

Real Estate:UK response to the MHCLG consultation on planning powers for Mayors in England

Prepared and submitted by
Sam Bensted, Assistant Director (Planning and
Development) RE:UK
SBensted@realestateuk.org

About Real Estate:UK

Real Estate:UK (RE:UK) brings together global and domestic capital, world-leading expertise and forward-thinking policy to drive growth.

With over 500 member organisations spanning investors, developers, advisers and operators, we represent the full breadth and diversity of the commercial real estate market, worth £950bn to the UK economy.

We connect UK and international investors with the insight, networks and opportunities that make the UK one of the world's most dynamic and investable markets. Working closely with national governments and their agencies, as well as regional and local leaders, we promote the UK real estate sector as a premier destination for capital. Through direct engagement with ministers, policymakers and advisers, we help shape a regulatory environment that unlocks growth and builds investor confidence.

We support thriving communities across the UK through the homes, workplaces, critical infrastructure such as logistics and data centres, and retail and leisure centres our members build, maintain and operate.

Real Estate:UK welcomes the opportunity to respond to this consultation on proposals to strengthen mayoral powers. Our response has been informed by the experience of members operating across the UK and reflects the perspective of investors, developers, advisers and operators involved in delivering development and infrastructure.

We support the Government's ambition to strengthen strategic decision-making and enable mayors to play a greater role in supporting growth and development. Our comments focus on ensuring that the proposed powers are clear, proportionate and practical, and that they support faster and more certain delivery rather than introducing additional complexity into the planning system.

General comments

We support greater devolution where it enables delivery. Greater mayoral powers can help places take coordinated decisions on economic development, transport, skills, housing, infrastructure and investment. A strategic authority can consider the benefits of development across a wider geography, alongside local impacts. This is particularly valuable for industrial and logistics schemes, whose jobs, economic output and business rates benefits often extend beyond the authority in which they are located.

The success of this next phase of devolution will be judged by whether additional powers and funding translate into homes, infrastructure, investment and economic growth. Strong

political leadership will be needed to navigate national, regional and local interests. Strategies rooted in the identity, economy and needs of places can help development strengthen communities and support positive change.

Mayoral intervention could help strategically important schemes, but must add value to the planning process. We support the ability of mayors to call in strategic applications, particularly where a local planning authority is minded to refuse a scheme with significant wider benefits. For a major industrial or logistics proposal, mayoral consideration could bring its wider employment and economic contribution into the decision. Members also noted that, once a scheme is called in, direct engagement with mayoral decision-makers through a case officer may offer greater certainty than an appeal.

Experience in London has nevertheless been mixed. Members reported that mayoral involvement can add time, cost, bureaucracy and uncertainty, including where a referred application is ultimately not called in. A framework based substantially on the London model must therefore be applied with regard to the different circumstances and governance arrangements of other mayoral areas. Strategic intervention should add value without duplicating work undertaken by local planning authorities.

The period before Spatial Development Strategies are adopted needs particular care. There is a case for establishing strategic powers before the new strategic planning system is fully in place, given the time Spatial Development Strategies (SDSs) will take to prepare. However, the proposed interim test for intervention may be too broad and uncertain. Without an SDS setting out strategic priorities, applicants may struggle to anticipate whether a mayor will intervene or how a strategic decision will be made against the existing local policy framework. The basis for intervention must be clear, grounded in sound planning reasons and understood by applicants from the outset.

The reforms must work alongside wider changes to local governance and planning policy. The relationship between mayoral powers, devolution, local government reorganisation and SDS preparation requires careful consideration. Governance arrangements are considerably more developed in some areas than others, and workable strategic governance will be important to the success of the proposals. Reform of the National Planning Policy Framework, including National Development Management Policies, provides an opportunity to define the distinct roles of national, strategic and local policy and avoid duplication.

Mayoral authorities will need sufficient resources to prepare policy and determine applications promptly, with appropriate development management, policy and administrative capacity. The Government should also consider how mayoral intervention will interact with statutory consultees and whether it can help secure timely engagement from them. The cumulative effect of new policies, processes and costs on viability and delivery must be considered, particularly while several reforms are progressing at once.

We welcome Mayoral Development Orders as a tool for strategic delivery. They could give mayors a proactive means of supporting development, including cross-boundary schemes and permission across multiple sites. Mayoral leadership can also help bring forward public land and support land assembly through consensus building and, where necessary, compulsory purchase.

Experience of Local Development Orders also provides useful lessons for the development of the MDO regime. Flexible, long-term and parameters-based approaches can provide greater certainty for investors while retaining the ability to respond to changing market requirements. Effective public-private collaboration will be particularly important, combining market knowledge and an understanding of what is deliverable with the certainty provided by public-sector involvement.

Mayoral Community Infrastructure Levy must have a clear and deliverable strategic purpose. Mayoral Community Infrastructure Levy (MCIL) could support important infrastructure, including in areas without local Community Infrastructure Levy (CIL). Members pointed to Crossrail as an example of funding linked to a clearly identified strategic project. They were concerned, however, about introducing an additional charge without a sufficiently clear infrastructure purpose. Viability may be particularly challenging where development economics are already difficult or local CIL arrangements are not well established. MCIL must be considered alongside local CIL, section 106 obligations and wider development costs.

Part 1: Applications of potential strategic importance

Questions 1 and 2

Question 1: Do you agree with the proposed PSI application categories for areas outside of London, as set out in Annex A?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why, referencing specific categories.

Question 2: Do you propose any other categories of development which should be considered a PSI application, including in London?

Please reference the particular category if you are proposing amendments to it.

Combined response

RE:UK supports referral categories that allow mayors to consider development with strategic benefits. The existing London criteria provide a useful starting point, and members have highlighted their value in allowing the wider housing and economic benefits of proposals to be considered. The categories and thresholds must nevertheless be tested against the circumstances of different mayoral areas.

The proposed commercial threshold needs further consideration. Members questioned whether 15,000 sqm is the right threshold for strategic commercial development. It does not align with some other commonly used thresholds around 10,000 sqm, while members with London experience questioned whether a 15,000 sqm industrial or logistics scheme would necessarily be strategic. A higher threshold could focus the process on schemes with the greatest wider significance.

There is also a case for retaining access to mayoral consideration for a wider range of schemes, particularly where a local authority is resistant to development with substantial jobs, economic output and business rates benefits. A lower threshold could provide that opportunity. The balance depends in part on how much time and cost referral adds: members noted that the referral process in London can delay an application even when the mayor does not ultimately call it in. The threshold should therefore be assessed against both the opportunities for strategic intervention and the burden placed on all schemes that must be referred.

The proposed category concerning existing employment land could help protect strategic economic capacity. Members noted the proposal for intervention where development could threaten the continued employment use of four hectares or more of existing industrial and logistics land. Decisions about land of this scale may have implications beyond a single local authority. The category should be applied with a clear understanding of the site's strategic role and the circumstances in which mayoral involvement would add value.

The residential threshold also requires careful calibration. Members expressed different views on the proposed threshold of more than 150 homes. Some considered that it could capture too many applications and extend mayoral intervention beyond genuinely strategic matters, particularly before an SDS is adopted. Others noted that a development of this size can make a substantial contribution to housing delivery outside London and may be significant within an individual authority's development pipeline.

Strategic importance will vary by area. The London categories should be tested against mayoral areas with different development markets, governance arrangements and stages of progress towards an SDS.

Question 3

Should mayors outside of London be able to call in Category 3J (50 homes or more) applications where local planning authorities are minded to refuse?

Yes or No. Please provide reasons why.

Response: Yes.

We support allowing mayors outside London to call in applications for 50 homes or more where a local planning authority is minded to refuse permission. This would allow the wider contribution of a scheme to housing delivery and placemaking to be considered.

The power should be exercised on a clear planning basis and supported by sufficient resources for timely decisions. It should also be coordinated with any referral to the Secretary of State so that successive stages of intervention do not create unnecessary delay.

Questions 4, 5 and 6

Question 4: Do you agree that the scope of powers to intervene in relation to PSI applications should expand as a SDS is progressed?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 5: Do you agree that where a SDS is not yet adopted, a decision by a mayor to either direct refusal or call in a PSI application will need to be justified in respect to growth?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 6: Do you agree with the proposed criteria for mayors to use their PSI application powers following adoption of a SDS?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Combined response

An adopted SDS should provide the principal strategic basis for intervention. It would give applicants greater clarity about the policies against which proposals will be considered. Linking the scope of mayoral powers to progress on an SDS could also encourage timely preparation of the strategy.

There is nevertheless a case for establishing strategic powers before SDSs are adopted, given the time the new system will take to become fully operational. Members saw potential for mayors to support housing delivery and economic growth during this interim period, including where a local authority is resistant to a scheme with wider benefits. They also expressed

significant concern that the proposed test for intervention before adoption could be too broad and uncertain.

Without an SDS identifying strategic priorities, applicants may struggle to anticipate whether a mayor will call in their scheme. It is also unclear how mayors would exercise strategic powers while determining applications against existing local plans, national policy and other economic or growth strategies. Applicants need to understand which documents will guide a decision, how competing considerations will be weighed and what strategic grounds would justify intervention. These questions may be especially difficult in areas where mayoral governance is still developing or local government reorganisation is under way.

Where powers are available before adoption, national guidance should therefore set clear criteria for their use and explain what it means to justify a direction to refuse or a call-in *in respect of growth*. Housing delivery performance, local growth plans and the wider economic contribution of a proposal may be relevant considerations, but intervention must remain grounded in sound planning reasons. Following adoption, the SDS should provide the strategic benchmark for the exercise of these powers.

Question 7

Do you agree with the proposed approach to written representations for called-in PSI applications?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Response

We support written representations as one possible procedure for determining called-in applications. A proportionate choice of procedure can help manage resources and timescales without requiring a hearing or inquiry in every case. The circumstances in which written representations are appropriate should, however, be clearly defined.

Members also raised the position of an applicant whose scheme is called in when permission had otherwise been expected. Consideration should be given to allowing the applicant to request at least a hearing in those circumstances.

Question 8

Do you agree to the approach to exclude centrally led UDCs or NTDCs from a mayor's powers to direct refusal and call in PSI applications?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Response

The relationship between centrally led development corporations, mayoral authorities and local planning authorities needs to be clearer, particularly in the context of the new towns programme. Uncertainty over which body leads, and how their respective powers interact, could have practical consequences for delivery.

Members questioned whether a blanket exclusion from mayoral direction and call-in powers is necessary given the Secretary of State's retained call-in role. They did not reach a collective position on the proposed exclusion. We ask the Government to explain the intended governance arrangements and how conflicts or overlapping responsibilities would be resolved.

Question 9

Do you have any suggestions for minor and/or technical changes to the PSI application procedure?

Yes or No. Please provide details.

Response

The procedure should clarify expectations for pre-application engagement, any associated fees and decision-making timescales. Mayoral authorities will need sufficient capacity to handle referrals promptly. The Government should also consider how the process will secure timely input from statutory consultees and whether mayoral involvement can help resolve delays in that engagement.

The relationship between mayoral and local planning processes should be clearly defined. Experience in London demonstrates the importance of ensuring that strategic intervention adds value rather than duplicating work already undertaken by the local planning authority. Referral itself can add time and cost even where an application is not called in. The procedure should therefore be proportionate and coordinated with Secretary of State referral processes to avoid successive stages of intervention prolonging decisions.

Part 2: Mayoral Development Orders

Questions 10 and 11

Question 10: Do you agree that Mayoral Development Orders cannot be used for Schedule 1 EIA Development?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 11: Do you agree that Mayoral Development Orders cannot be used for minerals development?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

RE:UK does not have a specific position on the proposed exclusions for Schedule 1 EIA development or minerals development.

Questions 12 to 16

Question 12: Do you agree with the proposed approach to preparing a Mayoral Development Order?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 13: Do you agree with the proposed approach to publicity and consultation of a Mayoral Development Order?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 14: Do you agree with the proposed arrangements for making a Mayoral Development Order?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 15: Do you agree with the proposed approach to approval of conditions following the grant of permission through a Mayoral Development Order?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 16: Do you agree with the proposed approach to revisions and revocations of a Mayoral Development Order?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Combined response

We welcome MDOs as a means of proactively supporting strategic and cross-boundary development. They could be particularly useful where a proposal spans more than one local planning authority and differing local positions might otherwise hinder progress. An opportunity to engage the mayor at the outset could help avoid a prolonged process of awaiting local decisions before mayoral intervention becomes possible.

The ability to cover multiple sites is valuable. An MDO's potential extends beyond individual sites. This should be clear in guidance and in how the power is promoted.

The design of the MDO regime should draw on practical experience of successful Local Development Orders. LDOs demonstrate the potential value of flexible, long-term and parameters-based planning permissions which undertake much of the necessary planning and environmental work upfront, followed by a more focused compliance process as individual development comes forward. This can help reduce planning risk and provide greater certainty to investors and developers.

Successful delivery will also depend on close collaboration between the public and private sectors. The private sector can bring market knowledge, investment and an understanding of what is commercially deliverable, while mayoral and local authorities can provide strategic direction and planning certainty. Early involvement of relevant statutory consultees can also help identify and resolve issues before individual development proposals come forward.

Government should consider accompanying the new powers with a programme of pathfinders and appropriate implementation support. Previous experience of LDO pathfinders suggests that practical examples can help build confidence and capacity among planning authorities. Support through mayoral strategic authorities and/or Homes England could help demonstrate how MDOs can be used effectively to unlock housing, regeneration and strategically important economic development.

The legal effect of an MDO should be described precisely. Members emphasised that an MDO grants planning permission, potentially at a high level and subject to controls. Describing it instead as a framework for future development consent could create uncertainty about its relationship with strategic environmental assessment.

Procedures should be proportionate to the development concerned and should not require an inquiry in every case. We do not have specific comments on the proposed detailed arrangements for publicity, consultation, approval of conditions, revision or revocation.

Part 3: Mayoral Community Infrastructure Levy

Questions 17 and 18

Question 17: To what extent, and in what ways, could evidence and analysis used to prepare a Spatial Development Strategy (SDS) inform work to prepare a CIL charging schedule?

Free text.

Question 18: Should SDS examination generally take place at the same time as CIL charging schedule examination, and where would greater flexibility be justified?

Yes or No. Please provide your reasons.

Combined response

The SDS should establish a clear relationship between growth and the infrastructure MCIL will fund. Evidence prepared for an SDS can inform both the strategic infrastructure priorities and the viability assessment underpinning a charging schedule. Members emphasised the importance of identifying deliverable projects in advance, rather than using MCIL to fund an ad hoc collection of schemes.

Question 19

How might the requirements for updating a MCIL charging schedule best ensure mayors of strategic authorities can keep rates reflective of market conditions?

Free text.

Response

MCIL rates must reflect development viability and changing market conditions. Conditions can differ substantially between places within the same strategic authority; members highlighted Cambridge and Peterborough as one example. Rates must also be considered alongside local CIL and other development costs.

We do not propose a specific timetable or mechanism for updating charging schedules, but the process should allow rates to respond to material changes in viability.

Questions 20 and 21

Question 20: Should the CIL regulations require mayors to take account of local tier authority CIL rates when setting their own rates?

Yes or No. Please provide your reasons.

Question 21: Are there further conditions or requirements (i.e. beyond those which already exist, and those proposed in this consultation) that mayors should need to fulfil before they can charge MCIL?

Free text.

Combined response — Yes to Question 20.

Mayors should be required to take account of local CIL rates when setting MCIL. The assessment must consider the combined burden of both levies, section 106 obligations and wider planning, regulatory and construction costs. Viability may be particularly challenging in areas where development economics are already difficult or local CIL arrangements are not well established. MCIL should not become an additional charge that makes development unviable.

There should be a clear distinction between infrastructure funded by the local and mayoral tiers, with arrangements that avoid double counting. A mayor should identify a clear and deliverable strategic infrastructure purpose before introducing a charge. Charging decisions must also reflect variation in market conditions across a strategic authority's area.

For Question 21, we emphasise the need for a defined strategic purpose, robust consideration of cumulative viability and coordination with local charging arrangements. We do not propose further distinct statutory conditions beyond these points.

Questions 22, 23 and 24

Question 22: Do you agree that MCIL outside of London should be capable of funding a broader range of strategic infrastructure than the current model in London (which funds strategic transport infrastructure only)?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 23: What type of strategic infrastructure do you think MCIL should be capable of being used to fund, and how might this affect rate-setting?

Free text.

Question 24: Could there be exceptional cases where it would be appropriate for MCIL to fund matters in an area that would usually sit within a single local tier authority's responsibilities?

Yes or No. Please provide more detail.

Combined response

MCIL should fund infrastructure that supports the mayor's strategic objectives and delivers benefits across a wider area. Members supported strategic infrastructure funding where it is linked to a clear and deliverable project. They pointed to the Crossrail approach and the potential for major regional transport projects, including metro extensions.

A broader scope must retain a clear distinction between strategic and local infrastructure. Members were concerned that MCIL could otherwise become an additional charge without a sufficiently clear infrastructure purpose, or fund an ad hoc range of projects ordinarily falling within an individual local authority's responsibilities. The absence of local CIL should not, by itself, justify using MCIL for a project specific to that authority.

Infrastructure priorities should be planned alongside the SDS. Rates must be assessed against viability and other development contributions, with particular care in weaker markets and areas where local CIL arrangements are not well established. Members did not identify an agreed list of additional non-transport infrastructure types or specific exceptional cases in which MCIL should fund a local-tier responsibility.

Question 25

How can the collection of MCIL work simply and effectively in all circumstances, including when the local tier authority does not charge its own CIL?

Free text.

Response

The experience of London authorities collecting MCIL before introducing their own local CIL offers a useful reference point. Members did not identify collection in these circumstances as the principal challenge. Their greater concern was that the levy should have a clear strategic purpose, fund identified infrastructure and remain viable alongside other contributions.

Question 26

Do you have any other observations or comments on the expanded MCIL proposals, or anything related to them?

Free text.

Response

MCIL could help deliver strategic infrastructure in areas where local CIL has not been introduced. Its success will depend on a clear connection between contributions collected and projects delivered. Members raised concerns about existing local CIL receipts remaining unspent, which reinforces the need to identify projects and plan for their delivery.

Members also drew attention to the earlier CIL review's discussion of a strategic infrastructure tariff. Defining eligible infrastructure by reference to the mayor's strategic objectives would provide a useful guiding principle.

The introduction of MCIL should reflect differences in the maturity of local CIL arrangements and in development viability across mayoral areas. A clear, deliverable infrastructure project and a credible plan for spending receipts will be important to securing confidence that the levy supports growth.

Part 4: Local Development Orders

Questions 27 to 29

Question 27: Do you agree to removal of the restriction that LDOs cannot be used to grant planning permission for development affecting listed buildings?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 28: Do you agree that Local Development Orders cannot be used for minerals development?

Strongly agree, Partially agree, Neither agree nor disagree, Partially disagree, or Strongly disagree. Please provide reasons why.

Question 29: Do you have any further minor technical changes to the Local Development Order procedure?

Yes or No. If yes, please provide more detail.

RE:UK supports measures which enable greater and more effective use of Local Development Orders. Experience demonstrates that LDOs can provide flexible, long-term planning certainty and can be particularly effective where public and private partners work together to establish the parameters for development upfront. Their potential application extends

beyond major strategic sites to housing, brownfield development, regeneration and multiple-site approaches.

We therefore support in principle removing unnecessary barriers to their use, including enabling LDOs to grant planning permission for development affecting listed buildings, subject to appropriate heritage safeguards. This could be particularly valuable in town and city centres, where heritage constraints can otherwise limit the usefulness of LDOs as a regeneration tool.

More broadly, Government should consider how it can encourage greater use of LDOs in practice. A further programme of pathfinders, accompanied by appropriate funding and guidance, could help build confidence among local planning authorities and demonstrate how the tool can support delivery under the reformed planning system.