



The City of London Law Society

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Response to "Planning for a Better 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 to the Greater London Authority consultation on "Planning for a Better London" has been prepared by the CLLS Planning & Environmental Law Committee. The Planning and Environmental Law Committee is a specialised committee concerned with these areas of policy and legal practice and is made up of planning and environmental law specialists from nearly all the major firms of solicitors in the City of London together with representation from a local authority.

We welcome the prompt publication of the Planning for a Better London report by the Mayor of London. Given the long lead times which are necessary for development in London, we think it is essential for certainty to be established as quickly as possible over the future direction of policy. It is therefore helpful to know the key areas which the Mayor intends to address in revising the London Plan. The opportunity to comment now before the detail of the Mayor's revisions is fleshed out in formal alterations to the London Plan is appreciated, since it gives those of us who are involved in the delivery of new development the opportunity to express our views.

We have set out below our comments on each of the sections in the report. Rather than commenting on every individual proposal, we have focused our comments on those aspects of the report that are of particular interest to our members.

Section 1: The Mayor's Approach

We agree with the Mayor's intention to move away from a one size fits all approach to development, and his awareness of the need to consider each development individually. This is particularly important when considering affordable housing provision, renewable energy requirements and planning obligations generally. It seems to us to be a fundamental strength of our planning system that it recognises what is suitable and possible for one development may not be appropriate for another. Given the current economic climate, it is more important than ever for there to be some flexibility in the system to take into account viability issues; for example, adherence to high affordable housing levels and high sustainability criteria may not be possible.

We welcome this focus on achieving overall outcomes rather than adherence to rigid solutions for all schemes. However, we also think it is important to establish a framework of certainty for developers when preparing planning applications. Not doing this is likely to lead to difficulties in assessing what is expected of developers, with consequent delays, cost increases and planning risk. Applicants for planning permission will only be able to prepare good quality planning applications if it is clear from policy what is expected of them. There is a difficult balance to be struck between flexibility and certainty in this regard.

We agree that the fixed sub-regional boundaries should be reviewed and should allow for permeability across and between them. We also feel that there needs to be greater co-operation between local planning authorities in relation to sites on the fringes of, or crossing, their boundaries. We sometimes see a scheme that has support in one authority giving rise to an automatic objection from the neighbouring authority, even though both authorities are effectively responsible for the same broad area. People don't perceive boundaries in the way that local planning authorities do. We think that the Mayor could perform a valuable role in smoothing the hard edges of these boundaries and encouraging co-operation and consistency rather than trench warfare.

The reassurance given that the Mayor will only use his powers to take over planning applications of real strategic importance is also generally welcomed. Applicants can spend many months negotiating with local planning authorities and it would be wrong for the Mayor to step in save in cases of genuine strategic importance. We would also be concerned if the Mayor took over an application in circumstances where his intention to do so was not made clear at an early stage in the planning process. Again, there is a need to create certainty in the conduct of planning applications and transparency as to the Mayor's intentions is essential to the integrity of the system. We assume that the Mayor will not take over an application in circumstances where he thinks it should be refused and that he will use his power to direct refusal instead. Taking over an application only then to refuse it would introduce unnecessary costs and delays.

We would hope that the Mayor's preference to leave decision making at the local level will be combined with a weather eye on such decisions to ensure they are being taken in general conformity with the London Plan. We see many decisions made locally which seem to go against London-wide policy aims. There is a risk that this brings local decisions into disrepute, with community expectations raised in circumstances where an appeal may be inevitable.

We hope that the Mayor's role in planning will include a drive to improve efficiencies in the planning system and to encourage applications to be dealt with more promptly.

The proposal of an annual London Planning Convention is welcomed. It would provide a forum for sharing expertise and promote the exchange of ideas and innovations. We are confident that it would appeal to planning solicitors working in the City of London and that many of our members would wish to attend. We agree that it would be wholly inappropriate (and, in some cases, unlawful) for the Mayor to reopen planning decisions made by the previous Mayor.

Section 2: The Key Challenges

We agree that the report has identified most of the key challenges that planning in London has to address. However, we feel that transport issues should also be regarded as a top-level priority in London: transport and planning are indivisible in the

city. At the same time, the challenge of responding to the effects of climate change make transport problems all the more difficult to solve.

Other great cities across the world are piloting new ideas and technologies in order to help people move about more easily and we hope that the Mayor will want London to be the forefront of these technologies. In addition, we would like to see continued improvements and investment in cycling in the capital and renewed attempts to embrace the transportation opportunity of the River Thames. Both of these offer the prospect of winning significant transport advantages with limited environmental consequences.

In relation to climate change and the environment, we hope that the Mayor will support innovation in sustainable development and not deter novel or cutting-edge developments. There will be some difficult decisions to make where these developments impact on other areas of planning policy – such as the protection of views – and we would hope that the Mayor does not reduce the weight that he affords to sustainability issues when considering such proposals. He has said that he wants to make London "the centre of the new global green revolution" – an ambition that we support.

There is considerable confusion regarding the various sustainability standards and the acceptable means of achieving certain sustainable targets; different bodies seem to apply different standards and this often makes it difficult for developers to know which criteria to follow and place most emphasis on. Therefore it would greatly assist if some clarification could be given so that there is uniformity across the boroughs and one set of appropriate definitive standards. Hopefully the new Department of Energy and Climate Change will assist with this aim.

We note that the Mayor has aspirations for district renewable energy supplies. Whilst laudable, this may result in conflicts with other areas of legislation; in particular with competition and procurement controls. Therefore the Mayor will need to assist developers in finding a way through these issues to enable them to access locally generated renewable energy whilst not falling foul of procurement and competition legislation.

We comment on other specific policy proposals in section 3 below.

Section 3: Key Policy responses

Ensuring London's continued economic success

The clear support for tall buildings in appropriate places is helpful and we hope that this statement of policy will facilitate the determination of more applications for tall buildings at the local level rather than by the Secretary of State following a public inquiry.

Whilst the proposal to designate places that are appropriate for tall buildings is welcomed, we think that it would be wrong for this to be accompanied by a blanket ban on tall buildings in other locations. A tall building that is well designed will often be a better solution for a site than a lower building of poor design, even in locations that are not designated as being appropriate for tall buildings. There can sometimes be a peculiar obsession in London with the height of buildings, to the exclusion of other factors that are equally important to their architecture. The Mayor has said that he wants to see beautiful buildings in London; it would be preferable to see design quality (and all the elements that encompasses, including height) as the primary

factor in determining whether a building should be permitted, rather than its height alone. If a building is truly of exceptional quality, then it will not act as a precedent and policies can be tailored to ensure that this is so.

Delivering homes for Londoners

The common sense approach of trying to increase affordable housing in places where it does not make development unviable, and not being overly prescriptive on levels in other areas where it would have an unacceptable impact on viability, is welcomed. In the current economic climate we think that the target of 50,000 new affordable homes between 2008 and 2011 will be challenging and a flexible approach to the delivery of affordable housing will be necessary if this objective is going to be achieved. This may include greater acceptance of off-site affordable housing in appropriate cases; this will often result in a larger number of new affordable homes being delivered overall.

There also needs to be greater focus on fluidity within the affordable housing system, with increased support for moving people on from affordable housing into private housing in order to free up space for those trying to get on to the first rung of the housing ladder. It will be important for the Mayor to support local boroughs in identifying innovative solutions to restore some of this fluidity instead of rigidly requiring a fixed percentage of affordable housing of specific tenures in every case.

Meeting the environmental challenge

We agree that tackling climate change is one of the greatest challenges of our time. We are pleased that the Mayor will support a variety of measures to combat climate change and will move away from the somewhat strict hierarchy of renewable energy solutions for individual developments that currently prevails.

We would welcome any support that the Mayor is able to give to boroughs in proactively identifying shared solutions to renewable energy requirements, rather than relying on developers to come forward with proposals if and when they submit planning applications. There is a need for genuine forward planning in this area and the Mayor is well positioned to take the lead.

Keeping London moving

We are concerned that there are some contradictions in the report in relation to the Mayor's position on the expansion of Heathrow Airport. On page 20, the Mayor refers to Heathrow Airport as an "economically critical place" and states that "all options for airport capacity for London and the south-east, including a new airport to the East of London, have to be looked at". Yet later in the same document, the Mayor states that he opposes a third runway at Heathrow.

Many of our members think that Heathrow will need to be expanded if it is to continue to serve the business and economic needs of London. While others will take a contrary view, it seems to us that a decision of this importance should not be taken by the Mayor until all the evidence is available. It is quite impossible for all options for airport capacity in London to be examined by the Mayor if he has already ruled out the main proposal currently being considered.

The Government will shortly be announcing its decision on the future development of Heathrow Airport. If it decides that a third runway should be permitted and the Mayor continues to oppose this, regional policy will be at odds with national policy. This is

not the coordinated decision making on new transport infrastructure that the Mayor wishes to see. It can only lead to uncertainty over transport policy and it seems to us that London will inevitably suffer as a result.

Section 4: Making it Happen

We agree that it is preferable in the short term to build on existing London Plan policies instead of undertaking a complete overhaul of the plan. Continuity in planning is of critical importance in view of the long lead times for development projects in London. The publication of best practice guidance should be of practical assistance in sharing experience and sits well with the Mayor's focus on planning outcomes rather than the planning process.

As the London Plan is revised it would be helpful for clear updates to be given as various stages in the process are completed. This will make it clearer what weight local boroughs should be placing on the revised policies in their decision making. We are keen to be involved in this review process and we hope that the Mayor will keep us informed of progress and seek our assistance where this would be helpful. We look forward to working with the Mayor to achieve his goals. In the meantime, if there are any particular aspects of the above that you would like to discuss further, please do not hesitate to contact Robert Leeder (Policy & Committees Coordinator, CLLS) at mail@citysolicitors.org.uk or 020 7329 2173.