



RESEARCH PAPER 06/61
7 DECEMBER 2006

The *Greater London Authority Bill* Parts 7 and 8 – Planning and Environmental Functions

Bill 11 of 2006-7

The Greater London Authority Bill would enable the Mayor of London to take over strategic planning applications from the London boroughs to determine them himself, instead of only being able to direct the boroughs to refuse applications, as is currently the case. The Mayor's powers over waste are also increased, but the Bill does not provide for a London-wide waste authority answerable to the Mayor.

The GLA will have a new duty to take action to mitigate the effects of climate change and help London adapt to its unavoidable impacts. The Bill will also place a duty on the Mayor to produce a statutory Climate Change Mitigation and Energy Strategy for London together with a statutory Climate Change Adaptation Strategy setting out how the capital should adapt to the effects of climate change.

Christopher Barclay

SCIENCE AND ENVIRONMENT SECTION

Elena Ares

SCIENCE AND ENVIRONMENT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

06/45	Economic Indicators, October 2006 [includes article: National Minimum Wage statistics]	03.10.06
06/46	The <i>Corporate Manslaughter and Corporate Homicide Bill</i> [Bill 220 of 2005-06]	06.10.06
06/47	Parliamentary pay and allowances	09.10.06
06/48	Gibraltar: diplomatic and constitutional developments	11.10.06
06/49	Social Indicators [includes articles: Migration from Central and Eastern Europe to the United Kingdom; Road accidents: Contributory factors and under-reporting]	12.10.06
06/50	Unemployment by Constituency, September 2006	18.10.06
06/51	The African Great Lakes Region: An End to Conflict?	25.10.06
06/52	Economic Indicators, November 2006	01.11.06
06/53	The Future of the British Nuclear Deterrent	03.11.06
06/54	Democracy and the Middle East: Egypt, the Palestinian territories and Saudi Arabia	08.11.06
06/55	Unemployment by Constituency, October 2006	15.11.06
06/56	The <i>Northern Ireland (St Andrews Agreement) Bill 2006-07</i> [Bill 7 of 2006-07]	17.11.06
06/57	The <i>Fraud (Trials without a Jury) Bill 2006-07</i> [Bill 6 of 2006-07]	23.11.06
06/58	Investment Exchanges & Clearing Houses Bill [Bill 4 of 2006-07]	23.11.06
06/59	Economic Indicators, December 2006	01.12.06

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet, URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our papers; these should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

Summary of main points

Planning

Planning applications are almost all determined by the London boroughs. The Mayor already has the power to direct the boroughs to refuse certain applications of potential strategic importance. The disappointed applicants retain the right to appeal to the Secretary of State. The Bill proposes retaining the London boroughs as the planning authority for the vast majority of applications but granting the Mayor three further powers:

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

The London boroughs are reluctant to give up the power to determine major planning applications. They consider that the proposed definition of “planning applications of strategic importance” would allow the Mayor too much scope to choose what to take over. Since the Mayor would be able to approve applications, there would be no further right of appeal to the Secretary of State, as there is no third party right of appeal in planning.

The Mayor would be responsible for negotiating the planning obligations (section 106 agreements) for those applications that he takes over. These are payments to the planning authority and negotiated between developer and planning authority. They are meant to pay for extra infrastructure costs incurred as a result of the proposed development. London boroughs fear that the money will go to infrastructure of the Mayor’s choosing rather than to projects of importance to them.

The Mayor, however, has welcomed the proposals as enabling him to bring greater consistency and speed to the planning system; the power to approve planning applications would mean that fewer strategic planning applications would be unreasonably refused and then go to appeal, resulting in further costs and delay.

The Government has published for further consultation its proposals on the definition of a planning application of strategic importance and on the appropriate procedure for the Mayor to determine these planning applications. Both topics will be covered in secondary legislation. Final proposals will be published before the committee stage of the Bill.

Waste

As with planning, the Government consulted on a range of options from “no change” to centralisation under the Mayor. However, while for planning they chose one of the more centralised options, for waste centralisation was rejected and the Bill will not make any major changes.

The Mayor favoured the establishment of a centralised waste authority answerable to him, to replace the existing borough waste collection and disposal operations. He criticised the current situation where much London waste is either incinerated or sent to landfill in other parts of the country. He argued that centralisation would allow him to implement policies to increase the rate of recycling.

However, London boroughs and others argued that the establishment of a centralised waste authority would be disruptive and make it even harder in the short term for London to meet its EU obligations on waste disposal. An additional problem was that most people agree that waste collection and waste disposal should not be separated.

The Government rejected the option of a centralised waste authority. The Bill requires London borough waste strategies to “be in general conformity with” the Mayor’s London waste strategy, unless compliance would impose excessive costs on them. The current position is that boroughs only have to “have regard to it”.

Climate Change and Energy

The Government consulted on whether the Mayor should be subject to a clear statutory responsibility to produce an energy strategy for London. The consultation also raised the question of whether the Mayor’s existing range of powers were consistent with his existing statutory duty on sustainable development, and whether there was a case for strengthening his existing powers to take account of climate change. Of the respondents to the consultation that expressed a view, most were strongly in favour of making the energy strategy a statutory document. Views on extending the Mayor’s powers to take account of climate change were more mixed.

The Bill includes measures to implement all the proposals in the consultation. It provides the Greater London Authority with a new duty to take action to mitigate the effects of climate change and help London adapt to its unavoidable impacts. The Bill also places a duty on the Mayor to produce a statutory Climate Change Mitigation and Energy Strategy for London together with a statutory Climate Change Adaptation Strategy setting out how the capital should adapt to the effects of climate change.

Water

The Government consulted on whether it should have a duty to have regard to the Mayor’s Water Action Framework when it prepares guidance for regulators on water pricing. This proposal had strong support from the GLA and the London Boroughs, but not from all water companies. When the Government published its proposals it did not include making the Framework a statutory document. Instead it proposed that the Secretary of State should have regard to the Mayor’s Framework when framing guidance in preparation for a review of water price limits.

CONTENTS

I	Background: planning	7
	A. The origin of the proposals	7
	B. The current position on planning	7
	C. What the Bill would do	8
II	First Government consultation on increasing the Mayor's planning powers	8
III	The Mayor's response to 2005 planning proposals	10
IV	The July 2006 proposals and further consultation	11
V	Procedures	12
	A. Why procedures for planning applications are important	12
	B. The August 2006 consultation proposals on procedures	14
	C. Comment on the proposals on procedures	16
	1. The Mayor	17
	2. Members of Parliament	17
	3. London Councils	18
	4. The London Assembly	18
	5. London First	18
VI	What is an application of potential strategic importance?	20
	A. The current position	20
	B. What the August 2006 consultation proposed	23
	C. Comment on these proposals	25
	1. Members of Parliament	25
	2. London Assembly	26
	3. London Councils	26
	4. London First	29
	5. Others	30
VII	The Mayor's powers and calling in by the Secretary of State	31

VIII	Regulatory Impact Assessment on Planning	33
IX	The Bill Part 7: Planning	35
	A. Conformity between plans	35
	B. Development control	36
	C. Planning obligations and planning contribution	36
X	Waste	38
	A. Waste policy overview	38
	B. Consultation on 2005 waste and waste planning proposals	40
	C. The Mayor supports a centralised waste authority	42
	D. July 2006 final proposals on waste and waste planning	44
	E. Regulatory Impact Assessment on waste and waste planning	47
	F. The Bill – Part 8 Environmental Functions: Waste	49
XI	Climate Change and Energy	50
	A. Background	50
	1. Mayor’s current powers and duties	52
	B. Government consultation	52
	1. Mayor’s response to consultation	53
	2. London Assembly’s response	54
	3. Local Authorities’ responses	55
	C. Government’s proposals	55
	D. Regulatory Impact Assessment (RIA)	56
	E. The Bill – Part 8 Environmental Functions: Climate Change and Energy	57
XII	Water	58

I Background: planning

A. The origin of the proposals

In November 2005, the Government issued a consultation package about London government. The press notice explained the thinking behind it:

The Government is looking at ways to shift powers away from Whitehall giving the Greater London Authority more control on key strategic issues affecting the capital. Proposals issued today by the Office of the Deputy Prime Minister reveal that Ministers are willing to consider major decentralisation but only if the result is improved quality of life in London.

Now Londoners are being asked for their views on a package of changes and options giving the Mayor greater freedom of choice and more influence over delivery of key services like housing, skills, planning and waste, while preserving the appropriate balance of power between the Mayor, Assembly and the boroughs...

The review focuses on the powers and functions of the GLA rather than on London governance structures as a whole. Many of the proposals set out in the paper would mean devolving powers from central Government to the Mayor.

However, Ministers have signalled they are keen to explore giving the Mayor a greater say over some specific functions currently carried out by the boroughs, where a convincing case can be made that change would improve the planning and delivery of services. Waste management and parts of planning are two such areas...¹

B. The current position on planning

Before the office of London Mayor was created in 2000, planning applications in London were determined by London boroughs as local planning authorities, apart from the very small proportion called in by the Secretary of State. Applicants refused by the local planning authority had the right to appeal to the Secretary of State. These appeals are almost always delegated to a planning inspector except for a few very important applications, but this paper will follow the correct legal position of referring to them as appeals to the Secretary of State. Strategic Planning Guidance for London (as for other areas) was issued by the Secretary of State. The position was not greatly changed in 2000 but the Mayor was given three main powers: he can direct boroughs to refuse applications of potential strategic importance; he has to prepare the London Plan with

¹ ODPM Press Release, *Government launches review on powers of the GLA*, 30 November 2005

strategic planning guidance; and he has to ensure that the borough unitary development plans (UDPs) are in general conformity with the London plan.²

The powers are limited. If the Mayor directs that a planning application be refused, that does not preclude an appeal to the Secretary of State (in practice again often a planning inspector). The Mayor's London Plan still requires approval from the Secretary of State, just like a Regional Spatial Strategy in another part of England. Government guidance requires the Mayor to act in co-operation with the boroughs in ensuring conformity between the borough plans and the London Plan.

C. What the Bill would do

The Bill would give increased planning powers to the Mayor. However, the London boroughs would remain the planning authorities determining the vast majority of planning applications. The Secretary of State would still hear appeals against the rejection of planning applications and would still retain the right to call in an application to determine it himself.

Part 7 of the Bill would do two main things. First, it would provide extra powers for the Mayor to ensure at an early stage that borough plans are in line with the London plan. Second, it would give the Mayor the power to take over applications of potential strategic importance from the boroughs, including powers relating to planning obligations (section 106 agreements). Two important points will be covered by secondary legislation. One is the appropriate procedure for the Mayor to determine a planning application. The second is the definition of a planning application of potential strategic importance.

II First Government consultation on increasing the Mayor's planning powers

A DCLG document of July 2006 explained the planning proposals that had been the subject of consultation in November 2005:

2.3.1 We consulted on possible changes to the current arrangements for preparing development plans and deciding planning applications of strategic importance. The proposals fell into three categories: significant additional powers, more limited new powers or updated existing arrangements. In relation to development plans the proposals were:

(a) **significant additional powers** for the Mayor to direct the boroughs to amend their Local Development Schemes (LDSs) and to sign off schemes and a power of direction over Development Plan Documents (DPDs) on any matters, including overriding binding Inspector's recommendations, for the purpose of ensuring

² Before the *Planning and Compulsory Purchase Act 2004*, the borough plans were unitary development plans (UDPs). That Act abolished the County Structure Plans and thus put local and unitary plans at the same level. Local plans became a collection of Local Development Documents called a Local Development Framework. The Local Development Scheme is a sort of overview of the Local Development Documents

consistency with the London Plan. The Secretary of State's powers of direction on DPDs would be limited to matters of national policy; or

(b) **more limited new powers** for the Mayor to direct changes to LDSs and DPDs in relation to a defined set of strategic issues; or

(c) **updating existing arrangements** to bring them up to date, but without major changes.

In relation to development control, the Government consulted on:

(a) **significant additional powers** for the Mayor to become the development control authority for defined classes of strategic planning application in London, including the negotiation of Section 106 agreements. The Mayor would consult on and decide strategic planning applications himself, in the same way as a London borough decides applications. The Secretary of State would retain the current power of call-in; however this power would only be exercised in relation to proposals that raised issues of national significance; or

(b) **more limited new powers** for the Mayor to direct boroughs to refuse or approve planning applications in defined categories of strategic planning; or

(c) **updating existing arrangements** to bring them up to date, but without major changes.

The document then describes the response to the consultation, which was less than enthusiastic, with little support for the proposals:

2.3.2 The planning proposals attracted the greatest interest amongst respondents to the consultation with just over half commenting on one or more aspects. Most supported no change, or only minimal change, to the current arrangements.

2.3.3 Some sectors, including the business community and the housing sector, supported some change (with safeguards), but there was no consensus amongst respondents on what change should occur. Some in the housing and planning sectors suggested that a stronger strategic overview was needed with a more consistent approach taken on planning policy across London, while others argued that there was no evidence to support change and that change would be too disruptive.

2.3.4 The Mayor supported option A on development plans [significant additional powers for the Mayor], and option B [more limited new powers for the Mayor] on development control. He considered that a balance should be struck between the decisions taken at local borough level and those that should be taken at the strategic regional level. He believed that his preferred approach provided that balance.

2.3.5 The London Assembly recognised that there was a range of views both for and against the proposals on plan preparation. However, it opposed option A, and on option B stated that any strategic issues would need to be clearly defined with a scrutinising role for the Assembly. It was against any fundamental change on development control arguing that the current system is working and delivering

effectively. It argued that additional powers for the Mayor on development control would lead to a loss of democratic accountability.

2.3.6 London boroughs overwhelmingly opposed significant change. Borough concerns focused on the need to ensure local democratic accountability for planning decisions, and that full account is taken of the views of local people when decisions are made. Some boroughs also contended that there had been insufficient time for the current system to bed-down.

2.3.7 Most residents groups who responded on planning opposed the Mayor assuming more planning powers. Many considered the boroughs to be best placed to take planning decisions given their local knowledge.

2.3.8 Most individuals who responded on planning supported no, or only minimal, change (option C). Many considered the Mayor to be too distant from local issues to decide the outcome of planning applications.³

III The Mayor's response to 2005 planning proposals

In February 2006, the Mayor published his response to the Government's November 2005 proposals, welcoming the opportunity of increased planning powers while criticising current arrangements:

The Mayor's proposals

4.5 A power to direct borough councils to grant permission for strategic applications would enable the Mayor to bring additional consistency and speed to the planning system. There need be no more examples of boroughs failing or refusing to determine strategic applications, or refusing unreasonably, leading to appeals and expensive, time-consuming public inquiries.

4.6 The Mayor already has powers to direct refusal of schemes that are deemed to be strategic, and therefore referable under the Mayor of London Order 2000. It is anomalous and illogical for the Mayor to have such powers (on the grounds that such planning applications are by definition, strategic and therefore of cross-borough significance), yet to have no such power to adjudicate on them until, and unless, the borough itself has approved them.

4.7 In effect, the current scheme, in granting the Mayor the power to direct refusal, offers him only a potential veto, while the absence of a positive power to direct approval, effectively gives a borough such a veto. This is unsatisfactory and means that far too many strategic planning applications are referred to a planning inspector, which adds substantially to the time and expense of the schemes concerned. Such delays and uncertainties are a major deterrent to development, regeneration and house building in London.

³ DCLG, *The Greater London Authority: The Government's Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Summary of the Responses to Consultation*, July 2006 http://www.communities.gov.uk/pub/576/TheGLAAdditionalPowersandResponsibilitiesfortheMayorandAssembly_id1501576.pdf

4.8 The Mayor is involved in only a tiny proportion of planning applications (indeed, he sees only 10% of applications for sites in London defined as 'major' by ODPM), and he therefore needs a way to ensure that nonstrategic planning applications – over 99% of the capital's total – are dealt with in accordance with the London Plan. Boroughs routinely take insufficient account of the Plan and it is therefore vital that the forthcoming Local Development Frameworks (LDFs) conform to the London Plan and incorporate the thrust of its strategic spatial policies.

4.9 The boroughs ensure that local considerations are taken into account; the Secretary of State ensures that LDFs conform with national policy; but no single body currently has the responsibility of ensuring compatibility with regional policy. This will become increasingly important if the Mayor acquires enhanced powers over housing and waste. The Mayor needs the power to direct boroughs not to adopt Development Plan Documents (DPDs) if in his opinion they do not conform to his Plan. This is not a matter that should be delegated to a planning inspector.

4

IV The July 2006 proposals and further consultation

In July 2006, following the consultation on proposals in November 2005, the DCLG published final proposals to give the Mayor increased planning powers.⁵ In summary the proposed planning powers were:

- * The Mayor will be able to direct changes to boroughs' programmes for the local development plans they produce.
- * The Mayor will have a stronger say on whether draft local development plans are in general conformity to his London Plan.
- * The Mayor will have the discretion to determine planning applications of strategic importance.⁶

The July 2006 final proposals document explains the Government proposals in detail.⁷ On 10 August 2006, DCLG published a second consultation document.⁸

⁴ Mayor of London, *The Mayor of London's response to the ODPM's consultation paper on the powers and responsibilities of the Mayor and Assembly*, February 2006

<http://www.london.gov.uk/mayor/powers/docs/response.pdf>

⁵ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006

http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

⁶ DCLG Press Release, *Consultation on Extended Planning Powers*, 10 August 2006

⁷ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006

http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

⁸ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Consultation Paper on changes to the Mayor of London Order 2000*, August 2006

http://www.communities.gov.uk/pub/97/TheGreaterLondonAuthorityTheGovernmentsfinalproposalsforadditionalpowersandResp0_id1502097.pdf

The consultation paper sets out the Government's preferred approach on three key aspects of the new arrangements:

- The thresholds which define applications as being of potential strategic importance and must be referred to the Mayor;
- A policy test which the Mayor would need to apply to those applications he sees to decide whether his intervention would be justified. He would be required to give reasons when he decided to take on an application; and
- Changes to some of the processes and procedures for referral of applications to the Mayor.

The consultation closed on 2 November and the results are not yet available. A summary of the responses will be published by February 2007. The Government will make available its decisions in time for the Committee stage of the Bill. These issues will be in a new statutory instrument, rather than in the Bill. However, for the Second Reading debate we do not know exactly what the Government proposes for the rules and procedures to allow the Mayor to take over a planning application from the boroughs. These issues are considered in the following sections of this paper.

V Procedures

A. Why procedures for planning applications are important

The position of the Mayor in determining planning applications will be unique within the British planning system. Normally planning applications are determined by a group of councillors called a "planning committee" or a "planning board". They have to follow strict procedures. One major issue is how those procedures relate to what happens when the Mayor determines a planning application. The Mayor can already direct refusal of certain planning applications, but the disappointed applicants would be able to appeal to the Secretary of State. The Bill would give the Mayor the additional power to approve planning applications, after which there would be no right of appeal except in the High Court through judicial review. This is because there is no third party right of appeal in the planning system.

Some issues relevant to local councillors are not particularly relevant to the Mayor. For example, the question of prejudicial personal interests is of great importance to local councillors who may live near to a proposed development or have personal contacts with those involved. The Standards Board for England lays down rules for when they are allowed to vote and other matters.

Another important rule is that councillors should not announce how they will vote before the planning committee meeting. That might be relevant to a Mayor. The Local Government Association has issued guidance taking account of the *Local Government Act 2000* and the national model Code of Conduct for Councillors. The following paragraph gives an idea of expectations:

- 8.4 Councillors, and members of the planning committee in particular, need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner, in which members taking the decision will take account of all the

evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. It is probably misleading to describe the determination of a planning application as a “quasi-judicial” process (unlike, say, certain licensing functions carried out by the local authority). It is, nevertheless, a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or to complain to the Local Government Ombudsman on grounds of mal-administration; or to the Standards board that a member has breached the local code.⁹

A PQ on the question of councillors making public statements on planning applications showed that there is no simple rule:

Ultimately it is for individual members to decide how they conduct themselves in carrying out official duties, including whether to make public statements, but if it is alleged that their conduct breaches the local code [of conduct] then they will be open to investigation by the Standards Board of England.¹⁰

This requirement might present difficulties for a democratically elected Mayor with a high profile. The DCLG proposals have taken the issue into account:

The Government proposes that the Mayor should only be able to take-over the handling of applications about which he has made no public statements of support or opposition. We propose that his power to direct refusal in such cases should remain because there is the further safeguard of an appeal to the Secretary of State.¹¹

It would perhaps not be too difficult for the Mayor to avoid commenting on an individual application. However, a Mayor with strong and well-publicised policies might find that people did not consider his determination to be fair. For example, a Mayor might have a well-known policy on large supermarkets but then might be faced with an individual application for a large supermarket. To some extent those policies might be in the London Plan. Anything in the London Plan could be a “material consideration” in the sense of s.38(6) of the *Planning and Compulsory Purchase Act 2004*. That sub-section states that planning applications must be determined in accordance with the development plan, “unless material considerations indicate otherwise”. The borough plan would be the development plan but policies in the London Plan could be taken into account as material considerations.

The concern for acceptable, transparent procedure is strengthened by Article 6 of the European Convention on Human Rights, which states that:

⁹ Local Government Association, *Probity in Planning (Update)*, 2002

¹⁰ HC Deb 18 March 2003 c742W

¹¹ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006
http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and independent hearing within a reasonable time by an independent and impartial tribunal established by law...

Case law from both the House of Lords and the European Court of Human Rights has accepted that the taking of planning decisions by democratically elected politicians does not breach the convention. However, that conclusion is partly dependent upon procedural guarantees of fairness.¹²

B. The August 2006 consultation proposals on procedures

The 2006 DCLG consultation document described its procedural proposals:

Current procedures

13. Planning applications are submitted to the borough in the first instance. If an application meets one of the thresholds in the Order the borough must send the Mayor a copy of the application as soon as reasonably practicable after its receipt. In practice, consultation with the Mayor will normally occur at the same time as other statutory consultees.

14. The Mayor then has the same opportunity as other statutory consultees to submit representations on the application – 21 days. This is known as stage 1. During this time the Mayor can also do one of two things;

- i. He can inform the borough he is happy for them to make the decision on the application without further reference to him; or
- ii. He can inform the borough that he wants to be notified of the borough's decision on the application in order to decide whether to direct the borough to refuse the application.

15. If the Mayor wants to be notified of the borough's decision, the borough may not grant permission for a period of 14 days from the date the notification is received by the Mayor. This is known as stage 2. Within this 14 day period, the Mayor may direct the borough to refuse the application. Any such direction must be accompanied by a statement of reasons, and must be copied to the Secretary of State.

Revised procedures

16. Planning applications will continue to be submitted to the borough in the first instance. Building on the current system, if an application meets a threshold, defining it as being of potential strategic importance, we propose that the Mayor should choose one of three options after receiving it (new stage 1):

¹² *Holding & Barnes PLC v UK* (Application No.2352/02) European Court of Human Rights, quoted in *Sweet & Maxwell Encyclopedia of Planning Law and Practice* 2-3885. The House of Lords judgement on the same case was *R (on the application of Alconbury Developments Ltd.) v Secretary of State* [2003] 2 A.C.295

i. Notify the borough that he is happy for them to make the decision on the application without further reference to him (the Mayor has this power currently); or

ii. Notify the borough that he wishes to be consulted again after the borough has considered their approach to the strategic issues raised by the application. This is to allow him to decide whether he should take over determination of the application by applying a policy test (this is a new power for the Mayor); or

iii. Notify the borough that he is content for them to make the decision on the application but that he wants to be consulted again when the Council's intention is known. This is to allow him to consider whether he should direct the borough to direct refusal of the application (the Mayor has this power currently).

Outcomes

- If i. happens, the Mayor will have no further involvement in the planning application.
- If ii. happens, the Mayor would decide whether or not to take over the application by applying the policy test (see paragraph 27) This is new stage 2.
- If iii. happens, in keeping with the current arrangements, the borough will consider the application in the normal way and, if they intend to grant planning permission, they must give the Mayor the opportunity to decide whether to direct them to refuse the application.

Consultation and enforcement

17. We propose that boroughs will be responsible for undertaking consultation on planning applications taken over by the Mayor. We also propose they should be responsible for enforcing planning obligations and conditions that are attached to planning permissions issued by the Mayor. This is because boroughs already have established consultation mechanisms and standards in place and enforcement teams.

Fees

18. We will be considering the issue of planning application fees over the summer in light of the new arrangements in conjunction with boroughs and the Mayor.

Reserved matters applications and listed building consent applications

19. If a planning application that the Mayor takes over is in outline, we propose the Mayor will also be responsible for subsequently deciding the reserved matters application(s). Similarly, if a planning application is accompanied by a listed building consent application, this should also fall to the Mayor to determine, subject to the normal procedures involving English Heritage.

(...)

POTENTIAL CHANGES TO PROCEDURES

(...)

New Stage 1

33. We propose the Mayor should have 21 days from the date he receives the application and other paperwork to respond to the borough. This is new stage 1. This would be in keeping with current arrangements for statutory consultees under the General Development Procedure Order 1995. The Government accepts that these timescales are challenging. However, this is the case for other consultees and is necessary to ensure that decisions on applications are made in good time.

34. Where the Mayor decides that a planning application may raise issues that could warrant him taking over the decision making of it, he will notify the borough of this by the end of new stage 1. The borough will then be required to set out their approach to the strategic issues raised by the application in the context of the London Plan policies. We propose the borough should have a 6 week period to make this assessment and to send their view to the Mayor. So as to minimise delay, we propose this 6 week period would start from the date the borough receives the application. This will mean that the strategic implications of a planning application above the thresholds, as set by the London Plan, will always be amongst the first set of issues considered by the borough irrespective of any action the Mayor may subsequently take. We consider this justified because the London Plan is part of the development plan and therefore must be taken into account even if the decision remains with the borough.

New Stage 2

35. Once the Mayor receives the borough's assessment of the strategic issues raised by an application he would decide whether he would be justified to take over jurisdiction of it (new stage 2). It is crucially important that the Mayor's decision at stage 2 is soundly based. We propose the Mayor should have 21 days to make his decision and inform the borough.

Decision stages

36. There are three possible outcomes:

- If at new stage 1 the Mayor has not intervened in a planning application, the decision to grant or refuse planning permission will be made by the borough.
- If at new stage 2 the Mayor can demonstrate that all parts of the policy test have been met he will take over the planning application and decide to grant or refuse planning permission.
- If at new stage 1 or at new stage 2 the Mayor decides the application does not raise issues that may warrant him taking over the decision making of it, he may still ask to be notified when the borough has reached a decision on the application. This would enable the Mayor to exercise his power to direct the borough to refuse the application. As now, we propose the Mayor should have 14 days to make this decision. The countdown of the 14 days would start as soon as the Mayor receives the application and associated papers.

Retaining the 14 day period for this stage will provide for the Secretary of State to take account of the Mayor's decision in deciding whether to exercise her power to call-in applications for her determination.¹³

C. Comment on the proposals on procedures

There has been some comment on general procedural issues:

¹³ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Consultation Paper on changes to the Mayor of London Order 2000*, August 2006
http://www.communities.gov.uk/pub/97/TheGreaterLondonAuthorityTheGovernmentsfinalproposalsforadditionalpowersandResp0_id1502097.pdf

1. The Mayor

The Mayor's response to the DCLG questions in the November 2005 proposals showed his views on the procedural issues:

Q12 Are safeguards needed (such as an increased role for the Assembly) to ensure accountability, consistency, fairness and propriety if the Mayor is given powers to decide planning applications and/or direct changes to Local Development Documents and Local Development Schemes? If so, what safeguards would be required?

4.22 The Assembly would need no particular additional powers, although it may want to scrutinise the Mayor's decisions via its planning committee. There will be a need to make suitable arrangements for the Mayor to consider representations from applicants and third parties if he has positive powers to determine applications, and there will be a need for some modest increased executive support to manage the additional workload.

Q13 How should the Mayor's promotional and decision making roles be reconciled under options (a) and (b)?

4.23 Option B [the Mayor being allowed to direct boroughs to refuse or approve planning applications in defined categories of strategic planning] should not present any additional problems. As he has done on a number of occasions in respect of his present powers to direct refusal, the Mayor could choose not to determine applications where they involve one of his functional bodies or where he has previously expressed a view. In such instances these could, as they are now, be determined by a delegation from the Mayor to the Head of Paid Service (with the functional body or bodies taking no part in the decision) or the Mayor could choose to leave the decision entirely with the relevant borough.¹⁴

2. Members of Parliament

Andrew Pelling commented on the procedure during the Queen's speech debate:

The Mayor of London has recognised that there are also issues in respect of the fact that only one person acts as a planning authority. He realises the importance of an open approach and a public process so that he can be given advice and be lobbied by people who may have concerns about an application. I very much hope to hear that the Government will give consideration to the inclusion of such openness in the legislation that comes before us at a later stage, because one Mayor's promise may not necessarily be delivered by another.

I am also concerned that in the proposed legislation it will be down to the boroughs to provide members of the public with information about anything in a planning application to which the Mayor will give consideration. That strikes me as a remote process...¹⁵

¹⁴ Mayor of London, *The Mayor of London's response to the ODPM's consultation paper on the powers and responsibilities of the Mayor and Assembly*, February 2006

<http://www.london.gov.uk/mayor/powers/docs/response.pdf>

¹⁵ HC Deb 20 November 2006 cc343-4

3. London Councils

London Councils (formerly the Association for London Government) criticized the proposed procedures for determining a planning application. In particular, they comment:

If the Mayor is to make decisions on certain strategic applications like a local planning authority, he should be expected to act like a local planning authority. He should make his planning decisions in public, with a right of representation for all concerned stakeholders. His decisions should be based on published reports which are open to scrutiny and which demonstrates how he has taken account of all the relevant development plan policies, and of responses to consultation on the application. These are all important aspects of the Planning and Compulsory Purchase Act 2004 which any additional planning powers for the Mayor must take account of. Furthermore, under current call-in arrangements, there is scope for the Secretary of State to resolve contentious cases under the scrutiny of a public inquiry. The proposed arrangements for London would remove this transparency from the most important and contentious planning applications, by allowing them to be determined by one individual (currently in private) with no external challenge. This will inevitably lead to more requests from local planning authorities and others for such applications to be called in by the Government. This is likely to delay rather than expedite decisions.¹⁶

4. The London Assembly

The London Assembly commented on the procedural aspects of the 2005 proposals:

The Assembly's view is that planning decisions must be taken in a transparent way, with a clear audit trail as to how decisions have been reached. In the Assembly's report "Behind closed doors" the Planning Committee recommended that the Mayor should hold his planning decision meetings in public. Without Mayoral acceptance of this principle, we recommended, and still do, that the Government amend the GLA Act 1999 to require him to hold his planning decision meetings in public. The Mayor is the only planning authority not subject to scrutiny of the decision-making process at the time of the decision.¹⁷

The London Assembly has repeated this point in its reaction to the Bill. They explicitly propose that: "The GLA Bill should be amended to introduce a requirement that the Mayor take his planning decisions in public."¹⁸

5. London First

The business lobby group accepted the Government decision to give more planning powers to the Mayor and concentrated upon trying to ensure that the process improved

¹⁶ London Councils, *Response to the Government's consultation on changes to the Mayor of London Order 2000*, 3 November 2006

¹⁷ <http://www.londoncouncils.gov.uk/upload/public/attachments/923/ConsResponseMayorLondonOrder.pdf>
London Assembly, *The London Assembly's response to the ODPM Review of GLA powers*, February 2006

¹⁸ London Assembly, *Parliamentary Briefing on the GLA Bill*, 6 December 2006

planning in London. They considered that the Government's test for judging the proposed changes [paragraph 4.3.7 of the November 2005 consultation], that changes should result in a demonstrable improvement in the delivery of planning with democratic accountability and with limited impact on adjoining regions, was appropriate. However,

As the proposed change is currently couched in the consultation paper we do not consider that it would improve planning in London rather, it would create too much uncertainty for major developments. The proposal would create an additional strain on borough resources. The proposed policy test is opaque and adds considerable uncertainty early in the planning process and that the decision point would be too early in the process to enable full consideration of the issues which is likely to result in the Mayor unnecessarily taking over a large number of applications, contrary to the Government's intentions.

They presented alternative proposals. Their proposal on the policy test for the Mayor to be able to take over an application is covered in the next section of this paper (section VI). Here is the procedural proposal:

LONDON FIRST PROPOSAL

This proposal utilises the current legislative framework for strategic applications in London through formalising the Stage One process and enabling the Mayor to take over applications, if he satisfies a policy test, when the borough has resolved to grant or refuse permission. We have drawn from existing processes and tests to maintain simplicity, clarity and certainty.

Stage One

- Six weeks after validation the Mayor would be required to provide a statement on whether he considers the application to be London Plan compliant or what would be required to make it so, and whether he considers it to be of strategic significance to London. The statement would address strategic London Plan issues such as affordable housing, density, sustainability, impact on the strategic road network and density. This would not be a definitive view but would highlight key issues which might require further input from other agencies and Statutory Consultees. It would set the clear direction of travel. This would essentially bring forward and formalise the Stage One process which currently does not have a set time.
- The borough would continue to negotiate the application knowing the Mayor's view, relevant London Plan policy issues and the key parameters such as size, affordable housing content etc.
- As is currently the case, the Mayor may state that he does not wish to see the application again.
- The borough would resolve to approve or refuse the application. In either case it would revert to the Mayor in the same way that a strategic referral would under the current system if the borough resolves to grant. The Mayor would have 14 days in which to decide whether to take over the application

- (...)
- If the Mayor takes over an application he would set out the timetable for determination. This can be extended with agreement of the applicant...¹⁹

VI What is an application of potential strategic importance?

A. The current position

One of the key issues is the definition of an “application of strategic importance”. This definition goes to the heart of the power of the Mayor to intervene in determining planning applications. If the definition is broad or if it is left to the Mayor to decide, then he has a considerable power to intervene in anything that he considers important. Conversely if the definition is narrow, then the power of the London boroughs will not be greatly altered from the current position.

The current position is defined in *The Town and Country Planning (Mayor of London) Order 2000* (SI 1493).²⁰ There are four main categories: Large Scale Development; Major Infrastructure; Development which may affect strategic policies; Development on which the Mayor must be consulted by virtue of a direction by the Secretary of State

LARGE SCALE DEVELOPMENT

Category 1A

1. Development which

- (a) comprises or includes the provision of more than 500 houses, flats, or houses and flats; or
- (b) comprises or includes the provision of flats or houses and the development occupies more than 10 hectares.

Category 1B

1. Development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings –

- (a) in the City of London and with a total floorspace of more than 30,000 square metres, or
- (b) in Central London (other than the City of London) and with a total floorspace of more than 20,000 square metres, or
- (c) outside Central London and with a total floorspace of more than 15,000 square metres...

Category 1C

1. Development which comprises or includes the erection of a building in respect of which one or more of the following conditions is met -

- (a) the building is more than 25 metres high and is adjacent to the River Thames,
- (b) the building is more than 75 metres high and in the City of London,

¹⁹ London First Press Release, *Review of the Mayor's Planning Powers*, 2 November 2006

²⁰ <http://www.opsi.gov.uk/si/si2000/20001493.htm>

(c) the building is more than 30 metres high and outside the City of London.

...

Category 1D

1. Development which comprises or includes the alteration of an existing building where -

(a) the development would increase the height of the building by more than 15 metres; and

(b) the building would, on completion of the development, be higher than a relevant threshold set out in paragraph 1 of Category 1C.

MAJOR INFRASTRUCTURE

Category 2A

1. Development which comprises or includes mining operations where the development occupies more than 10 hectares...

Category 2B

1. Waste development to provide an installation with capacity for a throughput of more than 50,000 tonnes per annum of waste produced outside the land in respect of which planning permission is sought...

Category 2C

1. Development to provide -

(a) an aircraft runway; (b) a heliport (including a floating heliport or a helipad on a building); (c) an air passenger terminal at an airport; (d) a railway station; (e) a tramway, an underground, surface or elevated railway, or a cable car; (f) a bus or coach station; (g) an installation for a use within Class B8 (storage or distribution) of the Schedule to the Use Classes Order where the development would occupy more than 4 hectares; (h) a crossing over or under the River Thames; or (i) a passenger pier on the River Thames.

2. Development to alter an air passenger terminal to increase its capacity by more than 500,000 passengers per year.

DEVELOPMENT WHICH MAY AFFECT STRATEGIC POLICIES

Category 3A

1. Development which is likely to -

(a) result in the loss of more than 200 houses, flats, or houses and flats (irrespective of whether the development would entail also the provision of new houses or flats); or

(b) prejudice the residential use of land which exceeds 4 hectares and is used for residential use.

Category 3B

1. Development

(a) which occupies more than 4 hectares of land which is used for a use within Class B1 (business), B2 (general industrial) or B8 (storage or distribution) of the Use Classes Order; and (b) which is likely to prejudice the use of that land for any such use.

Category 3C

1. Development which is likely to prejudice the use as a playing field of more than 2 hectares of land which -

(a) is used as a playing field at the time the relevant application for planning permission is made, or

(b) has at any time in the five years before the making of the application been used as a playing field.

...

Category 3D

1. Development -

- (a) on land allocated as Green Belt or Metropolitan Open Land in the development plan, in proposals for such a plan, or in proposals for the alteration or replacement of such a plan; and
- (b) which would involve the construction of a building with a floorspace of more than 1,000 square metres or a material change in the use of such a building.

Category 3E

1. Development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated and -

- (a) comprises or includes the provision of more than 2,500 square metres of floorspace for a use falling within any of the following Classes in the Use Classes Order -

(i) class A1 (retail); (ii) class A2 (financial and professional); (iii) class A3 (food and drink); (iv) class B1 (business); (v) class B2 (general industrial); (vi) class B8 (storage and distribution); (vii) class C1 (hotels); (viii) class C2 (residential institutions); (ix) class D1 (non-residential institutions); (x) class D2 (assembly and leisure); or

- (b) comprises or includes the provision of more than 150 houses or flats or houses and flats.

Category 3F

1. Development for a use, other than residential use, which includes the provision of more than 200 car parking spaces in connection with that use.

DEVELOPMENT ON WHICH THE MAYOR MUST BE CONSULTED BY VIRTUE OF A DIRECTION OF THE SECRETARY OF STATE

Category 4

1. Development in respect of which the local planning authority is required to consult the Mayor by virtue of a direction given by the Secretary of State under article 10(3) of the GDPO.

The July 2006 proposals document contained further details of how the new system would work:

Which planning applications could the Mayor decide?

3.3.16 The Government believes that planning applications should be decided at the local level whenever possible, and is keen to ensure that only applications which raise issues of genuine strategic importance are caught by these arrangements. Other than applications for waste facilities, the Government envisages the Mayor assuming jurisdiction for only a limited number [of] applications a year. To implement this approach we intend to build on the current approach set out in Mayor of London Order 2000 which has generally worked well and require the Mayor to test any decision to take-over an application against key policy criteria:

- Firstly, we will put in place criteria that would trigger referral of an application to the Mayor. These could be similar in form to the current referral criteria set out in Mayoral Order. We will consult shortly on what the detailed criteria could be.

- Secondly, the Mayor will apply a policy test (similar to the Secretary of State's call-in policy) which the Mayor will use to decide which of those applications he would be justified in taking over. The test could include whether the application raises the likelihood of significant conflict with the London Plan.

3.3.17 The Mayor has a key role in supporting development in London. Indeed, the GLA's principal purposes are to promote economic and social development; and environmental improvement, in Greater London. But this risks creating a conflict of interest between the Mayor's promotional role and a new power to decide strategic planning applications. The Government proposes that the Mayor should only be able to take-over the handling of applications about which he has made no public statements of support or opposition. We propose that his power to direct refusal in such cases should remain because there is the further safeguard of an appeal to the Secretary of State. We do not consider the Mayor should be able to take over those cases which fall under the jurisdiction of the Olympic Delivery Authority or London Thames Gateway Development Corporation.²¹

B. What the August 2006 consultation proposed

The August consultation gave details of the proposed amendment to the 2000 Order – the waste parts of which are covered in section X of this paper:

POTENTIAL AMENDMENTS TO THE TOWN AND COUNTRY PLANNING (MAYOR OF LONDON) ORDER 2000

20. The Government proposes that the thresholds set out in the Mayor of London Order 2000 should remain as currently set out other than in the following respects.

Part II, Category 2C

25. Tram stations – We propose that planning applications for tram stations are referred to the Mayor by being included in category 2C of part II.

Part III, Category 3D

26. Metropolitan Open Land – Metropolitan Open Land (MOL) is a London Plan policy rather than a national policy. Therefore, it is principally the responsibility of the Mayor to see it enforced. Currently, the Mayor only sees planning applications for development on MOL if, amongst other things, they are departures and involve construction of a building over 1000 square metres. Given the strategic importance of MOL, we propose that the Mayor should see all departure applications for construction of a building or buildings on MOL or for a material change of use in such existing buildings.

²¹ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006
http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

POLICY TEST

27. The Government expects that decisions on planning applications should normally be made by boroughs. London boroughs will continue to be responsible for deciding the vast majority of planning applications in the capital, including most applications of strategic importance. The Mayor should take over no more than a limited number of strategic planning applications in any given year that raise issues of London-wide or sub-regional importance.

28. The Mayor will be required to apply criteria to decide whether he would be justified in taking over the decision making on an application referred to him. We want the criteria to be as robust and clear-cut as possible, so as to minimise disputes between the Mayor and the boroughs. We propose the following two criteria that could be set out in a circular or in a Ministerial Statement.

The Criteria

29. In the Mayor's view:

- Does the planning application raise issues of a nature and scale that would significantly impact on the implementation of specific London Plan policies?; and
- Do the issues raised by the application have significant effects that go wider than a single borough?

30. To justify taking over an application to secure implementation of the relevant London Plan policies, the Mayor would need to clearly demonstrate that both criteria are satisfied and that in making his decision he has taken into account:

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

The Mayor would have to publish the reasons for his decision.

31. The Government expects that any disagreements between boroughs and the Mayor, or applicants and Mayor, about the application of the policy test should be resolved through discussion. However, the option of legal challenge would be available in the event that agreement could not be reached. We do not propose a role for the Secretary of State in arbitrating on any dispute.²²

²² DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Consultation Paper on changes to the Mayor of London Order 2000*, August 2006
http://www.communities.gov.uk/pub/97/TheGreaterLondonAuthorityTheGovernmentsfinalproposalsforadditionalpowersandResp0_id1502097.pdf

C. Comment on these proposals

1. Members of Parliament

During the Queen's speech several MPs criticised these proposals. Mark Field said that planning should be decided at local level rather than "being decided at City Hall, with its enormous bureaucracy covering 7 million people over the whole of the capital city". However, he added:

I have some sympathy with the view that making the Mayoralty work properly requires broader strategic powers, and so I will look on some of the proposals with an open mind.²³

Sir Paul Beresford regretted interference from the Mayor with local authority planning decisions on the grounds that planning was one of the issues influencing local voting:

The Mayor is supposed to interfere only in planning issues "of strategic importance", but he alone interprets what is of strategic importance. The whole process will take longer, as will the challenging of any decision. It will slow down even more planning programmes and planning development. There will be furious arguments between the two teams, yet there is no arbitration process. Even if the Mayor takes over a planning application, he will require the local borough to handle the application and, of course, to pay for it. This particular Mayor has a history of trying to get involved in major applications merely to squeeze section 106 money out of developers as a price for his agreement.²⁴

Andrew Pelling also favoured local decisions:

I know that the Mayor and his extremely professional planning officers take the view that they are better placed to intervene in the consideration of planning applications and to maximise the section 106 value from major applications. Indeed, some local authorities in London may not be as strong as others... There must, however, be an expectation that local knowledge means that local authorities are best placed to drive forward such applications...²⁵

In addition, Shadow Minister for London Jacqui Lait said:

"Local people know what's best for their communities, but giving the Mayor greater powers over housing and planning undermines the say they and the Boroughs have. London is already under pressure to increase housing density, but we need to be sure that the kind of communities where people actually want to live are being created. I fear that simply handing these powers over to the Mayor will lead to over-cramming and the destruction of our urban green spaces."²⁶

²³ HC Deb 20 November 2006 c321

²⁴ HC Deb 20 November 2006 c300

²⁵ HC Deb 20 November 2006 cc343-4

²⁶ Conservative Party Press Release, *Lait: Concerns over greater powers for London Mayor*, 13 July 2006

2. London Assembly

The London Assembly commented:

- The Assembly supports a limited extension to the Mayor's powers in relation to strategic planning decisions. However, along with London Councils, we are concerned about the lack of clarity so far about the extent to which the Mayor will be able to intervene in borough planning decisions. Any new powers for the Mayor in this area must be genuinely strategic, rather than representing an extraction of powers from the London Boroughs. This would represent a removal of planning decisions from those locally elected to take them and undermine local involvement in discussions about planning decisions.
- The GLA Bill and associated draft Regulations should be examined and amended to ensure that the Mayor's new powers to intervene in strategic planning applications are limited to genuinely strategic applications.²⁷

3. London Councils

The response of *London Councils* strongly criticised the proposals to increase the Mayor's powers:

Summary

London Councils has in the past stated that it does not believe it is necessary or appropriate to give the Mayor the power to grant approval for planning applications. The Government has, however made clear its intention to give the Mayor some powers in this issue and the current consultation sets out some details of how this would work. London Councils has a number of concerns about the workability and acceptability of the terms of the proposed changes to the Mayor of London Order 2000. The key issues for London Councils are:

1. The Mayor's decision making process should be as transparent as the activities of borough planning committees and should address potential conflicts of interest.
2. Any transfer of development control powers to the Mayor should not make the planning system more complex, and create delays at a time when the Government wants to streamline the planning system.
3. The number of cases where the Mayor needs to intervene should be minimised - the Mayor should only be able to take over a planning application for a limited time after a borough has resolved to approve or refuse an application, or where after a specified time the borough has failed to make sufficient progress on the application.
4. Failure of a borough to determine an application within a set timescale should not automatically cause the Mayor to take it over. The Mayor should be required to show that any intervention on such grounds takes account of boroughs' views,

²⁷ London Assembly, *Parliamentary Briefing on the GLA Bill*, 6 December 2006

such as the complexity of the case, any unforeseen factors and the behaviour of developers.

5. The Mayor should not be able to take over applications for housing development where a borough is already delivering: In particular there should be a mechanism under which the Mayor can confirm he would not seek to use his powers where boroughs are meeting their housing targets and delivering social housing in line with the London Plan.

6. The Mayor should demonstrate that his intervention is reasonable in terms of being needed to ensure delivery of the London Plan, so any use of his powers here would be open to challenge.

The Mayor should not use his new powers to take over an application if there is a small difference of views with the borough over section 106, or simply to control the section 106 funding.

7. On waste, new powers will need to be applied in accordance with the London Plan and so cannot be used to go outside the policy framework set by the London Plan.

8. The Mayor should focus on strategic issues in cases where he intervenes and should not be permitted to comment on non strategic matters. It would be disproportionate and unjustified to give the Mayor the discretion to take over a potentially large number of planning applications, when the evidence that important strategic developments for London are being frustrated, due to inappropriate refusals of permission by the boroughs, is very limited.

9. On resources London Councils is concerned that expert planners may leave the employment of boroughs if the decisions on most important applications are regularly taken at regional level.

10. It is essential that any review of fees should reflect the costs of implementing the new arrangements. Even if an application is called in by the Mayor, the costs likely to be incurred by the local planning authority are likely to be at least as high as if they had determined the case themselves. Boroughs should not, therefore, lose any of the fee.²⁸

Regeneration & Renewal had given a racier account of the attitude of London boroughs:

When the new planning powers for London's Mayor were announced last month, Ken Livingstone maintained...that he didn't actually want to use them... "[O]ne or two spectacular rows" in the early days would be enough to drag councils into line. The last thing he wants, he said, is to start taking over the role of local councils.

The problem is that the borough authorities do not quite believe what they're hearing...In particular, councils are worried about what will happen to community

²⁸ London Councils, *Response to the Government's consultation on changes to the Mayor of London Order 2000*, 3 November 2006
<http://www.londoncouncils.gov.uk/upload/public/attachments/923/ConsResponseMayorLondonOrder.pdf>

benefits – worth tens of millions of pounds – if it is the Mayor who ends up determining the application. Furthermore, many of the high-rise schemes approved by the Mayor have been described by critics as unsuitable and ill-thought through. His new powers will lead to a reduction in quality development, they maintain.²⁹

London Councils' response criticised the proposed policy test in more detail:

The Policy Test

Consultation Q2: Do you consider this [policy] test provides a clear basis for the Mayor to decide whether he should take over a planning application?

6. Certainty is vitally important for the planning process. The DCLG's proposed policy test is extremely vague over where the Mayor could intervene and take over a planning application. It is also subjective with a significant amount of emphasis on the Mayor's own interpretation of the situation. Such uncertainty is not beneficial for the boroughs, for local communities, for developers or even for the Mayor. Therefore, London Councils would like to raise a number of issues which would help to provide a clearer and more appropriate basis for the Mayor to decide whether he should take over a planning application.

The submission continued with further detail under the following headings:

- Need for a counter-balance to protect borough interests
- Need for a robust and transparent policy process
- Need for a more appropriate mechanism for boroughs to challenge the Mayor
- Need for a narrower definition of applications that could be taken over by the Mayor
- Need for boroughs to retain lead on most section 106 negotiations
- Need to limit the activities of the Mayor to strategic issues

London Councils proposed the following policy test:

14. London Councils would therefore propose for further discussion the following starting point for a modified policy test:

"Does the planning application propose a development which raises strategic issues of a nature and scale that are of special importance for the implementation of the London Plan as a whole, and which will have a significant impact on several boroughs; and
Are there sound planning reasons which make it necessary for the Mayor to take over the application?"

This would provide a useful starting point for discussions and help alleviate the issues outlined in paragraphs 6 to 13. The following issues would need to be built into any final policy test:

- The term strategic must be clearly defined in any subsequent legislation. It should be noted that the City of London has commissioned work on this

²⁹ "Will mayor's new powers raise the roof?" *Regeneration & Renewal*, 11 August 2006

and other aspects of the consultation, which can be fed into future discussions on this issue. London Councils and the City would be keen to engage further with the DCLG on further development to the policy test

- The policy test must not be against any one single policy in the London Plan. As noted in paragraph 13, there are over 180 separate policies in the current London Plan. It is important that the policy test acknowledges and reflects this
- Small developments which just happen to span borough boundaries should be excluded as they would not be strategic. A strategic development would impact on several boroughs
- The Mayor should have to state why he feels it is appropriate to take over determination of an application. On the issue of housing, London Councils considers it appropriate that any new policy test considers an assessment of borough performance against London Plan housing delivery targets and policy (size and type of homes). If a borough is meeting targets, the Mayor should not be able to take over determination of housing applications.³⁰

4. London First

London First made a specific proposal on the appropriate policy test:

Policy Test

- If the Mayor is to take over an application he would provide a statement of reasons demonstrating that:
 - the application could be contrary to the London Plan or prejudicial to its implementation; or
 - it would otherwise be contrary to good strategic planning in Greater London; and
 - there are sound planning reasons which make it necessary to take over or direct refusal of the application.

This is based on the test out in Statutory Instrument 2000 no.1493 (paragraph 5 [1]) that applies to the Mayor's power to direct refusal. The additional element is to address concerns that there are clear planning based reasons for recovery/direction of refusal. To reduce complexity the same test should apply whether the Mayor is to direct refusal or take over an application for his own determination...

- In deciding the application the Mayor would take account of the whole development plan, not just the London Plan...³¹

³⁰ London Councils, *Response to the Government's consultation on changes to the Mayor of London Order 2000*, 3 November 2006

³¹ London First Press Release, *Review of the Mayor's Planning Powers*, 2 November 2006

5. Others

A survey published in September 2006 by the Association for London Government (now called London Councils) suggested that the public did not favour increased planning powers for the Mayor:

Fifty four per cent of Londoners oppose plans to award the Mayor of London extra powers to decide planning applications across the capital – according to a GfK NOP survey released today by the Association of London Government. Only 27 per cent support proposals to award the Mayor further powers over planning, while, when asked who should be mainly responsible for planning in their area, an overwhelming 75 per cent of Londoners named their local council...

Key findings include:

- 54 per cent of Londoners oppose the Mayor being granted further powers over planning; only 27 per cent support the proposal to extend his powers;
- 75 per cent want their local council to be mainly responsible for planning decisions in their area;
- 68 per cent of Londoners agree that their local council should be given more powers to decide whether planning permission should be granted in their local area. Only 23 per cent agreed when asked if they thought that the Mayor should be given such powers;

However, when asked if they thought the system of granting planning permission in their area should be left as it is only 23 per cent believed that there should be any change; 63 per cent state that their local council keeps them well informed of the services and benefits it provides, while only 49 per cent say the same for the Mayor;

Half of Londoners say that their local council takes their views into account before making a decision. Only 33 per cent believe that the Mayor of London does the same...³²

However, Professor Tony Travers, the LSE expert on London government was more sympathetic:

In a city enjoying relatively rapid economic growth it is inevitable there will be conflicts between neighbourhood/local interests and those of the city as a whole. People and jobs must be located somewhere. Yet there is often a desire to ensure that someone else's area copes with the difficulties associated with construction work and social change. Moreover, British public policy is poor at underpinning major developments with either the 'hard' or 'soft' infrastructure needed to allow them to work well.

There would be a risk that a radical reform to development control powers (ie either making the Mayor development control authority for larger schemes or even giving him the power to direct approval) would provoke the boroughs into negative and oppositionist tactics. On the other hand, there is no doubt that

³² Association for London Government Press Release, *Londoners say no to extra planning powers for the Mayor*, 26 September 2006

London needs to be able to deliver major strategic developments in such a way that localised, pockets of opposition cannot halt them. There is a major economic competitiveness issue here.

A compromise will have to be found if there is not to be political bad blood and/or delays for individual planning applications. Doing nothing would clearly not be an option, given the Mayor's strongly argued case for reform. The current Mayor believes there is a fault with the existing planning system and this view should not be ignored...³³

VII The Mayor's powers and calling in by the Secretary of State

There is a very different approach in legislation relating to the power of the Secretary of State to call in planning applications to determine them himself. The power to call in planning applications is granted to the Secretary of State under section 77 of the *Town & Country Planning Act 1990*. The power is very general, as stated in the opening sub-section.

77 (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.

A PQ in December 2005 was answered with a brief statement of Government policy.

Baroness Andrews: The Office of the Deputy Prime Minister's policy is to be very selective about calling in planning applications and only do so where issues of more than local importance are involved. In deciding to call these applications in a view about their merits has not been taken. An inspector will hold a local inquiry into the applications and make a report and recommendations taking into account, among other things, the sustainability of the proposed development.³⁴

Although the Secretary of State has this power, it would not be feasible for her to call in a large proportion of planning applications because of the immense cost and delay, since public inquiries are required. The Mayor will not be under any obligation to hold a public inquiry when he takes over a planning application from a borough.

There are other differences between the position of the Secretary of State and the position of the Mayor. The Secretary of State will normally only call in an application that the local planning authority is minded to accept. If it refuses the application, there is already a right of appeal to the Secretary of State. The proposed extension of the Mayor's powers would allow him to intervene in an application that was to be rejected in order to allow the possibility of determining it himself and approving it. That would escape the possibility of appeal to the Secretary of State because there is no third party

³³ Tony Travers, *The Greater London Authority...A response to the consultation paper*, February 2006
<http://www.lse.edu/collections/LSELondon/GLAConsultation2006.doc>

³⁴ HL Deb 12 December 2005 c142WA

right of appeal. Using powers in the *Greater London Authority Act 1999*, the Mayor can take over an application that the local planning authority was minded to accept, determine it himself and refuse it. In those circumstances, the disappointed applicant would still be able to appeal to the Secretary of State. For the vast majority of applications such an appeal is determined by a planning inspector. However, the Secretary of State can recover appeals of particular importance to determine them himself.

In the debate on the Queen's Speech, Robert Neill gave some examples of the Mayor using his powers to intervene in a manner that he considered unsatisfactory:

The first relates to a mixed-use development in Kew Bridge road in Hounslow. The Mayor supported the development, but the borough council refused it. The Mayor supported the developers on appeal. The Secretary of State concluded that the borough was right to refuse the application. That was because the development was not a good design, it would harm a conservation area, a world heritage site and the setting of listed buildings, it would produce substandard units of accommodation, it would harm the living conditions of people nearby, and it conflicted not with only the borough's unitary development plan, but the Mayor's own London plan. The inspector found that the Mayor's evidence was wrong on that last point. The Mayor maintained that the development supported his London plan; the inspector said that it did not. That does not give one much confidence in the Mayor's planning powers.

A similar example is a development in Hammersmith and Fulham, where, again, the Mayor supported a planning development that contravened two parts of his own London plan. The same happened in Greenwich, where the Mayor wanted a high-rise development that was adjacent to a world heritage site. Finally, in Southwark, the Mayor sought to oppose the London borough's attempts to refuse a planning application, claiming that that would reduce not only the height of the building, which seems to be a bit of an obsession of his, but the number of units. In fact, the London borough of Southwark, left to its own devices, negotiated a scheme that produced more units than the Mayor's would have done. The majority of those borough councils are Labour controlled, so I am not making a narrow partisan point. The fact is that the Mayor does not have a good track record on planning matters, which is why we have concerns and will want to return to the issue in the debate on the Bill.³⁵

Many of the applications of sufficient importance for the Secretary of State to want to call in would also be applications of sufficient strategic importance for the Mayor to take over. That raises questions as to the relationship between the two powers. The July Final Proposals document considers this point:

Secretary of State's powers

3.3.18 We do not propose that the Secretary of State should be able to overturn a decision by the Mayor to take over an application. However, the Secretary of State would retain a power to call-in the application, after the Mayor had taken it over, though the expectation would be that this power would be exercised only in

³⁵ HC Deb 20 November 2006 cc352-3

limited circumstances such as where an application raised wider issues of national rather than regional importance.³⁶

The Mayor, in his response to the November 2005 proposals went further:

4.14 The efficiency and effectiveness of the strategic planning process could be improved if the Secretary of State were to indicate that the additional circumstances in which he would call in an application (that the Mayor had directed the borough to approve) would be limited to consideration as to whether the Mayor had taken proper account of the views of local people and the borough's advice on local impact.³⁷

VIII Regulatory Impact Assessment on Planning

The Regulatory Impact Assessment of the planning proposals published in July 2006 was broadly favourable, while noting uncertainties:

3.3.8 The discretionary nature of these powers makes costs difficult to assess at this stage. The Mayor may direct boroughs to either add to, or reduce, the number of LDDs [Local Development Documents] they intend to prepare, as set out in their LDS [Local Development Schemes]. This should therefore mean either savings or additional costs depending on whether and how the Mayor chooses to exercise his power. In practice, we would expect a Mayoral direction to result in a borough reprioritising its delivery of LDDs within its existing available resources, and therefore for the change to be cost neutral for the borough and other parties.

3.3.9 There should be no additional costs arising from the Mayor's strengthened role in relation to DPDs [Development Plan Documents] themselves. The proposed change involves a change of emphasis in the examination in public of draft DPDs, rather than any additional burdens on boroughs, developers or the public.

3.3.10 Costs resulting from the Mayor's enhanced role in development control are also difficult to quantify at this stage, and will depend on the extent to which he chooses to exercise his discretionary power. The Government will set out clear criteria to ensure fees in relation to strategic applications the Mayor takes on are allocated on a fair and equitable basis between a borough and the Mayor.

Environmental and Social

3.3.11 The environmental or social impacts arising from the Mayor's additional planning powers are likely to be positive. Through his powers, the Mayor will seek to encourage boroughs to prepare local plans in accordance with his London

³⁶ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006
http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

³⁷ Mayor of London, *The Mayor of London's response to the ODPM's consultation paper on the powers and responsibilities of the Mayor and Assembly*, February 2006
<http://www.london.gov.uk/mayor/powers/docs/response.pdf>

Plan, and will decide strategic planning applications in accordance with London Plan principles.

3.3.12 The London Plan sets out a wide range of policies which impact on the environment and social fabric of the capital – through changes to the built environment (such as the location of tall buildings or increasing densities in new developments) and the use and management of natural resources in London (including the efficient use of water, tackling climate change and protection of open space). London Plan policies are subject to Sustainability Appraisal incorporating the requirements of the Strategic Environmental Assessment (SEA) Directive as they are prepared...

Alternative planning policies were considered but quickly rejected. Perhaps this reflects the fact that the planning system already had a well developed hierarchical system with powers vested in both the local planning authority and the Secretary of State. It is not easy to insert further powers for the Mayor at an intermediate level.

GENERAL PLANNING: ALTERNATIVE OPTIONS CONSIDERED

3.3.16 We considered a number of alternative options in deciding the suite of enhanced Mayoral planning powers. On plan-making, we considered both a Mayoral power to direct changes to LDSs without a Secretary of State reserve power, and no additional powers for the Mayor. The former was discounted because it would fetter the Secretary of State's ability to ensure wider national interests applied to London, where appropriate. The latter was discounted because it would not strengthen the Mayor's role and ensure greater consistency between the London Plan and Local Development Frameworks.

3.3.17 Two alternative options were considered in relation to DPDs. First, the option for the Mayor to be able to override Inspectors' binding reports after an examination in public of the draft DPDs, with no reserve powers of intervention for the Secretary of State. Second, similar powers for the Mayor but with Secretary of State reserve powers of intervention. It was considered that both options would undermine the independence of the examination process – a process that was recently strengthened by the introduction of binding Inspector's recommendations through the Planning and Compulsory Purchase Act 2004. Allowing one party to the examination to be able to override the Inspector after the examination would skew the process and risk undermining public confidence in the planning system.

3.3.18 On development control two alternative options were considered and rejected. First, requiring the Mayor to decide whether or not to assume control of a strategic application as soon as that application is submitted to the local planning authority. Second, allowing the Mayor to decide to take on an application at any stage up to its determination by the local planning authority. The first option was rejected because, although it would provide clarity and certainty from the outset as to who the decision maker would be, it would remove any incentive or opportunity for boroughs to apply London Plan policies themselves. The second option was discounted because it risked creating ongoing uncertainty as to who was actually responsible for deciding a strategic application.

3.3.19 For both plan-making and development control, the Government considered "do nothing" options (more precisely, it considered a "minimal change" option, which would do no more than modify current arrangements to bring them up to date, rather than make any fundamental change). These options were not

taken forward in either case. The Government considered that there is a strong case, as set out above, for strengthening the Mayor's strategic planning role.

IX The Bill Part 7: Planning

This section gives some background on general issues, complementing the explanatory notes.

A. Conformity between plans

Clause 29 Duties in relation to consultation

Clause 30 Local Development Schemes

Development plans have been particularly important since 1991 because of a statutory requirement that planning applications should be determined in accordance with the development plan "unless material considerations indicate otherwise".³⁸ A local planning authority rejecting a planning application that is in accordance with the development plan is likely to be overturned on appeal unless there is some consideration, such as Government guidance, to justify its decision.

A local plan (for example a borough plan) is now a collection of local development documents. This has to conform to the Regional Spatial Strategy. Conformity is often controversial, particularly because of the pressure for housing development. The Government imposes housing targets at a national and regional level to cope with demand and a local authority has to find enough land to zone for housing to comply with the plan target. *The Greater London Authority Act 1999* requires that a borough plan (then unitary development plans or UDPs) in London must not be adopted unless it is in general conformity with the Spatial Development Strategy (SDS) also known as the London Plan.

A Circular from the Government Office for London describes the desired relationship between the Mayor and the boroughs in this respect. In particular:

5.3 The Government expects the Mayor and the boroughs to work collaboratively in the development and review of UDPs to ensure that broader strategic concerns are reflected from the outset. Formally, the Mayor is required to monitor UDPs and boroughs must seek the written opinion of the Mayor in accordance with regulation 13 of the regulations on whether a UDP or proposals to alter or replace a UDP are in general conformity with the SDS before placing the UDP on deposit. If the Mayor considers the deposit or revised deposit plan or proposals are not in general conformity, the written opinion should specify those respects in which this is considered to be the case, and will be treated as a duly made objection. However, as far as possible, any issues of non-conformity should be resolved through discussion between the Mayor and the borough before the UDP reaches the inquiry stage.³⁹

³⁸ This is now stated in the *Planning and Compulsory Purchase Act 2004* s.38(6)

³⁹ Government Office for London, *Circular1/2000, Strategic Planning in London*, June 2000

Clause 29 would strengthen consultation requirements. Under the Greater London Authority act 1999 s.335, the Mayor already has to consult the Assembly and functional bodies on the draft of his Spatial Development Strategy. Consultation requirements are common in planning law but there is sometimes disagreement as to how much notice has to be taken of what consultees say. Clause 29 would require the Mayor to “have regard to comments by the Assembly and the functional bodies”. He would also have to respond in writing to the Chair of the Assembly giving his reasons for those comments that he does not accept for implementation in the strategy. The Clause would formalise the consultation procedure. In some circumstances it might form the basis of a legal challenge through judicial review of a Mayor’s actions if he failed to give adequate reasons for rejecting comments.

Clause 30 would strengthen the Mayor’s control over borough plans at an early stage. Because local plans now consist of a collection of documents, there might be disagreements as to which documents should be included in the plan (Local Development Framework). Clause 30 would allow the Mayor to require that particular documents should be included, and consequently which policy areas should be covered.

B. Development control

Clause 31 provides the statutory framework for the Mayor to take over and determine planning applications. As noted above, the most controversial issues will be covered in secondary legislation and have been dealt with in parts V and VI of this paper. These are the definition of the types of planning application that the Mayor can take over from the boroughs and the procedure for the Mayor to determine applications.

C. Planning obligations and planning contribution

This is an area where policy is changing and even the names are confusing. Planning obligations are also called planning gain or section 106 agreements. The principle is that a developer agrees with the planning authority to provide or finance some item of infrastructure necessary to allow the development to go ahead or some affordable housing. The process is clearly a useful way of financing infrastructure although it is often criticised. Developers complain of excessive demands for money that they cannot avoid without incurring extra costs by going to appeal. Environmental campaigners complain that planning permission is, in effect, being sold. *The Planning and Compulsory Purchase Act 2004* s.46 provided for the option of a fixed rate planning contribution to replace the process of negotiating a planning obligation. That section has not yet been brought into force. A separate policy instrument – the planning gain supplement - is expected to operate alongside planning obligations/planning contributions. That is discussed below.

There is considerable room for disagreement as to the appropriate level of planning obligation and what it should relate to. For example, a London borough might consider that a housing development should provide money to pay for a new primary school. A London Mayor, on the other hand, might want the money to go to a completely different item of infrastructure. A further concern is that the Mayor might have an incentive to take

over applications from boroughs in order to secure the money from planning obligations to implement his infrastructure policies.

However, the planning obligation payment is meant to relate to the specific development rather than being a general development tax. Thus the Mayor would not be able to take money from one project in order to finance infrastructure in a completely different part of London.

Clauses 32-4 would give the Mayor the power to agree, enforce and discharge planning obligations related to applications that he will determine. However, the DCLG August 2006 consultation paper stated:

17. We propose that boroughs will be responsible for undertaking consultation on planning applications taken over by the Mayor. We also propose they should be responsible for enforcing planning obligations and conditions that are attached to planning permissions issued by the Mayor. This is because boroughs already have established consultation mechanisms and standards in place and enforcement teams.

DCLG envisage that boroughs will do most enforcement but that the Mayor would be empowered to enforce planning obligations if he wants to. For example, suppose the Mayor granted planning consent with a planning obligation that the developer should build some infrastructure controlled by the Mayor, such as transport. It is possible that a borough might be less enthusiastic than the Mayor about enforcement, and not bother to ensure that the infrastructure actually got built. The Mayor would then be able to intervene.

An example of why enforcement of planning obligations is important came in a debate on Thames Gateway in October 2005, when Derek Wyatt raised an objection to s.106 agreements:

Derek Wyatt: The trouble with section 106 agreements, certainly in my patch, is that they are never implemented. They are a bribe to tell the developers, "Hey, build us the school"—or the village hall or the pub—but they actually build more houses. The problem is that section 106 agreements cannot be enforced legally. Section 106 helps the developer, not the citizen. However, the hon. Gentleman makes an interesting point about having a tariff: 500 houses equal a school, a swimming pool, a village hall or whatever. Of course, as soon as a house is built, people pay council tax, but they have no facilities until the last house is built and the road is adopted. They can wait four years for that to happen, which does not seem fair either. So I also have some planning anxieties.⁴⁰

An added complication is planning gain supplement (PGS), on which an announcement is expected soon. The Government has consulted on the idea of a tax on the increase in land value resulting from the grant of planning permission. The Government consultation document explained: "A significant majority of PGS revenues would go back to the local level to help local communities share the benefits of growth and manage its impacts, with

⁴⁰ HC Deb 20 October 2005 c1055

the remainder used to finance regional and strategic infrastructure to promote growth.”⁴¹ The introduction of PGS will be balanced by restrictions on planning obligations. *London Councils* have already expressed concern as to how much money will come back to London and how much of that will return to the locality of the development, with their executive member for planning commenting:

“London’s boroughs have a track record of negotiating highly beneficial deals with developers to provide facilities for the local area. The Government’s proposals will limit their ability to do so, causing problems for communities, developers and London as a whole. “S106s make planning applications acceptable to the local community as residents and businesses can see a tangible benefit brought about by their local authority negotiating with a developer. At its best, the PGS system would remove this element of the planning process, severing the link between the developer and the community – to the detriment of both.

“At its worst, the PGS system could see London deprived of much-needed resources for improving the lives of Londoners. We estimate that the PGS system will have to raise £90 million to make up the shortfall brought about by the restrictions imposed on s106s. This is unlikely in itself, but when one considers that there is nothing guaranteeing that PGS money is reserved for the locality of a development, or even for London itself, one realises that the capital could doubly lose out.”⁴²

X Waste

A. Waste policy overview⁴³

a. National Waste Policy

The Government’s policy on recycling, which is currently under review was set out in *Waste Strategy 2000*. This is available on Defra’s website.⁴⁴ This strategy supports the concept of the waste hierarchy whereby waste minimisation and re-use are to be favoured in most cases above straight disposal in landfill or by incineration. *Waste Strategy 2000* set a national target of recycling or composting of at least:

- 25% of household waste by 2005
- 30% of household waste by 2010
- 33% of household waste by 2015

The UK also has to meet the requirements of the EU Landfill Directive which sets the following targets:

- By 2010 to reduce biodegradable municipal waste landfilled to 75% of that produced in 1995

⁴¹ ODPM Factsheet 2 *Infrastructure - Planning Gain Supplement*, 5 December 2005

⁴² London Councils Press Release, *Government planning proposals not right for capital*, *London Councils warns*, 29 November 2006

⁴³ Section A written by Edward White of the Science and Environment Section

⁴⁴ http://www.defra.gov.uk/environment/waste/strategy/strategy_legislation.htm

- By 2013 to reduce biodegradable municipal waste landfilled to 50% of that produced in 1995
- By 2020 to reduce biodegradable municipal waste landfilled to 35% of that produced in 1995

The Government also sets annual local authority statutory performance standards for recycling and composting household waste.

b. London's Waste

London produced over 17 million tonnes of controlled waste in 2000-01. Of this households produced 3.4 million tonnes, equivalent to nearly half a tonne per person from households. A further two tonnes is produced for every person living in London by businesses and industry in building our homes, and other facilities, and making the goods we consume. Local authorities collected 4.4 million tonnes of municipal solid waste, including the waste from households as well as some commercial waste, where they are requested to do so by businesses. Many operate civic amenity sites, where residents can deliver waste. Commercial and industrial wastes account for 6.38 million tonnes, construction and demolition wastes 6.05 million tonnes and special waste 0.36 million tonnes.⁴⁵

The *Greater London Authority Act 1999* gives the Mayor specific powers in relation to municipal solid waste. Municipal solid waste is waste that is managed by local authorities. The Act requires the Mayor to produce a municipal waste management strategy, which must include policies and proposals for implementing the National Waste Strategy, Waste Strategy 2000, within Greater London.

Since the launch of the Mayor's first Municipal Waste Management Strategy in September 2003, there have been improvements in recycling services provided by London waste authorities. A progress report in October 2005 states that over 2.5 million homes (80 per cent) now receive a kerbside collection. This is an increase from only 1.7 million homes in 2001/02. Household waste recycling rates also increased from 9.3 to 13.3 per cent over the same period. However, only 8 of London's 37 waste authorities met their statutory household waste recycling targets for 2003/04.⁴⁶

The latest estimates from Defra show that London still has one of the lowest recycling rates in England and Wales at 21% compared with 30 per cent in the East, East Midlands and South West. They suggest that the 3 London Boroughs of Newham, Havering and Tower Hamlets have the lowest household waste recycling rates in the England and Wales, of 5.8%, 9% and 9% respectively.⁴⁷

⁴⁵ Mayor of London, *Green Capital; The Mayor's State of the Environment Report for London*, May 2003.

⁴⁶ Mayor of London, *The Mayor's Municipal Waste Management Strategy; Progress Report*, October 2005.

⁴⁷ Defra, *First Estimates for Municipal Waste Statistics 2005/6*, 16 November 2006.

B. Consultation on 2005 waste and waste planning proposals

A DCLG July 2006 document reported on the consultation on the waste proposals put forward in November 2005. As with planning the results were rather inconclusive with boroughs suspicious of increased powers for the Mayor and opposing change.

2.4.1 The consultation looked at possible changes to the areas of waste management and waste planning. The Government consulted on four options for the future management of London's waste:

- **Option 1:** A Single Waste Authority (SWA) for London, accountable to the Mayor as a functional body of the GLA.
- **Option 2:** A single London-wide authority made up of borough representatives which could include a representative of the Mayor.
- **Option 3:** An extension of the current joint arrangements in some parts of London, so that all waste disposal arrangements in the capital are subregional.
- **Option 4:** A "do nothing" option, where the waste management structure in London would remain the same.

In relation to waste planning five options were proposed:

- **Option A:** The Mayor being responsible for planning all waste streams in London, with powers to identify specific sites, undertake development control functions and compulsorily purchase land.
- **Option B:** A borough-led single waste planning authority with the same powers.
- **Option C:** Sub-regional joint waste planning authorities with the same powers.
- **Option D:** Do nothing. The boroughs would remain responsible for planning all waste streams maintaining the same powers.
- **Option E:** Waste planning authorities would retain Development Control functions and the Mayor's existing planning powers would be enhanced, through one or more of the following:
 - a. allowing the Mayor to allocate sites;
 - b. giving the Mayor powers to determine strategic waste applications;
 - c. giving the Mayor powers to direct over Local Development Schemes and Development Plan Documents on waste issues;
 - d. consulting the Mayor on all waste development proposals and any planning applications for a change of land use from waste.

2.4.2 40% of respondents commented on waste. The consultation outcome provided no clear picture on a preferred approach for waste management and waste planning. Just under half of respondents on waste supported an increased strategic role for the GLA and many of these went further, believing that there should be a SWA under the control of the Mayor.

2.4.3 The waste industry recorded a mix of views. The 4 Joint Waste Disposal Authorities in London opposed any strengthening of Mayoral powers. They were divided between options 2 to 4 for waste management and options B to D for waste planning. Some felt that the case for change had not been proven and that the arrangements for planning London's waste needed more time to bed-down, while others commented that some form of joint working was necessary either at the regional or sub-regional level (but with the boroughs maintaining their key role). There was support for an enhanced strategic role for the Mayor over waste planning, but concerns were expressed that waste planning could become overly centralised.

2.4.4 Private sector waste companies recorded a wide range of views. Some supported the pro-Mayoral options (options 1 and A), arguing that there would be greater coherence in such a consolidated approach, while others argued that option 1 would undermine local control and decision making.

2.4.5 The Mayor supported the creation of a SWA accountable to him. In his response the Mayor considered that the current structures are insufficiently effective to ensure London delivers its contribution to meeting targets set by the Landfill Allowance Trading Scheme and the EU Landfill Directive. Only a single waste disposal authority, under his direction, could provide the strategic co-ordination needed to improve London waste disposal performance.

2.4.6 The London Assembly tentatively supported option 1, accompanied by an appropriate extension of Assembly checks and balances, with any additional waste planning powers for the Mayor limited to recommendations only.

2.4.7 Amongst the boroughs there was minimal support for both option 1 (waste management) and option A (waste planning) with many boroughs arguing that the case for a SWA accountable to the Mayor, coupled with significant new planning powers, had not been made – especially when set against the major investment and disruption they believed this could involve. Some also believed that the case for change was built on unreliable data. The majority of responses were split between the ‘do nothing’ (4/D) and sub-regional (3/C) options for both waste planning and waste management. Many of the supporters of option 3/C considered there was a case for greater co-ordination across London. For supporters of options 3/C and 4/D a key argument was that new changes had only recently been introduced and had not been allowed sufficient time to bed-in. Many emphasized the importance of maintaining their waste collection function, but some acknowledged that the Mayor should have an enhanced role in strategic waste planning.

2.4.8 There was strong support for a SWA accountable to the Mayor amongst responses from the business community, voluntary sector, and BME groups.⁴⁸

A separate Defra document of May 2006 goes into more detail but offers little more guidance to policy makers. 55% of respondents accepted the case for a change to current arrangements for waste disposal and planning. The following question was: “Are there powers that could be given to the GLA, disposal authorities or planning authorities that would enable the current structure to work better?” 28% of respondents said “yes” and 16% said “no”. The remainder did not know. Option 1 (centralised waste authority) attracted most support with 43% of respondents. However, this was qualified in many cases by retaining waste collection at a borough level.⁴⁹

⁴⁸ DCLG, *The Greater London Authority: The Government's Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Summary of the Responses to Consultation*, July 2006 http://www.communities.gov.uk/pub/576/TheGLAAdditionalPowersandResponsibilitiesfortheMayorandAssembly_id1501576.pdf

⁴⁹ Defra, *Consultation on the Government's proposal for additional powers for the Mayor and the London Assembly: waste management and waste planning Summary of responses*, May 2006 <http://www.defra.gov.uk/environment/waste/localauth/pdf/londonwasteconsult-responses-summary.pdf>

C. The Mayor supports a centralised waste authority

The Mayor's response to the 2005 proposals explained why he favoured a centralised waste authority answerable to himself:

The need for change

5.1 Existing waste management arrangements are failing to deliver the change needed in the capital. London faces a growth challenge – the London Plan forecasts an increase in the population of 800,000 – which will in turn give rise to increased waste management needs. In addition:

- London will need to reduce dependence on landfill as a means of dealing with its municipal waste
- As landfill opportunities outside of London dry up, the capital will have to become almost totally self-sufficient in the management of its waste.

5.2 Currently 70% of London's municipal waste is sent to landfill. But this is not a sustainable option. It is a significant contributor to greenhouse gas emissions, it fails to make best use of recycling potential, and, particularly relevant to London, sites for landfill are becoming increasingly scarce.

5.3 The challenge of reducing the dependence on landfill is given extra bite by the European Union (EU) Landfill Directive and associated fines. This directive requires member states to reduce the amount of biodegradable municipal waste that is sent to landfill to:

- 75% of 1995 levels by 2010
- 50% by 2013
- 35% by 2020.

5.4 In line with this directive, Government has set each waste disposal authority landfill allowances to ensure that targets are met. The landfill allowances that came into force on 1 April 2005 become progressively more challenging in the period up to 2020. The current levels of performance in recycling and non-landfill technologies mean that waste disposal authorities in London risk facing government fines, assuming surplus allowances within London are netted off, of up to £69 million in 2010, £174 million in 2013 and £268 million in 2020. On a worst-case scenario, this represents cumulative fines of up to £2.1 billion. This does not include EU non-compliance penalties of £0.5 million per day from 2010 onwards that the Government could face. The Government has stated that it intends to pass this penalty on to failing authorities.

5.5 The challenge facing London is complex and involves strategic waste planning and the development of infrastructure, both of which London boroughs are not well placed to deliver in the interests of London. The Herbert Commission in 1960, which led to the formation of the Greater London Council (GLC) over forty years ago, with responsibility for London's waste disposal, concluded that the local authorities were "carrying out their responsibilities for refuse disposal as efficiently as their present situation will allow, but the conditions which would make for full effectiveness do not exist". This is as true today as it was over forty years ago.

5.6 London's fragmented arrangements compromise its ability to contribute to national and international waste management obligations. No other world-city has such a complex delivery structure. Existing arrangements create tensions

between local and regional interests. At best these tensions slow down delivery, at worst they stop it completely. The Mayor's existing powers cannot deliver the strategic approach London needs. Whilst the Mayor has power to write a Municipal Waste Management Strategy, there are insufficient levers to deliver it. Mayoral powers are limited and reactive and cannot bring forward optimal solutions in the interest of London.

The Mayor's proposals

5.7 The Mayor has made it clear in his discussions with Government and stakeholders that London needs a single regional body, accountable to the Mayor, responsible for waste disposal, that can deliver strategically, quickly and effectively. This approach was supported by the majority of Londoners that responded to the Mayor's consultation on his Municipal Waste Management Strategy.

5.8 The ability of a single body to deliver will be compromised by waste planning arrangements unless these are changed. London boroughs are not prioritising waste planning, and in many cases do not act in the interests of London. That is why the Mayor is proposing enhanced Mayoral planning powers.

5.9 London needs strong and effective leadership in waste management. That requires not only a clear direction to be set but also powers and funding to deliver it. TfL demonstrates the benefits of a single resourced organisation under Mayoral leadership. A single waste authority will be able to attract world-class leadership, as has been the case with TfL.

5.10 The benefits offered by the Mayor's proposal clearly outweigh any short-term difficulties presented by transition. The effects of transition can be mitigated.

5.11 The Mayor's proposal offers a substantial number of environmental and economic benefits:

- A positive contribution towards the climate change agenda by reducing waste sent to landfill, co-ordinated use of sustainable modes of transport and using waste to develop the hydrogen economy
- Dramatically increase levels of recycling and composting and reduce the amount of municipal waste generated
- Delivery of new and emerging recovery technologies for waste management
- Enable London to meet the requirements of the Landfill Directive
- Enable London to become regionally self-sufficient in the management of its municipal waste
- Ensure waste is managed as close to the point of production as possible
- More effective co-ordination of reduction and reuse activities and communication messages
- Opportunities to influence and improve the management of non-municipal waste streams through the delivery of infrastructure
- Reduces the risk of Government fines for failing to deliver the landfill directive
- Improves the commercial attractiveness of the London waste market, by improving supply chain management and by introducing clearer lines of accountability in terms of strategy and delivery
- Reduces inherent risks in the London waste market
- Economies of scale for technologies and contracts which will contribute to the Gershon agenda

- Development of a single, resourced centre of procurement, bringing together waste management expertise across London
- Strategic profiling of investment
- Standardising contract conditions.

However, the Chartered Institute for Waste Management was much more positive about London's record on recycling:

One of the main reasons cited in the consultation document for change and setting up a London Waste Authority is that London is not recycling sufficiently and needs to do better. Information in the consultation document, recycling rate of 13.3 percent, is based on outdated 2003/04 data, whereas, London reached a 17 percent recycling rate in 2004/05. This may seem low compared to some other local authorities in England but they do not have the particular circumstances that London has. Key impacts on recycling rates as stated in the consultation document high density housing; ethnicity; language barriers; severe deprivation and lower levels of educational attainment, are not attributable to London alone. Many of the local authorities outside of London that are recycling 20 percent and above have higher socio-economic wards and benefited from previous Government funding. If London is compared to other metropolitan areas it has a much higher recycling rate, for example Liverpool's recycling rate was 7 percent for 2004/05.⁵⁰

D. July 2006 final proposals on waste and waste planning

a. Waste

As with planning, the Government put forward final proposals after an inconclusive and rather unenthusiastic response to the consultation. They rejected the idea of a single Strategic Waste Authority answerable to the Mayor, but still proposed increasing the Mayor's powers:

THE GOVERNMENT'S PROPOSALS

3.4.3 The Government has put forward a package of measures to strengthen London's ability to manage waste sustainably, without change to existing structures. This will allow the existing waste authorities to continue responding to the challenge of meeting EU Landfill Directive targets for the diversion of waste from landfill.

3.4.4 We propose that:

- The Mayor will be given further powers regarding waste planning.
- Waste authorities will be required to deliver functions under Part II of the Environmental Protection Act (1990) in "general conformity" with the Mayor's Municipal Waste Management Strategy.
- Government will establish a London-wide Waste and Recycling Forum, to bring stakeholders together to deliver improved performance on waste minimisation and recycling, promote collaborative action and link waste

⁵⁰ The Chartered Institution of Wastes Management., *The Greater London Authority: The Government's Proposal for Additional Powers and Responsibility for the Mayor and Assembly, 2006*
<http://www.ciwm.co.uk/mediastore/FILES/12829.doc>

with other London priorities around climate change, transport and employment;

- Government will establish a new London Waste and Recycling Fund administered by the above body; and
- Government will establish a dedicated London Waste Infrastructure Development Programme to get new waste facilities on the ground, led by Defra and with strong GLA involvement.

3.4.5 The enhanced requirement on boroughs with regard to the Mayor's waste strategy, alongside increased planning powers and existing powers of direction, will ensure that the vision and policies set out by the Mayor are implemented locally in the way that waste authorities deliver their functions. This will provide a strong policy framework for delivering sustainable waste management in London.

3.4.6 The Government believes that all sectors have an important role to play in achieving the significant challenge of meeting climate change objectives and landfill diversion targets. The London-wide Waste and Recycling Forum will bring together key stakeholders to look at strategic issues, facilitate joint working, make links to other London-wide strategic issues and improve waste management within the capital.

3.4.7 The Forum will administer a London Waste and Recycling Fund, the details of which will be worked up in consultation with stakeholders. The Fund will be created through contributions from the GLA plus re-division of the element of existing London local authority waste funding currently provided by the Waste Performance and Efficiency Grant (WPEG). The precise position will need to be decided in the spending review, but on the basis of current figures, we envisage a £25 million per annum fund, consisting of £19 million from local authority waste funding (WPEG) and £6 million from the GLA. The pre-announced settlement for local authorities in 2007/8 will be unaffected.

3.4.8 Delivering strategic waste infrastructure is vital to sustainable waste management in London. A stronger role for the GLA in bringing this infrastructure forward, working collaboratively with Government on a dedicated London element of the new national Waste Infrastructure Development Programme, will help bring forward investment and delivery of facilities that are of regional and sub-regional importance.

3.4.9 The Mayor's powers as regards waste planning are dealt with elsewhere. The Mayor will have discretion to decide those strategic waste applications critical to the delivery of the waste strategy set out in the London Plan.⁵¹

b. Waste planning

The waste planning proposals were included in the planning proposals:

⁵¹ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006
http://www.communities.gov.uk/pub/573/TheGLATheGovernmentsFinalProposalsforAdditionalPowersandResponsibilitiesfortheMy_id1501573.pdf

Planning for waste

3.3.15 Effective planning for waste facilities in London is critically important. The Government intends that the Mayor should have discretion to decide those planning applications for waste facilities which are strategically important and critical to implementing his waste strategy.

The August 2006 consultation document suggested the types of waste planning application that the Mayor could take over from the boroughs:

POTENTIAL AMENDMENTS TO THE TOWN AND COUNTRY PLANNING (MAYOR OF LONDON) ORDER 2000

20. The Government proposes that the thresholds set out in the Mayor of London Order 2000 should remain as currently set out other than in the following respects.

Part II, Category 2A

Waste facilities

21. We propose three main thresholds triggering referral to the Mayor. Applications for waste facilities for:

- hazardous waste at 5,000 tonnes throughput per year
- non-hazardous waste at the current 50,000 tonnes per year
- sites for hazardous or non-hazardous waste over 1 hectare

22. We propose to provide for the Mayor to see applications for waste facilities that do not accord with the development plan (departures). This is because the acceptability in principle of a waste use in that location has not been established. We propose lower thresholds to trigger referral to the Mayor for these matters:

- hazardous waste at 2,000 tonnes throughput per year
- non-hazardous waste at 20,000 tonnes per year
- sites for hazardous or non-hazardous waste over 0.5 hectare

23. These thresholds will also be used to refer applications that seek to change existing or allocated waste sites to non-waste uses and depart from the development plan.

24. We also propose these thresholds should be used to refer applications for residential or mixed use development which do not accord with the development plan and which abut existing or allocated waste facilities. This is necessary to ensure that non-waste uses that could prejudice the waste use are fully considered against strategic policies.⁵²

The Mayor's power to approve applications means that the resulting decision could not be overturned by the Secretary of State on appeal, since there is no third party right of appeal. In the context of waste, that might enable a Mayor to influence a borough's waste strategy by approving a waste planning application that the borough would not

⁵² DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly - A Consultation Paper on changes to the Mayor of London Order 2000*, August 2006
http://www.communities.gov.uk/pub/97/TheGreaterLondonAuthorityTheGovernmentsfinalproposalsforadditionalpowersandResp0_id1502097.pdf

have approved. To take a hypothetical example, a Mayor who approved of incineration might be able to approve an application for an incinerator in a borough that disapproved of incineration. Even if that borough did not want to incinerate its waste, it might find that the presence of an incinerator there in any case helped persuade it to change its mind. There is no suggestion that that scenario is particularly likely, however, since the current Mayor is opposed to incineration.

London Councils commented on that proposal:

Proposed thresholds for dealing with waste applications

1. London Councils accepts that all boroughs must play a role in dealing with London's waste.

2. The Mayor should take into account the extent to which the borough fulfils the requirements as set out in the London Plan for dealing with waste. The Further Alterations to the London Plan will consider apportionments for all boroughs to provide sites to manage London's waste. Therefore, it would be appropriate for the Mayor to first of all take into account how a borough is providing for treatment of London's waste before he could determine such an application. London Councils proposes that this part of the consultation should be reconsidered once the examination in public for the Further Alterations to the London Plan has been considered. At this point, the waste revisions can then be taken into account.

3. Strategic policy to achieve the waste objectives for London should be established and tested by the London Plan process. Any changes to the Mayor's planning powers must take into account borough planning performance in relation to London Plan objectives.⁵³

E. Regulatory Impact Assessment on waste and waste planning

a. Waste

The Regulatory Impact Assessment of the July 2006 waste proposals saw little financial or environmental cost in the proposals. It considered some alternative proposals, however:

ALTERNATIVE OPTIONS CONSIDERED

3.4.14 The consultation paper set out three options for the future management of London's waste, in addition to the option of no change to current structures. The Mayor's preferred option, a single waste disposal authority for London accountable to him as a functional body of the GLA, has not been taken forward. This is because Government was not convinced that the proposal offered sufficient benefits to outweigh the associated costs and risks, or to justify transferring powers from the boroughs to the GLA.

⁵³ London Councils, *Response to the Government's consultation on changes to the Mayor of London Order 2000*, 3 November 2006
<http://www.londoncouncils.gov.uk/upload/public/attachments/923/ConsResponseMayorLondonOrder.pdf>

3.4.15 First, the disruption caused by restructuring would impact on the ability of the UK to meet its EU Landfill Directive targets, the first of which bite in 2010. Developing new structures to manage London's waste, and transferring staff, contracts and assets from existing authorities, would divert attention and resources at a crucial time. It would also impact on London's ability to meet its obligations under the Landfill Allowance Trading Scheme. In addition, separating the functions of waste disposal and waste collection between different political bodies would be likely to make it more difficult to manage waste effectively.

3.4.16 If London failed to meet its obligations under the Landfill Allowance Trading Scheme, it would face fines of £150 for every tonne of biodegradable municipal waste sent to landfill in excess of its allowances. Furthermore, if the UK failed to meet its targets under the EU Landfill Directive it would face infraction penalties of up to £0.5 million per day. Government has made clear that it will pass any penalties to those authorities that fail to meet their landfill obligations. Ensuring targets are met in both the short and the long term is critical to ensure value for money for the taxpayer.

3.4.17 Second, it is possible that creating a single waste disposal authority could increase the overall cost of dealing with London's waste. Any efficiency savings gained look likely to be insufficient to justify the initial set-up costs and disruption. The tables below summarise analysis carried out for the Government by KPMG to estimate the costs of different models as compared to the current system. They show that the greatest efficiencies are likely to be gained around waste collection rather than waste disposal, and suggest that a single waste disposal authority offers at best limited cost savings.

b. Waste Planning

The Regulatory Impact Assessment stated

WASTE PLANNING: ALTERNATIVE OPTIONS CONSIDERED

3.3.20 Government consulted on five options for the future handling of waste planning decisions, largely mirroring the options for waste management.

3.3.21 Firstly, the Mayor becoming responsible for planning all waste streams in London, undertaking development control functions for waste and compulsorily purchasing land (Option A). This is the Mayor's preferred option. It has not been taken forward for two key reasons. First, the Mayor is responsible for preparing the London Plan. The current draft Alteration of the Plan, when published in final form, will set out a strategic framework for planning waste infrastructure in London in terms of the broad location of waste sites and number and types of facilities. The Government believes it important that the Mayor retains his strategic role, with more detailed, site specific plans developed at local level. Similarly, the Government believes that all but the most strategic applications in London should be determined by the boroughs (see earlier in this section). It would not be appropriate therefore for the Mayor to become the development control authority for all waste applications.

3.3.22 Secondly, a borough-led statutory joint waste planning authority responsible for planning all waste streams in London, and undertaking development control functions for waste and compulsory purchase of land (Option B). It was considered that a committee comprising London's 32 boroughs and the City Corporation was unlikely to provide a more effective or efficient

decision making process compared to the status quo. The third option (Option C) would create joint waste planning authorities on a sub-regional basis. It was considered that such an arrangement would prove effective only if a similar London-wide sub-regional structure is established for managing London's waste (such a structure is not being taken forward – see section 3.4).

3.3.23 The Government ruled out the fourth option (Option D) – do nothing. It believes there is a case for some strengthening of the Mayor's waste planning powers, as set out in Option E of the consultation paper. The Mayor's strengthened role on waste planning is a consequence of the wider changes in his planning role outlined earlier in this section.

3.3.24 The Government did not consider it justified to take forward some elements of Option E. In particular, the proposal to allow the Mayor to allocate specific sites would undermine the role of boroughs and, given the Mayor's strategic remit, the Government does not believe that providing for him to be consulted on all waste applications is warranted.

3.3.25 However, in line with planning in general, the Government believes enabling the Mayor to decide strategic waste planning applications and having greater influence over the content of LDSs and the general conformity of DPDs relating to waste is justified to allow the Mayor greater ability to ensure London Plan waste policies are implemented.

F. The Bill – Part 8 Environmental Functions: Waste

There are only two clauses on waste, partly because the Government decided not to establish a centralised waste authority answerable to the Mayor.

a. Clause 36 Duties of Waste Collection Authorities

Under the *Greater London Authority Act 1999* s.355, waste collection authorities and waste disposal authorities have a duty to have regard to the municipal waste management strategy, which is prepared and published by the Mayor. Clause 36 would change this duty so that they have to be in general conformity with the strategy, unless compliance would impose excessive costs on the authority.

An explanation of the term “general conformity”, albeit in the context of development plans, is provided in the ODPM's *Planning Policy Statement 12: Local Development Frameworks*.

General conformity with the regional spatial strategy or spatial development strategy

4.19 Local development documents must be in general conformity with the regional spatial strategy or, in London, the spatial development strategy. However, where the regional spatial strategy or spatial development strategy is being reviewed, account may be taken of the strategy's progression through the statutory procedures. The weight to be attached to the revised strategy depends on the stage it has reached. Where the regional spatial strategy/spatial development strategy has been through an Examination in Public, and the proposed changes have been published, considerable weight may be attached to that strategy because of the strong possibility that it will be published in that form by the Secretary of State.

4.20 The test is of general conformity and not conformity. This means that it is only where an inconsistency or omission in a development plan document would cause significant harm to the implementation of the regional spatial strategy/the spatial development strategy, that it should be considered not to be in general conformity. The fact that a development plan document is inconsistent with one or more policies in the regional spatial strategy/the spatial development strategy, either directly or through the omission of a policy or proposal, does not, by itself, mean that the document is not in general conformity. Rather, the test is how significant the inconsistency is from the point of view of delivery of the regional spatial strategy/the spatial development strategy.⁵⁴

There might be some future disagreement over the meaning of “significant additional costs”. A Mayor might include policies in his waste management strategy that boroughs considered would involve them in excessive additional cost. Unless the Government issued further guidance on that point, it would probably be left to the courts to settle an individual dispute between boroughs and the Mayor.

XI Climate Change and Energy

A. Background

According to the Mayor’s 2003 *State of the Environment Report*, London consumes as much energy as Portugal or Greece, and produces over 40 million tonnes of carbon dioxide every year. London’s per capita rate of energy consumption, and associated carbon emissions, has risen significantly since the 1960s. Between 1965 and 1999, total energy consumption in Greater London increased overall by around 16 per cent, to just over 151 million MWh (megawatthours), despite a net fall in population of seven per cent.⁵⁵

London’s population is now growing again and will continue to grow for the foreseeable future. Projections in the London Plan, the Mayor’s Spatial Development Strategy published in 2004, estimate a net population increase of some 800,000 people by 2016, equivalent to a city the size of Leeds. This is driving increases in energy consumption in domestic buildings, offices, and the transport system beyond the national rate of growth in energy demand.⁵⁶

London’s 1997 energy demand per capita was roughly 20 per cent below the EU average of 28MWh per person. Per capita energy use in London is also lower than the UK national average. This is a result of the relative lack of energy intensive industries, and economies of scale resulting from high population density and flatted housing. However, average household energy consumption is higher in London, because of the

⁵⁴ ODPM, *Planning Policy Statement 12: Local Development Frameworks*, 2004
http://www.communities.gov.uk/index.asp?id=1143854#P312_66196

⁵⁵ Mayor of London, *Green light to clean power; The Mayor’s Energy Strategy*, February 2004.

⁵⁶ *ibid*

region's above average affluence and smaller average household size. It is estimated that seventy per cent of London's carbon dioxide emissions come from buildings.⁵⁷

In addition to being responsible for a significant amount of UK carbon emissions the Greater London area is also particularly vulnerable to one of the main impacts of climate change. Flooding, due to rising sea levels and increased storminess, is a particular threat to the Thames region at a time when there is increased development on floodplain areas. According to the Thames Estuary Partnership:

The area at risk from flooding across the Thames is home to over a million residents and workers, 500,000 properties, 38 Underground and DLR stations, and City Airport, as well as many areas recognised for their ecological importance. An estimated 75% of the property value at risk from tidal floods in England and Wales lies within the Thames tidal flood plain. A large-scale flood event in this area would have disastrous effects, causing millions of pounds worth of damage to businesses, homes and infrastructure, and potentially causing the loss of life for thousands of London's residents.⁵⁸

The Thames Barrier, currently a major part of London's flood defence system, was raised 19 times between 1984 and 1993. In the following ten year period to 2003 this increased to 66 times.⁵⁹

London is also particularly vulnerable to the urban heat island effect (UHI) whereby cities are significantly warmer than surrounding rural areas during hot weather, especially at night. In the 1960s this effect was found to increase night time temperatures in London by 4-6 °C. More recently temperature excesses of 7°C compared to surrounding areas have been measured, and in the August 2003 heat wave these reached 9°C.⁶⁰ Furthermore the Mayor's commissioned report on the impact of this effect on London concluded:

Climate change over the next few decades and beyond is likely to have a major impact on the climate of London and potentially could affect both the frequency of occurrence and magnitude of extreme UHI events.⁶¹

The above phenomenon has implications for London's future energy consumption, as air conditioning use increases, and for London's health services, due to increased mortality during these extreme events. It also has implications for the design and planning of future development within London, as how new developments, including open spaces, are designed can either exacerbate or mitigate against this effect.

⁵⁷ London Climate Change Energy Press Release, *London's political and business leaders come together to combat climate change*, 20 June 2005 <http://www.lcca.co.uk/server/show/ConWebDoc.4>

⁵⁸ Thames Estuary Partnership Website, Flood Defence, 6 December 2006
http://www.thamesweb.com/topic.php?topic_name=Flood%20Defence

⁵⁹ *ibid*

⁶⁰ Mayor of London, *London's Urban Heat Island: A Summary for Decision Makers*, October 2006
http://www.london.gov.uk/mayor/environment/climate-change/docs/UHI_summary_report.pdf

⁶¹ *ibid*

1. Mayor's current powers and duties

Part IX of the *Greater London Authority Act (GLA) 1999 Act* sets out the Mayor's duties with regard to environmental issues. He is required to produce 'state of the environment' reports at least every four years. The legislation notes:

A state of the environment report shall contain information about the following matters in relation to Greater London-

- (a) air quality and emissions to air, including in particular emissions from road traffic,
- (b) road traffic levels,
- (c) water quality and emissions to water,
- (d) ground water levels,
- (e) energy consumption and the emission of substances which contribute to climate change,
- (f) land quality,
- (g) biodiversity,
- (h) the production, minimisation, recycling and disposal of waste,
- (i) noise,
- (j) natural resources, and
- (k) litter,

and may contain information about any other matters in relation to Greater London which the Mayor considers appropriate.

The legislation also places a duty on the Mayor to produce various plans and strategies: a Biodiversity Action plan; a Municipal Waste Management Strategy; an Air Quality Strategy; and an Ambient Noise Strategy. All of these are available on the London website.⁶² The Mayor has also produced an Energy Strategy, and a Water Action Framework is under development, neither of which currently has a statutory basis.

The Energy Strategy *Green Light to Clean Power* was published in February 2004. The Strategy sets an "energy vision" for London by 2050 that includes a target, along the Government lines, of CO₂ emissions reduced by 60% and a commitment to maximise energy efficiency. At the same time the London Energy Partnership (LEP) was established, to help deliver the Mayor's Energy Strategy, in particular to implement those areas of the Strategy that require cross-sector support. The Mayor also established a Climate Change Agency for London in March 2006.⁶³ The Agency aims to drive forward work that will provide decentralised, more efficient energy supplies for London and work with the private sector to deliver enhanced energy infrastructure and improve energy efficiency in new and existing buildings.

B. Government consultation

The Government's November 2005 consultation included a series of questions and proposals in relation to sustainable development, focusing in particular on energy and climate change:

⁶² London Website: <http://www.london.gov.uk/londonissues/environment.jsp>

⁶³ London Climate Change Agency Website: <http://www.lcca.co.uk/>

Q 29: Should the Mayor be subject to a clear statutory responsibility to produce an energy strategy for London? If you agree that he should, what more if anything does the GLA need to help deliver it?

Q 31: Are the Mayor's current range of powers consistent with his existing statutory duty on sustainable development (e.g. is there a case for strengthening his existing powers to take account of climate change)?⁶⁴

1. Mayor's response to consultation

In his response to the consultation document the Mayor strongly supported making his Energy Strategy a statutory document:

Experience shows that in some cases developers attempt to take advantage of the non-statutory nature of the Energy Strategy. This problem also arises where the local planning authority does not recognise the importance of energy policy and climate change. A statutory Energy Strategy would strengthen the negotiating position of the Mayor, improve the efficiency of the negotiation process, and lead directly to increased uptake of energy efficiency, renewable energy, combined heat and power, and community energy systems on new strategic developments.⁶⁵

And

A statutory status for the Mayor's Energy Strategy would send a strong signal to all stakeholders of the increasing importance of climate change and energy policy, reinforcing the focus of the review of the London Plan on climate change, and reflecting the importance of regional government in the delivery of the UK Government's energy and climate change policy agenda. It would also ensure that an Energy Strategy for London is maintained across political cycles.⁶⁶

The Mayor also strongly supported making his Water Action Framework a statutory document and the creation of a Single Waste Authority with the aim of tackling climate change. In addition to this, the Mayor also called for an overarching duty to be placed on the GLA to take action to tackle climate change:

The 1999 GLA Act outlines a number of powers relating to sustainable development, but there is no specific strategic focus on tackling climate change in the Act. A number of sectors, which are important in tackling climate change, such as energy and water, do not feature in the list of statutory strategies outlined in the Act.⁶⁷

And

⁶⁴ DCLG, *The Greater London Authority: The Government's proposals for additional powers and responsibilities for the Mayor and Assembly - Consultation paper*, November 2005
<http://www.communities.gov.uk/index.asp?id=1161897>

⁶⁵ Mayor of London, *The Mayor of London's response to the ODPM's consultation paper on the powers and responsibilities of the Mayor and Assembly*, February 2006
<http://www.london.gov.uk/mayor/powers/docs/response.pdf>

⁶⁶ *ibid*

⁶⁷ *ibid*

The Mayor's response, proposing to make both the Energy Strategy and the Water Action Framework statutory [...], would assist in tackling climate change. In addition, the creation of a Single Waste Authority would also help to co-ordinate further climate change related action.

However this would be considerably strengthened if, in addition, the GLA were given a specific Climate Change Duty to take action to tackle climate change in London. This would consolidate the Mayor's existing indirect powers to tackle climate change, would send a strong signal of the long-term importance the Government attaches to this issue and would require future Mayors to continue to act in this increasingly important area of policy.⁶⁸

2. London Assembly's response

The London Assembly supported new powers for the Mayor to deal with climate change as long as this was a result of the devolution of central government strategic powers rather than a loss of powers at local authority level:

The Assembly would support the devolution of additional strategic powers to the Mayor from central government in relation to sustainable development across London, provided that the following criteria were met.

- First, the Assembly would not support any new Mayoral power that resulted in powers being extracted upwards from local authorities in London.
- Secondly, any new powers should have a clear potential to deliver improvements in the lives of Londoners. The ODPM consultation paper does not put forward specific proposals. The Assembly would want to be reassured that any new powers in relation to sustainable development would be likely to add to the existing arrangements for researching and developing policy in those fields, and deliver needed benefits for Londoners. Strategic London-wide powers are appropriate in cases where it is possible for action to be taken at that level that will add to the actions already being taken by central and local government. In order to avoid duplication and provide a coherent framework for action, any new duties relating to sustainable development should also add materially to the Mayor's existing duty to produce five environmental strategies for London. On this basis, the Assembly would support the GLA being given a climate change duty to tackle London's contribution to climate change, and the Assembly [...] would support new Mayoral duties to produce strategies or water and energy in London.⁶⁹

The Assembly also expressed concerns as to how any new functions would be funded:

Furthermore any new duties should also be accompanied by clear agreements as to how any associated functions will be funded. This would ensure that

⁶⁸ Mayor of London, *The Mayor of London's response to the ODPM's consultation paper on the powers and responsibilities of the Mayor and Assembly*, February 2006
<http://www.london.gov.uk/mayor/powers/docs/response.pdf>

⁶⁹ London Assembly, *The London Assembly's response to the ODPM Review of GLA powers*, February 2006
<http://www.london.gov.uk/assembly/publications/docs/odpm-response.pdf>

Londoners do not pay for what are essentially national policies dealing with national issues. The Assembly welcomes the fact that the Government will be conducting a wider review of the effectiveness of public authorities' statutory duties to promote sustainable development.⁷⁰

3. Local Authorities' responses

There were mixed views amongst local authorities on the issue of extra powers for the Mayor to tackle climate change. These were summarised by DCLG as follows:

Just over half of London boroughs opposed change. Many argued that the case for change had not been made and that existing powers were sufficient. However some supported extra powers for the GLA to help London combat the threat of climate change.⁷¹

C. Government's proposals

The Government published its proposals in July 2006, following the consultation. The accompanying press release set out the proposals for climate change and energy:

Climate Change and Energy

The Mayor will prepare and publish a statutory Climate Change and Energy Strategy for London, stating how the capital should minimise emissions of carbon dioxide by the use of energy in London, help to eradicate fuel poverty; and harness economic opportunities for London from investment and innovation in energy technologies and energy efficiency.

He will also prepare and publish a statutory Climate Change Adaptation Strategy setting out how the capital should adapt to the effects of climate change. The GLA will be subject to a specific duty to take action to mitigate the effects of climate change and help London adapt to its unavoidable impacts.⁷²

The proposal document included further information on the rationale behind the decision to place a statutory duty on the GLA to tackle climate change (to be exercised by the Mayor). It would:

- help an enduring London-wide programme of action to lower emissions of carbon dioxide (CO₂).
- have the potential to contribute significantly to meeting the Government's ambitious goals for reducing emissions.
- help establish London as an important model for carbon management for other major international cities and strengthen the UK's reputation as a

⁷⁰ London Assembly, *The London Assembly's response to the ODPM Review of GLA powers*, February 2006 <http://www.london.gov.uk/assembly/publications/docs/odpm-response.pdf>

⁷¹ DCLG, *The Greater London Authority: The Government's proposals for additional powers and responsibilities for the Mayor and Assembly - Responses to Consultation*, July 2006 <http://www.communities.gov.uk/index.asp?id=1504772>

⁷² DCLG News Release 2006/0055, *Devolution agenda pushed forward with new powers for London*, 13 July 2006 <http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=2201>

- beacon of influence to the international community on combating climate change.
- require the GLA to take account of climate change in its day-to-day activities.⁷³

The Government also stated that the GLA would be expected to perform activities to mitigate and adapt to climate change which are reasonably practical, cost effective and cost efficient. It also supported the view that local and regional action can add significant value to the delivery of national and international climate change and energy policy objectives. Furthermore placing the Climate Change and Energy Strategy on a statutory footing would have significant benefits in terms of enhancing its credibility and ensuring climate change and energy policies remain a priority for all future Mayors, irrespective of the political cycle.

a. Press Comments

The new powers with regard to climate change and energy, amongst the other proposals, were welcomed in a press release from the Mayor.⁷⁴ Other than this there has been little comment on the proposals relating specifically to climate change and energy. The focus has instead been on concerns about loss of local authorities' powers as a result of the proposed new planning powers for the Mayor.

D. Regulatory Impact Assessment (RIA)

The RIA of the Bill's proposals concluded that there were negligible risks associated with the proposals for the new powers and the requirements to prepare strategies with regard to climate change and energy. The conclusion on likely costs was that no additional funding would be required:

The GLA has agreed that it will not require additional funding for the purposes of these duties. The Mayor will have no powers to impose new burdens on London businesses or public sector organisations in order to implement his energy and climate change strategies and exercise his climate change duty. As with his new health powers, the Mayor will need to work in partnership with a wide range of private and public sector organisations in London to ensure his policies are delivered. Secretary of State reserve powers will ensure both strategies conform to national policy.⁷⁵

The RIA also made clear that it expected no impact on competition from the new powers relating to climate change.

⁷³ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006
<http://www.communities.gov.uk/index.asp?id=1500896>

⁷⁴ Mayor of London Press Release 378, *Devolution agenda pushed forward with new powers for London*, 13 July 2006, http://www.london.gov.uk/view_press_release.jsp?releaseid=8621

⁷⁵ DCLG, *The Greater London Authority: Additional Powers and Responsibilities for the Mayor and Assembly Regulatory Impact Assessment (RIA)*, July 2006
http://www.communities.gov.uk/pub/575/TheGLAFinalProposalsforAdditionalPowersandResponsibilitiesfortheMayorandAssemblA_id1501575.pdf

We do not expect the raft of proposals in other policy areas – including culture, health, energy and climate change – to have any significant effects on competition.

E. The Bill – Part 8 Environmental Functions: Climate Change and Energy

The climate change and energy provisions are included in Part 8, **Clauses 38 to 40**, of the Bill. **Clause 38** mandates the Mayor and the Assembly to address climate change by inserting a new clause (361A) in the *GLA Act 1999* which sets out the duties of the Mayor and Assembly with respect to climate change:

- The Mayor is required, within London, to help prevent climate change and help London adapt to climate change;
- The Assembly and the Mayor are required to take into account Government policies on climate change whenever they exercise their functions;
- Both must also comply with any guidance or directions from the Secretary of State as to how they are to perform the above duties.

Clause 39 amends the *GLA Act 1999* by inserting two new sections. New section 361B requires the Mayor to prepare a climate change mitigation and energy strategy. This must include proposals for tackling carbon emissions as follows:

- Reducing energy use for surface transport (therefore excluding aviation);
- Reducing energy use for purposes other than transport;
- Support innovation and investment in energy technologies;
- Promote efficient energy production and use.

The strategy must also include information on London's energy use, carbon dioxide emissions from energy and fuel poverty. It should also include information on measures taken by the GLA, Transport for London and the LDA, together with measures to encourage other bodies and members of the public to assist in implementing the strategy.

Clause 40 amends the *GLA Act 1999* by inserting two new sections. New section 361D places a duty on the Mayor to produce a climate change adaptation strategy for London. This must include policies and proposals for adapting to the current and future climate change impacts on London. Again the strategy must take into account any guidance from the Secretary of State, which may include direction about what evidence the strategy must be based on.

The Secretary of State will also have the power to direct the Mayor to amend either strategy if it is inconsistent with the Government's climate change policies or objectives, and he considers it may have a detrimental effect on achieving them (new sections 361C and 361 E).

XII Water

A further question put forward during consultation concerned the Mayor's duties with regard to water:

Q 30: Do you agree that the Government should have a new duty to have regard to the Mayor's Water Action Framework when it frames its guidance to regulators in preparation for a review of water price limits?

In the responses to the consultation two thirds of those who mentioned the issue supported the proposal. There was an overwhelming majority from the London Boroughs and support from the London Assembly. However only about half the water companies supported the proposal. Some companies argued that because the work of water companies in London extends beyond the Greater London boundary, it would be more appropriate for any GLA role to be non-statutory.⁷⁶

When the Government published its proposals it did not include any change to the status of the Water Action Framework. Instead it proposed that the Secretary of State should have regard to the Mayor's Framework when framing guidance in preparation for a review of water price limits. The requirement to take account of the Framework will be on a non-statutory basis.⁷⁷

⁷⁶ DCLG, *The Greater London Authority: The Government's proposals for additional powers and responsibilities for the Mayor and Assembly - Responses to Consultation*, July 2006

<http://www.communities.gov.uk/index.asp?id=1504772>

⁷⁷ DCLG, *The Greater London Authority: The Government's Final Proposals for Additional Powers and Responsibilities for the Mayor and Assembly*, July 2006

http://www.communities.gov.uk/pub/573/TheGLAFinalProposalsforAdditionalPowersandResponsibilitiesfortheMayorandAssemblt_id1501573.pdf