2 it defines Residential Care Homes as:

Residential nursing care accommodation (including end of life/ hospice care and dementia care home accommodation) should be considered as C2 as it provides non-self contained residential accommodation for people who require additional personal or nursing care. Rooms may be private or shared and may provide an ensuite bathroom. Communal facilities are likely to include a dining room and residents' lounge, with meals and personal services routinely provided to all residents. Personal or nursing care is a critical part of the accommodation package at residential/nursing care accommodation. Care homes are unlikely to provide more than 80 bed spaces in total.

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At paragraph 2.9 it states:

In general terms, class C3 encompasses 'dwelling houses' and developments in this use class provide affordable housing contributions, whereas use class C2 encompasses 'residential institutions' and developments are not expected to provide affordable housing. Assisted Living Extra Care schemes providing on-site care and support typically are within C2 of the use class order but this is often questioned by local authorities, who are predisposed to seek affordable housing.... This debate leads to protracted negotiations and disputes between providers and local planning authorities with unnecessary cost and delay. These often use arbitrary characteristics of a development, such as whether apartments have their own front door, or are 'self-contained units' rather than look at more crucial factors such as the degree of support provided on-site.

We consider that this reinforces our belief that C2 Residential Care Homes are not dwelling houses and should not be the subject of the affordable housing policy(H5).

Crawley, as everywhere, has an ageing population. That will create additional demand for C2 Residential Care Homes. If affordable housing is requested as set out in policy H5 then there is a real danger that none will be delivered. Residential Care Homes would be unviable. Introducing such an impediment to delivery would result in the plan not being effective, justified or positively prepared. **The Plan is unsound.**

The default for affordable housing provision is on site provision. MM30/MM41 introduce an option, in exceptional circumstances, for an offsite contribution to affordable housing. Out of the town centre delivery of 40% affordable is sought.

Within the town centre 25% affordable is sought.

The level of contribution is based on the Council's Borough Wide Sums Calculator. For C2 uses the Net Sales Area (NSA) will be used to account for the gross - net ratio.

The worked example relates to self-contained dwellings. As has been set out earlier in these representations C2 Residential Care Homes do not operate in that manner. There appears to be no viability assessment of a C2 Residential Care Home.

The term "Net Sales Area" is imprecise. There is no "sales" area. The bedrooms are not "sold". This is not applicable to a C2 Residential Care Home.

If on site affordable bedrooms are provided (the default position), then based on a 70 bed unit this would deliver 28 affordable units. The local authority weekly room rate is in the region of £800. This equates to £41,600 per annum. The non-supported room rate is in the region of £1600. That equates to £83,200 per annum.

Across 28 units that would result in an **annual** revenue loss of £1,164,800.

However as stated if introduced, the Term Net Sales Area will need precise definition. Whilst not supporting this requirement as a matter of principle on C2 Residential Care Homes, we suggest that this should relate to the private residential elements of a Care

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Home only and not communal areas. A typical bedroom is 20 sqm . A 70 bedroom C2 Residential Care Home would result in a calculated off site contribution of £500,000.

However as stated there is a shortfall of available beds therefore it is highly unlikely this option would be available.

No C2 Residential Care Home can operate on that basis. Fixed operational costs remain unchanged whilst annual income would be £1.1m less than budgeted.

Furthermore, funders would not be attracted to funding the delivery of such schemes as they are unviable.

By including C2 Residential Care Homes within the affordable homes policy the plan will impede delivery at the very time that the population is ageing.

The Local Plan Viability Study (March 2021) is cited as justification for the inclusion of Residential Care Homes within the scope of the policy. The report at 3.7.24 states:

*"The typology results representative of extra care development (60 apartments – Table 3j) do not reach viability with 40% AH and the other assumptions used collectively. The nature of these results appears similar generally to those seen on appraisal of the care home typology reviewed within the scope of the commercial/non-residential tests as reviewed below (results at Appendix IIIc – Table 5k). The indications are that particular consideration may need to be given to such schemes, commencing with an understanding of their characteristics and looking at viability if relevant. From experience there may be a grey area in terms of where these sit between or combining care services and housing. **There could be a range of scheme types and within these it may be that some schemes would not be required to provide affordable housing in any event, or might be developed or procured in a way that means they make more accessible provision – meeting a range of needs.**"*

This part of the evidence base clearly shows that certain schemes and/or typologies will not be capable of delivering affordable housing. We can see no evidence within the Viability Report to support a policy that requires all C2 uses to provide affordable housing. In fact there is no worked example relating to Residential Care Homes.

MM40 shows a deletion of the following wording:

"This Policy applies to all new residential developments, including those providing care, regardless of whether it falls under Use Class C2 or C3. Each scheme will be considered on a case-by-case basis in relation to any specific or exceptional matters. However, the starting point remains as: Borough Wide: 40% affordable provision (tenure to be determined) Town Centre: 25% affordable provision (tenure to be determined)

This approach reflects that set out in the Housing Needs Survey and the Viability Study. Hence, we see no justification for its deletion and the introduction of a blanket tariff approach.

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Paragraph 63 of the Framework relates to establishing the housing need including tyhst fur older people including:

- Retirement Housing
- Housing with Care
- Care Homes

The Framework distinguishes between the older persons housing typologies. Policy H5 does not. The proposed amendment discourages provision.

C2 Residential Care Homes should be exempt from Policy H5. Policy H5 and MM30 and MM41 does not reflect the way Care Homes operate.

We are not aware of any other Local Plans that have a policy whereby C2 Residential Care Homes seek an affordable housing either on site or by way of a contribution.

Consideration should also be given to the need to comply with the Community Infrastructure Levy Regulations. In seeking on site provision the loss of revenue would require any affordable units to be subsidised in perpetuity. This is a revenue cost not a capital cost. Operational costs will increase year on year with rises in heating, staff costs, food, cleaning etc. Operators cannot influence the Local Authority rate and as a consequence the differential between the local authority rate and the privately funded rate will widen. This will increase the annual deficit. No funder would invest in the construction of a C2 Residential Care Home on that basis. In our strong opinion seeking of what is a revenue contribution is not compliant with the Regulations.

The Planning Practice Guidance states at 023 Reference ID: 25-023-20201116

Charging authorities may also set differential rates by reference to different intended uses of development. The definition of "use" for this purpose is not tied to the classes of development in the [Town and Country Planning Act \(Use Classes\) Order 1987](#) (as amended) although that Order does provide a useful reference point. Charging authorities taking this approach will need to ensure that the differential rates are supported by robust evidence on viability.

It is clearly within the gift to remove reference to C2 Residential Care Homes from Policy H5. We recommend that Policy H5 is changed according.

Paragraph 35 of the Framework sets out the tests of soundness of a Local Plan. As a result of MM30 and M41 Policy H5 is not justified, positively prepared or effective. **Hence the Plan is unsound.**

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We respectfully suggest that the Council, engages positively with the C2 Residential Care Sector to ensure a full understanding of the impact of Policy H5 and how, in its current form, it will impede delivery of Residential Care Homes throughout the Plan Period at a time when the need is growing.

Should you require any further information then do not hesitate to contact me.

Yours faithfully



Paul Stone
Director - Stone Planning Services Limited