I am writing as Chair of the Planning Committee to formally respond to the consultation on the Assembly’s behalf.

Please find the Committee’s comments below, they are set out by subject in the order they appear in the Draft Interim Housing Supplementary Guidance Public Consultation document that was published on 15 May 2015.

**Housing supply**

**Development viability**

Development viability is a huge issue in London, not just in terms of how it is assessed, but the whole principle of how viability is approached. We have heard evidence that “the system is widely abused”¹, with developers attempting to use viability assessments to demonstrate that they can provide no affordable housing. There have been calls for the next review of the London Plan to address the issue as a priority.²

Experts at the Planning Committee set out how the issue has become so complex in London. Complexities include the precise elements that are considered in the calculation of viability, different interpretations of the application of policy, and the assessment of the level of contributions toward affordable housing that schemes potentially might deliver.³ For example, the complexities involved might include:

- Arguments over the different elements of the viability calculation in terms of costs, values, fees, sales prices and profit margins.
- Assessments of changing viability levels over the lifetime of a long development and the ability to review viability levels.

The SPG provides some guidance on the assessment of viability but, overall, is relatively ‘light’ on such a complex issue.

The Mayor recognises that the issue of viability appraisal has become something of a “dark art” and that “sometimes developers do get away with it and it is very frustrating.”⁴ He has agreed to explore the need for a dedicated SPG on viability.⁵

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¹ Pat Hayes, LB Ealing, Planning Committee, 16 July 2015  
² Alan Benson, Senior Manager, Planning Committee, 16 July 2015  
³ Pat Hayes, LB Ealing, Professor Patrick McAllister, UCL; Alisdair Chant, Berkeley Group, Stephen Hill, C20 Future Planners and Oliver Wainwright, The Guardian  
⁴ Mayor’s Question 2015/2221- Viability in Planning Decisions, 15 July 2015  
⁵
Some boroughs clearly recognise the need for further policy and guidance and experts commended Islington’s recent consultation on the issue as a good basis for a Mayoral SPG. Others await the impact of tightening the approach on the delivery of development in the borough.

- The Committee welcomes the Mayor’s willingness to review the need for a dedicated SPG on viability appraisal. Such guidance should set out a common approach to appraisal and provide consistency of application across London. This would provide a greater level of certainty to all parties.

- The Committee recommends that the Mayor monitors the impact of Islington’s SPD and the approach adopted by other boroughs in response to the issue of development viability (as well as any approach adopted within housing zones and opportunity areas) and uses the evidence and lessons learned to form the basis of a viability SPG.

Inappropriate basement development

During the 2014 consultation on the Mayor’s proposals to alter the London Plan (FALP), the Assembly was strongly supportive of measures to control inappropriate basement development. We noted that inappropriate basement development is an increasing problem within London. We warned some of these renovations are turning already-large homes into massive ‘iceberg houses’, and can cause flooding, sink holes and structural damage to neighbouring buildings.

We therefore welcome the SPG’s reference to paragraph 3.33 of the London Plan which outlines the range of policies which should be taken into account when considering planning applications for basement development.

- The Committee welcomes recognition of issue of inappropriate development in the SPG.

Bed space targets

The Committee agrees with the Mayor that the delivery of affordable family homes remains one of the top priorities.

The Committee also notes, and agrees with, guidance in the SPG that states that housing requirements should generally determine mix, built form and density not vice versa.

The Plan and SPG note that densities will have to increase (overall) if the gap between London’s housing need and supply is to be bridged. The Plan and SPG give policy and

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5 Ibid
7 Professor Patrick McAllister, UCL; Stephen Hill, C20 Future Planners and Oliver Wainwright, The Guardian, Planning Committee, 16 July 2015
8 Alisdair Chant, Berkeley Group, Planning Committee, 16 July 2015
guidance on how in a number of parts of London density can be delivered above the thresholds set out in the sustainable residential quality matrix.

The Plan and SPG note that higher density development is less suitable for family homes, however it does not preclude family housing where open space, play space, car parking, social infrastructure and other relevant factors can be addressed satisfactorily.

- The Committee would wish to see further guidance on the circumstances where the provision of larger family homes would be acceptable at densities that go beyond those set out in the density matrix.

Previous comments from Assembly have urged the Mayor to monitor in terms of 4+ units as a better reflection of family homes. There is a distinct need for units with 4 bedrooms or more, as identified in the Strategic Housing Market Assessment, yet targets do not reflect this. Additionally, we recommend that the delivery of affordable housing should be measured in terms of bed spaces.

- The SPG might reflect these concerns, with guidance to boroughs that would allow monitoring the delivery of larger family homes and the measurement of bedspaces to reflect local need for this type of housing.

**Housing quality**

**Lifts in developments less than 4 storeys**

The SPG reflects new national housing standards and changes that were made to Part M of the Building Regulations that relate to the access and use of buildings. These are subject to the current Minor Alterations to the London Plan.

The SPG notes that the application of requirement M4(2) may have particular implications for blocks of four storeys or less, where historically the London Plan has not required lifts. Members appreciate the potential impact on scheme viability might be lower than otherwise expected however in some circumstances this may be the case and may result in the delivery of fewer homes in London.

- The Mayor may consider it appropriate to issue further guidance on scheme design that would involve any wheelchair accessible component of a scheme to be delivered on the ground floor, so removing the need for lifts in the remainder of a scheme.

- The Committee requests further clarity on the new requirement for lifts to be provided on buildings of four storeys and below, especially in terms of how and when this may be applied, to ensure that this will not incentivise taller buildings or lead to high maintenance or service charges.
Climate Change Mitigation and Adaptation - zero carbon and allowable solutions

The Mayor is currently in the process of making Minor Alterations to the London Plan (MALP) in response to a number of changes in Government policy.

The Committee supports the Mayor’s policy changes as they apply to Climate Change Adaptation and Sustainable Design and Construction Standards in general and notes that the Mayor has endeavoured to adopt the most stringent standards possible for London within national guidance.

As pointed out in the Committee’s response to the MALP consultation, it would be helpful for the Mayor to provide further clarity as to the impact of these amendments on wider environmental objectives and policies within the London Plan.

The Code for Sustainable Homes was launched in 2008 as part of a package of measures towards zero carbon development, including an overarching consultation: Building A Greener Future on the shift to zero carbon. However, following the technical housing standards review, the government has withdrawn the code for sustainable homes, aside from the management of legacy cases.

London policy guidance currently refers to Category 3 of the Code, which provides criteria on the environmental impact of and responsible sourcing of materials used in construction. The Code for Sustainable Homes brought together a whole lot of different standards that are now not included in the building regulations for example internal drying and recycling space and energy-labelled goods which are not covered by planning or building regulations. This may undermine London’s ability to achieve the highest standards of sustainable design and construction, as required by London Plan Policy 5.3.

The Committee, however, is concerned that there may be a loss of policies that help London provide high quality, sustainable housing. For example, the abolition of the Code for Sustainable Homes means that London may lose policies if they do not fall within any other planning or building control standard, such as on daylighting, NOx from boilers unless it can be demonstrated that they would still be covered within the amended London Plan.

- The Committee recognises that the national situation, in relation to the impact of the cancellation of the zero carbon homes standard, is as yet not completely settled. However, the Committee is clear that, in terms of the Allowable Solutions approach to the reduction of carbon emissions, the Committee is concerned that any Government policy for offsite mitigation allows London to retain all of the contributions generated in London. Guidance on how boroughs might approach this issue should be contained in the SPG.

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10 Celeste Giusti, Senior Strategic Planner, GLA, Planning Committee 16 June 2015
We are also concerned by the Government’s abolition of the Zero Carbon Homes target. We understand that the GLA is considering the implications for the Housing SPG and the MALP.\textsuperscript{11} We encourage the Mayor to maintain a commitment to a Zero Carbon Homes target equivalent and to develop a London-wide allowable solutions policy.\textsuperscript{12}

**Housing choice**

**Student accommodation**

Policy 3.8Bh of the London Plan requires boroughs to meet identified local and strategic requirements for student housing, without compromising the capacity for conventional homes.

The Mayor’s Academic Forum reported that universities and students consider affordability to be the key issue in student housing provision in London, particularly for purpose built, direct let accommodation. It recommended that the London Plan should introduce a requirement for such accommodation to include an element of provision that is affordable for students.

The Assembly’s Housing Committee met on 23 June 2015 to consider a number of issues relating to Purpose-Built Student Accommodation (PBSA). These include:

- The strategic implications of the provision of new PBSA for housing in London, particularly affordable housing.
- The reasons for the concentration of PBSA in central London and efforts to disperse this into outer London.
- The affordability of PBSA for students and how this can be improved.

\textgreater{} The Housing Committee is expected to publish a report on Purpose-Built Student Accommodation in the autumn, and the Mayor may wish to consider the findings and recommendations made by the Committee where relevant for this SPG should timings allow.

**Affordable housing**

**Intermediate housing – local criteria**

London Plan paragraph 3.61 sets out the gross household income eligibility ranges for Intermediate housing in London and paragraph 3.62 of the Plan states that eligibility criteria may be set locally to recognise the characteristics of local housing markets.

The Committee is concerned that the flexibility afforded by London Plan policy is not fully reflected in the guidance set out in the SPG that could be interpreted as more restrictive:

\textsuperscript{11} Jennifer Peters, GLA, Planning Committee, 16 July 2015.
“Where boroughs choose to set local eligibility criteria for intermediate housing, including residency and place of work criteria as well as lower income thresholds, planning conditions or agreements should apply their criteria for no more than three months from the point of initial marketing. After this time, the units should be offered to those who meet the London-wide eligibility criteria.”

The Committee has concerns that, in practice, the procedure for securing the necessary elements of home purchase, such as surveys, conveyancing and mortgage approval, will extend past the three month point during which local criteria are substituted for London-wide criteria.

- The Committee would wish to see the Mayor provide the flexibility in the guidance that is needed to ensure local criteria apply for a reasonable period, once a property is found and the purchase process commenced, to allow completion while local criteria still apply.
- The three month period should ‘pause’ once a potential purchaser has registered interest in a property, for a reasonable period until purchase has been completed. This would be consistent with the intention set out in the London Plan.

Affordable housing – fixed site-specific targets

In the SPG, the Mayor now suggests that new housing in opportunity areas and housing zones should be subject to a fixed affordable housing target set by boroughs, based on pre-assessed viability. Boroughs may determine the level of affordable housing they require within the development, which is not subject to viability considerations.

The SPG advises boroughs to set this target to the maximum reasonable amount for the specifics of that area, balancing the target against the need to provide social infrastructure, utilities and transport.

The Committee recognises the innovative thinking behind this advice in terms of providing a higher degree of certainty, making land purchase more realistic in terms of use value and so potentially speeding up delivery.

The Committee also understands why it is being limited to housing zones and opportunity areas at this early stage – principally to learn from the experience of applying it in areas that are likely to be developed in the relatively near future.

The Committee sees merit in giving boroughs the opportunity and encouragement to apply this approach more generally across sites within the whole authority area. Differences in viability will exist across a borough, and this is recognised by the SPG guidance that focuses on opportunity areas and housing zones where such variations in value are less likely. However,

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13 Paragraph 4.2.17 - Draft Interim Housing Supplementary Guidance
14 Alan Benson, Senior Manager, Planning Committee, 16 July 2015
15 Jennifer Peters, Strategic Planning Manager, Planning Committee, 16 July 2015
boroughs already recognise these differences in their own areas and apply different CIL charges in different zones to reflect variations in viability.

- The Committee agrees that a fixed site-specific affordable target approach has the potential to increase certainty for developers and to speed up delivery (subject to review mechanisms as set out in the comments on contingent obligations and review mechanisms below).

- The Committee recommends that the Mayor monitors the impact of this guidance to see if provides sufficient evidence to justify a new London Plan policy covering the application of fixed site-specific targets across the whole of London in the next review of the Plan.

Vacant building credits

National planning policy provides an incentive for brownfield development on sites containing vacant buildings. The vacant building credit (VBC) came into force through the publication of planning guidance on 28 November 2014.

The Committee notes the concerns raised by a number of boroughs that the VBC could potentially seriously reduce the affordable housing contributions that are secured from development, the vast proportion of which is on brownfield sites in London. There are also cross party concerns that the policy could provide an incentive for landlords to evict existing occupants in order to benefit from the credit.\textsuperscript{16}

The Committee notes that the SPG encourages boroughs to:

- Set out in Local Plan policies when and how the vacant building credit will be applied;
- Define how they will assess if a building was made vacant for the sole purpose of redevelopment (this could include setting a minimum vacancy period and marketing requirement), and;
- Make it clear in local planning policy that the credit would not be applied to sites with an extant or recently expired permission.

A number of boroughs have responded to the need to produce policy that reflects their local circumstances and how they intend to apply policy in relation to VCB. For example, Southwark has opted to apply the CIL in-use building test in determining eligibility to benefit from the VBC.

- The Committee notes that, on 26 March 2015, Government guidance was updated to make it harder for developers to exploit the system or to reduce or avoid affordable housing contributions. The Committee welcomes the clarity given by the updated guidance in terms of helping to ensure due contributions assist the delivery of affordable homes in London.

\textsuperscript{16} http://www.planningresource.co.uk/article/1333038/london-politicians-attack-catastrophic-vacant-building-credit
The Committee recommends that the SPG be more specific in supporting boroughs in defining their own local criteria and provide as much guidance as possible to boroughs to ensure the intention behind the VCB is not abused by developers seeking to avoid affordable housing contributions.

The Mayor needs to monitor the impact of the VCB and borough performance in resisting the avoidance of making contributions to ensure this is not resulting in a situation that is to the detriment of London’s strategic housing policy.

Contingent obligations and review mechanisms

The SPG introduces ‘contingent obligations’ which enable boroughs to re-appraise the viability of schemes or phases prior to implementation. The Mayor argues that this will give boroughs the power to maximise affordable housing output from schemes, giving them greater flexibility particularly in times of economic uncertainty.

The Committee notes that these provide an appraisal mechanism that enable increases in Section 106 contributions, based on the most robust data on the changes to the value of the development since application:

- For schemes with a long development period, this will mean that planning authorities can assess the viability of new affordable units on a phase-by-phase basis.17
- On schemes with a shorter development period, an assessment of viability can be built into the Section 106 agreement, so that should a development run over-schedule, a reassessment of viability can be triggered.

The Committee welcomes the support of this guidance and notes that ‘contingent obligations’ will provide an alternative to simply refusing permission on the grounds of an inability to fund defined obligations in the current economic climate, avoiding the challenge presented by appeals. In addition, planners will be able to prevent developers from ‘banking’ on the fact that they have consent (and so may be able to supply fewer affordable units, for example), as this will be based on current market conditions, and may be subject to change as the market changes.

The Committee notes that a number of London boroughs have already adopted ‘contingent obligations’ into their Local Development Frameworks or Supplementary Planning Documents, including Kensington and Chelsea,18 Camden,19 Brent,20 Lambeth,21 and Islington.22

The Committee strongly welcomes the Mayor’s encouragement to use contingent obligations as an appraisal mechanism that can capture the highest

17 Draft Interim Housing Supplementary Guidance paragraph 4.4.35
18 Royal Borough of Kensington and Chelsea, 2010, Planning Obligations: Supplementary Planning Document
19 London Borough of Camden, 2014, LB Camden comments on draft Further Alterations to the London Plan
20 London Borough of Brent, 2011, S106 Planning Obligations: Supplementary Planning Document
21 London Borough of Lambeth, 2014, Lambeth Local Plan Examination
22 London Borough of Islington, 2013, Planning Obligations (Section 106): Supplementary Planning Document
level of affordable housing obligations but would wish to see the SPG contain more detailed guidance on how and when these obligations should be pressed for.

Notwithstanding the Committee’s support for contingent obligations, it has some concerns that the policy might not be the optimal solution because contingent obligations will not apply to those developments that have been given fixed affordable housing targets (in housing zones and opportunity areas).

This may have largely negative implications. For example, developers and planning authorities could come to an agreement on a fixed level of affordable housing, but market conditions could improve, meaning that developers would be supplying a lower amount of affordable housing that would potentially be viable. Under ‘contingent obligations’, the target could be amended when the viability is reassessed, but applying both at the same time would contradict the ‘fixed’ nature of fixed affordable housing targets.

An example of ‘contingent obligations’ in practice is the London Borough of Wandsworth, which in March 2014, secured £40 million worth of affordable homes from the Ballymore Group’s development in Nine Elms, which is worth £1,000 per square foot. This development was secured on ‘contingent obligations’ in the Section 106 agreement, meaning that when the development was found to have massively exceeded the original £850 per square foot threshold, 40 per cent of the extra profits would be paid to Wandsworth, capped at £40 million. However, Nine Elms is an opportunity area, meaning that had the London Borough of Wandsworth adopted the fixed affordable housing percentages policy instead, it would not have seen this additional windfall and could potentially have missed out on providing these new affordable homes.

- The Committee recommends that the SPG is amended to encourage boroughs, where appropriate, to use both fixed affordable housing percentages and contingent obligations to ensure the delivery of affordable housing is maximised over all phases of a development.

Mixed use and large developments

Character of large sites and opportunity areas

The Committee understands that one of the key drivers of this updated SPG is the need to bridge the gap between London’s annual housing need of 49,000 and the minimum housing supply targets of 42,000 contained within the London Plan. The SPG provides further guidance to boroughs on how try to exceed their targets especially in opportunity areas, town centre intensification and other large residential sites.

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23 Inside Housing, 2014, Borough claims £40m homes windfall
The SPG also encourages boroughs to understand and recognise the differences in how the character of an area can change over time, reflecting the idea that densities will have to increase if London is going to deliver the houses that we need.

Existing policy on character and context is provided by London Plan Policy 7.4 Character, and the Character and Context SPG which was released June 2014.

The Committee has concerns that the new guidance provides too great emphasis on the flexibility of character, which may suggest a proposed scheme which is out of context still complies with London Plan policy on character.

Of further concern is the guidance that large sites need not consider existing character and context. This is laid out in the SPG in a number of places:

- Paragraph 1.3.29: Defining the setting of an area requires local knowledge and may entail an element of professional judgement, recognising the character of an area can change over time.
- Paragraph 1.3.30: In locations where there is scope for intensification and change, particularly on large sites, ‘setting’ for the purposes of Table 3.2 [Density Matrix] should not be defined in a static way in relation to the character of the surroundings area.
- Paragraph 1.3.35: Opportunity and Intensification Areas, can define their own setting and accommodate higher densities… Typically, sites over two hectares usually have the potential to define their own setting.
- Paragraph 1.3.43: There are still large parts of London that are currently substantially undeveloped or have for other reasons ‘no definable character’. This is especially the case in East London and former industrial sites.

The Committee is concerned that the guidance in the SPG is at odds with London Plan policy 7.4 which says “In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character for the future”.

The Committee is concerned that this approach may lead to development of an area as if there were no existing character when clearly, in most cases, there is a definable local character that should be taken into account sympathetically.

The Committee has concerns that this guidance may conflict with the existing Character and Context SPG, which was only published in June 2014, and provide confusion to all parties.

The Committee recommends the Mayor reviews the guidance in relation to local character and the ability of some areas to develop their own character. The Committee would not want to see a weakening of current policy on local character as set out in the London Plan and the existing Character and Context SPG. The Committee is of the view that these policies are proving sufficient to

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24 Jennifer Peters, Strategic Planning Manager, Planning Committee, 16 July 2015
allow areas to evolve yet protecting existing character from unsympathetic development.

➢ The Committee suggests the SPG points to examples where large schemes have been implemented that manage increases in density in ways that integrate with the existing built form without losing valued character. One such scheme is the 308-home Zenith development that occupies a prominent corner site on the Edgware Road in Barnet. This is a good example of a ‘superdensity’ development responding to context and creating a sustainable place.25

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25 Superdensity – the sequel, 2015
http://www.pollardthomasedwards.co.uk/download/SUPERDENSITY_2015_download.pdf