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Response

Response to Consultation Paper on the draft Mayor of London Order 2008 and draft GOL Circular 2008: Strategic Planning in London.

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Planning and Environmental Law Committee. This Committee is made up of solicitors who are experts in their field.

We have structured this response by reference to the questions raised in the Consultation Paper. We have also made some general comments (and references are to paragraphs in the Consultation Paper).

GENERAL COMMENTS ON: Section 3: The Mayor's New Planning Powers

3.1 This paragraph sets out an outline of the Mayor's new planning powers in relation to planning applications of strategic importance. In those cases which will be determined by the Mayor in place of the local planning authority the Mayor will himself become the local planning authority for the purposes of determining the application. The paragraph states that the Mayor may then enforce the terms of any planning permission but in the vast majority of cases the Borough will continue to do this. This seems to us to run the risk for mistakes to be made and inadequate monitoring of compliance with conditions and planning obligations or over/under enforcement. It seems to us that the Mayor should continue to be the enforcing authority (although perhaps not the only one) having imposed the various conditions in terms of clarity and consistency. However, the residual discretion is likely to be of a scale that would be appropriate for the Boroughs to exercise as it will fall well below the thresholds. At the very least there should be a detailed regime for liaison and settlement of disputes as to who is leading between the Boroughs and the Mayor. It might be better for the Boroughs to enforce in the first instance, but for the

Mayor to have a step-in power if the Boroughs do not wish to intervene, or the Mayor specifically wishes to.

3.3 This paragraph states that the Mayor, having given directions on a planning application will also determine any connected application e.g. listed building consent. Under the old GLC arrangement the Mayor would have had readily to hand advice from the Historic Buildings Division of the GLC.

We have concerns that the Mayor will not have any listed building experts to advise him. There would therefore have to be a role for English Heritage. This should be made clear in this paragraph. It is also noted that the Mayor may pass decision making for any subsequent applications for approval of reserved matters or approval of details under conditions in respect of these associated applications to the relevant London Borough. Similar considerations as set out above apply to the determination of such conditions.

In relation to section 106 obligations, we question whether the GLA will have the capacity to enforce. We have further concerns as to how negotiations will work out with the GLA on section 106 agreements.

In general, we question whether the Mayor has the appropriate resources available to him to deal with the range of complex and technical planning issues. We have a concern that in order to implement these new powers, the Mayor will, by necessity, have to divert resources from already under-resourced Boroughs which will have a knock-on effect on the Boroughs' capabilities.

3.5 The notion of having representation hearings introduces another layer of bureaucracy. This will be like a mini planning inquiry which seems to us to be unnecessary. The Mayor will need to have a number of expert advisers who will no doubt sit and hear argument at the hearing. The question arises as to who will pay for all of this. The implication is that various third parties may be able to join in the debate. This will have the effect of slowing down the system.

SPECIFIC RESPONSES TO DETAILED QUESTIONS

Question one - Do you agree with the new procedures for handling planning applications in London?

We have some specific points to make on the new procedures which we set out below by reference to the paragraphs in the Consultation Paper.

Section 4: the draft Mayor of London Order 2008

New Procedures

4.3 We query the need for the Mayor to provide a statement within six weeks of receiving the referred planning application and whether he considers that the application complies with the London Plan. Does that preclude the Mayor from deciding that other material considerations should override a policy in the London Plan?

We also question whether there should not also be a mechanism such as that for screening for an EIA for early determination. As for screening prior to an EIA an affected party would get advance notice before the application goes in as to whether the Mayor is likely to want to look at it or not.

4.4 In relation to the Mayor's statement in response to the application, we have some concerns over the reference to pre-application discussions. Will the Mayor be allowed to charge for these? Will he be under an obligation to make himself available for them within a certain time? This potential cost/delay factor is not included in the regulatory impact assessments, but this could be significant if there are two sets of pre-application discussions with different content. The way forward may be to have joint pre-application discussions.

4.7 In relation to the 14 day period that the Mayor has from receipt of the notification, it is not clear whether this 14 day period comes within the usual periods of determination. In any event, it is the timetable set by the performance statistics and planning delivery grant that for all practical purposes determine the timetable for the application. We think realistically that there may be a need to extend this time period (i.e. as for an EIA) to 13 weeks to avoid Boroughs being under undue pressure. Likewise we have concerns that the extra workload and strain on the system not mentioned in the RIA may have knock-on effects elsewhere as resources are diverted to meet this timetable.

Question Two - Do you agree with the Government proposals on thresholds for referral of planning applications to the Mayor? If not, what changes do you propose?

We have some specific points to make on the proposals on thresholds which we set out below by reference to the paragraphs in the Consultation Paper.

Thresholds

4.14 In relation to the proposed three key changes in relation to thresholds, we are not sure what the rationale is for selecting only residential and waste facilities in the first of those key changes. This is not supported by research or statistics. We wonder whether there should in fact be other strategic priorities (essentially, everything in the London Plan), such as hotels to build capacity for the 2012 Games etc. It is intended that in relation to housing and waste, the thresholds for any applications be lowered so that the Mayor can become involved and drive the delivery of housing and strengthen the Mayor's strategic role in relation to waste management. The threshold for housing is

reduced from 500 homes to 150 homes. That will clearly mean that the Mayor potentially could become involved in a considerable number of cases. The Boroughs are unlikely to be happy with this, with the effect that there may be a greater frequency of disputes and potential for recourse to law if they cannot be resolved otherwise with consequential cost and delay implications. Perversely, the reduction of the threshold might have the opposite effect of slowing down the provision of housing as applications get caught up in the GLA machinery.

4.20 In relation to the proposal to raise the thresholds for the City to developments with a total floorspace of 100,000 square metres and developments which are more than 150 metres high, there is a divergence of views within the committee as to whether this is too great (resulting in too little influence of the Mayor), or too low (resulting in applications being subject to extra bureaucracy that could safely be determined by the City of London). Perhaps this should be kept under review with research being undertaken in the meantime as to the effectiveness of the current thresholds.

Question Three - Do you think this test provides a clear basis for the Mayor to decide whether or not he should determine a planning application? If not, what changes to the test do you suggest?

We have some specific points to make on the proposals for the test which we set out below by reference to the paragraphs in the Consultation Paper.

Policy Test

4.24(a) In relation to the proposal for the test to determine whether the Mayor should take over applications, it is not clear to us whether the relevant issues are to be considered on a cumulative basis (although this might be inferred from a reading of 4.29). This ought to be clarified. Additionally, what does <u>significant impact</u> mean in this context? There is likely to be much scope for argument on this point.

4.30 It is stated that in deciding whether to take on an application the Government believes that the Mayor should take account of the performance of the London Borough in achieving targets set out in the London Plan that are relevant to the subject matter of the application. It seems to us that this raises potential difficulties and it will be particularly difficult to determine to what extent a London Borough is actually achieving targets under the London Plan without considerable research and consequent delay. The London Borough might seek to challenge the Mayor's decision. This is also a recipe for delay in determining the planning application which could be to the detriment of the developer. However, notwithstanding this concern, we consider this could be expressed differently to simplify the position, namely that intervention should be ruled out when there is compliance with targets.

4.32 Dealing with the question of the inter-relationship between targets in the London Plan and the Borough's Development Plan, we have concerns that there is a great deal of room for manoeuvre here. Although this clause states that the latest policies and targets take precedence, the LDF must also be in general conformity with the SDS, and on that basis it would only catch later LDF`s that were generally, but not absolutely, in conformity. If absolute conformity is not a requirement for the Mayor to intervene in the LDF then why should he be able to intervene in the application?

4.34 In relation to the test generally as to whether the Mayor can intervene, as it stands, there is no provision for recourse to a higher body, such as the Secretary of State, meaning that the only further challenge route for a disgruntled local planning authority is via judicial review. We wonder whether there ought to be a provision for automatic call-in by the Secretary of State if local planning authorities do not agree with the Mayor's interpretation of the scope of his powers. Whilst the tests themselves seem reasonably clear, there seems to be currently no balancing arrangement to ensure that they are policed.

Question Four - Do the draft Circular and proposed amendments to the *Town and Country Planning Local Development (England) Regulations 2004* provide clear guidance on:

(i) the Mayor's power to direct changes to Local Development Schemes (LDSs); and

(ii) the Mayor's role in deciding planning applications?

We have some general comments (and references are to paragraphs in the Consultation Paper) to make on the draft Circular and one specific comment. We also have some specific comments to make on the draft Mayor of London Order 2008 and references are to sections in the draft Order.

SECTION 5: THE DRAFT CIRCULAR: STRATEGIC PLANNING IN LONDON

GENERAL COMMENTS

Local Development Schemes

5.5 The new GLA Act 2007 gives the power to the Mayor to direct that changes be made to draft local development schemes if it is necessary to ensure that key policies of the London Plan are reflected in the local development documents work programme. The Mayor is also empowered to direct a local planning authority to prepare a revision to their local schemes. This seems a good idea to avoid conflict between the LDFs and SDS that slip past the general conformity test, or arising from changes to the SDS subsequent to preparation of an LDF, which must be correct.

5.7 This refers to the powers to be returned by the Secretary of State to direct a local planning authority not to implement a direction from the Mayor. That would only be exercised in exceptional cases. This seems sensible.

SPECIFIC COMMENTS on GOL Circular

Paragraph 5.25 of the GOL Circular indicates that no time restriction will be imposed on the Mayor to determine the application once called in by him (ie no 13 week deadline) and that the timescale will be left to negotiation with both sides. This does not seem to be a practical way forward as there is bound to be disagreement over agreeing timescales and uncertainty about when the right to appeal kicks in is not satisfactory.

SPECIFIC COMMENTS on draft Mayor of London Order 2008

Schedule

Paragraph 1(1) - this defines the 'PSI application'. However, paragraph 1(4) also defines a 'PSI application' in relation to section 2A (of the 1990 Act) applications. As the order is virtually entirely focused on section 2A applications, it is confusing and unnecessary to have two definitions.

Paragraph 2 - reference is made to applications for more 'substantial' developments without defining what is 'substantial'. It would be more sensible to refer to PSI developments and if a local authority receives an application which forms part of a PSI development to then treat it as a PSI.

Paragraph 4(a) - the purpose of this paragraph is unclear. It is not clear whether it is supposed to be a definition of 'area of development'. In any event, this seems redundant as any development would normally only relate to the redline area of a planning application.

Part 1

Large Scale Development

Category 1A

This refers to a development which comprises or includes the provision of more than 150 houses, flats or houses and flats. However, the majority of planning legislation refers to 'dwelling houses' as defined in the General Procedural Development Order. We can foresee problems if a new definition for ‘houses’ is introduced.

Part 2

Major Infrastructure

Category 2C

In paragraph 1(a) development is stated to include 'an aircraft runway'. However, the new planning bill encapsulates construction of 'runways at airports'. Unless the two definitions are clarified, reference to runways being part of PSIs will be redundant as they will fall within nationally significant projects and so would be decided by the Commission. We presume the Order is meant to capture the smaller runways for which different thresholds should apply as they do for size of airport extensions.

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