

APPENDIX 1

Meeting:	Strategic Planning Advisory Panel
Date:	12 th September 2006
Subject:	GLA: Government Proposals for Additional Planning Powers
Responsible Officer:	Graham Jones
Contact Officer:	Graham Jones
Portfolio Holder:	Property, Housing Planning (Development) and Planning (Strategic)
Key Decision:	No
Status:	Part 1

Section 1: Summary

Decision Required

To recommend to the Executive that the Comments as set out in the report are forwarded to the Department for Communities and Local Government and the ALG

Reason for report

To respond to Government in response to the current consultation

Benefits

Making Government aware of the Council's views

Cost of Proposals

none

Risks

If no response is made the Council's views will not be heard
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Implications if recommendations rejected

No response will be made

Section 2: Report

2.1 Brief History

In November last year the Government issued an initial consultation on extending the Mayor of London's powers in a number of respects including planning. Following the November consultation the Government has now come back with a set of proposals outlined in its policy statement of July 2006.

In respect of planning the proposals are threefold

- The Mayor would be able to direct changes to Borough's programmes for local development plans
- The Mayor would have a stronger say on whether draft local development plans are in general conformity with his London Plan
- The Mayor would have the discretion to determine planning applications of strategic importance

Changes in respect of the Mayors powers of direction on development plans and general conformity are to be taken forward through a GLA Bill and changes to secondary legislation and Circulars. Arrangements for progressing these and what consultation there may be have not yet been published. A consultation paper has been produced in respect of the implementation of the discretionary powers in determining planning applications. It is proposed that this would work as follows:

Boroughs send strategic applications to the mayor for his information as at present . The Mayor can then:

- Leave the application for the Borough to determine
- Ask to be consulted again when the Borough has decided to grant permission allowing the Mayor to then direct refusal (as at present).
- Ask to be consulted again after a limited period once the Borough has considered the strategic issues the application raises. The Borough would be required to set out how it intended to apply the relevant London Plan policies in determining the application.

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2.2 Current Consultation

The current consultation is around three issues

- The thresholds which define applications of potential strategic importance.
- The policy test which the mayor would need to apply
- Changes to processes and procedures

2.3 Thresholds:

At present applications are referred to the Mayor if they are outside the thresholds as set out in Annex A. The main change the Government is proposing is in respect of applications for waste facilities. These are not currently included except where they trigger one of the other thresholds as set out in the existing arrangements.

The proposed thresholds are for development

- that exceeds 5000 tonnes throughput per year for hazardous waste
- that exceeds 50000 tonnes throughput for non- hazardous waste
- where the site area exceeds 1 hectare

In addition, where proposals for waste facilities do not accord with the development plan (ie the principle has not been established) lower thresholds are proposed:

- 2000 tonnes hazardous waste
- 20,000 tonnes non-hazardous waste
- sites exceeding 0.5 hectares

The Government also proposes that applications for residential or mixed use development adjoining sites falling within the above thresholds should be referred to ensure that non-waste uses do not prejudice future waste planning.

Two other categories are also proposed for referral:

- Planning applications for tram stations
- All departure applications for construction or change of use within MOL (there is already a similar provision for Green Belt)

Comment on thresholds : These mainly relate to waste proposals and the numbers of applications in Harrow which exceed the thresholds are likely to be rare. Similarly there are no envisaged tram routes in the Borough. Development within MOL is more common and members may wish to consider whether this is necessary to maintain the integrity of MOL policy, bearing in mind departures are already referred to GOL.

2.4 Policy Test

The Government is proposing that there should be two criteria for determining whether the Mayor should take over planning applications from the Boroughs. The Mayor would have to come to the conclusion that in his view:

- The application raises issues of a nature and scale that would significantly impact on the implementation of specific London Plan policies, and
- The issues raised by the application have significant effects that go wider than a single Borough

Both criteria would need to be satisfied and the Mayor would also need to take into account:

- the Borough's analysis of the relevant London Plan policies and how it intends to apply them.
- The Borough's record in dealing with previous applications which have raised strategic planning issues and
- Any precedent the application is likely to establish for implementing London plan policies.

Comment on policy test: Having taken the in principle decision to extend the Mayor's powers in this respect, the criteria look appropriate. However the other factors give cause for concern. The procedure for the Borough analysing the London Plan policies is set out below, which gives Boroughs 6 weeks to come to a view. There must be concerns given the nature and scale of the applications likely to be involved that this will be inadequate to come to an in principle view as to whether the application meets or otherwise key policy tests. Such analysis should be endorsed by members as a clear view of the Authority which will involve reporting with all of the lead in times this requires, and at this early stage consultation responses are unlikely to be available and properly considered, which again could have a bearing on key policy matters.

For major strategic applications it is unlikely that policy considerations will be straightforward, and the priorities and balance are unlikely to be resolved so early in the process. Indeed coming to such an early view could prompt challenges that the Borough had made up its mind on key issues prematurely. If this is to work smoothly, surely it would be better for the Mayor to respond to the Borough's consultation within 6 weeks explaining what he sees as the key London Plan policy issues and then the Borough could respond setting out

whether it agreed or disagreed. If the Borough disagreed the Mayor could then decide whether he wished to take over the case.

Taking into account the Borough's record on dealing with strategic applications also gives cause for concern. This opens the door to the Mayor making subjective assessments which may or may not be based on a reasoned analysis of performance. Presumably he would want to take over cases where a Borough had refused applications he would have liked to see approved. In such cases applicants have the right to appeal and this should be the test of the Borough's decision making, not the Mayor's individual opinion. This factor should not be a factor in the decision making process.

2.5 Changes to Procedures

The Government is proposing a new 3 stage process.

- Stage 1: The Mayor should indicate to the Borough within 3 weeks of being notified that the application raises issues such that he may wish to take the application over.
- The Borough has 6 weeks from the receipt of the application to respond to the Mayor setting out the key London plans policy issues and how it intends to approach them.
- Stage 2: The Mayor decides within 21 days whether he feels justified on the basis of the Council's response in taking over the application.
- Stage 3: Either the Mayor or the Local Authority will make a decision, depending on the outcome of stage 2; if it is the Council and it approves the application, the Mayor would still have the right to determine that it should be refused.

For the reasons set out above, members may feel that a better procedure would be for the Mayor :

- to respond to the Borough within 3 weeks of being consulted on whether this is an application which he may wish to consider taking the application over.
- The Mayor to inform the borough within 6 weeks of being consulted on the key strategic policy issues and how the Mayor would expect them to be addressed.
- The Borough to respond to the Mayor within 4 weeks of receiving the mayor's views setting out whether it agrees or disagrees with the Mayor's views and why.
- The mayor would then have a further 14 days to decide whether he wishes to take over the case.

This process would seem more appropriate in that it should be for the Mayor to clearly set out his view and allow the Borough to respond before he embarks on what is a very significant action in intervening in the statutory responsibilities of a Local Planning Authority.

Whether the process proposed by the Government is adopted or amended, with the processes and timescales involved in mayoral referrals all such applications should be outside of the Local Planning Authorities' returns for BVPI 109c 'Major Applications'.

2.6 Other matters

There are three other matters which are not dealt with in the consultation which need to be addressed:

Negotiation: If the Mayor is to be given this power there must be an absolute requirement that the Boroughs will be involved in all elements of negotiation unless they decide otherwise. The Borough Council still has the duty to its members and residents to protect their wellbeing and the local as well as the strategic implications of the proposed development will need to be properly addressed.

Transparency: London Boroughs' development control committees are held in public in accordance with statute, whereas the Mayor's decision making is in private. It would be unacceptable to extend this confidentiality to the determination of major planning applications. The Mayor should be bound by the same rules as the Boroughs if he is exercising the same powers.

Representation: many if not most London Boroughs allow public representation at Development Control Committees, which is advocated as best practice. Again this should be extended as a requirement for the Mayor if this proposal proceeds.

2.7 Financial Implications

none

2.8 Legal Implications

Included in the report

2.9 Equalities Impact

none

2.10 Section 17 Crime and Disorder Act 1998 Considerations

none

Section 3: Supporting Information/Background Documents

The GLA: the Governments Final Proposals for Additional Powers and responsibilities for the Mayor and Assembly: (DCLG July 2006)

The GLA: The Governments Final Proposals for additional Powers and Responsibilities for the Mayor and Assembly – A Consultation paper on changes to the Mayor of London Order 2000 (DCLG August 2006)