

Draft response to the Mayor's consultation on a proposed new funding condition to require resident ballots in estate regeneration



**Sian Berry, Green Party member of the London Assembly
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Introduction

The Mayor has responded positively to an overwhelming desire for estate residents to be given a binding ballot on any demolition plans for their homes as part of regeneration.

In September 2016 I wrote to the Deputy Mayor proposing a set of principles for estate regeneration that should be included in his new guidance. These were:

1. No residents excluded from involvement in making plans for the area
2. Full transparency for information on the current state of estates and the basis for new plans
3. Early and wide engagement with residents, when the goals of the regeneration are still open to change
4. Expert support for residents to develop their own plans for their areas
5. A meaningful final say and real decision-making power over the final options, ideally with a ballot for all residents

The Mayor's draft Good Practice Guide to Estate Regeneration, published in December 2016, was very disappointing.¹ I described it as: "almost useless as a resource for residents who want to hold their councils and landlords to account, take part in developing and putting forward positive new ideas to improve their areas or have a meaningful say in whether their homes are demolished."²

The consultation on the draft ended in March 2017, and 95 per cent of respondents – including me – asked for ballots for residents, even though this was not one of the proposals and was not asked about in any of the consultation questions.³

The final draft of the Mayor's Good Practice Guide was published in February 2018.⁴ This is much improved on the original draft and includes a new funding condition requiring a positive result in a ballot of residents on estates in order to qualify for the Mayor's affordable housing grants. This will go some way to meet the Mayor's manifesto commitment to: "Require that estate regeneration only takes place where there is resident support, based on full and transparent consultation."

However, ballots should also be part of planning policy. They should be held in all cases of estate demolition in order to ensure resident engagement is done properly, and to inform planning decisions by the Mayor and other authorities. The results of a ballot – supporting or opposing a proposal – should be given very significant weight in these decisions.

The Mayor is now consulting on the technical requirements for ballots, and this document is my draft response to the questions in the consultation document here:

<https://www.london.gov.uk/sites/default/files/consultation-on-a-new-funding-condition-requiring-resident-ballots-in-estate-regeneration-schemes.pdf>

The consultation is open until 5pm on Tuesday 3 April 2018. You can respond by email at: ballotsconsultation@london.gov.uk. My draft responses to the Mayor's questions are below.

Question 1: Do you agree that the GLA should make resident ballots a funding condition for estate regeneration schemes?

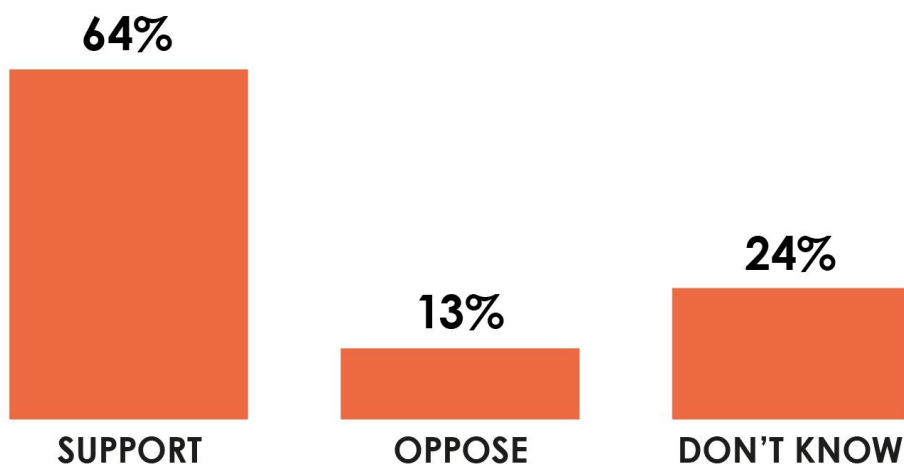
I support the proposal to hold ballots as a condition of funding. However, this principle should be applied as widely as possible, using all the powers the Mayor holds, including planning powers.

The use of ballots in all estate regeneration plans had overwhelming backing in the consultation carried out on the draft Good Practice Guide:

"54 per cent of responses from organisations and 80 per cent of responses from individuals, as well as the Demolition Watch petition and several responses to the Campaign Company consultation, sought a requirement for mandatory ballots on proposals for estate regeneration before any demolition of homes. In all, 1,977 of the 2,076 responses received by the GLA mentioned ballots, with 1,973 of these supporting their mandatory use, and 4 responses opposing this."

Ballots are also supported by a majority of Londoners. I have commissioned an independent opinion survey of London residents through YouGov.⁵ This found that 64 per cent of a representative sample support this principle, with only 13 per cent opposed.

SUPPORT FOR HOLDING RESIDENT BALLOTS IN ESTATE REGENERATION:



The principle of a ballot should therefore be applied as widely as possible, using all the powers the Mayor holds. However, in the consultation document, the Mayor proposes only to use his funding powers, and says in section 2.5: “Planning decisions are a quasi-judicial process and there is no legal basis to require either holding a ballot or the results of a resident ballot to be binding on them.”

This seriously downplays the powers of the Mayor to set planning requirements and make recommendations for processes during planning.

In the draft new London Plan the Mayor is seeking to introduce a wide range of processes that must take place when new plans for areas of London are being made.⁶ These include the use of design panels and the development of new local design codes for small sites (policies D2 and H2), a policy to require transparency in viability assessments where a threshold percentage of affordable housing is not proposed by developers (policy H6), and the introduction of a new Urban Greening Factor assessment method (policy G5).

In planning, almost no issue can be made a fully binding requirement, as it can be for devolved funding decisions. But a process for holding ballots could be made part of planning policy in London, with very significant weight given to the results.

An extract of my response to the draft London Plan policy H10 (Redevelopment of existing housing and estate regeneration) is below.⁷ The Mayor should implement these changes to the London Plan, and also make a firm recommendation as part of his estate guidance that ballots should be held to inform all planning decisions where existing homes are being proposed for demolition.

“I believe that, both in planning and funding decisions, ballots of residents should be held. While I recognise that a positive result in a ballot can only be made an absolute requirement of Mayoral funding decisions, ballots should still be held in all cases of demolition and their results given significant weight in planning decisions by the Mayor and local authorities.

The current version of the Good Practice Guide backs this general principle when it says: ‘The Mayor supports the principle of mandatory ballots as part of estate regeneration schemes where demolition is involved.’

“The application of the Mayor’s Good Practice Guide therefore needs to be a firm requirement of policy in this plan, with ballots required to be held, and their results taken account of with significant weight, in all planning decisions.”

Response to the draft London Plan, Sian Berry AM

Another issue that needs clarification within the guidance is what constitutes ‘demolition’. There are examples of schemes where the overall fabric of the building is planned to be maintained, but with homes remodeled into different unit sizes that mean most or all residents have to move permanently away from the building. These schemes should also be subject to ballots.

The best resident-centered definition of demolition is one that defines it as a process that sees the demolition or reconfiguration to the extent that it requires the permanent departure of a resident from their home.

Question 2: Do you agree with the proposed criteria that would trigger the requirement for a resident ballot?

Any funding decision, even for smaller estates, should be dependent on the support of residents being established, and ballots should be used for all suitable schemes. I propose this should be where 10 or more homes are involved (and note that many more than 10 people are likely to live in these homes).

The consultation proposes only to ask for ballots for schemes that would, in planning, be referable to the Mayor for a decision, i.e. schemes that involve the construction of at least 150 homes, regardless of tenure. This has no rational basis, and is also inconsistent with the Mayor's proposal only to use his funding powers to enforce these rules.

All schemes involving the demolition of a minimum of 10 homes should be subject to a ballot, and consent established for schemes smaller than this through individual discussions and negotiations. The Mayor can enforce these requirements directly where these schemes are applying for funding, whatever their size. In planning, ballots should be required to be held under the same terms, and their results given very significant weight in planning decisions, regardless of the authority taking the decision – see my response to question 1.

Question 3: Do you agree with the proposed scope of resident ballots?

I support measures being taken to prevent schemes being split in order to fall below the Mayor's threshold for ballots. However, I am not convinced that ballots should only be held on a single 'offer' from landlords and believe that in many cases several options may be more appropriately put to residents and voted on with a preference system. The level of detailed information required for residents to make an informed decision also needs to be higher than proposed by these draft guidelines.

Sections 3.5 to 3.7 of the consultation document set out the scope proposed:

- I welcome the scrutiny promised in section 3.5 to prevent schemes being 'partitioned' in order to fall below the threshold for ballots (although note that I also propose a lower threshold in answer to question 2).
- Section 3.6 gives more information about what should be voted on, and proposes that "The ballot would be a yes/no vote on a landlord's offer to residents".

- Section 3.7 sets out the level of detail required to be put to residents about the proposals, including: “the estimated overall number of new homes,” and “the estimated scale of demolition of homes.”

I do not believe the criteria set out in sections 3.6 and 3.7 require enough information for residents to make decisions in an informed way. The language should be strengthened to ‘require’ not merely say landlords ‘should’ provide these details. And the list of information requirements should be expanded to include specific information about the fate of each current block and/or home, as well as firm numbers or ranges for the different types of new homes that will be built overall, as well as those to be offered to current tenants. Details required should include home sizes, tenures and other issues of interest to residents such as room sizes, aspect, outlook, communal facilities and outdoor space. Issues such as allocation, locations within the scheme, policies and timing should also be included in the information (as the guidance proposes already), as well as how the impact of construction will be managed.

It is too limiting to expect all decisions to be yes/no on a single ‘offer’ from the landlord. The Mayor has repeatedly cautioned against binary decisions. In many cases single proposals will not be appropriate as a number of different feasible options with varying strengths and weaknesses may emerge from the work done with residents. The consultation document asks in paragraph 3.8 for “an open and transparent options appraisal process” and so all the feasible options emerging from appraisals should be put to a ballot, not just the landlord’s preferred option.

The ballot should be run under a simple Alternative Vote (AV) system, where residents rank options by preference (including where there is single option, where the alternative is ‘go back and think again’ – an option that should also be included where two or more feasible plans are on offer). AV voting systems are a proven way of identifying options with the broadest support from a range of alternatives.⁸

Question 4: Do you agree with the proposed stage in an estate regeneration process at which ballots should happen?

Ballots should be held at the latest possible time when there are different, detailed options on the table, with enough information so that people can see the consequences for their own home. Further ballots should be required where any significant aspect of the plan changes following a positive ballot to support a detailed option.

The consultation document as a whole is contradictory on this point. Sections 3.9 and 3.10, reproduced below, ask for a large amount of detail to be given to residents, but also for ballots to be held before the masterplanning stage, and before a development partner is selected, after which there are commonly significant changes to plans.

The vagueness of the information requirements given in sections 3.6 and 3.7 – asking for no more than general promises from councils and landlords – combined with the early stage at which ballots are proposed here, risks creating suspicion among residents. This could lead to

plans being rejected in cases where a later ballot and a greater amount of detail could win resident support.

“3.9 The GLA will encourage social landlords to provide as much detail in their proposals to residents as possible. Landlords should include as much information as is available about design, mix, management proposals, and allocation policies, although the GLA recognises that a number of such details may be developed following a positive vote.

“3.10 A ballot would be the culmination of a period of consultation, engagement and negotiation between residents and their landlord. It would generally take place prior to the procurement of a development partner and/or prior to the precise specification of works. This is so that the outcome of the vote can set the terms of the landlord’s commitments to residents as well as the broad vision, priorities, and objectives that underpin the detailed planning stage.”

The wording of the guidance should make sure that residents are given a choice between detailed options for their estates, at the option selection stage, with minimal changes made afterwards, and it should also require that they have been fully involved in the development of those options.

In terms of timing, this means ballots should be held at the latest possible time when there are different, detailed options on the table, with enough information so that people can see the consequences for their own home. This also means not constraining the scope of ballots to just yes/no on a single option – see my answer to question 3.

Section 3.13 says: “The Mayor expects landlords to honour the outcomes of ballots. This means landlords’ offers to residents should be fulfilled.” However, the proposed process also appears in section 3.11, to allow for significant changes to be made to schemes after a ballot.

Further ballots should be required where any significant aspect of the plan changes following a positive ballot. Criteria for these changes should be set out, and should include issues such as tenure mix, number of homes, building heights, home sizes and other issues that are of importance to residents when approving (or not) a plan for their estates.

Question 5: Do you have any other comments on the threshold, scope and timing of resident ballots?

I propose that, in cases where limited demolition is proposed on an estate, the results of ballots should be reported in two parts: for the subset of residents facing demolition, and for the estate as a whole. There should be a ‘double lock’ condition so that a scheme cannot go ahead unless both results are positive. This will ensure two things: wide community support for any approved scheme; and that those facing the greatest impact are satisfied with proposals made to them for rehousing and compensation.

What will happen in cases where a wider estate regeneration plan involves the demolition of a small number of homes is an important issue to get right in this policy. This situation is relatively common for schemes that are mainly infill, but may involve demolishing one or more blocks to make a proposal work.

I have discussed this issue with a range of residents of estates under threat and campaigners and I believe that the process in cases like these should involve a 'double lock' that enables both the wider estate community and the residents facing demolition to reject a plan if their needs are not being met. This would mean a ballot being held for all residents as usual, but the ballot result being reported in two tranches. If either a majority of residents across the estate or a majority of residents facing demolition reject the plans then they should be rethought.

This proposal is not intended to pit residents with different needs against each other, but in fact to guard against this kind of behaviour by landlords.

It should prevent, for example, residents in homes proposed for demolition being given inadequate or unsuitable rehousing and interim housing options within the plans. Conversely, it should also make sure that a small number of residents in a block intended for replacement with a larger building cannot be induced to approve plans that would have an unacceptable impact on the rest of the community.

A double lock ballot is a positive proposal that should ensure that all residents, including those with different needs and facing different impacts, have their expectations met by any plans that are put forward at the detailed stage where a ballot would be held.

Question 6: Do you agree with the proposed eligibility criteria for resident ballots?

No, I object to the exclusion of private tenants from the ballot unless they are also on the housing list for the local council, as this risks introducing a 'postcode lottery' due to differing housing allocation policies within London councils. I want to see all residents over 16 years old in homes on the estate given a vote, rather than just those named on leases and tenancies.

The proposed eligibility criteria are set out in section 3.17 to 3.20:

3.17 The Mayor proposes that ballots would be open to all residents on an estate that meet one or more of three eligibility criteria:

- social tenants (including those with secure, assured, flexible or introductory tenancies) named on the tenancy agreement;
- resident leaseholders and freeholders who have been living in their properties for at least one year prior to the ballot and are named on the lease or freehold; or
- any resident who has been on the local authority's housing register for at least one year, irrespective of their current tenure.

3.18 Individuals who meet more than one of the eligibility criteria would only receive one vote. It is proposed that there is no limit on the number of eligible voters per household.

3.19 The following would therefore only be eligible to vote in a ballot if they had been on the local authority's housing register for at least one year:

- tenants on non-secure/assured shorthold tenancies; and
- homeless households living in temporary accommodation.

3.20 The following would not be eligible to vote in a ballot:

- non-resident leaseholders and freeholders;
- resident leaseholders and freeholders who have been living in their properties for less than a year prior to the ballot; and
- non-residential tenants, leaseholders and freeholders (e.g. businesses).

These proposals exclude from voting a large number of residents on estates who ought to have a say, including:

- private renters who are not on the local authority housing register
- people living in homes who are not named on their lease or tenancy, including large numbers of the young people whose lives will be affected for the longest by any plans
- homeless people living in temporary accommodation.

I believe that all residents over 16 who are living in the estate under any tenancy should be able to vote.

For social housing tenants and leaseholders this should not be restricted to the person named on the tenancy agreement or lease but to all over 16s in the property, whether or not they are on the local authority housing register. The electoral roll could be used to verify a year's residency, at least for over 17s, as residents wishing to vote can request to be added to the electoral roll after their 16th birthday.

The equalities impact of the proposed mandate should be looked at very carefully. I believe that restricting votes only to those named on leases and tenancy agreements could have a huge effect on the ability of many women living on the estate to vote, as well as on younger members of the community who may have the most stake in any provision of new homes in the future.

I agree with the proposal to restrict the vote to resident leaseholders but their residency should not be required for more than one year. All current residents as of a suitable cutoff date should be included.

I would like to see all private renters, tenants on non-secure/assured shorthold tenancies and homeless households living in temporary accommodation included in the ballot too.

Eligibility among these groups should not be limited just to those who are on the local authority housing register. The ability to be accepted onto housing lists has been restricted by many councils recently, and also varies considerably across council boundaries.⁹ The

Mayor should avoid creating a 'postcode lottery' for who is able to vote on the future of their homes in this way.

I would also like small businesses who have been based on the estate for more than a year given one vote each in any ballot, rather than being completely excluded.

Question 7: Do you agree that eligibility criteria should be the same for all schemes?

I agree that there should be consistency across London in the application of these ballots and who can vote.

See my response to question 6 for concerns about inconsistency if being on a local authority housing register is made a condition of voting for social tenants or private renters.

Question 8: Do you agree with the Mayor's proposed requirements for implementing ballots?

I fully agree with the proposal that "a qualified independent body, such as Electoral Reform Services, contracted by the landlord, should supervise the ballot," would like this to be made a firm condition of the new guidance, and would like the Mayor to maintain a list of approved providers.

Paragraph 3.25 says that the Mayor 'believes' an independent body like Electoral Reform Services 'should' supervise the ballot. I agree but the wording of the final funding guidance on this needs to make this a firm condition and to say 'undertake' rather than 'supervise'. It is important to note that the independence of Electoral Reform Services is well established, and that its reputation for confidentiality and good practice is clear.

Residents on estates will become very suspicious – and the process of carrying out ballots will quickly fall into disrepute – if new companies that do not clearly demonstrate their independence with a high degree of transparency and accountability spring up and start being contracted by councils to hold ballots.

I propose that the Mayor maintains a list of approved, reputable providers in order to prevent this from happening.

Question 9: Do you have proposals for other potential Mayoral requirements for implementing ballots?

I believe the Mayor should be helping residents who do not get support from their landlords to devise their own plans. This should include a way for them to access truly independent advice and expert support through City Hall in order to examine information provided by their landlords, and to develop, assess and cost their own alternative plans where these ideas are being formed.

Question 10: Do you agree with the proposed exemption where the demolitions are required to deliver an infrastructure scheme?

I agree with this exemption where the land is needed directly to support major infrastructure, but not in cases where estates are merely 'linked' to such schemes. The wording of this section leaves open too many opportunities for this excuse to be used across wide areas around major infrastructure schemes.

The successful application of this exemption very much depends on the definition of 'infrastructure'. Given the clear statutory processes that exist for compulsory purchase where truly major infrastructure is required, I would agree with the exemption in these cases. The processes involved give residents wanting to oppose the demolition of their homes a clear way to make their case and ensure it is listened to.

However, I would remove the last, additional, part of this proposal, which appears to add a potential loophole for landlords to argue that many other proposals qualify for an exemption because they are 'linked' to major infrastructure plans. The entire Old Oak Common area could be covered by this exemption as it is written, for example.

Where other statutory processes are not involved, ballots should still be held and used as a condition of Mayoral funding in all but very exceptional cases. In these cases the results of a ballot should be clearly known to decision makers who are implementing any exception, rather than a ballot not being held.

[from section 3.29]

"He therefore proposes to grant an exemption to the proposed funding condition where proposed demolitions form part of a major infrastructure scheme with statutory underpinning (e.g. a Hybrid Bill or a Transport and Works Act Order), or on a case by case basis where the landlord can demonstrate that the demolitions are required to facilitate a scheme linked to major infrastructure improvements."

Question 11: Do you agree with the proposed exemption where the demolitions are required to address safety issues?

I disagree – while the decision to demolish may fall under other legislation, in these cases a ballot on replacement home plans should still be held.

Again, as one of the purposes of a ballot is to help ensure residents' needs and wishes for rehousing are being met, there is no reason not to hold a ballot in these cases. The case for demolition may be very clear on safety grounds, and so a positive result may be expected and a negative result may not be able to be respected by a long delay to find a better solution.

However, as the vote in this case would be on the option being offered for rehousing, a positive result should be worked towards by landlords. A ballot on replacement plans should still be held and be used as a condition of funding and a factor with significant weight in planning in the normal way.

Question 12: Do you agree with the proposed exemption where a specialist or supported housing scheme is being decommissioned by a local authority?

Again, there is no reason why a ballot should not be held in this case and its results used to assess the adequacy of the proposed offer to residents for rehousing. There should be a high bar to any exemption for a binding ballot on demolition being allowed.

Such plans are often part of a wider reassessment of provision being made for other reasons, which may be compelling. In these cases, while the results of a ballot may not always be binding in terms of the decommissioning of a facility, the wishes of residents and their view of the proposed strategic changes to services should be established as part of the process, and a binding ballot should still be held on options for rehousing.

The Mayor should also have a very high threshold for allowing this exemption to be used on the question of demolition itself – the words in the current consultation are very vague and the condition should be along the lines of “very strong technical or financial reasons”.

Question 13: Do you have proposals for other potential exemptions to the proposed funding condition?

Not at this time.

Question 14: Do you agree with the proposed transitional arrangements?

It makes sense that any funding agreements signed before the publication of these new draft conditions on funding should be honoured without new conditions being imposed. But the Mayor should pause any new funding contracts being signed until the new arrangements are in place. He promised to do this at the March 2018 Mayor’s Question Time meeting.

Transparency is vital. In order that residents are fully informed about what happens during the transition to the new arrangements, we must be able to see what has already been signed off for funding as of the date of the publication of the guidance (2 February 2018).

We must also see a commitment to transparency and a process set out for how funding applications and decisions will be made more public in future.

This could include, for example, the publication of a funding application register along with the likely timetable for progress through the stages of funding approval. This will help give residents of estates notice that a ballot is to be expected and give them chance to prepare and ask for any information from their landlord that they believe they will need in order to make an informed decision. It will also help residents who want to put forward their own proposals for evaluation.

Londoners will be very unhappy to see any schemes signed off for funding during the period of transition, and therefore I am asking the Mayor for a pause to any new funding contracts being signed until the new arrangements are in place, and for him to recommend to councils and landlords who are currently applying for funding for schemes involving demolition to commission a ballot while these details are being determined.

Paragraphs 4.3 to 4.5 set out the Mayor's proposed transition arrangements.

I disagree with the proposal in paragraph 4.3 that ballots would not be required before funding decisions are made if a scheme already has full or outline planning permission. Outline planning permission often does not contain anywhere near the level of detail required for residents to know the fate of their homes or the final outcome of schemes.

I broadly support the proposal in paragraph 4.4 not to apply a condition for ballots retrospectively to funding decisions that are already in contract. However, as I say in response to question 2, I would like to see a strong recommendation from the Mayor during the transition that for schemes without planning permission a ballot should be held to inform planning decisions.

In paragraph 4.5 it is proposed that surveys and consultations already held by councils will be used by the Mayor as a substitute for a ballot in some cases, even after the transition period. This worries me, as residents have pointed out many deficiencies in council ballots in the past and, in general, do not have faith in these processes. **An exemption should only be applied where a truly independent ballot has already been carried out, using one of the Mayor's recommended providers (see my response to question 8).** However, the Mayor appeared to contradict paragraph 4.5 at the March 2018 Mayor's Question Time meeting, indicating that there would be no flexibility on the requirement for an independent ballot.

In some cases, there have been council consultations whose results conflict with resident surveys. The Mayor should recommend an independent ballot is held to decide between conflicting results.

References

¹ Draft Good Practice Guide to Estate Regeneration. Mayor of London, Dec 2016

<https://www.london.gov.uk/sites/default/files/draftgoodpracticeestateregenerationguidedec16v2.pdf>

² Mayor's guidance won't stop estate demolitions. Sian Berry, Mar 2017 <https://www.london.gov.uk/press-releases/assembly/sian-berry/mayors-guidance-wont-stop-estate-demolitions>

³ The Mayor's draft Good Practice Guide to Estate Regeneration Consultation Summary Report. Feb 2018 <https://www.london.gov.uk/sites/default/files/draft-good-practice-guide-to-estate-regeneration-main-consultation-summary-report.pdf>

⁴ Good Practice Guide to Estate Regeneration. Mayor of London, Feb 2018 <https://www.london.gov.uk/what-we-do/housing-and-land/improving-quality/good-practice-guide-estate-regeneration>

⁵ Respondents were asked the following question: 'The Mayor of London has announced that any regeneration plans that will receive funding from his office, and that involve the construction of at least 150 new homes but the demolition of existing homes, should be voted on by existing residents. Do you support or oppose this policy?' All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,155 adults. Fieldwork was undertaken between 12th - 15th February 2018. The survey was carried out online. The figures have been weighted and are representative of all London adults (aged 18+).'

⁶ Draft London Plan. Mayor of London, Dec 2017 <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/download-draft-london-plan-0>

⁷ Response to the draft London Plan. Sian Berry AM, Mar 2018 <https://www.london.gov.uk/what-we-do/publication-sian-berry-response-draft-london-plan>

⁸ Electoral Reform Society. Alternative Vote information. <https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/alternative-vote/>

⁹ Vulnerable people 'trapped in homelessness' due to law. BBC News, Feb 2018 <http://www.bbc.co.uk/news/uk-england-42919703>