

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2861

**Title: London Plan Guidance**

### Executive summary:

This Mayoral Decision seeks the Mayor's agreement to the adoption of two London Plan Guidance documents that provide additional guidance relevant to the implementation of specific policy areas in the London Plan as follows:

- Public London Charter (Policy D8 – Public realm)
- Be Seen Energy Monitoring (Policy SI 2 – Minimising greenhouse gas emissions).

This will help support and steer boroughs, developers and other stakeholders and help ensure the delivery in practice of key London Plan objectives.

### Decision:

That the Mayor approves the Public London Charter London Plan Guidance and the Be Seen Energy Monitoring London Plan Guidance for adoption as further guidance to the London Plan 2021, taking into account the accompanying Equality Impact Assessments and Consultation Reports.

### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

**Signature:**



**Date:**

15/7/21

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. The London Plan 2021 (“the Plan”) was published on 2 March 2021, giving full statutory weight to the Spatial Development Strategy as part of the Development Plan for all London planning authorities. Following its publication, a suite of new guidance is being developed, providing additional detail on how specific policies in the Plan should be applied to planning applications and boroughs’ Local Plans. The two guidance documents in this MD will be the first to be adopted following the Plan’s publication.
- 1.2. London Plan Guidance (“LPG”) has no specific statutory weight. However, it is capable of being a material planning consideration. The guidance does not and cannot create or change London Plan policies but can add further, more detailed guidance as to its implementation.
- 1.3. Such guidance has previously been referred to as Supplementary Planning Guidance (SPG), reflecting earlier terminology used for the statutory guidance provided at local level. As there is no comparable term for guidance at Mayoral level to support London Plan policies, all guidance to the London Plan 2021 will be referred to as LPG. There are 16 SPG documents that were ‘saved’ when the Plan was published in March, and a further seven were revoked as they were out of date. Over time, the LPG will update and replace the remaining SPG documents.
- 1.4. It is not the intention to have full LPG coverage for every policy in the Plan; rather, this is a focussed programme of guidance to provide additional information and technical guidance on the policies in the Plan requiring this. The LPG is a portfolio of guidance, rather than a number of significant discrete documents. The focus is on what is needed to meet the policy, rather than wider discussion of a topic. Information, such as that related to best-practice projects, will be included and referenced in other documents such as Good Growth by Design publications or appendices. Guidance documents on any particular policy will thus range in length to ensure they assist with the implementation of policies – for example, for the determination of planning applications.
- 1.5. This MD form relates to the adoption of the following LPG topics:
  - Be Seen Energy Monitoring Guidance (Appendix A)
  - Public London Charter (Appendix B).
- 1.6. A continuing LPG programme is planned, as set out in Appendix G to this decision form.

#### **2. Objectives and expected outcomes**

- 2.1. The LPG’s objective is to provide detailed guidance to complement and advise on the implementation of policies within the London Plan 2021 and the Good Growth objectives set out in the Plan. It should facilitate improved clarity and faster decision-making by ensuring a consistent and shared understanding of the policy’s requirements across all stakeholders, including local planning authorities, developers and their agents, and the local community. The development of the LPG will contribute to the aims set out in the Greater London Authority Act 1999 (as amended) (“the GLA Act”), in particular to achieving sustainable development, and mitigating and adapting to climate change. The LPG topics that are included for adoption in this MD have specific objectives as set out in turn below (from section 2.3 onwards).
- 2.2. As there is no statutory power that expressly deals with the LPG, there is no express statutory procedure for its preparation or adoption. However, it has been through a process that is similar to

that of local Supplementary Planning Documents, which do have a specific process set out within the Town and Country Planning (Local Planning) (England) Regulations 2012, in particular undergoing a similar consultation, to ensure it can be treated as a material planning consideration. The process undertaken also complies with the requirements relating to the GLA's general powers, as set out in the GLA Act and in particular the consultation requirements set out in section 32 of the GLA Act. This is the same process as was followed for the previous SPG that accompanied earlier London Plans. The process also included a review of what other legal requirements may be applicable and an Equality Impact Assessment (see Appendices E and F), which is discussed in detail in section 3, below.

### Be Seen Energy Monitoring

- 2.3. The Be Seen Energy Monitoring LPG provides guidance for the implementation of Policy SI 2, on minimising greenhouse gas emissions, as specifically referred to in subsection (A)(4) of that policy. This requires monitoring and reporting of the actual operational energy performance of buildings forming part of major developments for at least five years after construction, as set out in paragraph 9.2.10 of the London Plan. It applies to all major developments. The guidance was developed with technical expertise from consultants Verco, and through engagement with a wide range of stakeholders including developers and industry experts. UCL provided support in developing the Be Seen Energy Monitoring portal, on which the guidance also gives advice, and which will house all energy performance data submissions.
- 2.4. To achieve net zero-carbon buildings, the built environment sector needs to have a better understanding of actual operational energy performance and work towards bridging the 'performance gap' between design and actual energy use. The LPG sets out three main stages for reporting information: the design stage, the 'as built' stage and the 'in use' stage. Data submitted through the portal will form a ground-breaking resource, allowing the comparison of 'real-world' energy performance with expected performance, in turn enabling policy-makers, designers and operators to strengthen their shared understanding of how the design of buildings in the future can improve energy performance. The technical detail set out in the Be Seen Energy Monitoring LPG is critical to achieving this and therefore to the implementation of the London Plan policy to reduce greenhouse gas emissions. This will contribute to the Mayor's commitment to making London a zero-carbon city.

### Public London Charter

- 2.5. The Public London Charter provides guidance for London Plan Policy D8 on the public realm. It sets out eight principles to which developers of schemes providing public space will be required to sign up. These principles aim to ensure that London's public spaces are safe, accessible, inclusive, attractive, well-connected, easy to understand, and well maintained and serviced. The principles promote public space that is open, and offers the highest level of public access irrespective of land ownership, ensuring that any rules or restrictions are only those that are essential for the safe management of the space.
- 2.6. The LPG also includes guidance on how the principles can be applied through the management and maintenance of public space. Applicants will be required to demonstrate, through a management plan, how the requirements of the Public London Charter principles will be met; and to agree to the implementation of these measures through a legal agreement.
- 2.7. The COVID-19 pandemic has highlighted the importance of public spaces and the inequalities that exist in Londoners' access to outside space, particularly the distinctions in access to private and public spaces. As London recovers from the pandemic, the Public London Charter LPG will contribute towards the longer-term resilience of the city by ensuring that public spaces can be shared and enjoyed by all Londoners.

### 3. Equality comments

- 3.1. The Mayor and the GLA are subject to the public sector equality duty, as set out in section 149 of the Equality Act 2010. The 2010 Act includes a single public sector equality duty ("Equality Duty") bringing together race, disability, sex, age, sexual orientation, marriage and civil partnership, religion or belief, pregnancy and maternity, and gender reassignment. These are the grounds upon which discrimination is unlawful and are referred to as "protected characteristics".
- 3.2. The Equality Duty requires the Mayor when exercising his functions to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.3. Having 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 involves:
  - having due regard, in particular, to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.4. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice and promote understanding. Compliance with these duties may involve treating some persons more favourably than others.
- 3.5. The courts have emphasised that "due regard" requires an active and engaged analysis of the relevant material with the specific statutory considerations in mind. However, the Equality Duty does not require that the considerations raised in the analysis are decisive in the particular case. The weight to be given to the requirement that "due regard" is to be had is for the decision maker to decide.
- 3.6. The London Plan and its policies plan for growth on the basis of its potential to improve the health and quality of life of all Londoners, to reduce inequalities and to make the city a better place to live, work and visit. It uses the opportunities of a growing and changing city to plan for a better future, using each planning decision to improve London, transforming the city over time. It plans not just for growth, but for Good Growth – sustainable growth that works for everyone.
- 3.7. Objective GG1 of the London Plan – building strong and inclusive communities – makes it clear that Good Growth is inclusive growth. This objective underpins the policies in the Plan, which will help to address inequality in many ways, for example:
  - creating more genuinely affordable homes, which will help those on lower incomes and Black, Asian and minority ethnic Londoners in particular, for whom the rates of overcrowding and poverty are higher than other racial groups
  - requiring accessible housing, hotel rooms and public realm, which will help make the capital more manageable and enjoyable for many disabled Londoners and older people
  - seeking to protect LGBTQ+ venues, which will help to stem the tide of the disproportionate loss of queer spaces seen in previous years
  - bringing in measures to limit pollution, encourage active travel and improve air quality, which will help to address health inequalities between different groups of Londoners and different parts of the capital.

- 3.8. The London Plan 2021 was subject to an iterative Integrated Impact Assessment process including an EqlA, and this assessed the impact of the policies within the Plan that the LPG in this report provides further guidance on. This has been supplemented by an EqlA specific to each of the LPG topics, recognising that the application of the detail can give rise to additional, exacerbated or mitigated impacts that need to be taken into consideration in having due regard to the Equality Duty.

#### 'Be Seen' Energy Monitoring

- 3.9. The EqlA undertaken for the guidance did not show any impact on groups with protected characteristics and no responses to the consultation identified any equality impacts. The full EqlA report is included as Appendix E. The Mayor should have regard to the contents of this EqlA report in deciding whether to agree the recommendations within this report.

#### Public London Charter

- 3.10. The EqlA undertaken for the Public London Charter identified overall positive impacts for all protected characteristic groups except marriage and civil partnerships, for which no impacts were identified. An overall positive impact was also identified for people on low incomes (while income is not a protected characteristic, a number of groups that share a protected characteristic are more likely to have low incomes and this can exacerbate negative impacts). The full EqlA report is included as Appendix F. The Mayor should have regard to the contents of this EqlA report in deciding whether to agree the recommendations within this report.

### **4. Other considerations**

- 4.1. As the LPG has an established precedent for this type of guidance to be published alongside a London Plan, previously in the form of Mayoral Supplementary Planning Guidance (of which a number of documents are still extant), there are no significant legal risks associated with the preparation or adoption of this guidance.
- 4.2. Care has been taken to ensure that the guidance contained in the LPG falls within the constraints for such guidance, specifically that it does not create or amend policies contained within the London Plan 2021 and does not purport to be a statutory Local Development Document within the meaning of the Planning and Compulsory Purchase Act 2004 or a Supplementary Planning Document developed in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. This will mitigate the risk of any legal challenge to the LPGs following adoption.
- 4.3. Historically, the issuing of Supplementary Planning Guidance has not always been as successful as envisaged, due to the length of the documents and a lack of focus on how their requirements should be implemented in the planning system. To mitigate this risk, the new LPG documents are written in a clear and direct manner, without unnecessary related information. In addition, each LPG document sets out clearly at the start the types of planning applications it should be applied to and how it relates to boroughs' development plan documents (as relevant). The relevant London Plan policy and who the guidance is for are also explained up front.
- 4.4. While the London Plan 2021 was developed and subject to Examination in Public prior to the COVID-19 pandemic, it remains a sound spatial development strategy for London. Many objectives and policies in the Plan are now even more relevant. The final version of the Public London Charter LPG in particular has been informed by the increased importance given to public space by Londoners during the pandemic and the need to therefore ensure that new public space is welcoming to all.
- 4.5. The Be Seen Energy Monitoring guidance requires the submission of data by developers and managers of buildings forming part of major developments to the GLA through the Be Seen Energy Monitoring portal. The development of the guidance and the portal were funded through the Zero Carbon Policy Team's 2019-20 budget (see [ADD2352](#) and [ADD2356](#)) and the Climate Change Mitigation Team's 2020-21 budget (see [DD2518](#)). Ongoing support for the portal will be funded from the Climate

Change Mitigation Team's budget (subject to a separate formal decision through delegated authority).

- 4.6. No-one involved in the drafting or clearance of this form or the preparation of the London Plan Guidance has any conflict of interests that might arise as a result of the adoption and implementation of the LPG.

#### Consultation and impact assessments

- 4.7. For each piece of guidance, consultation was undertaken in accordance with section 32 of the GLA Act. This included a bespoke engagement process in order to realise Good Growth objective GG1 A, which requires early and inclusive engagement with stakeholders.
- 4.8. A pre-consultation draft of both LPG topics was published in March 2020. Consultation on the draft guidance was held between 13 October 2020 and 15 January 2021. Details of the consultation are set out in the consultation reports attached at Appendix C and D.

#### Engagement – Be Seen Energy Monitoring LPG

- 4.9. Engagement on the Be Seen Energy Monitoring LPG included two workshops at an early stage with developers and housing associations, professional bodies, industry professionals, and managers and operators of energy systems. A webinar was also held with boroughs, and the approach was presented at a technical seminar in the run-up to the London Plan Examination in Public (EiP). This was open to members of the public and those involved in the EiP, including the panel of Planning Inspectors. These various sessions informed the development of the draft guidance. A webinar was held during the formal consultation, attended by over 240 people.
- 4.10. There was strong overall support for the Be Seen Energy Monitoring LPG, with 96 per cent of respondents to the consultation survey agreeing or strongly agreeing with the approach set out in the draft guidance.
- 4.11. The main issues raised by respondents related to difficulties in obtaining and reporting certain information requirements at various stages of development and post-construction, particularly in getting data for residential properties. The need for further clarity on verifying data and enforcing compliance with reporting requirements were also raised. The guidance has been updated in response to these issues, including updates to the processes and responsibilities for reporting. Suggested wording has also been made available to help boroughs secure the data requirements as part of legal agreements.

#### Engagement – Public London Charter LPG

- 4.12. Engagement on the Public London Charter LPG included three roundtable discussions at an early stage in the development of the Charter, hosted by London Councils, the Campaign to Protect Rural England and London First. Following the publication of the draft LPG, five webinars were held with a wide variety of stakeholders. The engagement included a session with a group of Peer Outreach Workers, designed to seek the views of young Londoners from diverse backgrounds on the use of public space. Meetings were also held with the inclusive design and access panel, to seek the views of disabled people and older people, and with representatives of the Brent Youth Council.
- 4.13. There was strong overall support for the Public London Charter. Over 70 per cent of respondents to the online consultation survey agreed or strongly agreed with the draft Charter principles; 83 per cent said the Charter would make them feel more confident about their rights and responsibilities when in a public space. The main issues raised in the consultation highlighted the need for clarity on how some Charter principles would be applied and how the Charter would be implemented, as well as concerns about the use of intrusive biometric surveillance technologies (smart technologies).

- 4.14. In response to the consultation, the document has been amended to be clearer and more concise, and to focus on how each principle can be applied. The Charter principle for Privacy and Data has been updated to clarify the use of smart technologies must be justified; further detail as to how this principle should be applied has been added to the LPG. The guidance now sets out that if technologies such as live facial recognition cannot meet the tests set out by the Information Commissioner's Office, then they should not be deployed in London's public spaces. Reference to the Mayor's Emerging Technology Charter has been added.
- 4.15. Equality Impact Assessments (EqIA) have been undertaken in line with the Public Sector Equality Duty; see section 3 for further details.

## **5. Financial comments**

- 5.1. There are no direct financial implications for the GLA arising from this decision.

## **6. Legal comments**

- 6.1. There is no statutory power that expressly deals with the development of the London Plan Guidance in the the GLA Act. However, the LPG is developed in accordance with the general power in section 30 of the GLA Act<sup>1</sup>, which gives the GLA the power to do anything that it considers will further any one or more of its principal purposes, namely promoting economic development and wealth creation in Greater London; promoting social development in Greater London; and promoting the improvement of the environment in Greater London. The London Plan Guidance will further all three principal purposes to some extent, in particular promoting social development and the improvement of the environment. In addition, section 34 of the GLA Act contains a general power to do that which "is calculated to facilitate, or is conducive or incidental, to the exercise of any functions of the Authority." The London Plan Guidance is developed under these general powers.
- 6.2. The High Court has confirmed<sup>2</sup> that planning guidance issued by the Mayor of London is capable of being a material planning consideration in the same way as local Supplementary Planning Documents at borough level – that is, through supporting the policies in the relevant Plan.
- 6.3. Both the Be Seen Energy Monitoring LPG and the Public London Charter LPG have been subject to legal advice throughout the process to ensure that any legal implications in terms of crime and disorder, data protection, health and inequalities, and environmental issues have been appropriately considered and addressed.
- 6.4. The Mayor and the GLA are subject to the public sector equality duty; this is considered in detail in section 3 above.

## **7. Planned delivery approach and next steps**

- 7.1. This is the final stage of the LPG development process for these pieces of guidance. There is further guidance in different stages of development.
- 7.2. The LPG will be applied to relevant planning applications by decision-makers taking into account the guidance as a material consideration and will be taken into account by the Mayor when considering referable planning applications. Boroughs will consider the guidance (where relevant) when developing Local Plans; and it will be taken into account by the GLA when assessing the general conformity of boroughs' Local Plans with the London Plan.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1999/29/part/II>

<sup>2</sup> *McCarthy and Stone Retirement Lifestyles Ltd & Ors, R (on the application of) v Greater London Authority* [2018] EWHC 1202 (Admin) (23 May 2018)

7.3. The LPG includes links to GLA webpages and other sites. As and when the web addresses change (including forthcoming changes to the GLA website later in 2021) the links in the online and PDF versions of the LPG will be amended to ensure they direct users to the correct place.

Activity	Timeline
Notification of the adoption	September 2021
Publication (including supporting documents)	September 2021

**Appendices and supporting papers:**

Appendix A: Be Seen Energy Monitoring LPG

Appendix B: Public London Charter LPG

Appendix C: Be Seen Energy Monitoring LPG consultation summary report

Appendix D: Public London Charter LPG consultation summary report

Appendix E: Be Seen Energy Monitoring LPG EqIA

Appendix F: Public London Charter LPG EqIA

Appendix G: LPG programme (August 2021)

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

**Part 1 – Deferral**

**Is the publication of Part 1 of this approval to be deferred? NO**

Until what date: (a date is required if deferring)

**Part 2 – Sensitive information**

Only the facts or advice that would be exempt from disclosure under the FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to  
confirm the  
following (✓)

**Drafting officer:**

Rob McNicol has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Phil Graham has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

This decision was agreed by the Corporate Investment Board on the 31 August 2021.

**EXECUTIVE DIRECTOR, RESOURCES:**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature**

*D. Bone*

**Date**

31 August 2021

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor.

**Signature**

*D. Bellamy*

**Date**

31 August 2021

