

Sadiq Khan (Mayor of London)
New London Plan
GLA City Hall
London Plan Team
Post Point 18
FREEPOST RTJC-XBZZ-GJKZ
London SE1 2AA

2nd March 2018

Dear Mr Khan

**CITY OF LONDON LAW SOCIETY
PLANNING AND ENVIRONMENTAL LAW COMMITTEE
Comments on the Draft London Plan**

1.
 - 1.1 The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. Details of the members of the committee can be found herewith:-
http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=148&Itemid=469
 - 1.2 The Committee does not intend to comment on the merits of any specific policies contained in the draft London Plan, but does wish to comment on three legal issues arising from the publication of the plan. Those issues are the scope of the draft plan; the weight to be afforded to the policies contained in the plan; and the plan's compliance with national planning policy.
 - 1.3 We are making these representations in the interests of good plan-making and to ensure there is clarity and certainty around the city's strategic planning policies so that investment continues to be attracted to London.

2. SCOPE

- 2.1 The new draft London Plan is considerably longer than previous plans and officers have been clear that it is intended to be more "tangible", "site specific" and "directive" than previous plans – ie that its policies may be applied directly by local planning authorities rather than being repeated in local plans.
- 2.2 This is a significant change of direction and the Committee is concerned that it is not in accordance with the underlying legal framework which governs the contents and objectives of the London Plan.
- 2.3 Section 334(5) of the Greater London Authority Act 1999 states that:
"The spatial development strategy must only deal with matters which are of strategic importance to Greater London." [emphasis added]
- 2.4 The London Plan is not a local plan and should not include policies that seek to achieve local rather than strategic objectives. That function is allocated by statute to local planning authorities rather than to the Mayor of London: paragraph 154 of the National Planning Policy Framework states, for example, that it is local plans that should set out opportunities for development and clear policies on what will or will not be permitted and where.
- 2.5 The Encyclopedia of Planning Law and Practice expands on this point at paragraph 2-4232:
"Detailed development planning remains a matter for the London local planning authorities ... It follows that the [London Plan] is not a detailed development plan, but more a broad statement of ambition, focused on key development and infrastructure requirements. All the post-War history of British development planning suggests that the further it gets drawn into detail, the less effective it will prove in practice and the more drawn-out will be the processes of its adoption. Directly elected executive Mayors with a fixed term of office are unlikely to show much patience with that habit, yet will find it difficult to brush aside the various disciplines imposed by the legislation and guidance."
- 2.6 The Committee is concerned that, in publishing a draft London Plan that is intended to be both detailed and "directive", the Mayor is not observing the legal constraints that govern the scope and purpose of the London Plan. Those constraints have been imposed by Parliament for a reason. If the Mayor disagrees with them, then he should seek a change of law rather than promoting policies that are not fully in accordance with the existing law.
- 2.7 Compliance with the legal requirements for the new London Plan is ultimately a matter for determination by the courts. If the plan goes beyond what is permitted by the law, then the plan is likely to face legal challenges to its validity. This adds uncertainty to the planning system, which is not in the interests of the Mayor, local planning authorities or developers alike.
- 2.8 For these reasons, the Committee believes that the plan's policies should be limited to matters of strategic importance to Greater London and should not include site-specific details that ought properly to be addressed in local plans instead.

3. WEIGHT

3.1 It is clear that the draft London plan is already being afforded substantial weight in decisions taken by the Mayor on applications referred to him. Stage 1 and Stage 2 reports issued by the Mayor since 1 December 2017 list draft London Plan policies alongside adopted London Plan policies, with no apparent distinction as to any difference in weight being given to them. There is nothing to indicate that the Mayor is not, in fact, affording *equivalent* weight to draft London Plan policies as to adopted London Plan policies in his decision making, including when directing to refuse planning permission.

3.2 This practice is not in accordance with the law. Although emerging plans are material considerations, the weight to be given to their policies is not at the decision-maker's absolute discretion, but is subject to and constrained by an established legal framework.

3.3 Paragraph 216 of the National Planning Policy Framework states as follows:

"From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*

3.4 These three criteria were considered by Holgate J in *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1173 (Admin):

"In my judgment, the policy in paragraph 216 of the NPPF should be read as a whole. It is not a policy which simply makes the trite point that decision-makers may give weight to relevant policies in emerging plans. Rather it is a policy that they may do so "according to" the three criteria or factors which follow. The policy clearly stipulates that the three criteria are relevant in each case. Of course, when dealing with a particular planning proposal it may be the case that the relevant policies in a draft plan have not attracted any objections and so it would not be necessary to consider the second criterion beyond that initial stage. But plainly the second criterion is material in each case in order to ascertain whether a relevant draft policy has attracted any objections and if so, their nature, before going on to make an assessment of the significance of any such objections."

- 3.5 It follows that the amount of weight that can be given to any policy in an emerging plan must not only be *less* than the weight given to the adopted plan (the first factor in paragraph 216 of the NPPF), but must also be *very limited* at a stage when the objections to that policy are not yet known, let alone resolved (the second factor). The third factor is commented on further below.
- 3.6 This approach is sensible, given that the draft policies remain subject to consultation and an examination in public in due course. It would be inappropriate to make planning decisions in reliance on policies that may be varied or even deleted before the plan is finally adopted.
- 3.7 The Committee therefore requests that the Mayor takes these legal considerations into account when making decisions in reliance on the draft London Plan and, specifically, that he makes clear in Stage 1 and Stage 2 reports what weight is being afforded to draft London Plan policies by reference to the three NPPF criteria referred to above.

4. COMPLIANCE WITH NATIONAL POLICY

- 4.1 Sections 41(4) and 41(5) of the Greater London Authority Act 1999 require the Mayor, in preparing the London Plan, to have regard to (among other things) the need to ensure that the strategy is consistent with national policies.
- 4.2 Under sections 337(6) and 337(7) of the 1999 Act, if it appears to the Secretary of State that it is expedient to do so for the purpose of avoiding any inconsistency with current national policies, he may give a direction to the Mayor not to publish the London Plan except in a form which includes modifications to the proposed plan in order to remove the inconsistency. Under section 337(8), the Mayor would then be prohibited from adopting the plan unless he satisfies the Secretary of State that he has made the modifications necessary to conform with the direction (or the direction is withdrawn).
- 4.3 During the passage of the Greater London Authority Act through Parliament, the Minister explained that:
- "The Mayor must, in preparing any strategy, ensure that it is consistent with national policies. That means any policies of the Government which are available in written form and which have been laid before Parliament or have been published by a Minister of the Crown."*
Hansard, HL Vol 602, col 925 (23 June 1999)
- 4.4 This is reflected in the formal definition of "national policies" in section 424(1) of the Act.
- 4.5 Yet paragraph 0.0.20 of the draft plan states as follows:

On some occasions, the Plan deviates from existing national policy and guidance; this is mainly where the Plan is delivering on a specific Mayoral commitment and reflects the particular circumstances of London. The scale of the Mayor's election victory provides a significant political mandate to use the planning system to deliver his manifesto commitments.

- 4.6 The Committee believes that this statement should be deleted from the plan. Sound planning reasons must be given for any proposed deviation from national planning policies. The scale of a politician's election victory is not a relevant planning consideration which justifies a departure from national policy; this would be against the rule of law and would set a dangerous precedent for planning.
- 4.7 The Committee also notes that the London Plan is intended to set out a framework for the development of London over the next 20-25 years, whereas the Mayor's term of office (for which the scale of his victory is relied upon) expires in May 2020. Furthermore, the London Plan is not expected to be adopted until Autumn 2019.
- 4.8 It is in the interests of good planning and public administration that the London Plan is consistent with national planning policy in all its forms. Although the Committee recognises that London faces particular planning issues and has specific planning requirements, the city does not exist in a vacuum beyond the influence of planning policies determined by the government in the national interest.
- 4.9 If and to the extent that there are sound planning reasons to deviate from national policies then the plan must at the very least:
- identify the national policies in question;
 - identify where the plan deviates from those policies – and in this respect the Committee notes that the draft plan currently does not identify any specific inconsistencies beyond the general statement in paragraph 0.0.20 referred to above; and
 - clearly set out the planning reasons relied upon to justify the proposed deviations, by reference to matters of strategic importance to Greater London.

The Committee should be grateful if the Mayor would take these comments into account during the further progress of the new draft London Plan.

If you have any queries in relation to these comments, please contact Kevin Hart, Legal Policy Analyst at the City of London Law Society at kevin.hart@citysolicitors.org.uk, or Stephen Webb, Chair of the CLLS specialist Planning and Environmental Law Committee at the following email address stephen.webb@clydeco.com

I would be grateful for confirmation of receipt of these comments and their submission to the online consultation portal this morning.

Yours sincerely

Stephen Webb
Chair,
Planning and Environmental Law Committee
City of London Law Society

