

**DRAFT MAYOR OF LONDON ORDER AND CIRCULAR
RESPONSE FROM LONDON FIRST
08/02/08**

1. London First is a business membership group whose aim is to improve and promote London to ensure that London maintains and enhances its position as a leading world city. We do this by mobilising the experience and expertise of the private sector to develop practical solutions to the challenges facing London and to lobby central and London government for the investment that London needs in its infrastructure. London First delivers its activities with the support of 300 of the capital's major businesses who account for 25% of London's GDP and 17% of all London employees.
2. Business needs a planning system which is responsive, timely and takes full account of the strategic importance of development. London needs an increase in development in all classes to support population and economic growth.
3. London First considers that it is appropriate for the Mayor to be able to take over strategic applications in exceptional cases and broadly supports the proposals for how the Mayor's new powers will work as set out in the Draft Mayor of London Order. The consultation and dialogue between the main interested parties has been extremely useful and productive throughout this reform process and has achieved a broad consensus.
4. As this is a significant change to the planning system it is important the Government commits now to review how the new power is working after two years, with a particular view to amending the policy test, definitions of strategic development and arrangements for representations, if experience of practical working of the new system makes it necessary.
5. London First's principle concerns are:
 - The new arrangements must be as **simple** as practicable and not add undue complexity to planning in London.
 - We do not support including a geographic element to **the policy test** as this would create uncertainty and is likely to lead to legal challenge.
 - A **new referral category** should be introduced for applications in the inner and middle HSE consultation zones.
 - Arrangements for the Mayor to take **representations** should not create undue delay, become too formal or a media circus.
 - **Minor changes to permissions** (including s73 applications) should not be referred to the Mayor.
 - The Government should commit now to **review** the working of the system in two years (April 2010). In particular this should include the policy test, definitions of strategic development and arrangements for representations.
 - The Government should give urgent consideration to how it will **communicate and inform borough planning officers** of the changes to the system to avoid confusion and delay.

MINOR AMENDMENTS, RESERVED MATTERS AND CONDITIONS

6. It is intended that Mayoral ability to take over planning applications for his determination is strategic and exceptional. In the vast majority of cases it will be appropriate for boroughs to determine applications. The GLA does not have the resource to be involved in detailed matters of development control, such as approval of reserved matters and discharge of planning conditions, which on major applications can be numerous and over many years.

Reserved Matters (Strategic applications and those determined by the Mayor)

7. The Mayor should state when determining the outline application whether he wishes to be consulted on specified reserved matters or may state that he wishes to determine them.
8. The Circular should strongly state that the presumption is that reserved matters are dealt with by the borough.
9. The decision over jurisdiction should not unduly delay determining the application.

Conditions

10. The Mayor may also specify that he wishes to be consulted upon the discharge of conditions of a strategic nature (either where he has the power to direct refusal or has determined the application).
11. Where the Mayor determines the application and wishes to be involved in the discharge of conditions e.g. on matters of strategic importance such as energy, this should be reflected in the drafting of the condition.
12. Variation of conditions attached to applications that have been the subject of Mayoral scrutiny should not require referral to the Mayor unless in the opinion of the local planning authority such a variation would be likely to raise a consideration of strategic significance.

MAYOR OF LONDON ORDER

Article 5

13. **5 (a) (iv)** Clarification is required of what is meant by “and details of any planning contribution.”

Article 7

14. London First remains concerned with the policy test **[7 (1)]**. Its impact and potential to cause delay and uncertainty must be monitored carefully. In particular we are concerned that ‘significant effects’ (b) and sound planning reasons (c) require further explanation and definition.
15. **7(3) (a)** Taking account of targets: whilst the Mayor should take account of borough performance against London Plan targets when deciding whether to take over an application, the decision of whether to take it over should be made on the basis of the application, its impacts and the borough’s resolution. While failure to meet targets should increase the rationale for Mayoral intervention, meeting targets should not diminish the role of the Mayor.

16. Where a borough has achieved its targets it should not preclude the Mayor from taking over an application if there are sound planning reasons for him to do so. It should also be noted that borough housing targets are minima to be exceeded. Housing delivery is not constant: whilst a borough may achieve or exceed its target one year, this does not mean that it will achieve the ten year target. Any assessment of targets must be on at least a three year basis.
17. There is no development plan target for affordable housing (“including affordable housing targets” [7(3) (b)]).
18. The relevance and application of targets must be treated carefully. Development plan policy is not black and white and usually includes consideration of viability and feasibility in its application. It is therefore not possible to simply determine whether an application accords with the development plan.
19. Boroughs do not have a numeric affordable housing target. The strategic affordable housing target for London is 50% from all sources – this cannot be translated to a target for an individual borough. The London Plan acknowledges that [para 3.42] “there will be some sites that are capable of achieving more *towards* [our emphasis] the overall 50% Londonwide affordable housing target and some less.” Borough targets are also expressed as a percentage. This ambiguity could lead to debate about whether the borough is achieving its target and delay to the application and development.
20. There is no affordable housing tenure target: the split of affordable housing (70% of social and 30% intermediate) is a Londonwide objective [policy 3A.1], taking account of the need to promote mixed and balanced communities. It is therefore not appropriate to apply this on a site basis. Ambiguity could lead to unnecessary delay.
21. **7 (3) (b)** The guidance should explain what other targets are being referred to here.
22. **(6)** This provision is critical to address instances where a borough is slow in processing an application. Delay to determining applications is contrary to the London Plan’s over-riding objective of accommodating growth through decision and implementation. It is therefore important that the Mayor has the ability to take over significantly delayed cases in the interests of implementing the London Plan if the applicants requests that he does so.

Article 9: Access to representation hearings and documents

23. We are deeply concerned that the Mayor arrangements for the Mayor to hear representations could add undue delay (at least two weeks) to the planning process. This would be counter to the objectives of the changed powers. There should be a strong presumption that representations will be made in writing in most cases and that hearings will be exceptional.
24. The Mayor should not be expected to adhere to more stringent requirements than the boroughs. The Order should simply state that written representations may be made to the Mayor who might, in exceptional circumstances, hear oral representations. There should be no right to be heard. The Mayor should have met the applicant and borough through the determination process.

25. The Mayor should not have to hear representations personally but should be aware of general views and concerns, whether through written representations or exceptionally in hearings, but does not need to hear each objector and supporter.
26. Consultation should remain the responsibility of the borough who should report the results to the Mayor. Where the Mayor has taken over a case due to borough failure to meet the deadline for assessment, the borough should still undertake consultation as they are best placed to do so. In some cases GLA officers may choose to meet objectors and report their concerns to the Mayor.
27. Review of working of the changed powers after two years should include arrangements for representations.

SCHEDULE

Minor amendments to permissions

28. The Planning Bill proposes to allow minor, non-material changes to permissions recognising the importance of allowing reasonable flexibility and the need to make the best use of planners' time.
29. Where changes are still deemed to be material and the application had been the subject of Mayoral scrutiny, they should not be referable and should be determined by the borough unless, in the opinion of the borough, such an amendment would be likely to raise a consideration of strategic significance. This is particularly important on long term regeneration schemes where it is likely that amendments will be needed to reflect changed circumstances. This is likely to become an increasing issue as the Mayor seeks increased detail at outline stage.
30. **1(2)** Should therefore exclude minor changes to permissions (including section 73 applications) where they are dealing with amendments to the detail rather than the principal of the development.
31. The purpose of the Mayor's planning power is to ensure implementation of London Plan policies: minor changes do not have a bearing on implementation of strategic London Plan policy.
32. The possibility of Mayoral referral, especially at a time of constant policy change, adds undue risk and uncertainty to the application process. This could also create a considerable strain on GLA resource.
33. Guidance should assist planning authorities in determining what is a major change and the type of changes which do not require a repeat of the application process.

Threshold for Residential Development

34. A threshold of 200 housing units (rather than the proposed 150) would reflect Kate Barker's definition of 'major major development' and would accord with category 3A on loss of residential units.

New Referral Category

35. A new referral category of 50 residential units or 2,500 m² of commercial development should be included where development falls within the HSE inner or middle consultation zone, being proximate to major hazardous substances. This will enable the Mayor to consider the application and HSE advice and take a balanced view of the risk and appropriateness of development.
36. Applications within the HSE consultation zone are assessed through the HSE's PADHI automated system. Whilst PADHI is a useful tool, it needs to be supplemented with assessment of site specific details which should include measures to mitigate risk. Few planning authorities have expertise to interpret and apply HSE advice and thus tend to accept HSE advice at face value without proper examination of the individual circumstances, realistic degree of risk and scope for mitigation. Boroughs are also not best placed to take the risk of not adhering to HSE advice.
37. An increasing number of housing developments are affected by HSE advice in relation to major hazards and it is becoming a major constraint on housing supply in London: it is estimated (Impact of HSE PADHI Policy Proposals on LDA & GLA policies and projects, Capita Symonds for the Mayor, June 2007) that up to half of the Mayor's annual housing delivery target could be at risk. Prior to 2006, the HSE were only consulted on 28 sites in London (84 hectares). Since 2006 this has risen to 87 sites (923 hectares).

Category 1B

38. **1B1 (a)** Recognising the unique status of development in the City of London, as the heart of the UK economy and the predominantly commercial land use within the City, we support the increase to the floorspace and height thresholds applying in the City.

Category 3E

39. **3E** was drafted before the London Plan was part of the development plan and is based on the departures direction which is currently under review. It is proposed (Review of call in directions, 7 January 2008, CLG) that the referral criteria is now departures of more than 5,000m² gross of retail, leisure, office or mixed use on edge of town or out of town and increases of 2,500 m² where the total would be more than 5,000m².
40. As currently drafted it would effectively enable the Mayor to direct refusal on applications over 2,500 m² if the application is not compliant with one of the London Plan policies. This is clearly not the Government's intention and should be amended to increase the threshold to a strategic level or removed.

GOL CIRCULAR: STRATEGIC PLANNING IN LONDON

Introduction

41. **1.5** should state that, in addition to being able to direct changes to LDSs, the Mayor's view on general conformity will be the starting point of discussion at LDD Examinations.

42. **1.8** should refer to Mayor of London Order rather than Mayoral order.

Scope and format of the SDS

43. **2.1** should state that as a result of 38(2) of the 2004 Planning and Compulsory Purchase Act the London Plan is part of the development plan.
44. **2.16** retail should be added to the types of uses where the SDS may identify broad locations.
45. We strongly endorse the requirement [**2.22**] that on adopting SPG the Mayor makes a statement of the consultation undertaken, the representations received and response to them.
46. For clarity **2.24** should state that policies in Mayoral strategies will only have development plan status if adopted through the SDS process, as drafted it could imply a parallel process.

Arrangements for the review, alteration and replacement of the SDS

47. 'Minor alterations' as referred to in **3.9** [which require less consultation] should be defined.
48. 'Minor or uncontentious' alterations as referred to in **3.15** [which may not require examination] should be defined. We do not consider that changes to the development plan are appropriate without full independent examination.
49. It would be helpful to define review, alteration and replacement.

The Mayor's Role in Planning Applications

50. **5.10** should not refer to the 'current review' but changes to the GLA Act and Order in 2007/8.
51. If category 3E is to be retained, **5.12** should be strengthened to clarify that any referrals would be exceptional.
52. **5.13** should refer to the Mayor's power to take over and determine applications (rather than 'new power').
53. We strongly endorse the statement [**5.17**] that when the Mayor comments on an application he should 'avoid commenting on parts of the planning application that are not more than local importance and which do not have significance to the wider interests of London.' This should be strengthened, replacing 'avoid' with 'not.'
54. The presumption that the Mayor should pass back reserved matters and other consents [**5.28**] should be strengthened.
55. It would not be efficient for the applicant to pay s106 to the Mayor for him to simply transfer it to the borough as described [**5.31**].
56. 'Other parties' who the Mayor may invite to enter into planning obligations should be defined [**5.32**]. We consider that this should be restricted to the boroughs and TfL. The Circular should state that in the interests of expediency and to reach quick agreement, the number of parties should be kept to a minimum.

57. The circumstances where the Mayor may enforce obligations should be explained [5.33].

The policy tests

58. Commitment should be made to review the policy test in two years in light of experience, as for the definitions of strategic development.
59. 5.37 should also refer to the need to deliver commercial development to support London's world city status.
60. A definition should be provided for 'significant impact' and 'sound planning reasons' [5.39].
61. We do not agree that if a borough is meeting its targets the 'Mayor should not normally assume jurisdiction for that application' [5.45]. Delivery in one year may not give a picture of borough importance. Borough targets are also minima to be exceeded. The approach should be that where a borough is failing to meet its targets this increases the rationale for the Mayor to take over an application, not that where it is meeting target it diminishes the Mayor's case.
62. If the application is one of strategic importance, and the Mayor has satisfied the policy tests, the Mayor should be able to assume jurisdiction. Each case should be judged on its merits.
63. The Circular should state that where the Mayor has taken over an application for his own determination, the draft heads of terms should be provided and that this includes unilateral undertakings.

Representation Hearings

64. It should be stated that there should be a strong presumption that representations will be in writing other than in exceptional circumstances.
65. The Mayor should be aware of general views and concerns but does not need to hear each individual objector and supporter. As with the boroughs, where there exceptionally are hearings, there should be no right to be heard.
66. Where hearings are held guidance must ensure that these do not cause undue delay and are conducted in an appropriate manner. Care should be taken to ensure that hearings do not become too formal, like a planning inquiry, or be inappropriately used to protest against development and promote the agenda of single interest groups through attracting media coverage.
67. In exceptional cases where there are hearings, only those who have made written representations and have a genuine locus should be eligible to speak (in favour or against the application).
68. It is unrealistic to expect the agreement of a statement of common ground as suggested in 5.50. This could cause undue delay or be used to cause delay.
69. The number able to make representations should be limited to no more than four groups, including the applicant and borough, each speaking for no more

than five minutes. Only one person should speak on behalf of either the objectors or supporters.

70. Statutory consultees should not be eligible to speak as they will have had sufficient opportunity to make their case.
71. Meetings should be open to the public. We are concerned that if the media is present it could distort proceedings and would prefer that, at very least, no broadcast media is present.
72. Review of the experience of the changed power should include review of arrangements for representations.