

RESPONSE BY THE MAYOR TO THE PANEL REQUEST NUMBER “PANEL NOTE NO. 7.2: EQUALITY OF OPPORTUNITY AND THE INTEGRATED IMPACT ASSESSMENT”

Introduction

1. The Panel has requested, through Panel Note No. 7.2, that the Mayor responds to these matters. They are that the Mayor:
 - Responds to the written statements with particular reference to the case law cited and legal implications, the general points of principle raised about the approach of the equalities impact assessment, and the specific policies referred to; and
 - Provides brief separate outlines of the specific implications of the Plan (both positive and negative) for each of the 9 groups with protected characteristics.

2. The Mayor has produced this Response to provide the information requested by the Panel. The Mayor’s Response is made up of the contents of this document supported by four appendices:
 - Appendix 1: Mayoral strategies – This identifies all the Mayoral Strategies which are relevant to identify the Mayor’s overall approach to matters falling within this consideration;
 - Appendix 2: Legal note – This identifies the relevant legal principles regarding the Public Sector Equality Duty, with reference to the case law cited;
 - Appendix 3: Summary – This provides brief separate outlines of the specific implications of the Plan (both positive and negative) for each of the 9 groups with protected characteristics;

- Appendix 4: Table of responses – This shows the Mayor’s response to the further written statements made following the publication of additional information relating to the equality impact assessment.

The Mayor’s Response

3. It is of considerable importance, when seeking to address the questions asked and the points made, to have specific regard to the purpose which has to be met as part of the action being taken.
4. The duty relied upon arises from Section 149 of the Equality Act 2010. This section is in the following terms:

“149 Public Sector Equality Duty.

- (1) *A public authority must, in the exercise of its functions, have due regard to the need to –*
 - (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
 - (b) *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
 - (c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

[...]

- (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 –*
 - (a) *remove or minimise disadvantages suffered by persons who share a relevant characteristic that are connected to that characteristic;*
 - (b) *take 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;*

(c) encourage 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.”

5. There are certain fundamental matters to be noted.
6. First, it casts an obligation on all public authorities. These are defined in the legislation (see section 150 and schedule 19) very broadly. Given the universal application, it must be the case that one public body can legitimately expect another public body to fulfil its obligation. Further, the law presumes persons will act and will have acted lawfully. Accordingly, the Panel in considering this matter must proceed on the basis that others in a planning process (e.g. in dealing with an application for permission) will have the obligation given by section 149 cast upon them. They must also proceed on the basis that the obligation will be fulfilled.
7. Second, the obligation arises in a given circumstance (and not otherwise). It arises (see the opening words of section 149) in the exercise of a public authority's functions. This means that, in considering the performance or otherwise of an obligation, one must always identify the function being performed. If this is not done, the language of section 149 is not being respected. In this matter the function being performed is given by section 334 of the Greater London Authority Act 1999. It is the preparation and publication of a Spatial Development Strategy. We are only presently concerned with the function of preparation. We should note that the Examination is concerned with matters affecting the Spatial Development Strategy (see section 338). The Panel are not exercising a judicial role, i.e. it is not for the Panel to say the preparation was not done in accordance with the section 149 duty.
8. Third, the Duty is, in the exercise of the function of preparation of a Spatial Development Strategy, to have due regard to given matters. The obligation is not to produce for any individual subject, being a part of that strategy, a given outcome. The Duty is in the preparation of the Spatial Development Strategy to have due regard to the matters set out at section 149(1). The Duty is not a tool

of micro management. This is emphasised by the fact that the strategy will provide policies to be taken into account when planning decisions are made. At that stage the local planning authority will also have to have regard to the Duty in determining what decision to take.

9. The Mayor is aware of the nature and extent of the section 149 Duty. He has brought forward a series of individual Strategies. Those Strategies are a series of documents that both respond to individual statutory obligations (“Statutory Strategies”) and go further than he is obliged by utilising his statutory powers (“Non-statutory Strategies”). The various Strategies are listed and summarised in Appendix 1. In respect of each of those various Strategies the Mayor has fulfilled the Duty.
10. The London Plan is the overall strategic plan for London, it sets out an integrated economic, environmental, transport and social framework for the development of London over 20-25 years. It brings together the geographical and locational aspects of the totality of all the applicable strategies including those relating to transport, the environment, economic development, housing, culture, health and inequalities. The function being exercised by the Mayor and therefore the aspect which gives rise to the Duty under the Equality Act, is that relating to the making of and promotion of the London Plan as the Spatial Development Strategy for London.
11. The requirement is therefore for the Mayor to have “due regard” to the Duty in the context of the “function” being exercised as part of the Plan Making exercise. Due regard has been referred to in several of the decisions of the Courts referred to in Appendix 2 as has the ability in meeting the Duty to rely on information before the Mayor from a variety of sources. The function being exercised is that relating to the Spatial Development Strategy for London and the Duty has to be examined in that context.
12. This Response addresses how the London Plan does that in the context of the questions asked by the Panel.

Application of the legal principles to the preparation of the London Plan

13. The case law is referred to in Appendix 2.
14. Below is a summary of the 11 key legal principles established by that case law and an explanation of how they apply to the Mayor. This explains how the Mayor has met the Duty in the preparation of the London Plan.

What “due regard” means

(1) The regard that is “due” (i.e. appropriate) will differ from case to case, depending on the function being exercised and the facts.

15. The relevant function is the Mayor’s preparation of a Spatial Development Strategy for the whole of Greater London.

16. This will necessarily engage very different considerations from, for example, a local authority deciding whether or not to take a particular step in court proceedings regarding an individual. A broader regard will necessarily be appropriate.

(2) The Duty is procedural. It does not require a particular result to be achieved.

17. Therefore, the issue is not whether the draft London Plan has or has not achieved a particular outcome.

(3) It is for the decision maker to decide what weight equality implications should be given.

18. Therefore, the issue is not whether another body may make a different decision based on the available evidence.

19. That would not mean there has or has not been a breach of the Duty.

The level of detail

(4) Equalities duties are fundamental to public sector decision-making. The decision-maker must be aware of the Duty and appreciate what the likely equality impacts will be.

20. The Mayor is clearly aware of his Duty and its importance to his decision-making. This is demonstrated by the steps taken to ascertain and consider the impact on equalities (for example, in the Integrated Impact Assessment, the background final EqlA matrices published at the Panel's request, Appendix 3 and Appendix 4).

(5) However, he is not required to identify or consider all possible impacts on equalities. That would be unduly onerous. A relatively broad-brush approach is appropriate.

21. The Mayor clearly appreciates what the likely equality impacts will be. For example, see the Integrated Impact Assessment, the background final EqlA matrices published at the Panel's request, Appendix 3 and Appendix 4.

22. The Mayor has not contemplated all possible equality impacts. However, he is not required to do so because that would be unduly onerous and go beyond the regard that is "due" in the circumstances.

Evidence of compliance with the Duty

(6) The fact that a public body has produced an equality impact assessment in advance of a decision is, usually, convincing evidence that it has complied with the Duty.

23. The Mayor has done so (for example, see the Integrated Impact Assessment, the Addendum Report and the background final EqlA matrices published at the

Panel's request). This is convincing evidence that the Mayor has complied with his Duty.

(7) The public authority must gather some, but not all, relevant information.

24. The Mayor has done so. For example, see the Integrated Impact Assessment, the background final EqlA matrices published at the Panel's request, the Strategies set out in Appendix 1, Appendix 3 and Appendix 4.

(8) The Duty is a matter of substance rather than form: What matters does all the relevant evidence suggest the decision-maker took into account?

25. One can also look at the other documents available to the Mayor beyond a specific EqlA. For example, the Strategies contained in Appendix 1, and the detail provided in Appendix 3 and Appendix 4. These demonstrate that he has had "due regard".

Timing

(9) "Due regard" should be had before making a decision.

26. The Mayor produced an Integrated Impact Assessment which incorporates the requirements of the EqlA, that summarises the likely equalities impacts prior to publishing the draft London Plan.

27. This is evidence that "due regard" was had prior to making that decision.

(10) However, it is a continuing duty.

28. The Mayor continues to have "due regard". (For example, see Addendum Report to the Integrated Impact Assessment, Appendix 3 and Appendix 4). We are still within the Examination process and the Plan is therefore very much still under consideration.

(11) The Duty must also be met by other public bodies when making planning decisions, including those affected by the London Plan.

29. The Mayor's duty is to have "due regard" in the context of his preparation of a Spatial Development Strategy for Greater London.
30. If published, the new London Plan will be implemented in the future. For example, by a local planning authority determining an application for planning permission. That public body will also be subject to the same Public Sector Equality Duty as the Mayor.
31. However, it will be exercising a different function which will naturally involve different considerations. There will be some considerations that will be appropriate in the context of determining a particular planning application but not appropriate in the context of the Spatial Development Strategy for Greater London.

An Identification of the specific implications of the Plan

32. As indicated above the Mayor's Response to the Panel request consists of this paper and the attached appendices. Appendix 3 is a summary of the specific impacts of the London Plan on the 9 protected characteristics and Appendix 4 a response from the Mayor to the written representations made by parties pursuant to the Panel's earlier request. This part of this paper seeks to summarise the position which is set out in more detail in those two appendices and accordingly if further detail is required reference should be made to the information within those appendices.
33. The Mayor is aware of the Duty which arises from the exercise of the Public Sector Equality Duty. It was in response to that Duty that the information before the Examination was produced and made available leading up to and as part of the Examination. That information can be found in the main Integrated Impact Assessment, the IIA addendum report and the EqIA policy assessment

spreadsheets. The Panel's request is to produce a summary of the specific implications of the Plan on the 9 protected characteristic groups. This is set out in Appendix 3.

34. The approach taken has not been to summarise the implication of every policy in the Plan but rather to highlight key specific implications by chapter, which are both positive and negative, from the perspective of each of the nine protected characteristics.
35. The overall approach identified and followed in the activity undertaken to meet the Duty, both in seeking the information and also in bringing forward the policy response, has not sought to identify every potential subset of every aspect that may potentially arise from the nine protected characteristics either individually or in combination. The approach which has been followed is that which is legally required, as indicated in the relevant court decisions, for the Mayor to have sufficient information to enable it to make the decisions necessary in the context of the Duty to be met whilst exercising the particular function it is. That Duty is a procedural one and it does not require a particular result to be achieved. It is to be judged by the body exercising the function and once that body has sufficient information, bearing in mind that the Duty continues to operate, that will be judged to be sufficient.
36. That is the approach taken by the Mayor in respect of bringing forward the Plan through its various stages. The extent of the investigation made, the methodology followed and the results of that process are fully set out in the documentation relating to the Integrated Impact Assessment as well as drawing upon information contained within the related Mayoral Strategies and their evidence base. That demonstrates that the approach and what was undertaken meet the relevant legal requirements for the preparation of the document. As additional information comes forward that will, where it is relevant, continue to be taken into account through the development of the Plan as necessary to meet the continuing Duty upon the Mayor. The Mayor is therefore content that the Duty has been and continues to be met.

37. Appendix 3 summarises the specific implications for each of the 9 protected characteristics. The Plan as a whole is broadly positive across the population of London as a whole and across all those with protected characteristics. It seeks to help to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. However, Appendix 3 seeks to draw out where there are nevertheless potential negative impacts for those with a particular protected characteristic. Where such potential negative impacts have been found to exist, the Plan seeks to mitigate those effects wherever possible.

Conclusion

38. The Mayor is aware of the Duty which exists as he undertakes his plan making function to bring forward the London Plan. The documents produced and referred to in this note, including the appendices, shows how the Mayor has undertaken his task in meeting that Duty throughout the process so far. The Mayor will continue to meet his duty and expects all public authorities to do the same.