

M31. Would Policy H15 provide a justified and effective approach to meeting the housing needs of older people in London? In particular:
a) Would the approach to affordable housing requirements be effective and justified in supporting the delivery of housing for older people? Would the definition of the different types of older persons' accommodation in terms of use class (class C2 and C3) be effective and justified? Would it be appropriate in a strategic document?

- 31.1 Yes. The 2012 NPPF states that to deliver a wide range of quality homes, local planning authorities should plan for a mix of housing that is reflective of the needs of different groups, including older people.¹ By 2029 the number of older person households (aged 65 and over) will have increased by 37 per cent, with households aged 75 and over increasing by 42 per cent.² It is important that the need generated by this substantial growth in London's older population is met.
- 31.2 Research undertaken for the GLA in 2017 found that around 15% of older households are expected to want to move into specialist older persons housing.³ Therefore, most older Londoners will choose to remain in non-specialist housing. New non-specialist residential developments have a crucial role to play in providing suitable and attractive accommodation options for older Londoners, particularly developments in or close to town centres, near to relevant facilities and in areas well-connected by public transport. Draft London Plan policy requirements for Inclusive design (Policy D3) and Accessible housing (Policy D5) will play an important role in ensuring non-specialist housing is suitable for the older people that live in it.
- 31.3 To ensure that the draft Plan addresses the need for accommodation for those older Londoners who have a preference for specialist older persons housing, Policy H15 aims to ensure that it is provided in the suite of accommodation options for older Londoners. Importantly the Policy aims to provide older Londoners who wish to access specialist older persons housing with an equivalent level of choice in accessible housing and affordable housing to that available to Londoners accessing non-specialist housing.
- 31.4 Section 149 of the Equality Act 2010 places duties on public authorities, in their exercising of functions, to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.⁴ 'Age' is one of the protected characteristics. The Plan should therefore ensure that older people accessing specialist older persons/age-restricted housing have the same chance of being able to access affordable housing as people who do not share that protected characteristic.
- 31.5 In November 2011, Housing Learning & Improvement Network (LIN) viewpoint 20 update covered the subject of Planning Use Classes and Extra Care Housing, and summed up the then relatively recent problems of clarifying which Use Class a development of specialist older person housing fell under, stating:

¹ NLP/GD/03: DCLG, National Planning Policy Framework (NPPF) 2012, Paragraph 50

² NLP/HOU/023: Three Dragons, Older persons housing benchmarks: assessing future potential demand for older persons housing, care homes and dementia housing in London, November 2017, Page 3

³ NLP/HOU/023: Three Dragons, Older persons housing benchmarks: assessing future potential demand for older persons housing, care homes and dementia housing in London, November 2017, Page 3

⁴ HM Government, [Equality Act 2010](#), Section 149

*'In the past there was little dispute that a residential care home consisting usually of just a bedroom (and possibly a bathroom) but with everything else communal, including meals, was C2. Sheltered housing based on self-contained accommodation with simply a warden or scheme manager and no direct provision of care was housing and thus C3. ... Arguments about how to treat extra care housing have arisen as self-contained accommodation – a hallmark of sheltered housing and modern extra care housing – has been combined with extensive communal facilities and the provision (or availability) of personal care, and often some meals, within the same overall scheme.'*⁵

It goes on to say that cases that have eventually been decided in court are for the most part concerned with fine distinctions and interpretations of Use Class 2 (C2), Use Class 3 (C3) and "care".

- 31.6 The GLA topic paper explores issues around the definitions and Use Class categorisation applied to specialist older persons housing, and the barrier the lack of clarity can be to delivery, citing a number of studies that have highlighted it as an issue.⁶ Since the publication of the topic paper, the House of Commons Communities and Local Government Committee session report 'Housing for older people'⁷ has also cited the inconsistent and cumbersome application of the C2 and C3 planning classifications to extra care housing as being problematic.
- 31.7 Despite the provisions of communal facilities and personal care in some specialist older persons housing developments, the individual homes are essentially the same as non-specialist housing. Communal facilities can be provided in non-specialist housing, and the nature of the care available in specialist older persons housing can often also be provided in non-specialist housing. In addition, the individuals' occupancy status for these developments is similar to that provided in non-specialist housing e.g. through a tenancy agreement, long lease or freehold. In contrast, in residential care and nursing homes the care provided is intrinsically linked to the accommodation, and the nature of the resident's occupancy status is distinct to that offered for non-specialist housing.
- 31.8 Given the evidenced need for clarity on the classification of specialist older persons housing, the consultation draft of Policy H15 aimed to set a strategic approach to this issue, achieving clarity and certainty for developers, applicants and boroughs by providing clear, effective and justified definitions for specialist older persons housing and care home accommodation via the Use Class Order.
- 31.9 Significant concerns were raised via the draft Plan consultation process around the approach taken in Policy H15 to clarification of the Use Class Order in relation to the application of the policy requirements. The definitions in paragraph 4.15.3 of the draft Plan were considered confusing by some consultees. These definitions covered matters such as building layout, amount and level of care, and community facilities provided. However, as set out above these matters are elements of a development that are sometimes provided in general needs housing, specialist older persons housing and care home accommodation, so can be considered confusing if used to define the Use Class of the development. In response to these concerns, a different approach to

⁵ Housing LIN, [Planning Use Classes and Extra Care Housing](#), November 2011, Page 3-4

⁶ NLP/TP/01: Mayor of London, Specialist older persons housing in London, November 2017, Page 5-10

⁷ House of Commons Communities and Local Government Committee, Housing for older people second report of session 2017-19, February 2018, Page 55

improve clarity and assist in the interpretation and implementation of the Policy H15 is proposed via changes to Policy H15 set out in appendix 1. The proposed simplified approach sets out the key attributes that should be used to determine if Policy H15 applies.

- 31.10 The proposed approach has in part been informed by the Care Quality Commission's (CQC) guidance on regulated activities for providers of supported living and extra care housing, the details of which can be found in their 2015 publication 'Housing with care'.⁸ The CQC regulates certain activities undertaken in different types of accommodation settings, and draws a distinction between 'care home accommodation' and 'personal care'.
- 31.11 For 'care home accommodation' the CQC-regulated activity consists of the provision of 'accommodation for persons requiring nursing or personal care' i.e. both the accommodation and the care are regulated together. The CQC's regulated activity described as 'personal care' applies to care that can be delivered in non-specialist housing or specialist older persons housing, but not in a care home. The key difference between these activities is that the regulated activity of 'accommodation for persons requiring nursing or personal care' regulates the accommodation **and** the care, whereas the regulated activity of 'personal care' only regulates the care, not the accommodation.
- 31.12 This guidance assists in defining the attributes that differentiate between 'care home accommodation' (which Policy H15 does not apply to) and 'specialist older persons housing' (which Policy H15 does apply to). Housing development that has the attributes associated with the regulated activity of 'personal care' is specialist older persons housing, and Policy H15 applies. If the development has the attributes used to describe 'accommodation for persons requiring nursing or personal care' Policy H15 does not apply. This approach is based on nationally-recognised descriptions of different forms of accommodation and care for older people and does not reference or seek to clarify the Use Class Order.
- 31.13 Under the Health and Social Care Act 2008, providers of health and adult social care services must, by law, register with the CQC if they carry out a regulated activity. Their 2015 guidance document provides indicators of the different regulated activities. It explains, '*For the regulated activity 'Personal care' to apply, the agreements covering the accommodation and the care must be separate. They must not be provided as a single package under one agreement*'⁹.

Personal Care

The CQC indicators which assist in defining the regulated activity of personal care as provided to a person in their own home include:

- The provision of personal care and accommodation run separately and do not rely on each other.
- There are separate agreements in place for the accommodation and personal care being provided. The supported person has a genuine choice about who provides their personal or nursing care.

⁸ Care Quality Commission, [Housing with Care](#), October 2015

⁹ Care Quality Commission, [Housing with Care](#), October 2015, page 9

- The way the service is purchased (by a local council, NHS body or the individual) allows the agreements for care and accommodation to be separate. This gives the supported person a real choice about who provides the service.
- The person receiving personal care can choose to do the following without affecting their occupancy or accommodation agreement/ contract:
 - Stop receiving the personal care
 - Arrange for an alternative provider or carer to deliver their personal care
 - Not allow the care provider or the housing provider access if they choose
- Housing tenure in extra care and retirement villages should be based on a tenancy, long lease or freehold.

Accommodation for persons requiring nursing or personal care

The CQC indicators to assist in defining 'accommodation for persons requiring nursing or personal care' are that the personal care and accommodation are provided together as a package with no clear separation between the two (with the provider of care and accommodation normally being the same legal entity). The person receiving care has no choice as to who their care provider is, i.e. to receive accommodation, the supported person must accept personal care from the accommodation provider or a company that works with them to deliver the combined service. A key-influencing factor is that 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.¹⁰

31.14 Policy H15 B requires developments of specialist older persons housing to provide accessible and adaptable dwellings in accordance with Policy D5. This will ensure that the developments achieve suitable design standards for older people, and increase housing choice to enable Londoners to live in appropriate accommodation. The need for this housing to meet the accessible housing standards is evidenced in the GLA-commissioned research report 'Accessible design features in specialist older persons housing'.¹¹ This form of housing will also be required to deliver affordable housing in accordance with Policy H5 Delivering affordable housing and Policy H6 Threshold approach to applications.

31.15 The further suggested changes to Policy H15 set out in Appendix 1 help to provide a clear, effective and justified approach that will support the provision of specialist older persons housing in London.

b) Would the 'benchmark numbers' set out in table 4.4 be justified?

31.16 The GLA-commissioned research paper¹² provides evidence and justification for Table 4.4, providing an assessment of need as required by the 2012 NPPF¹³. The paper updated previous research carried out for the GLA in 2014, which informed the 2015 Further Alterations to the London Plan, in which indicative borough benchmarks for specialist older persons housing were first introduced. They modelled potential demand for specialist older persons housing in London, using the Retirement Housing group (RHG) Model, an approach that is recommended in 'Housing in Later Life'.¹⁴

¹⁰ Care Quality Commission, [Housing with Care](#), October 2015

¹¹ NLP/HOU/022: Three Dragons, Accessible design features in specialist older persons housing, January 2018.

¹² NLP/HOU/023 Three Dragons. Older persons housing benchmarks: assessing future potential demand for older persons housing care homes and dementia housing in London. Nov 2017

¹³ NLP/GD/03: DCLG, NPPF, Paragraph 50

¹⁴ Housing LIN, [Housing in later life](#), December 2012

31.17 The 2017 research found that the total potential demand for specialist older persons housing across London is for just over 4,000 units a year over the period 2017-2029, which represents a step change from the average of 471 new homes that have been consented in each of the past two years. To help ensure that boroughs recognise the importance of planning for specialist older persons accommodation, annual borough benchmarks for specialist older persons housing, covering the period 2017-2019, have been provided in Policy H15 Table 4.4.

31.18 GLA research stated that most of the demand for specialist older persons housing is expected to be for home ownership or shared ownership, and that there is a large stock of affordable rented sheltered housing.¹⁵ However, much of this stock is old or unsuitable and will need upgrading, and there is at present a very limited supply of specialist retirement housing for market rent. Recognising that the specialist older persons housing market and models of delivery are rapidly changing, Table 4.4 does not provide a tenure breakdown for these benchmarks. This approach will provide a greater level of flexibility for providers and boroughs and allow a responsive approach to local demand, accounting for the rapidly changing range of products on the market and the variation in how this type of housing is delivered.

c) What would be the mechanism for monitoring this policy and would it be effective?

31.19 The provision of specialist older persons housing by planning consent is monitored via the London Development Database (LDD). The clarification around the definition of specialist older persons housing provided by Policy H15 will assist in this process. The borough benchmarks provided in Table 4.4 are annualised for ease of comparison; this data will be published in the delivery of specialist older persons housing section of the London Plan Annual Monitoring Report (AMR).

31.20 It has been recognised that there is scope to considerably enhance the information available to people looking for accessible and/or specialist older persons housing in London, as the current lack of information can result in people not being able to find a home that meets their requirements. The Mayor is therefore developing an online locator tool for specialist older persons and accessible housing, which will help to ensure that older and disabled Londoners are aware of the new homes being developed so that they can make better-informed decisions about their housing options. The project will make the following information on planning consents publicly accessible from the point of launch (December 2018):

- Level of M4(2) Accessible and adaptable dwellings provided within a development
- Level of M4(3) Wheelchair user dwellings provided within a development
- Specialist older persons housing developments

31.21 Using information from the LDD, the register will be available on the London.gov website and will enable members of the public to easily access and filter planning data by location and type of housing, or search for it on a map.

d) Overall, would Policy H15 meet the objective of Policy GG4 in delivering the homes Londoners need?

¹⁵ NLP/HOU/023: Three Dragons, Older persons housing benchmarks: assessing future potential demand for older persons housing care homes and dementia housing in London, November 2017, Page 3

- 31.22 Yes. For older Londoners who wish to live in specialist older persons housing (around 15 per cent of older Londoners¹⁶) Policy H15 aims to support the delivery of a form of housing that is suitable and relevant for this group. This housing is an important element in the suite of accommodation options for older Londoners. Policy GG4 Delivering the homes Londoners need highlights the importance of creating mixed and inclusive communities, with good-quality homes that meet high standards of design and provide for identified needs, including the need for specialist housing and affordable specialist housing. Policy H15 meets the objective of Policy GG4 by helping to meet the housing needs of older people in London.

¹⁶ NLP/HOU/023: Three Dragons, Older persons housing benchmarks: assessing future potential demand for older persons housing, care homes and dementia housing in London, November 2017, Page 3

Appendix 1: M31 Further suggested changes to H15

The Mayor is suggesting the following further changes to Policy H15 and supporting text:

- **Bold blue** – new text
- ~~Blue strikethrough~~ – deleted original plan text
- ~~Purple strikethrough~~ – deleted minor suggested change text
- **Bold purple**- reinstated original text
- ~~Red strike through~~ – minor suggested change

Change ref no	Policy/para /table/map	Further suggested change
M31.1	H15B	B Specialist older persons housing (Use Class C3) provision should deliver:
M31.2	H15C	C 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.
M31.3	H15 4.15.3	4.15.3 In some circumstances, older people may choose to seek alternative, more tailored specialist accommodation. There is a range of specialist accommodation options providing a different offer and level of care. and the following definitions should be applied in London: – sheltered accommodation and extra care accommodation should be considered as C3 housing: – sheltered accommodation (also referred to as supported housing) is self-contained accommodation specifically designed and managed for older people (minimum age of 55 years) who require no or a low level of support. Schemes normally include additional communal facilities such as a residents’ lounge and a scheme manager, warden or personal alarm/telecare system – 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

		<p>residential nursing care accommodation (including end of life/ hospice care, nursing care units and dementia care home accommodation) should be considered as C2 as it provides non self-contained residential accommodation for people who require for whom additional personal or nursing care is essential. 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.</p>
M31.3	H15 4.15.3	<p>4.15.3a This policy contains requirements for 'specialist older person housing'. It does not apply to accommodation that has the following attributes, which is 'considered care home accommodation':</p> <ul style="list-style-type: none"> • Personal care and accommodation are 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 activity¹⁷ will be 'accommodation for persons who require nursing or personal care' <p>4.15.3b Specialist older persons housing covered by the requirements of this policy has the following attributes:</p> <ul style="list-style-type: none"> • There are separate contracts/ agreements in place for the personal care and accommodation elements • Residents have a choice as to who provides their personal care • Housing occupied under a long lease or freehold, or a tenancy agreement, licensing

¹⁷ Care Quality Commission. Housing with care guidance on regulated activities for providers of supported living and extra care housing. October 2015.

		<p>agreement, license to occupy premises or a leasehold agreement.</p> <ul style="list-style-type: none"> • Housing provided is specifically designed and managed for older people (minimum age of 55 years) • Likely CQC-regulated activity¹⁸ will be ‘personal care’. <p>4.15.3c Where a development does not meet the attributes of ‘specialist older persons housing’ or the attributes of ‘care home accommodation’ as above, then the general housing policies in the Plan apply.</p>
M31.4	4.15.4	<p>4.15.4 Research58 has identified a total potential demand in London across all tenures for just over 4,000 specialist older persons units a year between 2017 and 2029. Table 4.4 provides these requirements as annual borough indicative benchmarks for specialist older persons housing (C3) 2017-2029.</p>
M31.5	4.15.7	<p>4.15.7 The fast track route for affordable housing delivery is available for specialist older persons housing providers. Where an application does not meet the requirements set out in part C of Policy H6 Threshold approach to applications it must follow the Viability Tested Route. Specialist older persons accommodation housing (C3) should provide affordable housing in line with Policy H5 Delivering affordable housing and Policy H6 Threshold approach to applications. However, the tenure split requirements for specialist older persons accommodation housing may differ to those set out in Policy H7 Affordable housing tenure. Where they do, they should be clearly set out in local Development Plan Documents or supplementary guidance. Specific tenure flexibility for small sites is provided in Policy H2 Small sites and small housing developments and Policy H6 Affordable housing tenure. Schemes meeting the threshold set out in Policy H6 Threshold approach to applications will be considered under the Fast Track Route, but developments not delivering this will be subject to the Viability Tested Route.</p>
M31.6	Table 4.4	<p>Title: Table 4.4 - Annual borough benchmarks for specialist older persons housing (C3) 2017-2029</p>