Royal Brompton Hospital, Chelsea Farmers Market and 117-123 Sydney Street in the Royal Borough of Kensington and Chelsea planning application nos. PP/16/04357; PP/16/04366; PP/16/04269

**Strategic planning application stage II referral**

**The proposal**
(1) Demolition of 30 Britten Street and the Imatron building to facilitate the extension of the existing Sydney Street Hospital to provide a ground plus 5 storey consolidated healthcare building with 2 storeys of basement and a ground plus 2 basement level imaging centre, together with the associated access, landscape and other works.
(2) Demolition of existing buildings and erection of part 5, part 6 storey buildings with part 1, part 2 storeys of basement to provide a mixed use development comprising 59 residential units, and flexible retail uses (Class A1, A2, A3) and the creation of new publically accessible landscape spaces, associated car, cycle parking, landscaping and amenity and all necessary enabling works.
(3) Conversion and alterations to four Grade II listed buildings at 117-123 Sydney Street for use as 4 residential units at part ground, first and second floors with retail (Class A1, A2, A3) at ground and lower ground level.

**The applicant**
The applicant is The Royal Brompton Hospital and Harefield NHS Trust and the architect is Paul Davi & Partners.

**Key dates:**
Stage 1 reported to Mayor of London: 3 October 2016
Planning Committee: 1 June 2017

**Strategic issues**
**Housing:** The cross subsidy of high quality health facilities in lieu of affordable housing is accepted in this instance. The viability information has been robustly interrogated. The section 106 legal agreement has been negotiated to define and secure the health facilities and ensure surplus development value is appropriately directed towards affordable housing provision.

**Other issues:** The proposals are broadly consistent with London Plan Policy in terms of climate change and transport.

**The Council’s decision**
In this instance Royal Borough of Kensington and Chelsea has resolved to grant permissions subject to the signing of a Section 106 legal agreement.

**Recommendation**
That Royal Borough of Kensington and Chelsea be advised that the Mayor is content for it to determine the case itself, subject to any action that the Secretary of State may take, and does not therefore wish to direct refusal or direct that he is to be the local planning authority.


Context

1 On 14 July 2016 the Mayor of London received documents from the Royal Borough of Kensington and Chelsea (RBKC) notifying him of a planning application of potential strategic importance to develop the above site for the above uses. This was referred to the Mayor under Category 1B of the Schedule to the Order 2008:

- 1B: Development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings — outside Central London and with a total floorspace of more than 15,000 square metres.

2 The two associated planning applications are not referable in their own right. However, they represent enabling development that will cross subsidise the extension to the hospital and were therefore reported alongside the principal application.

3 On 3 October 2016 the Mayor considered planning report D&P/3354/01, and subsequently advised RBKC that while the scheme was broadly acceptable in strategic planning terms, the application did not fully comply with the London Plan, for the reasons set out in paragraph 109 of the above-mentioned report; but that the possible remedies set out in that paragraph could address these deficiencies.

4 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. On 1 June 2017 RBKC agreed recommendations resolving to grant planning permission and listed building consent subject to signing of a Section 106 agreement and on 26 July 2017 it advised the Mayor of this decision.

Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, direct RBKC under Article 6 to refuse the application or issue a direction to RBKC under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application and the connected application for listed building consent. The Mayor has until 8 August 2017 to notify the Council of his decision and to issue any direction.

5 The decision on this case and the reasons will be made available on the GLA’s website www.london.gov.uk.

Update

6 At the consultation stage RBKC was advised that while the scheme was broadly acceptable in strategic planning terms the application did not fully comply with the London Plan for the reasons set out in paragraph 109 of the aforementioned report, as set out below:

- **Housing:** Further information and discussion is required in relation to the proposed cross subsidy of the hospital works in place of affordable housing provision.

- **Climate change:** The carbon dioxide savings fall short of the target within Policy 5.2 of the London Plan. The applicant should consider the scope for additional measures aimed at achieving further carbon reductions before proceeding to any agreement with the borough for any likely carbon shortfall.

- **Transport:** TfL currently object on the grounds that part of the sites fall within the Crossrail safeguarding zone. Further discussions are required to resolve this objection.
Since consultation stage GLA officers have engaged in joint discussions with the applicant, the Council and TfL officers with a view to addressing the above matters. Furthermore, as part of the Royal Borough’s draft decision on the case, various planning conditions and obligations have been proposed to address the above concerns and ensure that the development is acceptable in planning terms.

Housing

As set out at consultation stage the Trust is seeking to modernise and expand its Sydney Street site to allow it to deliver the highest standard of patient care and remain an international leader in the treatment of heart and lung disease. The delivery of the hospital works is based on a cross-subsidy funding strategy, whereby the Trust intends to dispose of the other two non-medical sites. RBKC was advised that whilst the London Plan is clear that affordable housing is a strategic priority when negotiating planning obligations, importance should also be given to social infrastructure. The provision of the new facilities at the hospital was considered to represent a significant public benefit and RBKC was advised that in these exceptional circumstances consideration could be given to affording it priority over the provision of affordable housing. However, further information was required to properly weigh the benefits of providing on-site affordable housing against those of the hospital works.

As set out in the Mayor’s draft Affordable Housing and Viability SPG the Mayor normally expects higher proportions of affordable housing on publically owned land. Central to this is the expectation that when disposing of land, public bodies will ensure that land values take into account affordable housing policy and reflect policy compliant affordable housing provision. In this instance the residential development represents enabling development that will cross subsidise the provision of social infrastructure as part of comprehensive proposals for the redevelopment of the Trust’s estate.

The hospital extension is urgently required to meet clinical needs and provide the highest standard of patient care. However, there are Crossrail 2 safeguarding restrictions preventing the development of the Chelsea Farmers Market site. TfL have agreed to withdraw its safeguarding objection to planning permission being granted for the redevelopment of these sites on the basis that they will be signatories to a section 106 legal agreement with obligations to prevent development of the sites until the safeguarding direction is lifted alongside an extended 15 year consent period. In order to make funds available for the early delivery of the hospital extension, a mechanism is proposed in a section 106 legal agreement to dispose of the associated sites with a clear and transparent process regarding both the funds achieved from the land sale and the hospital costs and direct surplus towards affordable housing. The summary heads of terms of these obligations are as follows:

- Proceeds of the sale of Chelsea Farmers Market site and 117-123 Sydney Street to be placed in a ring-fenced account – this will be the actual amounts achieved at the time of disposal;
- Ring-fenced account will be administered by nominees of the Local Planning Authority (LPA) and the Royal Brompton and Harefield NHS Trust;
- Proceeds of the sale can only be spent on the estate project at Royal Brompton Hospital, Chelsea Campus and for no other purpose;
- Obligations to ensure that if the hospital works do not commence or are not completed or cost less than the sale proceeds that any surplus is to be apportioned between the LPA and the Trust. At the request of GLA officers, this profit share has been increased from 50/50 to 60/40 in favour of the Council to reflect the approach within the Draft Affordable
Housing and Viability SPG. The LPA are to use their share of the surplus for the provision of affordable housing;

- All receipts received by the Royal Brompton and Harefield NHS Trust relating to the disposal of the Chelsea Farmers Market and Sydney street sites whether at first transaction or resulting from subsequent overage or clawback provisions would be placed in the ring-fenced account;

- At the request of GLA officers, a ‘Longstop date’ (six years) has been included to ensure that the hospital works are delivered in a timely manner.

11 Local Plan Policy CH2, adopted in line with London Plan Policy 3.11, requires development to provide affordable housing at 50% by floor area on residential floorspace in excess of 800 sq.m gross external area. Following the consultation stage the Council’s independent assessment of the financial viability appraisal (FVA) submitted in support of the application has been completed and provided to GLA officers.

12 The FVA compares the combined residual land value of the Chelsea Farmers Market and 117-123 Sydney Street sites against the costs of the hospital works. The FVA included a detailed breakdown of the hospital costs which were independently assessed and agreed, including an ‘optimum bias’ at 10.36%, which is effectively a contingency used for costing NHS projects. The submitted FVA and independent assessment also include the following sensitivity testing:

- 50% on site affordable housing provision;
- 20% on site affordable housing provision;
- 10% on site affordable housing provision;
- 5% on site affordable housing provision;
- 0% on site affordable housing provision.

13 The independent assessment concludes that in all these scenarios the costs of the hospital extension would exceed the residual land value (RLV) of the two disposal sites. As requested at consultation stage the Trust has provided a statement regarding alternative funding sources to demonstrate that the disposal of the two sites in question is necessary to enable the hospital extension. The Trust’s associated Charity will embark on a special fundraising campaign to raise the shortfall in funds through charitable donations, if required.

14 Having interrogated the submitted FVA and the Council’s independent review, GLA officers consider that the RLV of the two associated sites could be higher than that indicated in the independent review, as construction costs are considered to be overstated. As such, the proposed section 106 legal agreement requires that the actual receipts from the sales of the sites and the actual costs of the hospital extensions will be used for the purposes of calculating any surplus which could be used for affordable housing. In the event that the sites sales receipts exceed the costs required for the new hospital facilities, and to reflect the approach to profit sharing within the Draft Affordable Housing & Viability SPG, any surplus generated would be split 60:40 in favour of the Council to be used as commuted sum for off-site affordable housing provision within the Royal Borough. The remainder would be retained by the Trust for the provision of healthcare services.

15 The section 106 agreement secures the public benefit of the hospital extension and ensures that the contribution reflects any changes in the development value from the date of the application to the development of the sites including any subsequent revised planning permissions. As such the proposed development is supported in accordance with London Plan policies 3.12, 3.17 and 8.2 and the draft Affordable Housing and Viability SPG.
Climate change

At consultation stage RBKC was advised that the carbon dioxide savings for the Royal Brompton Hospital and Chelsea Farmers Market fell short of the target within the London Plan, and the applicant should consider the scope for additional measures aimed at achieving further carbon reductions before proceeding to any agreement with the borough for any likely carbon shortfall.

With regards to the Royal Brompton Hospital the applicant has reviewed the benefit of further improving the building fabric and concluded that there is little benefit in reducing U values further, as to do so would increase the risk of overheating and with the need to carefully regulate the internal environment, further energy efficiency improvements are difficult. Also the location of the existing energy centre and works required to enable connection to a future district heat network would go beyond the scope of works and be disruptive to the clinical environment. As requested additional information has been provided with regards to the proposed CHP and ASHP’s. Overall, following the investigation of additional measures to reduce carbon emissions and given the constraints of the building type and use, the carbon emission reductions of 24.2% for the Royal Brompton Hospital development is acceptable in accordance with London Plan policy 5.2.

With regards to the Chelsea Farmers Market the applicant has provided confirmation that all uses will connect to the central energy centre. The development will achieve carbon emission reductions of 31.3% and a carbon off-setting payment has been secured. Overall the development is supported in accordance with London Plan policy 5.2.

Transport

At consultation stage concerns were raised regarding the conflict of the proposed development of the Chelsea Farmers Market land with Crossrail 2 Safeguarding. Following discussions, the s.106 agreement, as agreed, puts in place arrangements consistent with the Secretary of State’s March 2015 Safeguarding Directions for Crossrail 2.

Having regard to the Royal Brompton Hospital site transport issues raised at consultation stage, including delivery and servicing plans, travels plans and construction logistics have been addressed through appropriately worded conditions and legal agreement.

Having regard to the development of the Chelsea Farmers Market, the parking provision falls within London Plan standards. All other transport issues raised at consultation stage, including delivery and servicing plans, travels plans and construction logistics have been addressed through appropriately worded conditions and legal agreement.

Having regard to 117-123 Sydney Street it is accepted that due to very specific site constraints, London Plan policy compliant cycle parking cannot be provided. All other transport issues raised at Stage 1 have been addressed.

Response to consultation

RBKC carried out consultation for each of the three planning applications and the listed building consent application. The details of the consultation and the responses received for each of the three application sites is set out below:

Royal Brompton Hospital

RBKC notified local residents and interested parties with 2,886 letters of notification, site notice and advertisement in the local press. A further neighbour notification was carried out in
January 2017 following the receipt of minor amendments to the proposals which consisted of repositioning of the plant at main roof level and revised design details to the new Sydney Wing extension and plant screen.

25 In response to consultation RBKC received 34 objections that are summarised as follows:

- The new service entrance will result in traffic congestion;
- Cale Street should not be used for construction traffic;
- HGV’s using Cale Street;
- Loss of car parking;
- Traffic and air pollution during construction;
- Noise pollution from new plant;
- Overshadowing of St Luke’s Gardens;
- Harm to the setting of St Luke’s Church;
- Bulky massing of the new wing and plant;
- Doubts over viability.

26 RBKC also received one response supporting the application as the facilities are much needed.

27 In relation to the objections and points raised, these have been addressed in the Council’s committee report, and strategic matters, relating in particular to scale and viability, have been addressed in this report and the initial Stage 1 consultation. Having specific regard to air quality it is noted that mitigation measures have been secured by conditions in respect to plant, demolition and construction, and the submission of a low emission strategy.

28 In terms of statutory consultees the Local Lead Flood Authority requested further details, which have been secured by condition. Historic England and the Environment Agency made no comment. Thames Water has no objection subject to engagement from the applicant at detailed design, which has been addressed by informative.

Chelsea Farmers Market

29 RBKC notified local residents and interested parties with 2,886 letters of notification, site notice and advertisement in the local press. A further neighbour notification was carried out in January 2017 following the receipt of minor amendments to the proposals which consisted of changes to the detailed design of the blocks.

30 In response to consultation RBKC received 136 objections that are summarised below:

- Need more affordable housing not unaffordable high end housing;
- Overdevelopment and overcrowding;
- Already sufficient residential sites in the Borough;
- Should include provision for hospital staff;
- Detrimental to nearby residents in terms of loss of light, overlooking and noise;
- Loss of the farmers market resulting in loss of a local amenity and local jobs;
- Loss of public open space;
- All ground floor units should be commercial to create active frontages;
- Retail use would not allow for boutique local retailers;
- Adverse impact on local businesses;
- Proposals will only serve people from outside of the local community;
- Lower local property values;
• Impact on local highways, including increased congestion and accidents, from loss of parking and increased trips;
• Introduction of Crossrail station inappropriate;
• Proposals do not address local Quietway;
• Impact upon the setting of St Luke’s Church;
• Massing and architecture out of keeping with historic character of the site and detrimental to appearance of the area;
• Uninspiring architecture
• Proposals will result in gentrification;
• The application and other current application for development in the area should be considered together;
• The Council has a duty to protect such significant community assets;
• Loss of trees;
• Project viability appears doubtful.

31 In relation to the objections and points raised, these have been addressed in the Council’s committee report, and strategic matters, relating in particular to affordable housing and viability, have been addressed in this report and the initial Stage 1 consultation.

32 RBKC also received three responses supporting the application as an improvement to the existing unattractive site, materials in keeping with the character of the area and would provide improved hospital facilities.

33 In terms of statutory consultees the Local Lead Flood Authority raises no objection subject to conditions, which have been secured. Historic England (GLAAS) raises no objection subject to Written Scheme of Investigation, which has been secured by condition. Historic England made no comment in respect to built heritage. The Environment Agency made no comment and Thames Water requires engagement and detailed design and a condition in respect to sustainable urban drainage, which has been addressed by condition and informative.

117-123 Sydney Street

34 RBKC notified local residents and interested parties with 2,886 letters of notification, site notice and advertisement in the local press.

35 In response to consultation RBKC received eight objections that are summarised below:

• No need for high end luxury houses and retail use;
• The proposals will result in a loss of car parking and increased traffic congestion;
• Pollution during construction;
• The ground floor should be kept in retail use.

36 In relation to the objections and points raised, these have been addressed in the Council’s committee report, and strategic matters, relating in particular to housing have been addressed in this report and the initial Stage 1 consultation.

37 In terms of statutory consultees Historic England have authorised RBKC to determine the application for listed building consent in line with local policy. The Council for British Archaeology commented that on balance, the work being undertaken to change the building was very limited and would not have an adverse effect on the conservation area. Although the Local Lead Flood Authority raised concerns regarding the lack of sustainable urban drainage, RBKC note that the proposals will not increase surface water run-off with additional soft landscaping and less hard surface.
Draft Section 106 agreement

The following are to be included within the draft Section 106 agreement:

- Review mechanisms to capture any surplus for an affordable housing commuted sum (see paragraph 10 above for full details).
- Crossrail 2 safeguarding measures.
- £125,000 for highway works.
- Employment and Skills Plan, including measures for local employment, training and skills over the construction period.
- S106 monitoring costs.

Article 7: Direction that the Mayor is to be the local planning authority

Under Article 7 of the Order the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance the Council has resolved to grant permission with conditions and a planning obligation, which satisfactorily addresses the matters raised at stage 1, therefore there is no sound planning reason for the Mayor to take over this application.

Legal considerations

Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power under Article 6 to direct the local planning authority to refuse permission for a planning application referred to him under Article 4 of the Order. He also has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application and any connected application. The Mayor may also leave the decision to the local authority. In directing refusal the Mayor must have regard to the matters set out in Article 6(2) of the Order, including the principal purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to good strategic planning in Greater London. If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice. If the Mayor decides to direct that he is to be the local planning authority, he must have regard to the matters set out in Article 7(3) and set out his reasons in the direction.

Financial considerations

Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government Planning Practice Guidance emphasises that parties usually pay their own expenses arising from an appeal.

Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.
Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the council to do so) and determining any approval of details (unless the council agrees to do so).

**Conclusion**

The principle of the redevelopment of these sites is supported in accordance with strategic policy. The issues raised at consultation stage regarding housing, climate change and transport have been addressed. As such the application complies with the London Plan, and there are no sound reasons for the Mayor to intervene in this particular case.

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