



How will the Mayor use his new powers to determine planning applications of “potential strategic importance”?

Planning team briefing April 2008

From 6 April 2008 the Mayor of London has had the power to determine planning applications that are of potential strategic importance in the Greater London area. How the Mayor will do this and the manner in which he does so could have a significant impact on the built and political environment.

The Mayor has had the power to direct a Local Planning Authority (“**LPA**”) in London to refuse planning permission in certain circumstances for over seven years. The current Mayor, Ken Livingstone, has lobbied Ministers for additional powers throughout his tenure. This lobbying has been successful. Following the grant of Royal Assent to the Greater London Authority Act 2007 (“**GLA**”) (“**the Act**”) on 23 October 2007, the Mayor and the London Assembly now have a new range of powers particularly in relation to planning.

NEW POWERS

The powers in the Act range from culture and health to planning, waste and climate change. Specifically, the Mayor will now:

- be able to direct LPAs that he is to be the local planning authority and determine a planning application of potential strategic importance;
- be able to give LPAs directions in relation to their Local Development Schemes;
- be under an obligation to have regard to any comments submitted by the London Assembly on the Spatial Development Strategy;
- publish a London Housing Strategy;
- be under an obligation to have regard to climate change and the consequences of climate change; and
- publish a climate change and mitigation strategy.

GUIDANCE ON THE MAYOR’S POWERS

The Government Office for London published a Circular on Strategic Planning in London (GOL 01/2008) on 4 April 2008 (“**the Circular**”). It provides advice and guidance on strategic planning in London.

The Circular sets out guidance on the Mayor’s role in planning applications and should be read in conjunction with the Town and Country Planning (Mayor of London) Order 2008 No. 580 (“**the Order**”). The Order sets out the categories of development that are of “*potential strategic importance*”.



DETERMINING APPLICATIONS OF POTENTIAL STRATEGIC IMPORTANCE

The procedure for determining applications of potential strategic importance is based upon the pre-existing framework for referring applications to the Mayor. In summary, the Order provides that once an LPA has made a draft decision to grant or refuse a permission it must notify the Mayor of this decision. Following this notification the Mayor has 14 days to decide to:

- allow the LPA to make its decision;
- direct the LPA to refuse the application; or
- apply the policy test to decide whether to make the decision himself.

The policy test must (generally) demonstrate that the Mayor considers that the application has:-

- significant impacts on the implementation of the London Plan;
- significant effects on more than one borough; and
- there are sound planning issues for issuing his discretion.

In addition to the power to determine applications of potential strategic importance, the Mayor will have the power to decide connected applications for listed building or conservation area consents, as well as hazardous substance consents.

It should be noted that if a LPA does not make a draft decision on an application of potential strategic importance within 13 weeks the applicant can ask the Mayor to apply the policy test or appeal against non-determination.

Importantly, the Mayor will also have the power to enter into planning obligations (Section 106 Agreements) and enforce them. The Mayor is, however, under an obligation to consult the LPA before agreeing a Section 106 Agreement. How this will work in practice will be of great interest to developers as it may result in delays to the negotiation of Section 106 Agreements, which in turn will delay the grant of planning permission. Landowners will be interested to know that LPAs will also be able to enforce planning obligations in addition to the Mayor.

When determining a planning application the Mayor has to make the decision himself and must give the applicant and LPA an opportunity to make oral representations at a hearing. The procedure for these hearings has yet to be published by the Mayor. This, of course, is yet another procedural step which may prolong the application process and give rise to legal challenges.

Other related planning powers will enable the Mayor to reserve matters for subsequent approval in the case of outline planning permissions, or direct that the originating LPA approve them. The Mayor will also be able to exercise enforcement powers, instead of, or as well as LPAs.



CATEGORIES OF DEVELOPMENT THAT ARE OF POTENTIAL STRATEGIC IMPORTANCE

The Order sets out the categories of development deemed to be of potential strategic importance. The categories relate to large-scale development, major infrastructure projects and development which may affect strategic policies.

The Order, perhaps surprisingly, does not include development proposals that relate to the generation of electricity, given the importance of this issue in relation to climate change and the new provisions relating to climate change in the Act, as well as the Mayor's policies on renewable and localised energy generation.

The Order does, however, include amendments to certain categories of development. These amendments include development, which comprises or includes:

- 150 houses, flats, or houses and flats (previously 500);
- the erection of buildings in the City of London with a total floorspace of more than 100,000 sq m (previously 30,000 sq m); and
- the erection of a building in the City of London above 150 m in height (previously 75 m).

Other categories of development of potential strategic importance include development in Central London (other than the City) with over 20,000 sq m of floorspace and outside Central London development with over 15,000 sq m of floorspace.

The Mayor's new powers do not limit the role of the Secretary of State for Communities and Local Government in the planning process. In fact, the Mayor must notify the Secretary of State that he wishes to determine an application of potential strategic importance. In addition, in relation to LPAs' Local Development Schemes the Secretary of State can give a direction to the LPA to ignore a direction given by the Mayor. Developers will be watching very carefully how the Secretary of State exercises her powers and whether she will seek to play a role in this process.

CONCLUSIONS AND CONCERNS

A number of London Boroughs have expressed concerns about the Mayor's new powers. In particular they are worried about a democratic deficit as local politicians will now no longer be accountable for planning decisions. Other concerns relate to the use of the powers by the Mayor to force through development in Boroughs which conflict with his planning policies and the time it will take to determine applications.

Unsurprisingly, the Mayoral candidates have different views on the new powers. Boris Johnson has said he wants to limit mayoral interaction in LPA's decisions and that he has little need for "strategic powers". He has also said the 50% affordable housing target may be relaxed.

In contrast, Ken Livingston's team has stated that too many applications have been unreasonably referred or delayed by LPAs. The new powers will enable the Mayor to deliver faster and more consistent implementation of London Plan policies.

One of the main concerns for developers is that if the Mayor decides to determine an application they will have to negotiate Section 106 contributions with him. This may prove both



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costly and time-consuming as all the candidates have policies they wish to implement, which will have to be paid for. In this respect Ken Livingston has confirmed he will be looking for Section 106 contributions as part of the means of funding Crossrail.

In conclusion, the new powers will give the Mayor significant influence over development in London. How the Mayor chooses to utilise these powers and the manner in which he does so could have a significant impact on London and its politics over the next few years.

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