

London Plan revised early minor alterations (REMA) – schedule of Mayor of London’s responses to the EiP Inspector’s recommendations

Rec no	REMA Inspector’s recommendation	REMA ref	Mayoral response and statement of reasons
IC1	<p>Amend last sentence to read: ‘...set by agreement between developers, providers, the Mayor and, in dealing with individual planning applications for schemes not funded by the Mayor, the London Boroughs.’</p> <p>Delete the proposed new sentence that starts with “In view of the particular priority...”</p> <p>Delete: ‘Boroughs should enable the range of affordable rents to be applied....other relevant documents.’</p>	<p>Para 3.61, 2nd bullet</p> <p>Para 3.63</p> <p>Para 3.68</p>	<p>The first part of recommendation IC1 is <u>accepted in part</u>.</p> <p>The second and third parts of recommendation 1C1 are <u>not accepted</u>.</p> <p>The Inspector has suggested three changes to those parts of the REMA which deal with affordable housing and in particular proposals intended to exclude boroughs from setting their own rent caps for the new affordable rented housing product (which Government guidance states should be available at rents up to 80 per cent of local market rents) and from involvement in setting rates through the planning process in individual cases.</p> <p>The Inspector concluded (paragraphs 17-25 of his report) first that the REMA proposals could not be justified on the basis of a single housing market in London, pointing to the existence of a number of sub-markets with their own characteristics with considerable variations in types of accommodation, tenure, rents and sale prices. He went on to point out that not all affordable housing will be provided with financial support from the Mayor; other providers and mechanisms may be available. While different strands of policy need some consistency it is not necessarily appropriate for the Mayor to enforce his housing powers through a spatial planning document such as the London Plan. He also concluded that the emphasis in the REMA on maximising the quantity of new affordable housing could outweigh the part of the policy to meet objectively assessed needs for market and affordable housing in their area, and that boroughs should be enabled to seek to meet objectively assessed local needs for affordable housing, eligibility for which having to be established by reference to local house prices and income levels. Such a policy, he suggests, would be consistent with the spirit of the Localism Act and would complement their ability to negotiate affordable housing contributions to help meet locally assessed needs at planning application stage</p> <p>In paragraph 24 of his report, the Inspector noted a letter “from the former housing minister in support of the REMA” which he treated as “an indication of an aspect of government housing policy regarding affordable housing needs but national planning policy</p>

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			<p>does not give priority to regional needs”. He concluded that a policy framework set out by the Mayor which might preclude effective provision of housing that is genuinely affordable in parts of London could be argued to be inconsistent with the thrust of policy in the National Planning Policy Framework.</p> <p>Accordingly, he has made his recommendation IC1 in three parts:</p> <ul style="list-style-type: none"> • to amend the second bullet point in paragraph 3.61 by adding the words “...set by agreement between developers, providers, the Mayor and, in dealing with individual planning applications for schemes not funded by the Mayor, the London boroughs.” This would have the effect of allowing boroughs to set rent caps for affordable rented housing where no funding by the Mayor was involved. • In paragraph 3.63, delete the proposed sentence reading: “In view of the particular priority the Mayor gives to provision of new affordable homes to meet London’s very pressing need, boroughs should give particular weight to the criteria set by national government for the allocation of public resources for affordable housing in setting local plan targets (Policy 3.11) or negotiating provision in private housing or mixed-use developments (Policy 3.12) and should avoid imposing any requirements (such as borough-level caps on rent levels for affordable rented housing) that might restrict the numbers of new affordable homes”. This would enable boroughs to set rent caps for affordable rented housing at levels below the 80 per cent specified in the NPPF. • In paragraph 3.68, delete the proposed sentences reading: “Boroughs should enable the range of affordable rents to be applied and should not attempt to set rent targets for affordable rented housing in their local development frameworks as this is likely to impede maximisation of affordable housing provision Londonwide. Instead the Mayor may provide details of where variations to Affordable rent can apply in his London Housing Strategy and other relevant documents.” This would enable boroughs to set rent caps for affordable rented housing in their local plans below the 80 per cent specified in the NPPF.

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			<p>The first of these is <u>accepted in part</u>, but with amendments to avoid possible ambiguities in the wording proposed by the Inspector. The result would be an additional sentence at the end of the second bullet point in paragraph 3.61 (which defines “affordable rented housing”:</p> <p style="padding-left: 40px;">“In respect of individual schemes not funded by the Mayor, the London boroughs will take the lead in conjunction with relevant stakeholders, including the Mayor as appropriate, but in all cases particular regard should be had to the availability of resources, the need to maximise provision and the principles set out in policies 3.11 and 3.12”.</p> <p>The remaining elements of this recommendation are <u>not</u> accepted, as in the Mayor’s view, they give inadequate weight to national policies, the extent of resources for affordable housing and the basis on which they are made available, and to Mayoral housing policies and the need for planning policies to be consistent with them. There are also issues of internal consistency among the recommendations, and with other policies in the London Plan. Most of these are issues that were taken into account by one of the Inspector’s colleagues in a report on the London Borough of Tower Hamlets’ development management policies¹ who came to a substantially different conclusion on the issues at hand in a decision published after the examination (in December 2012). This therefore raises a new matter following the examination in public which it is appropriate to take into account in considering this recommendation. These matters are dealt with in the same order below.</p> <p>The Mayor’s position at the EiP was that the NPPF did not support the setting of rent caps for the affordable rented housing product. At the first stage of public consultation (that primarily intended for the London Assembly and functional bodies), the Mayor received a letter from the then Minister for Planning, Bob Neill MP, confirming that this approach as carried forward in the proposed alterations was in accordance with national policy. At the</p>

¹ Report to Tower Hamlets London Borough Council: Report on Examination into the Managing Development Local Plan, File Ref: E5900/429/11

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			<p>second stage, a similar letter was received from the then Minister for Housing, Grant Shapps MP.</p> <p>The Inspector referred to the latter as a “letter from the former housing minister” which was “an indication of an aspect of government policy regarding affordable housing need”, and went on to contrast this with “national planning policy”. The inference is that he viewed the letter from Grant Shapps as a statement of national housing, as opposed to planning, policy. Whether or not that is the case, the Mayor considers that simply treating the letter as an “indication of an aspect of government policy” gives the letter insufficient weight . It was sent as part of a formal consultation exercise on alterations to the Mayor’s spatial development strategy and, in that context, clearly deals with planning policy. Indeed, it states explicitly that “I am aware that some local authorities’ intention to intervene and set arbitrary rent caps is likely to have a detrimental effect on the delivery of the Affordable Rent homes by housing associations. We should also recognise that reintroducing rent controls ‘via the back door’ of planning policy is likely to hinder the supply of affordable and private rented accommodation, reducing choice for tenants and simply meaning less housing is available to rent. This will not be in the public interest for Londoners”.</p> <p>The Inspector’s Report does not clearly engage with these substantive points. In the Mayor’s view, these clear ministerial statements should have been given greater weight by the Inspector. Contrary to the Inspector’s conclusion that the REMA are not in accordance with national policy, the Mayor considers these letters clearly demonstrate that accepting the second and third parts of the Inspector’s recommendation would not be consistent with national policy and would as such fall foul of one of the NPPF tests of “soundness” (that the plan should enable the delivery of sustainable development in accordance with the policies in the NPPF).</p> <p>The Inspector’s report and recommendations also do not address the basis on which funding for affordable housing is to be made available. This is set out in the CLG HCA 2011-15 Affordable Homes Programme-Framework, and is an authoritative statement of the basis</p>

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			<p>on which resources for affordable housing will be available in the current funding round. As such, it goes to the questions of viability and deliverability highlighted in paragraph 173 of the NPPF.</p> <p>Para 3.4 of the Framework makes clear that nationally, “<u>Providers</u> (our emphasis) will be able to let a property at an Affordable Rent of up to 80% of the gross market rent which reflects the property size and location. The maximum rent level for Affordable Rent should be assessed according to the individual characteristics of the property”. There is no reference in the document to rents being set through the planning system; the Framework identifies only the HCA as being able to intervene in the decision of a provider considering whether rents may be set at less than 80% (para 3.11). The London-specific section 7 of the Framework does not alter this position but does explain that the Mayor’s Housing Strategy “sets out his vision and policies for housing, which with his (then) draft replacement London Plan, informs his funding priorities for the 2011 – 15 period” (para 7.2). The Framework anticipates that in London “Providers will be expected to deliver a range of rents across their development proposals from homes let at target rents up to a maximum of 80% of the market rent. In order to maximise the number of new homes, it is expected that most will be let at, or close to, the 80% limit” (para 7.11).</p> <p>In the Mayor’s view, the Inspector’s report (paras 18 - 22) and recommendations do not sufficiently recognise the importance of this policy on the Affordable Rent product or the arrangements for investment in it across London agreed with CLG. In addition, the report appears to support the setting of rents through the planning system, and seeks to focus investment on inner London and/or to make the Affordable Rent product work in a way for which it was not designed. This is contrary to the approach anticipated by the Minister, the CLG HCA Framework and the Mayor.</p> <p>The Inspector’s report also gives insufficient weight to the availability of resources for different forms of affordable housing, and to the effects on development viability of local planning authorities setting rent caps at levels which would not be supported by the level of subsidy available. As such, this approach would render impossible the achievement of the</p>

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			<p>overall strategic objectives for delivery of affordable housing in policies 3.11 and 3.12 of the London Plan. This would be inconsistent with the NPPF requirement (paragraph 173) that plan policies should be deliverable over the plan period and have particular regard to viability and costs.</p> <p>It is significant that in the Tower Hamlets case referred to above, the Inspector concluded that the Borough’s policies purporting to cap rents for the new product (by implication) would have the direct result of reducing the total number of new dwellings available for rent in new housing schemes, due to the viability implications for providers. The Inspector in that case concluded that “...the imposition of maximum percentages for Affordable Rent levels...does not constitute an appropriate element in a planning policy for the whole borough as, among other things, it would also restrict the total number of new rental units provided overall for viability reasons. Both would be contrary to the firm intent of the NPPF and out of general conformity with the L[ondon] P[lan].”</p> <p>In the Mayor’s view, the REMA EiP Inspector’s report is also incorrect in its approach to the London housing market area. Leaving to one side the points made earlier about whether setting rent caps is compatible with national policy, the NPPF (paragraph 159) states that when considering housing needs, planning authorities should work “with neighbouring authorities where housing market areas cross administrative boundaries”. It has long been accepted that London represents a single housing market area, and both the London Plan and Mayor’s Housing Strategy are based on this accepted approach. Even accepting the point made by the Inspector that there are variations within this market (which would be true of any housing market area), there was no evidence before the EiP or cited in the report which shows these variations are meaningfully correlated with borough boundaries. The Tower Hamlets Inspector’s conclusion that “in this particular context, the borough must be seen as part of the effective single housing market across London and therefore play its part in helping to meet wider strategic, not just local, housing needs” is more consistent with both the NPPF and the existing policies in the London Plan. As the Tower Hamlets decision points out, failure to consider wider housing need “would only exacerbate difficulties for other parts of the city”.</p>

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			<p>Mayoral policy on affordable housing is set out in the draft Revised London Housing Strategy (published in December 2011). This sets parameters for the London Affordable Housing Programme in the 2011-15 funding round covered by the Framework referred to earlier. It states that the affordable rented product will be applied so as to deliver almost 55,000 affordable homes (Policy 2.1A), and that the affordable rent product will include homes at a range of rents with a programme average of 65 per cent of median market rent, with rents charged within the new welfare caps on both new and converted homes (Policy 2.1B). It further states (Policy 2.1C) that 36 per cent of new affordable rent homes allocated will be family-sized housing with three bedrooms or more, with rents within the welfare caps.</p> <p>In his report, the Inspector does not indicate how an approach allowing each borough to set its own rent levels can be compatible with this approach. The Mayor is subject to a statutory requirement to have regard to the need to ensure consistency between his strategies (Greater London Authority Act 1999 (as amended), section 41(5)(b)), and this has to be taken into account in considering these recommendations. It is difficult to see how taking completely different approaches in spatial development and housing strategies can be reconciled with this duty; the only likely result of doing so would be widespread confusion and delay in delivery of new affordable housing.</p> <p>This problem is exacerbated by some inconsistencies between the Inspector’s conclusions and the recommendations in his report. For example, his first recommended change to the housing aspects of REMA and paragraph 20 of his report appear to apply only to affordable housing schemes not involving Mayoral funding, while the other recommendations would apply to all schemes.</p> <p>Further, the recommendations would undermine deliverability of other London Plan affordable policies some of which were, and some of which were not subject to REMA-based changes. For example, Under Policy 3.11 A “The Mayor will, and boroughs and other relevant agencies and partners should, seek to maximise affordable housing provision and to ensure an average of at least 13,200 more homes per year over the term of this Plan. In</p>
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			<p>order to give impetus to a strong and diverse to a strong and diverse intermediate housing sector, 60% of the affordable housing provision should be for social and affordable rent...” The words “and affordable” were part of the REMA but the Inspector made no recommendation with regard to them.</p> <p>Similarly, in his report, the Inspector made no recommendations on the Mayor’s addition to 3.11B which introduced affordable rent “and to making the best use of available resources to maximise affordable housing output” or to the addition to 3.11 C which underscored these point as priority policy concerns, or to Policy 3.12 Ag requiring boroughs when negotiating on individual schemes to have regard to “resources available to fund affordable housing, to maximise affordable housing output and the investment criteria set by the Mayor”. In the Mayor’s view, these inconsistencies would undermine the deliverability and effectiveness of affordable housing, contrary to NPPF paras 173 and 182.</p> <p>Finally, in his report the Inspector suggests that the approach taken by the Mayor in the REMA on affordable housing is inconsistent with that concerning provision for gypsies and travellers where, despite the arguments for giving some direction at sub-regional level, the Mayor has left full responsibility to the boroughs. In the Mayor’s view, this argument is based on an incorrect analogy between very different policy areas, and a misreading of the Mayor’s policy on gypsies and travellers.</p> <p>While it is correct that the Panel that conducted the examination of the draft replacement London Plan in 2010 recommended sub-regional targets for gypsy and traveller sites, it was noted at the time that this was inconsistent with developing (and now established) national policy, that none of the stakeholders (gypsies and travellers themselves, the boroughs or the Mayor) considered sub-regional targets would be effective and that they would not provide a clear and robust mechanism for setting targets across London. In fact the Mayor does not leave full responsibility to the boroughs on gypsy and traveller provision in the London Plan: Policy 3.8 makes clear that the Mayor will work with boroughs to identify the accommodation requirements of gypsies and travellers and states that boroughs should ensure that sites are identified to address these requirements in line with national policy.</p>

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			<p>National policy on gypsies and travellers makes quite clear the Government’s view that this is a matter for determination at the local level; the position as regards affordable housing is quite different, as explained above. In both areas of policy the REMA reflects the approach taken in national policy and the respective powers and responsibilities of the Mayor and the boroughs. As such, these approaches meet the tests of soundness set out in paragraph 182 of the NPPF, particularly those of appropriateness, effectiveness and consistency with national policy.</p> <p>In summary, it is the Mayor’s view that acceptance of the second two elements of the Inspector’s recommendation IC1 would be inconsistent with national policy, would be likely to lead to widespread confusion and delay and would undermine implementation of other Mayoral planning and housing policies. For these reasons, the second two elements of the Inspector’s recommendation IC1 are <u>not accepted</u>.</p>
IC2	Adopt the changes set out under reference 7.1 of the SESC	Para 7.5	<p>Recommendation IC2 is <u>accepted</u>.</p> <p>The NPPF introduces a new local open space designation:</p> <p><i>76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances .Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.</i></p> <p><i>77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:</i></p> <ul style="list-style-type: none"> • <i>where the green space is in reasonably close proximity to the community it</i>

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			<p><i>serves;</i></p> <ul style="list-style-type: none"> • <i>where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and</i> • <i>where the green area concerned is local in character and is not an extensive tract of land.</i> <p>At the examination, the Mayor’s representatives agreed to a minor change to the reference to the new designation proposed to be added to paragraph 7.5 of the London Plan in order to ensure consistency with the NPPF, avoid confusion of terminology in definitions and make the London plan effective (the wording is shown in Annex C).</p> <p>The Inspector has made a recommendation that this agreed change should be made, and this is <u>accepted</u> accordingly.</p>
IC3	Delete Section D of Policy 8.3 and paragraph 8.15A	Policy 8.3D and Para 8.15A	<p>Recommendation IC3 is <u>not accepted</u>.</p> <p>The REMA proposed changes to the policy (8.3) in the London Plan dealing with the Community Infrastructure Levy (CIL). In short, it was proposed to add references in Policy 8.3 and a paragraph 8.15A of the explanatory text stating that the Mayor will work closely with boroughs to ensure the CIL is applied appropriately and effectively to achieve the objectives set out in the London Plan and, in particular, to support optimisation of the opportunity/intensification area and other strategic development opportunities identified in Chapter Two of the Plan.</p> <p>The Inspector concluded (in paragraph 41 of his report) that the proposed alterations “appear rather prescriptive. They do not reflect paragraph 175 of the NPPF, which states that CIL should incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place”, and recommended that these proposed alterations should be deleted.</p>

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			<p>This recommendation has been overtaken by the publication of new statutory guidance on the CIL by the Department for Communities and Local Government following the examination in public, in December 2012 and again in April 2013. Paragraph 4 of this guidance makes clear that borough CIL charging schedules should be consistent with and support implementation of up-to-date local plans and, in London, the London Plan. Paragraphs 8 and 21 of the new guidance reinforce this by making it clear that boroughs should be able to show how their CIL proposals will help delivery of their plans (which include the London Plan), and that the extent to which they do so should be considered by charging authorities in proposing levy rates (paragraph 29). The proposed alterations reflect this approach, which has also been carried forward in the recently published Mayor’s supplementary planning guidance on the use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy.</p> <p>Even if this development subsequent to the examination is put on one side, in the Mayor’s view the recommendation is to be based on a misunderstanding of what the REMA say on this subject. Contrary to the implication in the Inspector’s report, the REMA do not counterpose strategic and neighbourhood infrastructure and suggest that the former should take priority (this is a difficult division to make in practice - there is likely to be considerable overlap between “strategic” and “neighbourhood” needs in fields such as transport). Rather it says that where there are strategically important infrastructure priorities, they should be identified through the LDF process jointly by the boroughs and the Mayor.</p> <p>The question of neighbourhood funding raised by the Inspector is now dealt with by legislation, through amendments to the Community Infrastructure Levy Regulations 2010 and to the extent that there is a distinction between “neighbourhood” and “strategic” infrastructure (and it is important to bear in mind that neighbourhood plans have to have regard to the strategic policies of the London Plan and borough local plans), the REMA will have to operate within the new regulations.</p>

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			For these reasons, this recommendation is <u>not accepted</u> .