



**BARKER REVIEW OF LAND USE PLANNING
RESPONSE FROM LONDON FIRST
28 MARCH 2006**

1. INTRODUCTION

- 1.1 London First is a business lobby group established in 1992 to improve and promote London. London First lobbies for the infrastructure needed by the capital to retain its status as a world city, to stimulate growth and promote regeneration. An effective planning system is an essential part of this to facilitate the development needed to accommodate economic and population growth in a sustainable way.
- 1.2 London is forecast to grow by 800,000 people and 600,000 jobs by 2016. Planning plays a critical role in supporting and enabling this growth. London's success is critical to the national economic well-being. If the planning system in London fails to support growth it will have national as well as regional repercussions.
- 1.3 London First welcomes the Barker review of planning. We caution however that the planning system is going through a fundamental change as a result of the 2004 Planning and Compulsory Purchase Act with local authorities and regions preparing new regional and local plans. At the same time there is a push to increase the amount of development, particularly residential, to meet the Government's objectives and increase housing supply. Local authorities are extremely under-resourced. Further change or proposed change could increase uncertainty and slow down rather than improve planning. In our response we have highlighted ways in which the operation of the planning system can be improved rather than seeking further change to the structure. Most critical to this is increasing resource in planning departments. However, real progress will only be achieved by addressing two critical non-planning matters that influence the planning system and local authority attitudes to development: infrastructure funding and the pooling of business rates.
- 1.4 In our response we have addressed residential as well as economic development issues reflecting the policy emphasis on mixed use development.
- 1.5 In our view one of the most serious threats to development and the Government's growth agenda is the lack of investment in the infrastructure needed to support growth. Without crucial transport and social infrastructure growth will be unsustainable. Lack of transport capacity is a critical issue in London and a major impediment to further growth in the central area. Without new capacity the boroughs and the Mayor could refuse applications which are critical to London and the UK's economy.

- 1.6 There are currently a number of suggestions for helping to fund infrastructure investment from the increase in land value that is created by improved accessibility. One mechanism being considered is a Planning Gain Supplement (PGS). London First's response to the consultation on PGS is included at annex one. We believe, in line with the original proposal from the Barker Review, that it is not relevant to the situation in London, where virtually all development takes place on brownfield sites where windfall profits from planning permission are unlikely to arise, that the effect would be to encourage refurbishment rather than redevelopment and that the revenue would in any case be limited. The Lyons review of local government finance is currently considering other ways of capturing increased land values. London First will be making a further submission to the review on possible mechanisms.
- 1.7 London First's Response comprises:

2. Why Planning Matters to London

- **Competitiveness**
Growth
Attractiveness
Sustainability
- **Complementary Policies**
Transport
Housing
Skills
Climate Change

3. Planning in London

- 1.8 We have made a number of suggestions of improvements to the operation of the planning system itself. Most important however to the Government's goal of increased sustainable development would be:
- Government investment in the infrastructure needed to support development
 - Redressing pooling of business rates which removes authorities' incentives to grant planning permission
- 1.9 Improvements to the planning process would be achieved by:
- Increased resource in planning departments
 - Clarifying and strengthening the relationship between regional and local plans
 - Improved training for planners
 - Improving the appeal system so that it offers real redress to applicants including establishing a London Inspectorate and changing the test for award of costs from appeals
 - Strengthening policy to promote development

2. Why Planning Matters to London

COMPETITIVENESS

- 2.1 London is a world city competing in a rapidly changing global economy. It hosts the most productive economic activity in the country. It is an international city for business and finance and the hub of the UK's service sector, from which 87% of the UK's recent export growth has come. It is the most popular location for the European headquarters of international businesses, with about a third of Fortune Global 500 companies choosing to locate here. London's success brings major benefits for the rest of the UK.
- 2.2 London First has recently published a report written by CEBR, "Keeping the UK Competitive" which demonstrates how increasing public sector investment in London would benefit the whole UK. It is essential however that private sector investment is not frustrated by the complexity and slowness of the planning regime. In the late 1980s London was in danger of losing international banking activity as the planning regime failed to adapt to the changing needs of this sector. It was only the establishment of the London Development Docklands Corporation that enabled a major new financial centre to be built in a relatively short time.
- 2.3 London's large infrastructure projects have a strong track record of delivering positive return on investment. The investment package outlined in the report would boost GDP by £6.6 billion, with the dividend split equally between London and the rest of the UK: investing in London benefits the UK. The investment would create over 100,000 jobs in the UK (only half in London) and increase exports by £2.3 billion. Private sector investment would be increased by £4.5 billion annually. Investment would be self financing on an ongoing basis from 2009/10 and would lead to additional net public sector revenues of £4 billion per annum by 2017/18.
- 2.4 Infrastructure projects including the East London Line extension, Thames Gateway Bridge, Silvertown Crossing and Crossrail impact directly on labour and social mobility and complement the skills investment identified in "Keeping the UK Competitive". (www.keepingtheukcompetitive.com).
- 2.5 The "State of the English Cities" published by the Government on 7th March found that whilst London is highly successful nationally with a Gross Value Added (GVA) over 40% above the national average and the highest proportion of working age population with degrees, it "trails behind many of the highest performing continental cities in terms of economic competitiveness" and is ranked 23rd on GDP per capita among European cities.
- 2.6 London's success cannot be taken for granted. Much of the capital that is invested in London is footloose and can be taken elsewhere. If London does not provide the development that is needed to deliver services effectively, the benefits will be lost to the UK. They will go to other global cities that are equipped to better London's offer – not just our established competitors such as New York, Tokyo and Paris, but also emerging economic centres such as Singapore, Shanghai or Dubai. London cannot afford to have a slower and less responsive planning process than its competitors.

- 2.7 The immediate result of failure to meet demand is increased prices. London already has the most expensive office accommodation in the world, with rents in the West End, where the planning regime is most restrictive, reaching £100 per sq ft. Total Occupation Costs in the West End of \$179 are more than twice those of Paris \$90 and Frankfurt \$64¹. London continues to be voted the best city in Europe for business², but there is a limit to how long that will continue if London goes on getting more expensive. Companies which find London too expensive will vote with their feet.

Growth

- 2.8 Current projections show that London's population could rise to nearly 8.2m by 2021, an increase of around 870,000 since 2001. The number of households is expected to increase by over 500,000 during this period. Housing London's growing population creates a major challenge for the planning system. The annual housing target is proposed to increase by 36% to 31,090 from 2005/6 to 2016, whereas new supply in 2004 was 23,000. Half of new supply is proposed to be in the east sub-region, delivery of which is reliant on changing market perceptions and delivering new infrastructure, a point recognised by GOL in their response to the draft Alteration.
- 2.9 Employment is projected to increase by over 900,000 between 2003 and 2025. Some two-thirds of this growth is expected to be in business and financial services, focussed in central London. This will require significant growth in office floor space as well as redevelopment and modernisation of the current stock and accessibility improvements to support this growth, the most critical of which is Crossrail.

Attracting Investment and Talent

- 2.10 The outstanding growth of London's business and financial service sectors is driven by its attractiveness to international companies, who employ over 500,000 people in London and account for nearly a third of its GVA. The exceptional productivity of central London employees depends on attracting the best talent from all over the world. But London could easily lose many of these jobs and talent if attractiveness is reduced.

¹ CB Richard Ellis Global Rental Survey

² Cushman and Wakefield European Cities Monitor

COMPLEMENTARY POLICIES

Transport

2.11 Growth of the London – and UK – economy depends on London’s continuing success as a global financial and business centre. This growth is not constrained by domestic growth parameters, but is linked to the growth of the global economy. Equally however it can take place in one of the other global economic centres. The London Plan is predicated on 440,000 new jobs in financial and business services by 2016, mainly in the central areas. Central London also benefits from the agglomeration effect: the concentration of business links and skills which allows a high degree of specialisation, not only in financial and business services of all kinds, but also in the media, publishing, design and other creative industries. Increasing employment in London’s central business areas generates exceptionally high productivity.

2.12 Transport into these areas is already at capacity. Transport for London has estimated that the pressure on overall rail capacity (Network Rail, Tube and light rail) between 2001 and 2016 will increase by 44%³. High value employment in the key growth sectors cannot increase without enhanced transport capacity. The London Plan states that:

Policy 3C.2 Matching development to transport capacity

“Where existing transport capacity is not sufficient to allow for travel generated by proposed developments, and no firm plans exist for a sufficient increase in capacity to cater for this, boroughs should ensure that development proposals are appropriately phased until it is known these requirements can be met.”

2.13 The Mayor is already on record as saying that without Crossrail there could be no more office development in London within five years.⁴

“We are reaching a point where without Crossrail, and by no later than 2010, then as far as London is concerned, you would be turning down the majority of office development proposals because the transport system would be at maximum capacity.”

³ Analysis of the Transport Programme to Support the Draft London Plan, TfL, January 2003

⁴ Estates Gazette Interview, 4 March 2006

Housing

- 2.14 The high cost of housing in London is a significant barrier to recruitment and retention of key workers – essential skilled workers and support staff in the private sector as well as public sector employees. London's net population increase is made up of migration into London from the rest of the UK and overseas offset by out-migration. Within the UK, there is a pattern of inward migration of young people between 20 and 25 starting their careers and outward migration of people over 30.
- 2.15 Lack of affordable housing for families is quoted as one of the major reasons for people leaving London. London has the highest average house price in the UK according to the ODPM index - £264,505 in May 2005, compared with £182,651 for the UK as a whole. The average price is recently (March 2006) reported to have risen to £290,000. High London house prices reflect a continuing increase in demand which is not matched by supply.
- 2.16 London Plan policies seek to make good the shortage of affordable housing while requiring that 50% of new housing supply is affordable housing – 35% social housing and 15% intermediate housing. The effect of this policy is to depress new house building rates by making it less economic and where development does go ahead it means that the price of market housing is increased to compensate for the amount of affordable housing provided.
- 2.17 This policy is implemented through s106 planning conditions. It is however a mis-use of the planning system to use it to force house-builders to subsidise affordable housing and compensate for reductions in public investment. While there is a good case for subsidising the provision of affordable housing in London, it is counter-productive to do so by increasing the cost of all new housing.
- 2.18 National policy seeking re-use of redundant employment and industrial land for mixed use and residential development is important to ensure the supply of land for housing, but is still resisted by many local authorities. We have raised in our response to draft PPS3 concerns that the replacement of paragraph 42a with paragraphs 41 and 15 could be interpreted as weakening policy in this regard. Given local authority resistance to the loss of employment land, policy should be strengthened.

Skills

- 2.19 The pattern of experienced staff moving out of London and being replaced by younger people imposes a heavy burden on employers in terms of loss of productivity and training requirements. To the extent that people move out to the Home Counties and commute into London, it means increased demand on the transport system.
- 2.20 At the same time, London has the highest unemployment rate of any region or country in the UK. The proportion of London's population of working age who are in employment is below 70%, compared with a national average of 75%, 28% of the economically inactive have no qualifications. If London's employment rate were to be the same as that of the UK as a whole, an extra 274,000 Londoners would be in work.
- 2.21 A major reason for London's low employment rate is the proportion of the population who lack the necessary skills. There are 1.5 million adults in London with low or intermediate skills. Extending basic and intermediate skills within London would not only increase productivity, but would also alleviate London's housing shortage and transport problems as fewer people move to or commute into London.

Climate Change

- 2.22 There is increasing emphasis on policies relating to climate change which consist:
- measures to mitigate the effects of climate change which are likely to occur as a result of irreversible global warming
 - measures to reduce emission of green house gases.
- 2.23 The planning system has a role to play in reducing emissions of greenhouse gases but is only one mechanism to address this important issue and can not effect significant change alone. Real progress can not be achieved without fundamental behavioural change: the benefits of sustainable design and construction are lost through unsustainable occupier behaviour. This requires national action from the Government including education as well as the introduction of fiscal incentives and disincentives. Consumer education is critical to change expectations and influence the market to favour energy efficient building construction and use.
- 2.24 Policies impose real and opportunity costs which must be balanced against other objectives and priorities including those relating to planning obligations and affordable housing. There is a danger that policies could undermine London's world city status by making development too expensive. Policies must be applied sensitively to ensure that London does not become uncompetitive through increased costs or through poor quality built environment and office stock. If planning requirements are too onerous developers will choose to refurbish rather than redevelop which will forgo wider benefits of development, including public realm improvements, and mean that London does not have the best quality real estate.

- 2.25 Changes in planning requirements are likely to be of only limited effect. The built environment only accounts for a fifth of carbon emissions (less than food consumption). As the majority of emissions are from the existing built stock planning policies for new development will not achieve significant change: new housing supply represents less than 1% of the existing stock.
- 2.26 Building Regulations are the established and appropriate regulatory framework for matters relating to sustainable design and construction. Planning policy should not seek to duplicate Building Regulations. Planners are not skilled in these matters at the planning stage nor monitoring implementation.
- 2.27 18% of emissions and a third of energy consumption are from transport: the most important role planning can play is reducing the need to travel through policies on the location of development. The London Plan already promotes high density, mixed use developments on previously used sites in areas of good transport accessibility. Development of this nature is inherently sustainable.
- 2.28 The greatest threats to future development are flooding and water shortage. London should follow the national policy on flood risk, as set out in PPG25 and draft PPS 25. There is an urgent need for more efficient water supply as well as seeking sustainable new sources. Reducing water consumption requires consumer education: we consume one third more water than most Europeans. This is not a matter that can be addressed by the planning system alone.

3. PLANNING IN LONDON

Overview

- 3.1 References are frequently made to the “planning system”. Whilst there is a legislative framework interpretation and application of policy varies considerably. London the development plan is the Regional Spatial Strategy – the London Plan and 33 Local Development Frameworks which will comprise over 150 Local Development Documents as well as Supplementary Planning Documents.
- 3.2 Crucially, planning in London is made up of 86,000 planning decisions each year. Applicants include households, developers, corporates and the public sector who have different objectives and are subject to different pressures. How planning operates in one borough will vary considerably from another. Even within boroughs there can be variance in the way policy is interpreted and applied to different applications. Whilst it is crucial that planning judges each case on its own merits, greater consistency in the interpretation and application of policy and guidance is needed.
- 3.3 Reforms to the system largely change the structure and the context for local decision making. The drivers of local decision making do not change fundamentally as a result of reform. Local decision making is driven by the concerns of local voters rather than the strategic needs of the borough, sub-region or London.
- 3.4 The proportion of planning applications refused in London has increased by almost 40%, from 18% in 2000 to 25% in 2004/5. This is a higher number and larger increase than the rest of the country.
- 3.5 Applications still take too long to determine and too often are assessed in the context of local political issues rather than strategic planning policy and the wider needs of the capital. Although PPS1 seeks to promote development and a proactive approach from local authorities, this is not as strong as the past presumption in favour of development and does not go far enough to overcome local resistance.
- 3.6 Targets for assessing applications need to recognise that for many large strategic schemes thirteen weeks is not realistic and indeed sixteen is required where there is an EIA. The pilot Planning Delivery Agreements are welcome in establishing a realistic timetable for the assessment of large applications.
- 3.7 The failure of the appeal system to give adequate redress when bad decisions are made, due to the substantial delay in getting an appeal date, means that appeals are no longer a real option in many cases. If the appeal system were faster, with fast-track appeals for strategic schemes and a body of Inspectors specialist in London, this would improve the planning system and therefore increase development.
- 3.8 Development in London is different from that in the rest of the country in that over 90% is brownfield and much is mixed use. Higher land values and a mature market mean that a large amount of development is speculative.

- 3.9 Specialist Inspectors would deal with both London Appeals and Examinations in Public into Local Development Documents (LDDs). By being specialist in London they would have a thorough understanding of the regional context as well as the London Plan, ensuring that its policies are appropriately reflected in LDDs.

LOCAL DECISION MAKING

- 3.10 There is little incentive for local authorities to grant planning permission, particularly for commercial development. Whilst some authorities welcome development that creates employment or amenity for residents, these benefits are often seen to be outweighed by resistance to change and local concerns about disruption, congestion and strain on local services.
- 3.11 The introduction of the uniform business rate, with the proceeds pooled and distributed on a per capita basis has meant that authorities gain no financial benefit from an increase rateable value. London First's submission to the Lyons review of local government finance argues that local authorities should retain the rate income generated by new commercial development so that they have a strong incentive to grant planning permissions. The Local Authorities Business Growth Incentives scheme is too complicated and delivers too little to make much difference.

REGIONAL AND LOCAL PLANNING

- 3.12 London is the first region to have adopted its Regional Spatial Strategy which is now undergoing an Alteration and its first review. The London Plan has brought a welcome strategic vision and focus to the capital although it is still not reflected in all local policy and decision making.
- 3.13 There is inevitably a tension between meeting strategic regional needs and policies of local planning authorities based on the concerns of electors. This is most obvious in the case of 'bad neighbour' uses such as waste processing and disposal, which are not welcome anywhere but must go somewhere. This issue will become critical with the currently proposed Alteration to the London Plan.
- 3.14 The same also applies to development in London's central business districts, which represent a unique agglomeration of activities which are crucial to the well-being of the capital and of the UK as a whole. In the City of Westminster however development to protect and enhance London's world city role is largely frustrated by the application of borough policies for conservation areas, protected views and height restrictions, and for mixed use, which requires half the increase in floorspace in all commercial developments greater than 200 m² to be residential. The West End is an attractive location for international corporate headquarters, which bring great benefit to the whole of the UK economy, but local policies make it very difficult to accommodate them. These policies also constrain the ability to redevelop retail floorspace, which is critical if the long term future of the West End as a national and international attraction is to be protected.
- 3.16 To address concerns in this regard, in our response to the consultation on reform of the Mayor's planning powers we recommended that the Government:

- Make a Ministerial statement on the definition of conformity with respect to the relationship between the London Plan and Local Development Documents. This would: restate that the London Plan is part of the development plan and explain the implications for development plans and development control decisions, including that as a consequence the scope for departure applications under the Order is wider than when first drafted; strengthen the requirement for LDDs to reflect London Plan Policy; and clarify what is meant by “significant harm.”
- Request that the Mayor provides a statement of policies for Inspectors undertaking examinations on Local Development Documents in order to clarify the Mayor’s policy and ensure conformity with the London Plan.
- Amend the Order to require borough planning committee reports to include a statement on relevant London Plan policies, as part of the development plan, as well as the Mayor’s views on the application. Where the committee does not reflect either in its decision it should be required to give reasoned justifications.

3.17 The full response is included at Annex Two.

THE APPEAL SYSTEM

3.18 The objectives of increased and better development would be more achievable if the appeal system was improved and speeded up to give proper redress to applicants who consider they have been unreasonably refused planning permission. The Government should consider piloting improvements to the appeal system in London including the appointment of London specific and specialist Inspectors. This would speed up appeals in London as a result of increased resources as well as through Inspectors having specialist knowledge of the region and London Plan. Consideration might also be given to whether strategic applications should be fast tracked. We consider that development in London is sufficiently distinct and important to the nation’s well-being to warrant this.

3.19 This could be funded through ring-fencing increased application fees in London for major development or strategic applications.

PLANNING OBLIGATIONS

3.20 London First recognises that negotiating Section 106 Agreements can delay development but we fundamentally believe that negotiated 106 Agreements create better development and better planning obligations. We have responded to the consultation on Planning Gain Supplement [annex one].

3.21 Increased use of formulae and standard clauses are starting to speed up the negotiation of agreements. In addition, greater clarity on heads of terms when the planning application is decided would ensure quicker agreements once resolution to grant has been passed.

- 3.22 Where Section 106 Agreements can significantly delay development it is frequently because of inadequate resource and co-ordination in the local authority and that the terms of the agreement were not sufficiently clear or detailed when the resolution to grant was passed. This can be dealt with through best practice guidance and through changing the emphasis of Government targets.
- 3.23 The Planning Delivery Grant (PDG) has been important in increasing resource although more is needed. Rather than PDG targets being on resolution to grant, which is not an implementable permission without the Section 106 Agreement, the Government should consider changing the target to completion of the Section 106 Agreement as this marks the point at which development can start.

RESOURCES AND SKILLS

- 3.24 The level and quality of resource in planning departments remains a critical concern and major impediment to the planning process. This is exacerbated by the introduction of the new planning system with boroughs producing new Local Development Frameworks as well as responding to changes in national guidance and regional policy.
- 3.25 Planners are now expected to understand an increasing breadth of issues such as sustainable design and construction – previously a matter for Building Regulations/Building Control, and are not equipped to evaluate them. This results in slower decisions and those not based on a full understanding of the issues.
- 3.26 The increased complexity of planning also means that planning committee members need better training to understand the issues.
- 3.27 Propriety in planning is clearly critical. However it is absurd that the only people not consulted and involved in the development of a major application such as the one at King's Cross Central are those that will be assessing it. It should be possible to brief and involve members without creating conflicts of interest.

SPATIAL PLANNING

- 3.28 Spatial planning requires that applicants address a broad range of issues which frequently involves the need for a range of specialist consultants to prepare transport, social and economic, environmental and sustainability impact assessments. They may also have to address different checklists. The requirements for these vary between authorities and tiers of government and may overlap with each other. They are costly and time consuming to prepare, are often not fully understood by planning authorities (see above) and considerably increase the entry price for development. An EIA is required under European legislation. The requirements for further assessments should be reviewed and consolidated.

THE NEW PLANNING SYSTEM

- 3.29 The move to the new planning system is creating a huge weight of new planning documents which are being consulted upon. In London, as well as continued reform of national guidance there is an Alteration and first review of the London Plan and the preparation of 33 new Local Development Frameworks. The new system requires early engagement from stakeholders with no right to appear at Examinations in Public (EIP). Many draft documents are at preferred options stage now with the EIP expected in eighteen months and adoption in two years. For those not actively involved in development where it is not their core business it is hard to devote time and resource to such a long process. For those active in development in many areas, this represents a huge resource commitment which could be devoted to development proposals.

Annex One: London First response to the consultation on Planning Gain Supplement

RESPONSE FROM LONDON FIRST 22 FEBRUARY 2006

- 1 London First is a business lobby group established in 1992 to improve and promote London. London First lobbies for the infrastructure needed by the capital to retain its status as a world city, to stimulate growth and facilitate regeneration. An effective planning system is an essential part of this to facilitate the development needed to accommodate economic and population growth in a sustainable way.
- 2 London First supports the introduction of Planning Gain Supplement on greenfield sites only. We do not consider that it is appropriate or viable to seek to introduce it on brownfield development.

Infrastructure Funding

- 3 We welcome the Government's recognition that infrastructure investment is needed to support population and economic growth and that it should be funded by general taxation. Infrastructure investment is critical to support and stimulate growth. London needs considerable investment in a range of infrastructure, including transport, to support forecast population and economic growth. Most critical among this is Crossrail which is urgently needed to support London's world city functions in central London and facilitate regeneration in the east. We welcome the inter-departmental review as part of the Comprehensive Spending Review assessing what infrastructure is needed to support growth.
- 4 London First does not consider that the proposed Planning Gain Supplement (PGS) is an efficient or appropriate way to seek to fund infrastructure. Moreover, the focus of the consultation paper is on value capture rather than infrastructure delivery.
- 5 The delivery of new infrastructure from transport to schools and health facilities is critical to make development sustainable. Uncertainty regarding the likelihood and timing of delivery would undermine this and is likely to increase communities' resistance to development at a time when the Government is trying to encourage it.
- 6 Land value uplifts created by the planning system or market conditions are already captured through the existing taxation regime through domestic and non-domestic rates, Stamp Duty, Capital Gains Tax and the Corporation Tax of property companies and developers. Introducing a new tax will reduce and redistribute revenues from these other taxes. Additionally development contributes to local infrastructure and services through planning obligations. Affordable housing requirements, in particular in London where the Mayor seeks 50% of new supply to be affordable, already represent a tax on land values especially as the use of the Affordable Housing Toolkit requires applicants to demonstrate that they cannot meet the target and to justify grant allocation.

- 7 The existing taxation system, such as capital gains tax, could be amended to recover more of the uplift created by planning for greenfield development, by charging a higher rate. The resultant funds could then be invested in infrastructure.
- 8 More appropriate than seeking to tax the development process would be to ensure that those that occupy the developments and therefore use the infrastructure contribute, i.e. through council tax and business rates. Higher rates, perhaps with differential levels of rates on new developments for a period of time, would feed back to land values by depressing achievable rents and sale values. Charging the user/beneficiary of the new infrastructure would be more appropriate in taxation terms. One such mechanism to do this is tax increment financing whereby the additional rates revenue generated by development is hypothecated to fund the infrastructure needed to support it.
- 9 The provision and funding of local services and the relationship between central and local government in this regard is the subject of the current review by Sir Michael Lyons. Any proposal for PGS should reflect the conclusions and recommendations of this research.

Planning Obligations

- 10 London First and its members recognise the importance of planning obligations in making development acceptable and addressing local needs. We believe that the best planning obligations are those that are negotiated and tailored to individual circumstances for different sites in different areas. Whilst this can add time to the planning process, this need not be the case where there is a desire to conclude negotiations quickly. Increasingly local authorities are following best practice through starting discussions in tandem with those on the application, involving all relevant departments and ensuring fast resolution. London First supports the use of standard clauses and formulae where appropriate to speed and negotiations. It is likely that we would support the standardised planning agreement/wording which is being promoted by ODPM. However, given the complexity of much of the development in London which is brownfield and contains a mix of uses, we consider that it is fundamental that obligations reflect the individual circumstances of a development.
- 11 Section 106 agreements together with affordable housing requirements have proved to be a more effective tax on development than any of the previous attempts at development land tax. If it is considered that this is insufficient with respect of greenfield development we propose this is addressed specifically for these cases through PGS.

Brownfield development

- 12 We are deeply concerned that while the proposed PGS might work on a greenfield urban extension where former farmland is redeveloped for residential use; seeking to adopt such an approach in an urban setting will not work and will ultimately serve to frustrate development. Previous attempts at development land tax led to a reduction in development as landowners and developers waited for a change of Government and the removal of the tax. We cannot afford to risk this happening again. London is the economic driver of the country. A failure to provide the best quality accommodation for business could lead companies to choose to locate in other European cities such as Paris and Frankfurt. London's population is forecast to grow by 800,000 by 2016, it is critical that sufficient new homes and other facilities are developed to support this. The introduction of PGS could pose a real threat to London's future if the development needed to support and promote growth does not happen.
- 13 Whilst the consultation document acknowledges that a lower rate may be applied to brownfield development, the cost to the applicant/developer of assessment will remain high and could be higher for brownfield development given its complexity.
- 14 Land value increases generated by the planning system or market changes are already captured through the existing taxation regime: principally the rating system, Capital Gains Tax, Stamp Duty and Corporation Tax of property companies and developers. Value increases are essential to make development viable. It is not until alternative use values, less development costs, exceed existing use value that development will happen. This process is essential to renew the existing built stock, bring back derelict land into beneficial use and facilitate population and economic growth. The marginal nature of such calculations is evidenced in the low rate of development in areas such as the Thames Gateway. Any attempt to further tax development is likely to make marginal development unviable and therefore undermine the Government's objectives to increase housing supply and facilitate regeneration. Whilst development in central London development is less marginal, an increase in taxation may lead owners to refurbish rather than redevelop properties. This will undermine London's international competitiveness if the real estate stock is of poor quality and will forgo wider benefits of development such as public realm improvements.
- 15 The original Barker proposal and the Government's proposal remain predicated on a narrow set of cases where large value increases are generated by the rezoning of agricultural land for residential development which creates a consequent need for infrastructure investment in these urban extensions. This is clearly illustrated in Table 1.1 where the significant value differential is from changes of use from agricultural land. The PGS proposal is clear and valid for these instances where there is an easily identified uplift, the planning process has created a substantial change in value and the nature of development demands the provision of significant new infrastructure. **We therefore urge the Government to limit the introduction of the proposed PGS to these greenfield cases and exclude it from existing urban areas where it is likely to frustrate development.**

An Efficient Tax

- 16 An efficient tax is one that is transparent, cheap to administer and fair. When Lawson repealed the 1976 Development Land Tax Act in 1985 he stated that the cost of administering the tax was 20% of the revenue. Given the complexities in valuing the proposed PGS this is likely to be the case again.
- 17 The purpose of PGS is to tax the windfall increase in land values generated by the grant of planning permission, but the tax is paid by the developer. It is therefore assumed that the tax is passed back to the landowner through the purchase price. This is a considerable assumption, unsupported by evidence, making the tax is neither transparent nor fair.

A Political Tax

- 18 Previous development land taxes were repealed by the successor government. It is therefore likely that if PGS is introduced in 2008, rather than increasing development, it will lead to a cessation while landowners and developers wait for the next election in 2009/10. This would undermine the Government's objective of increasing housing supply and could be damaging to the economy and London's international competitiveness.

A "Modest" Rate

- 19 The consultation paper repeatedly states that the rate for PGS will be modest. However, we think this unlikely based on the information in the paper. Paragraph 6.4 states that local government "will overall receive more funding through PGS than raised through Section 106." The paper goes on to say that the "overwhelming majority" of PGS funds will be recycled within the region.

Increasing Development and the Quality of Development

- 20 Recent government policy has focussed on increasing development and increasing the quality of development. We consider that the proposed PGS will undermine these objectives. Uncertainty over infrastructure delivery is likely to increase local resistance to development as will the potential loss of benefits such as local training initiatives. Increasingly opposition to development is the result of concern about the impact on local services.
- 21 By increasing the complexity and cost of development PGS could result in less development as those less experienced and expert are put off by the increased entry price.
- 22 Increased development costs through increased tax on development could lead to poorer quality development as other costs are reduced including those of design and public realm.

Effect on Land Supply

- 23 The focus of the consultation paper is on housing supply with little regard to the need to increase land supply to facilitate this. Land owners must be incentivised to bring forward redundant and under-used sites for development.
- 24 In London many of the major residential/mixed use development sites are former public sector land (hospitals, MOD), industrial sites or utilities. The supply of public sector land is likely to increase as the Government continues to review its needs and implement asset management strategies at all levels, an initiative raised in the response to the Barker report. The effect of PGS for these sites, if the developer reduces the price of the land to take account of the PGS liability, would be to reduce the revenue available to be recycled into these public services.
- 25 If fewer sites are developed as a result of PGS it will reduce housing supply as well as the supply of affordable housing which is contingent on market developments. This would especially be the case where there is an overage agreement whereby the landowner receives a proportion in planning uplift or the sale value. This practice is becoming increasingly common.

The Role of Planning

- 26 The role of the planning system is about securing the best use of land whilst ensuring that development is appropriate and its impacts addressed. We are concerned that through the proposed PGS planning will become part of the tax infrastructure and that this important role will be undermined. We would run the risk, the adverse consequences of which are evident in the United States, of decisions about the location and nature of development being driven by revenue considerations rather than the best use of land.

Clarification and further detail

27 Whilst we recognise that this is a very early part of the consultation process, it is hard to fully consider and respond to the proposals given the lack of detail of how PGS might work.

28 We therefore request clarification/further information on the following issues:

- The likely rate and estimated yield from PGS – although the rate is describes as “modest,” the rate will be critical in evaluating the impact on development. The estimated yield is critical in assessing the impact on infrastructure funding.
- The process for subsequent reviews of the PGS rate. There is concern that what starts as a modest rate could quickly be increased.
- The mechanism to redistribute revenues locally, regionally and inter-regionally, including approximate proportions for each, and how much of the revenue might be retained by the Treasury.
- The relationship between PGS and cross-cutting review as part of the Comprehensive Spending Review.
- How timely and certain delivery of infrastructure needed to support development will be ensured.
- How infrastructure priorities will be established including resolution of regional and local differences between spending priorities.
- How disputes about self assessment valuations would be resolved.
- The Development Start Notice procedure, how long it will take and who will administer the notice.

29 **London First’s response to Planning Gain Supplement can be summarised as follows:**

- Land value uplifts are already captured through the existing taxation regime.
- It is more appropriate for the occupiers of developments to pay for the infrastructure they use rather than seeking to fund it through the development process which represents a low tax base.
- PGS represents an inefficient tax which would be expensive to administer. Although the purpose is to tax land value uplifts, it is charged to the developer and assumes that the cost will be passed on to the landowner.
- PGS is predicated on very specific examples of residential development on greenfield sites previously used for agriculture where a large increase in land value is generated and easily identifiable. It does not work for mixed use developments on brownfield sites in areas such as London. It should therefore be limited to greenfield cases.

- The rationale for and structure of PGS relates to residential development which is one class of development. Government policy promotes mixed use development. Other types of development such as commercial in London are critical to the capital's competitiveness and nation's economic well-being. The effects and impacts in these cases have not been considered.
- The proposal requires developers to pay the tax before any value is realised at the same time that they have to invest considerably in the development process.
- It is not apparent how infrastructure needed to support development and ensure it is sustainable, such as education and health facilities, will be delivered in a certain and timely manner. Any delay in delivery could undermine the Government's objectives of creating sustainable communities by increasing the strain on existing infrastructure such as schools and the transport system.
- In practice Section 106 is unlikely to be scaled back meaning that developers will be expected to pay considerably more. Negotiations are also unlikely to be quicker.
- The cost of PGS and Section 106 is likely to make many marginal developments unviable and will therefore serve to undermine the Government's objectives of increasing housing supply and encouraging regeneration. It will also lead to an increase in refurbishment rather than redevelopment, reducing investment in the built environment, undermining London's competitiveness and reducing productivity.

For further information contact:
Judith Salomon
Director of Property and Planning
jsalomon@london-first.co.uk
7665 1584

Planning Gain Supplement Consultation Paper

1. Introduction

- 30 London First recognises the urgent need to increase housing supply. However, housing development is one type of development and Government policy [for example PPS1 and PPS6] promotes mixed use development. In London, commercial development is critical to supporting the London and national economy. We are concerned at the suggested introduction of PGS on all classes of development to address one issue. Paragraph 1.1 states that “the Government is committed to improving housing supply” and 1.4 couches proposals in the terms “if the Government is to achieve its housing ambitions”. Greater exploration is needed of the impact of the proposal on commercial and mixed use developments and objectives in this regard.
- 31 Box 1.1 states that the Government wishes to “use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development.” However, the proposed tax is to be levied on developers and is therefore achieving this objective contingent on developers passing back the cost to landowners. One of the principles of a good tax is that it should be paid by those who receive the benefit.
- 32 The process of passing back the cost is relatively straightforward where a developer purchases land from a farmer, although a change in the rate of PGS between sale and the grant of permission would distort this. The proposition is different in the instance of a property company redeveloping its portfolio when leases expire. These two scenarios are highly distinct. In the latter case development is likely to be desirable to maintain efficient land use and achieve wider environmental and planning objectives.
- 33 Paragraph 1.9 states that “PGS would be set at a modest rate to capture a portion of land value created by the planning process.....while preserving incentives to bring forward land for development.” If the Government were to introduce PGS it might consider an escalating rate of PGS as time passes from the grant of permission to encourage sites to be developed quickly.
- 34 The inclusion [table 1.1] of average land values across England for different classes of development is meaningless and over-simplifies the situation as it masks considerable variances. The figures used are not applicable to London and ignore that in many places there will be alternative use values. It also ignores the many instances of low or negative existing use values coupled with the need for significant infrastructure and other investment such as decontamination necessary to facilitate development. This applies to much of the Thames Gateway, a national and regional priority area for regeneration.
- 35 Whilst we note that the PGS rate is described as being “modest” greater detail is required as to how it will be established and reviewed. To provide assurance that it will not increase significantly after introduction, the Government should commit not to increase it more than the rate of inflation for the first three years after introduction, enabling a reduction if market conditions require one.

Objectives

- 36 **To finance additional investment to support housing growth:** later we raise concerns about how PGS revenues will be allocated and what infrastructure will be funded. Whilst we strongly support the need to invest in infrastructure to support housing and economic growth, we question whether PGS is the most appropriate and efficient mechanism to do this. Assessing the impact would be aided by the inclusion of estimates of the amount of money PGS is expected to yield, bearing in mind that the yield will be sensitive to the rate and that if it is too high development will not happen thereby undermining the Government's objective of increasing housing supply.
- 37 **Help local communities share the benefits of growth and manage impacts:** the extent to which PGS aids local communities will depend on how funds are redistributed. The current planning obligations system enables local communities to benefit from development, beyond the development itself, and addresses impacts of development.
- 38 **Provide a fairer, more efficient and transparent means of capturing land value uplift:** land value uplifts are currently captured through the existing taxation system, principally through capital gains tax, stamp duty and corporation tax. Kate Barker raised concerns about the efficiency of Capital Gains Tax with respect to some agricultural land sales. These represent a small proportion of overall transactions and could be addressed through amendments to that regime. In our view the current taxation system in this regard is fair, efficient and transparent.
- 39 **Create a flexible value capture system which responds to market conditions:** the current proposal, even with a lower rate for brownfield development, does not respond adequately to different conditions and is essentially predicated on instances of residential development on re-zoned agricultural land. Such a scenario does not apply to London or other urban areas. The extent to which the proposal could be responsive in the future is unclear. On the contrary, there is a real risk that whilst the rate might be set low it is increased annually in the Budget as it will not be viewed as politically controversial to do so.
- 40 We therefore consider that the proposal does not meet the Government's stated objectives and that these can, and to some extent are, being met through existing regimes.

2. Valuing Planning Gain

The levy base

- 41 Whilst the grant of planning permission might trigger an increase in value on paper, this is unrealised and also marks the point at which the applicant has to commit to considerable investment in the development process. This is particularly problematic for long-term phased regeneration projects which could take two decades to complete and several years to make any money.
- 42 Whilst the sale of land/the interest might be more problematic to calculate, it would be more equitable as it would represent the realisation of the increased value. This would be more appropriate on multi-phased schemes.

Calculating the PGS liability

- 43 The valuation assumption of an unencumbered freehold with vacant possession is unreasonable and unrealistic for complex urban regeneration schemes where this is unlikely to be the case. In such instances after planning permission is granted there is a complex process of unifying the different interests which can be costly and time consuming.
- 44 Current use value calculation should take account of “hope” value such as from an allocation in a Local Development Document for a higher value use which would be reflected in the value of the land.
- 45 Will the valuation exclude the elements of development that the developer is required to provide by the Section 106 agreements or that will be provided from PGS revenues such as a road or community facility?
- 46 Paragraph 2.8 states that “the expected cost of developing the land, including remediation costs, could affect the Planning Value.” To be equitable and not discriminate against complicated brownfield regeneration schemes, the calculation would have to deduct all the costs of development (including achieving unencumbered freehold status with vacant possession) and therefore represent a residual value.
- 47 As PGS is levied on the difference between the current use and planning value, applicants will want to maximise the former and reduce the latter. This will act as a deterrent to pre-letting development which would increase the planning value.
- 48 Valuation is proposed to be on the day of the grant of permission. If the market deteriorates between this point and commencement development could become unviable and will therefore not happen. Indeed the consequence is likely to be a further planning application with a view to fixing a later valuation date – wasting time and resources for both the applicant and the planning authority.
- 49 On phased schemes account should be taken of the value generated by earlier phases of the development in the valuation of later stages so as not to penalise the developer.

Actual valuations and self assessment

- 50 We agree that valuation would have to be done on an individual basis rather than seeking to apply averages which in an area such as London would be too broad.
- 51 We are concerned that given the likely number of qualifying developments for PGS. In 2004/5 514,000 planning applications were granted permission. Excluding householder permissions 241,580 permissions were granted equating to 4,646 per week. Even if a small proportion are to be inspected this would still be a large number.
- 52 Further information is required on how disputes about self assessment would be resolved and the process for validation and challenge. To avoid delay to development as the developer establishes the PGS liability, the verification of valuation needs to be swift and the opportunity for challenge limited to a brief, specified period.
- 53 Commercial valuations are far more complex than those for residential schemes and involve professional assessments and judgements on issues such as the likely rent, lease length, any break clauses, and fit out and rent free periods.
- 54 On phased developments valuations will need to relate to final approval of reserved matters for each stage. The development will therefore be subject to a series of valuations, Development Start Notice (DSNs) and PGS liabilities.
- 55 The cost of the valuation process will be high, especially for long-term phased schemes and will represent an additional cost to the developer.
- 56 Self assessments should not be open to public inspection.

3. Paying Planning Gain Supplement

- 57 We do not agree that [para 3.5] requiring payment of PGS on commencement of development would better address cash flows. Commencement represents the point at which the developer has to invest in construction before having realised any gains. At King's Cross Central, a major mixed use regeneration project, the developer will have to invest over £80 million in infrastructure to support development on commencement. The project will not show profit until later phases. A complex major regeneration scheme such as King's Cross Central is the type of development the planning system encourages, but would be made difficult with the introduction of PGS.
- 58 We therefore consider that if PGS was to be introduced payment would not be required until the completion of development and therefore value increases are realised. To be workable PGS must enable phased payments, which are common under the existing Section 106 regime, where payment is triggered by agreed dates or events. This is especially important on long term phased developments. This in part could be addressed through the resolution of reserved matters on outline applications but will need to be more flexible to avoid frustrating development. However, valuation in these circumstances would be highly complex, problematic and costly.

The Development Start Notice

- 59 Further information is required regarding the DSN procedure in particular how long it is expected to take and who would administer the notice.
- 60 We are concerned that given the number of developments likely to be liable for PGS, 4,646 developments per week, the process of verifying the DSN could add significant delay to the development process, undermining the Government's objectives of speeding up development and increasing productivity. Developers would not start on site until the DSN is verified and their liability is clear.

4. Scope

Greenfield and brownfield land

- 61 We consider that PGS would frustrate brownfield development and would serve to make many marginal developments unviable, in many cases these are the regeneration schemes the Government seeks to encourage. The introduction of PGS in London would frustrate development and undermine the Government's objectives of increasing housing delivering and supporting economic growth.
- 62 As the PGS has been modelled on greenfield urban extensions where considerable land value increases are generated through rezoning agricultural land for residential development we urge the Government to limit its introduction to these circumstances and exclude London and other urban areas.
- 63 If the Government were to persist with PGS in urban areas/on brownfield sites we would suggest that the rate for brownfield land should be very low to still encourage development. The cost of assessment for brownfield sites is likely to be higher than for greenfield developments reflecting the complexity of development.

Minimum Thresholds

- 64 If the rationale of PGS is to tax development to fund the infrastructure needed to support that development, those developments that do not create demands on existing infrastructure or require new infrastructure should not be required to pay PGS.
- 65 The application of PGS to minor development is likely to deter development and act as a disincentive to invest in the existing built stock. In London where the quality of the commercial stock is critical to attract internationally mobile corporates and the quality of the public realm and other developments such as retail is crucial to tourism, this could have a significant adverse economic effect.

- 66 We therefore propose that if PGS were to be introduced, a minimum threshold should be set to exclude development not creating demands on infrastructure and to ensure that development is still encouraged. The following should therefore be excluded from PGS:
- Advertisements
 - Signage
 - Telecommunications equipment
 - Change of use
 - Temporary uses where planning permission is required
 - External improvements such as to cladding/design/public realm
 - Internal works where planning permission is required
 - Where the increase in net gross floorspace is less than a specified %
 - Variations of conditions such as hours of operation which result in the issuing of a new planning permission
 - Infrastructure development such as landscape works, roads, rail-linked development, waste, energy
 - Development undertaken by or for public bodies

5. Financing Infrastructure through the Planning System

- 67 Paragraph 6.4 states that “a significant majority of PGS revenues will be recycled directly to the local level for local priorities.” It goes on to state that the “overwhelming majority of funds will be recycled within the region from which they are derived.” Consequently some PGS revenues will be redistributed inter-regionally. This implies that the rate of PGS will be not be modest as, in addition to what is already paid in Section 106, it will need to be high enough to raise funds for redistribution within the region as well as between regions. We are therefore gravely concerned that far from being modest the rate of PGS will be high and will frustrate development.
- 68 The example of Milton Keynes provided in Box 5.3 shows how the current system can achieve the Government’s stated objectives without the need to introduce additional taxation. It should be noted that the Milton Keynes example applies to a clearly defined area for an urban extension where growth is achieved by rezoning former agricultural land. It was also established in a rising market.

The case for scaling back planning obligations

- 69 Whilst we recognise that negotiating planning obligations can delay development, this can be addressed through a number of simple improvements to the current process, some of which are already becoming standard practice such as the use of standard formulae and clauses, starting negotiations earlier and setting out clearer local policy which adheres to national policy. The Government might also consider that targets for Planning Delivery Grant be linked to the conclusion of Section 106 Agreements as this marks the point at which the planning permission is implementable, rather than as at present the point of resolution to grant.

- 70 We do not consider that the proposed scaling back of the scope of Section 106 agreements is likely to reduce the length of negotiations. Disputes are likely to centre on what is appropriately covered in the “development site” approach as well as how matters raised in the Transport and Environmental Assessments are addressed. Many of the areas proposed to be removed from Section 106 are those that are less contentious and do not delay negotiation. Affordable housing, which will remain part of the S106 process tends to represent the most significant delay to development.
- 71 Negotiated planning obligations create better development and better Section 106 Agreements which are reflect individual site circumstances. Where Section 106 Agreements can significantly delay development it is frequently because of inadequate resource and co-ordination in the local authority and that the terms of the agreement were not sufficiently clear or detailed when the resolution to grant was passed. This can be dealt with through best practice guidance and through changing the emphasis of Government targets.
- 72 Whilst we support greater consistency and transparency in planning, the system must also enable local circumstances to be reflected in individual decisions and developments. Whilst Table 5.1 illustrates the different approaches of local authorities to planning obligations, it shows nothing of the different circumstances or physical characteristics of those areas.
- 73 Concerns about [para 5.13] “fairness” or “competitive or market distortions” can to a large degree be addressed through refinements to the existing system. However, it should be recognised that it is not possible, nor necessarily desirable, to create a level playing field across the country for developments as conditions are dictated by the different physical, economic, environmental and social characteristics of sites. The planning system is established on the principle of each case on its own merits.

The development-site environment approach

- 74 The principles of the new approach set out in Box 5.4 do not provide reassurance that planning obligations will in fact be scaled back. The test of “development site acceptability: i.e. necessary to make the development-site acceptable” is too broad and could be used to argue for the inclusion of almost anything within an obligation. We therefore do not agree that this approach [para 5.17] would reduce the scope of matters covered by planning obligations, nor does it place limits on the size of contributions. We do not consider that reducing disparities between local authorities is necessarily important, especially as development conditions vary so considerably between them. If local authorities adopt an anti-development approach this can and should be dealt with through other mechanisms.
- 75 We welcome the statement that [para 5.18] PGS is considered to be only one source of funding for infrastructure not secured through obligations.
- 76 Any review of how PGS might work with Highways Agreements would have to ensure timely delivery of new highways/improvements to support development.

- 77 We support rationalisation of affordable housing requirements and prevention of attempts to maximise land value capture through them and consider that the Government should do this irrespective of PGS. It should be noted that affordable housing requirement calculations in many areas, in particular London, require an assessment of viability to demonstrate what the development can support and what grant is required. It is likely that one impact of PGS could be to reduce viability (by increasing costs) and would therefore reduce the affordable housing requirement and total output which would undermine the Government's objective of increasing affordable housing supply.
- 78 Most critical, however, is how infrastructure necessary for the development, but funded through PGS, will be delivered in a timely and certain manner. This is especially important for matters raised in Transport and Environmental Impact Assessments and where addressing them is a condition of planning permission. If the local authority requires provision of infrastructure before a development can be started or occupied. For example, if the authority links infrastructure provision to phasing failure to provide, for example additional school facilities would stall development.
- 79 Section 106 agreements may include two-way obligations such as to require the local authority to provide crucial infrastructure such as school places. How this would be achieved from PGS funding requires explanation.
- 80 Timely provision of new education or health infrastructure will be critical for a new residential development to be sustainable and for its occupants, a key Government objective. It will also be critical in allaying concerns of existing residents who may oppose development if they are concerned about local school and health provision. To be sustainable and viable any PGS proposal must address this.
- 81 Any proposal must also address providing land for new facilities. A major new development may include a new school or health centre or transport facilities. How this will be addressed under scaled back Section 106 and through new funding arrangements from PGS is unclear.
- 82 The Milton Keynes roof tax enables developers to provide "works in kind" which are set off against liabilities for the roof tax. PGS would need to allow for this to ensure provision of crucial community facilities.
- 83 Labour and training initiatives are a vital part of making developments acceptable locally and ensuring existing residents benefit and are embraced with current Section 106 arrangements which provide a trigger for provision. The Paddington Brokerage ensured that local residents benefited from construction jobs as well as those created by the developments' occupants. Such initiatives are vital in achieving the Government's stated objective that the community shares in the benefits of growth and should be encouraged. If the funding is provided through PGS it is not clear how and when initiatives will be delivered.

6. Allocating Planning Gain Supplement Revenues

Revenue allocation principles

- 84 We note that [para 6.4] the “significant majority” of revenues will be recycled at the local level for local priorities. This is said to help local communities “share better the benefits of growth.” We consider that planning obligations enable communities to share such benefits. We would welcome clarification of what the “local level” is (borough/ward?) and how priorities will be agreed.
- 85 We would we welcome clarification of the process by which local and regional stakeholders determine infrastructure priorities and how any difference between local and regional priorities might be resolved.
- 86 Notwithstanding our considerable concerns regarding the desirability and feasibility of PGS, if the Government were to introduce it we consider that funds should be collected regionally, not nationally. The Regional Planning Body (RPB) would then redistribute them locally in the context of an agreed framework with the local authorities and business.

Options for allocation

- 87 The first option for allocation: distribution in direct proportion to revenues raised is more equitable and should therefore be adopted should PGS be introduced. However, further information is required on how and when that redistribution occurs and the nature of funding (capital and revenue?). Given the limited scope to raise money in London as over 90% of development is brownfield, in order to fund the infrastructure needed to support development, especially in the Thames Gateway, PGS revenues would need to be reallocated to London.
- 88 Explanation is required of the overall process for redistribution given that the “significant majority” of revenues will be distributed locally and the “overwhelming majority” will be recycled regionally. What proportion would therefore be distributed between regions for strategic infrastructure and what proportion would be retained by the Treasury for other purposes? How would priorities be decided for nationally strategic inter-regional infrastructure, for example Crossrail?
- 89 We note [para 6.10] that the Government is undertaking a cross-cutting review as part of the 2007 Comprehensive Spending Review to assess what infrastructure is needed to support growth and ensure resources are targeted to support this. We would welcome clarification of the relationship between this review and PGS.

Transition

- 90 Given the uncertainty caused by the proposed introduction of PGS we urge the Government to make a swift decision whether to proceed. Uncertainty is bad for the development process and is likely to lead to a reduction in development.
- 91 If the Government decides to introduce PGS we strongly recommend that it is not applied retrospectively or to the resolution of reserved matters on existing outline permissions on phased developments. This is critical for long term schemes being planned now where negotiations may be starting on what the Section 106 Agreement might encompass where planning permission is unlikely to be granted until after 2008.
- 92 We would recommend that the Government pilots the concept first in a greenfield growth area location.

Annex Two: London First response to the consultation on the Mayor's Planning Powers
20 February 2006

To retain its status as a world city and the driver of the UK economy London needs a better planning system which is more responsive, faster, and takes account of the strategic needs of London as well as considering local issues. The planning system must support the critical objective of accommodating London's population and economic growth through higher density development on previously used sites in areas with good public transport accessibility. It must also be resourced with skilled planners able to manage the complexities of modern spatial planning and development and be able to balance strategic and local priorities.

The planning system in London currently fails to meet these objectives. We welcome the review of the Mayor's planning powers and consider that any consequent changes must strive to meet these challenges.

For the reasons set out below, we support some of proposed procedural changes in and have suggested some additional measures which could be made immediately to improve the system in London. However, we consider that the power for the Mayor to direct grant on major planning applications should be considered once there has been time to assess the impact of the other changes and the strengthening of the Mayor's powers in relation to borough development plans. We are opposed to lowering the threshold of what is defined as "strategic" and the referral of reserved matters to the Mayor.

PLANNING IN LONDON: ISSUES FOR DELIVERY

Whilst housing output has increased in London in recent years, this has been at a time of sustained economic and population growth and in a rising market. What is not known is what new supply might have been achieved if the planning system worked better and more positively promoted development. Some boroughs still fail to meet their annual housing targets.

Despite changes in national policy and the publication of the London Plan, which since commencement of the 2004 Planning and Compulsory Purchase Act has been part of the statutory development plan, development density in many boroughs has not increased to reflect policy changes and in some instances has decreased.

The proportion of planning applications refused in London has increased by almost 40%, from 18% in 2000 to 25% in 2004/05. This is a higher number and larger increase than the rest of the country. At 75%, London has the lowest approval rate of the regions.

Applications still take too long to determine and too often are assessed in the context of local political issues rather than strategic planning policy and the wider needs of the capital.

The failure of the appeal system to give adequate redress when bad decisions are made, due to the substantial delay in getting an inquiry date, contributes to the pressure to reform the Mayor's powers. If the appeal system were faster, with fast-track appeals for strategic schemes and a body of Inspectors specialist in London, this would improve the planning system and consequently increase development.

Any changes to the current system should increase clarity and certainty in planning as well as the speed of decision making. The complexity of planning is such that the practicalities of implementing any changes must not undermine the fundamental objective of increasing speed and clarity.

London First members' experience of the Mayor's planning powers to date has been broadly positive. The level of communication with applicants is good as is the skill level of the planning officers. However, there is some concern with the level of Mayoral involvement in planning applications: although an application might be strategic by virtue of its size, the Mayor seeks to get involved in matters of detail which are not strategic.

Mayoral supplementary planning guidance can also contain inappropriate detail.

When consulting on policy and supplementary planning guidance, the Mayor should be required to demonstrate that he has taken account of consultation responses.

Consideration should be given to whether an amendment to the Mayor of London Order should require the Mayor to respond to consultees demonstrating how he has taken account of their views and providing justification where policy is not amended.

Definition of Strategic

To assess the proposals and any future changes to the system the purpose of the Mayor's strategic planning power and its objectives should be defined to create the context against which his powers can be assessed. The purpose of the Mayor's strategic planning powers should be to:

- establish, through the London Plan (part of the development plan), strategic spatial planning policies and priorities against which Local Development Documents are drafted and planning decisions are taken;
- ensure that strategic applications in the capital reflect the Mayor's priorities and make a strategic contribution to the capital, whilst addressing local needs and concerns; and
- Ensure implementation of the Mayor's strategies thereby preventing development which would cause "significant harm" to the delivery of the London Plan.

Resources

Any change to the Mayor's powers must have regard to resource implications, including the impact an increase in resources for the GLA might have on borough resources. The Mayor estimates that his proposed changes to the definition of strategic applications and the ability to direct grant would increase the number of cases he deals with by about 20%.

The operation of the existing system could be improved through greater training of planners and councillors regarding the implications of the London Plan for local decision making and development documents.

Boroughs should be encouraged to collaborate more and work together, including pooling planning resources where appropriate, building on the experiences of the Olympic Joint Planning Team.

The Consultation

We are concerned by the lack of detail and explanation in the consultation document. Planning is a highly complex and technical area where a change might result in a very different from intended outcome. In order to fully assess what is being proposed it would have been necessary to include greater explanation of how any new system might work.

We support the Government's test for judging the proposed changes - resulting in a demonstrable improvement in the delivery of planning with democratic accountability and with limited impact on adjoining regions. It would be useful to have examples of what is considered to be national policy on "important matters" which may be affected by the proposals.

Proposed Changes to Statutory Instrument 2000 No. 1493

Our response to the consultation is on the basis of the current system as set out in the GLA Act 1999 and Statutory Instrument 2000 No. 1493. We do not consider that a full evaluation of the proposals is possible given that there will be further consultation on the extent of the changes to referral criteria after the outcome of this consultation, as the Mayor is seeking a significant increase in the number of applications deemed to be strategic.

Included at the end of this response are London First's views on the Mayor's proposals in this regard as set out in a November 2005 letter to GOL. In summary, we support the proposed procedural changes but are opposed to lowering the threshold of what is deemed strategic and the referral of reserved matters to the Mayor.

The Mayor's power should be a strategic one and applications that go before him must therefore be truly strategic. In this regard a number of the thresholds should be increased (such as the floorspace threshold in the City, central and outer London.) Strategic issues will be dealt with at the outline application stage, removing the need for the Mayor to consider reserved matters. Evaluation of the proposed options in this consultation should not ignore the possibility that the number of applications deemed strategic might increase considerably.

Immediate Measures

Substantive change as a result of this consultation requires primary legislation which is unlikely to come into effect before 2008 at the earliest. Given the urgency of the need to improve the planning system, when the Government announces its preferred option for change, it should give consideration to effecting immediate change through Ministerial statements and amendments to Circulars. This is particularly important for development plans given that the boroughs are currently producing Local Development Documents (LDDs) under the new system, many of which will have been through Examination by 2008.

In particular the Government can:

- Make a Ministerial statement on the definition of conformity with respect to the relationship between the London Plan and LDDs. This would: restate that the London Plan is part of the development plan and explain the implications for development plans and development control decisions (including that as a consequence the scope for departure applications under the Order is wider than when first drafted) strengthen the requirement for LDDs to reflect London Plan Policy; and clarify what is meant by “significant harm.”
- Request that the Mayor provides an explanation of the application of London Plan policies to an LDD to ensure that the Inspector is able to ensure that they are fully reflected.
- Make a Ministerial announcement restating the requirement for borough planning committee reports to include a statement on relevant London Plan policies, as part of the development plan, as well as the Mayor’s views on the application. Where the committee does not reflect either in its decision it should be required to give reasoned justifications.

Additional Measures

The Mayor’s and Government’s objectives of more and better development would be more achievable if the appeal system was improved and speeded up to give realistic redress to applicants who consider they have been unreasonably refused planning permission. We propose that the Government pilots improvements to the appeal system in London, including the appointment of London specific and specialist Inspectors. This would speed up appeals in London as a result of increased resources as well as through Inspectors having specialist knowledge of the region and London Plan. Consideration might also be given to whether strategic applications should be fast tracked. We consider that development in London is sufficiently distinct and important to the nation’s well-being to warrant this.

This could be funded through charging and ring-fencing an appeal fee where an appeal is made to the London Inspectorate. In addition, the test for whether costs are awarded against boroughs for unnecessary appeals should be reviewed to reduce the number of unnecessary appeals. The issue has been highlighted recently in the Deputy Prime Minister’s statement on the recent Lot’s Road decision on how unnecessary the Inquiry was given the merits of the development and its compliance with planning policy.

In summary London First proposes that:

- Borough development plans should be required to conform to the Mayor's London Plan rather than just be 'in general conformity'.
- When consulting on policy and supplementary planning guidance, the Mayor should be required to demonstrate that he has taken account of consultation responses.
- A series of measures should be made with immediate effect to improve the operation of the planning system including Ministerial restatement of the requirement for borough planning committee reports to include a statement on relevant London Plan policies, as part of the development plan.
- The Government establishes a specialist body of London planning Inspectors to improve the appeal system in London and ensure that making an appeal is a genuine option for applicants.
- Boroughs should be encouraged to collaborate more and work together, including pooling planning resources where appropriate, building on the experiences of the Olympic Joint Planning Team.
- Legislative provision is made for the Mayor to be able to direct grant but this is only instigated when full assessment is made of the impact of the first two measures, and it is demonstrated that planning performance has not improved and the additional power is still required.
- Applicants should be able to request the Mayor to call in the application for his determination where the borough fails to determine it within an agreed period.
- The Mayor's ability to be a signatory to section 106 agreements should not be extended from the current exceptional cases where TfL has been a signatory.
- The Mayor should be a statutory consultee on strategic applications in adjoining regions.
- The threshold for strategic applications is not lowered and reserved matters are not referred to him.

For further information contact:
Judith Salomon
Director of Property and Planning
jsalomon@london-first.co.uk

DEVELOPMENT PLANS

We share the Mayor's concerns that the London Plan, which is part of the statutory development plan in London, is not sufficiently reflected in some borough development plans and consequently in development control decisions. This significantly harms implementation of the London Plan. The need to ensure better conformity is urgent given the number of development documents being drafted and to be examined in the next few years as a result of recent planning reforms.

Irrespective of what option the Government considers appropriate, we consider that the immediate arrangements outlined above will be critical in the short to medium term and may sufficiently address the Mayor's concerns. For example, an efficient way to quickly achieve better implementation is for the Mayor to provide Inspectors on development document examinations with an overview of relevant Mayoral policies and issues.

We consider that the concept of general conformity is subject to too wide interpretation and dispute to satisfy the need for LDDs to reflect the London Plan. A requirement that borough development plans conform to the Mayor's London Plan would allow boroughs to establish local policies where appropriate, whilst ensuring that the London Plan is embedded in LDDs.

If the Government does not consider this option to be acceptable, we would support option B that the Mayor be able to direct on a defined set of issues. These might include housing, density, waste and retail, but should be the subject of further consultation.

To avoid conflict and confusion, the SOS should make it clear that any use of his reserve powers should be restricted to extreme circumstances such as matters of national significance. National policy and any regional differences are considered through the Examination in Public on the London Plan and should therefore be inherent in the Mayor's policy.

The Mayor's powers of direction, as for those of the Secretary of State, should only be used in extremis. The Mayor's representations should mainly be made through the Examination process. The Mayor should only over-rule the binding Inspector's report in exceptional circumstances, with full justification.

The extent to which it is appropriate or necessary to have 33 full Local Development Frameworks is questionable. It could be considered more appropriate to plan on a sub-regional level for some issues such as housing, waste and retail, whilst addressing local issues in more focused LDDs.

DEVELOPMENT CONTROL

The issue of development control is more contentious than development plans as it more obviously and directly affects individuals' rights. The fundamental objective of any change must be to increase the quality and speed of decision making, ensure that applications are not unreasonably refused permission and that boroughs assess them fully in the context of the development plan i.e. the London Plan as well as the local plan. Community involvement must remain a fundamental part of determining major planning applications. We believe this is best achieved at the borough level.

We propose that while legislative provision might be made for the Mayor to have the power to direct grant (Option B), this should only be instigated once full assessment has been made of the impact of the change to development plans as well as our proposed immediate measures. The power should only be activated if these have been proved not to work. This approach is akin to the power to remove the ability to "twin track" in the 2004 Planning and Compulsory Purchase Act once it has been demonstrated that local planning authority performance has improved.

We have reached this view because:

- We consider that community involvement is fundamental to the planning process and that this is best achieved at the borough level.
- We also concerned that if the Mayor were to have the power to direct grant additional safeguards will be added to the system which would end up creating a slower system, contrary to the objective of change.
- We consider that the measures we have suggested, including reviewing the test for awarding appeal costs, will achieve the desired goal of quicker and better planning decisions.

Any safeguards as part of the power to direct grant must not add undue delay or uncertainty to the system. If what is proposed by the Mayor in this regard, the safeguard of a period between the Mayor's direction and the borough granting permission when the borough or other parties can request that the SOS calls in the application for his determination, is not considered achievable we would not support any change to the current system beyond those outlined above.

To avoid undue delay the SOS should have a maximum 21 days to decide what action to take. The grounds for action should be limited to issues of national significance or concern with the propriety or process undertaken by the Mayor. The Mayor's decision would remain subject to judicial review and the statement of reasons and decision notice would have to withstand scrutiny in the courts.

If the Mayor were to direct grant we consider it appropriate that he agrees the planning conditions as a safeguard against the borough requiring onerous conditions rendering the permission unimplementable. The Mayor would have to work with the borough to monitor their discharge.

In cases where the borough fails to determine an application within an agreed period (26 weeks for a strategic application or the period set out in a Planning Delivery Agreement), the applicant should be able to request that the Mayor calls in the application for his determination.

The Mayor's promotional role would not be prejudiced if the Mayor is able to direct approval providing any comments made as part of his promotional role are not on matters of detail nor made once formal pre-application discussions have started.

SECTION 106

We have confined our comments to the current planning obligations regime. The Government is currently consulting on proposals for Planning Gain Supplement with the prospect of introducing it in 2008, at about the same time the changes to the Mayor's powers would come into effect. If the Government were to introduce Planning Gain Supplement it would substantially change the nature of section 106, removing the ability to pool and scaling back section 106 to site specific matters. The Mayor's role would relate to regionally redistributed Planning Gain Supplement.

We do not support the Mayor becoming a statutory signatory to section 106 agreements. The Mayor acknowledges that in exceptional cases TfL has been a signatory. Where this is appropriate we consider that this continues on a voluntary basis. As the circumstances will be exceptional we do not consider it necessary or appropriate for this to be on a statutory basis. If the Mayor or his agencies were to be statutory parties to section 106 agreements it could significantly lengthen the time it takes to agree them thereby slowing down the development process.

We agree that in some cases development impacts are wider than the site and it may be appropriate to pool contributions. In this regard it may be beneficial for TfL to be a signatory to section 106 agreements. However, this should not be extended to other parts of the GLA family. Such obligations may be two-way and require TfL to undertake specific action.

Where pooling arrangements are made regulations would need to clarify:

- The point in the planning cycle that pooling may be undertaken for new transport infrastructure
- Arrangements to hypothecate and ring-fence funds
- Who will hold the funds
- Who will spend the funds
- Clawback arrangements if the infrastructure is not developed
- How long funds will be held before being returned, with interest
- Arrangements to ensure independent and realistic costing of necessary infrastructure is undertaken to ensure value for money.

Arrangements would also have to ensure that such pooled contributions do not inflate the amount of Section 106 required but lead to a re-prioritisation of requirements from the GLA and borough. If Section 106 costs are inflated they could lead to development being unviable and not taking place, which would undermine the Mayor's and Government's objectives to accommodate growth and promote regeneration and would forgo wider environmental benefits and those from planning obligations.

We consider that the Mayor should not be a statutory party to negotiations on Section 106 Agreements associated with strategic applications.

APPLICATIONS IN ADJOINING REGIONS

We agree that the Mayor should be a statutory consultee on strategic applications in adjoining regions to ensure that they do not have an undue adverse impact on London or the implementation of the London Plan.

Annex One:

LETTER to GOL, February 2005
Mr Andrew Melville
Head of Planning
Government Office for London
Riverwalk House
157-161 Millbank
London SW1P 4RR

2 February 2005

Review of the Mayor's Planning Powers

I am writing to set out London First's initial views on the review of the Mayor's planning powers. I understand that there will be full and formal consultation later in the year. This letter expresses the views of London First members and responds to the proposals raised in Giles Dolphin's letter of 17 November.

When the Mayor's powers were established in the Greater London Act 1999 and Statutory Instrument 2000 no. 1493, it was not intended or envisaged that the London Plan would have development plan status. However, by virtue of section 38(2) of the Planning and Compulsory Purchase Act 2004 the London Plan is now part of the development plan in London. This therefore adds weight to its policies and changes the context for planning applications and strategic referrals.

As the thresholds were set prior to publication of the London Plan, we are now in a better position to judge what should be termed strategic.

PURPOSE OF THE MAYOR'S PLANNING POWERS

The Mayor has dealt with a total of 850 strategic referrals, about 250 per year (draft annual London Plan monitoring report). It is not possible to ascertain the criteria under which the applications were referred although in many instances the likelihood is that the applications are deemed strategic on more than one ground. We consider it unlikely that as many as 250 applications per year are genuinely of strategic importance.

The purpose of the Mayor's powers should be implementation of the Mayor's strategies and should therefore be to stop development which would cause "significant harm" to the delivery of the London Plan. In reviewing the Mayor's powers it is important to distinguish between what is a strategic issue and what is strategic development. The fact that an application raises strategic issues does not in itself mean that it should be deemed to be a strategic development.

PROCEDURAL CHANGES

We support the principle of the GLA's proposed changes to procedures as they will increase clarity around notification and consultation. The request for a minimum of 21 days consultation "for the most complex cases" requires definition.

In allowing increased time for the GLA, borough targets should be reviewed to avoid penalising London local planning authorities with respect to the allocation of Planning Delivery Grant. This should be achieved through a more realistic time target (13 weeks makes no sense for truly strategic applications and does not take account of the 16 week target when there is an EIA) in the order of twenty weeks.

THE MEANING OF DEVELOPMENT

We do not consider it desirable or appropriate for the Mayor to be re-consulted on applications with respect to the approval of reserved matters, conditions or listed building consent. The purpose of the Mayor's power relates to the strategic nature of development. Reserved matters and conditions in relation to an application which the Mayor has already agreed not to object to in principle can not be deemed strategic.

DEFINITION OF STRATEGIC APPLICATIONS

We support the proposed clarification regarding who deems an application to be strategic although in reality the Mayor is likely to remain reliant on notification from boroughs.

We propose that the thresholds over which applications are deemed strategic are reviewed as follows:

Category 1A

Residential development of more than 500 units
London First Proposal – no change.

We do not consider the reduction in the threshold as proposed by the Mayor to be desirable or appropriate. Schemes of 150 units are captured if they are a departure from the development plan. Larger schemes are likely to have been through the plan-making process at local and regional level and therefore by implication comply with the Mayor's policies.

We are concerned that the rationale for the proposed change is to "increase the Mayor's scope to secure affordable housing...." The ability for the Mayor to do this is through policies contained within the London Plan (which has development plan status) and ensuring LDFs are in general conformity with the Plan. The regional role is clearly set out in the revisions to PPG3. Further intervention is therefore not necessary.

Category 1B:

Currently - City – 30,000m², Central London 20,000 m², Outer London 15,000m²
London First Proposed change – City (including Isle of Dogs) – 50,000 m²
Central London – 30,000 m²

The current thresholds are too low and do not reflect truly strategic development. We are deeply concerned that the Mayor wishes to lower the threshold further to capture more development. The role of the Mayor's development control power should be restricted to exceptional cases which are genuinely strategic development.

We do not consider thresholds set in a 1998 document to be relevant in 2005 especially as they were not suggested against the backdrop of a spatial development strategy for London with development plan status.

The Isle of Dogs should be treated in the same way as the City i.e. 50,000m². A 30,000m² threshold is more appropriate for the rest of central London.

Category 1C:

Current thresholds: buildings taller than 25 metres if adjacent to the Thames, 75 metres in the City, 30 metres outside the City

These thresholds should be reviewed in light of the London Plan's policies and approach to tall buildings (primarily Policy 4B.8 page 181) and the planned SPG on View Management which will trigger transfer of strategic view designation to the Mayor. A height threshold should be added to the departure tests (Part III).

We do not consider that there is any justification to reduce the height thresholds as proposed by the Mayor.

Waste Facilities

The proposal to include any extension of existing facilities that would result in breaching the 50,000 tonnes annual throughput should be refined as this could represent a minor change and therefore not be of strategic significance.

Railway Stations

The comparison of the impact of an increase in capacity of a railway station and air passenger terminals is not realistic or helpful. Any proposal to include stations should be better defined and truly strategic and limited to an agreed list of major London stations.

Loss of Assembly and Leisure

We do not consider the loss of D1 and D2 uses as described to be a matter of strategic importance.

Non-residential car parking

We do not consider the provision of a car park of fifty spaces to be in any way strategic. The threshold should remain at 200 spaces.

Existing out of centre retail units

We do not consider the development as described to be strategic.

Casinos

Although we acknowledge that the size thresholds as described in the Gaming Bill are far smaller than those for developments referable to the Mayor, the role of the Regional Planning Body has been set out by the Government and is through designation of suitable areas within the RSS (the London Plan). We consider this to be appropriate in giving the Mayor a strategic role.

We do not propose any changes to the major infrastructure or development which may affect strategic priorities.

The role of the Secretary of State

The role of the SOS should be confined to issues which are truly of national significance. We do not consider that the applications for the Thames Gateway Bridge to be of national significance, although the new infrastructure is critical regionally. It is therefore disappointing that the applications have been called in for a public inquiry despite thorough local assessment and consultation.

I would be pleased to discuss this further with you ahead of the formal consultation process.

With best wishes,

Judith Salomon
Director of Property and Planning
CC Roger Chapman, Giles Dolphin – GLA