

Morgan, Jackson

From: Kevin Hart [REDACTED]
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THIS IS AN EXTERNAL EMAIL

Dear Sir/Madam,

I attach the submission of the Planning and Environmental Committee of the City of London Law Society to the above consultation.

I would be grateful if you would acknowledge receipt, and look forward to hearing from you.

Yours faithfully

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The City of London Law Society (CLLS)

City Plan 2040 – Regulation 19 Consultation

Introduction

The CLLS represents approximately 21,000 practicing in the City of London through individual and corporate membership. This Consultation Response on the City Plan 2040 is provided by the CLLS Planning and Environmental Law Committee.

The Planning and Environmental Law Committee comprises specialist planning and environmental lawyers representing over 28 law firms who have a particular focus on Planning and Environmental Law and in supporting the City of London as a global centre for the legal profession.

In terms of the draft City Plan consultation, whilst many – if not all – of our members are currently working or have recently worked on development schemes within the City of London, it is not the Committee's brief to pursue representations or submit comments on behalf of clients – which may on occasion prove to be rather more subjective, than objective.

The Committee's brief in the context of the draft Plan is to remain objective and to confine its comments to legal matters – and in the case of the draft Plan, whether it is “legally compliant” and “sound”.

In this context we are conscious of the need to ensure that, in accordance with paragraph 35 of the NPPF, to be “sound” the Plan must be –

- “(a) **Positively prepared** - providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do and is consistent with achieving sustainable development;*
- (b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
- (c) **Effective** – deliverability over the plan period , and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*
- (d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national policy, where relevant.”*

The comments that follow are based on the draft Plan's chapter headings, taken sequentially.

1 Strategic Priorities

- 1.1 The Committee is conscious of the need to ensure general conformity with the London Plan but would query whether the sole use of the term “Strategic Priorities” in this part of the draft Plan should be qualified. The Plan quite properly goes further than just identifying “strategic” issues in that it also then has to demonstrate and explain how those strategic priorities can be realised on the ground.
- 1.2 What this chapter is surely wishing to identify at the outset is the City Corporations’ priorities – i.e., “the City Plan’s Priorities”. The Committee does, of course, accept that the use of the word “Strategic” quite properly forms a theme throughout the draft Plan, but with a London Plan and neighbouring Local Plans, and against these, the specific unique needs of the “City” – some underlining of the City Plan’s objectives might be appropriate?
- 1.3 In terms of the three strategic priorities/objectives identified in line with paragraph 8 of the NPPF (which could perhaps usefully be referenced?) the Committee would query whether the Priorities as identified risk laying the City Corporation open to the criticism that it has excluded some of the key elements as identified in the NPPF.
- 1.4 For example, in the Economic Objective the Committee would query whether there should be a specific reference to achieving a “competitive economy” and we would suggest the deletion of the word “*more*” in the objective – “*Creating a more vibrant and diverse retail economy*” in that the use of that word invites comparisons.
- 1.5 We note that in the Environmental objective (1.4) there is no reference to Biodiversity Net Gain which it would seem to be an omission in light of draft **Policy OS4: Biodiversity Net Gain** – upon which the Committee comments below.

2 Spatial Strategy

- 2.1 The Committee notes that there are errors in the paragraph numbering within this section. We consider that the first paragraph (currently numbered 2.1) should not be numbered and instead should be read as a normally formatted paragraph to be consistent with other chapters.
- 2.2 In paragraph 1 we would query whether the wording could lead to misinterpretation. Is the paragraph acting as statement or what will happen or as something that the City Corporation would like to happen – i.e., an objective?
- 2.3 Overall, the wording employed in this section is possible over-generalised? We appreciate that there is a thin dividing line between setting policy strategies and setting policy objectives but we do wonder whether the wording invites an over positive interpretation – or put another way, when will a given development, proposal, change not meet the broad Spatial Strategy?

3 Health, Inclusion and Safety

- 3.1 **Strategic Policy S1: Healthy and Inclusive City** – The Committee would suggest that the word “*some*” in paragraph 3.1.1 – “*some overcrowding of the housing stock*” could usefully be deleted?

- 3.2 We note that paragraph 3.3.5 refers to the use of non-combustion generators, however the paragraph itself acknowledges that this is unlikely to be practical with current technology. This likely undermines the effectiveness and proportionality of the policy.
- 3.3 The Committee would suggest reframing this paragraph to indicate that developers should seek to use the most pollution-friendly generators available with the technology at the time of the development being built. The effectiveness of this policy may be assisted further by considering how planning conditions or obligations could provide for efficient use of power generation technology.
- 3.4 It is noted that in paragraph 3.4.5 in relation to **Policy HL3: Noise**, consideration is given to enhancements to the City's environment. We note that this is currently framed as indicating how buildings could positively contribute to noise pollution but does not specifically provide a policy to encourage this.
- 3.5 The Committee considers that a degree of obligation could be added to this policy – for example by stating that major developments are required to contribute to infrastructure that positively enhances the City's acoustic environment.
- 3.6 Overall, this is clearly a very important chapter within the draft Plan. Whilst some third parties may wish to introduce amendments to specific directions taken in some instances, the Committee applauds the overall strategy which in legal terms, it considers to be sound.

4 Housing

- 4.1 The Committee recognises the potential dilemma the city corporation faces in the context of Housing policy. The city of London is properly recognised as one of the hubs of the UK economy – and that recognition must if anything be underlined enhanced.
- 4.2 At the same time, however, the City Corporation quite probably accepts its obligations in relation the provision of housing even though with a lack of available development space for new housing - as recognised by implication at least at Paragraph 3 of the **Spatial Strategy** – a difficult balance has to be struck.
- 4.3 In this context, the Committee notes that paragraph 4.1.12 acknowledges the size, commercial character and priority that has to be given to commercial development in the City of London.
- 4.4 Additionally, in recognition of the “balance”, it is noted that paragraph 4.1.13 indicates that the City Corporation aims to deliver social housing on land both inside *and outside* the City.
- 4.5 Given the commercial importance and focus of the City, the Committee would endorse collaboration with neighbouring boroughs to facilitate future housing delivery. Certainly, in the view of the Committee, this objective falls within paragraph (b) of the soundness test in the NPPF as being “*justified*”.
- 4.6 It is also noted that paragraph 4.1.8 refers to **Policy SD5 of the London Plan** stating that: “*The London Plan’s strategic framework includes Policy SD5 which indicates that residential development is inappropriate in the commercial core of the City of London.*”

- 4.7 Having considered the wording of **Policy SD5** above, the Committee draw attention to the fact that the policy actually suggests that residential development would be inappropriate “*in defined parts of the City of London... (areas to be identified by boroughs in development plans)*”.
- 4.8 This may be a subtle nuance, but the Committee does query whether consideration should be given to amending paragraph 4.1.8 to reflect more accurately the wording of **Policy SD5** of the London Plan?
- 4.9 On the subject of affordable housing, we note that paragraph 2.a. of **Strategic Policy S3: Housing** requires the delivery of a minimum of 50% affordable housing “*on public sector land*”.
- 4.10 We would suggest consideration is given to clarifying the scope of the requirement, for example, would this be necessary on public sector land outside identified residential areas? Does the policy effectively restrict the delivery of affordable housing on non-public sector land? We query whether the policy may be a little over-prescriptive?
- 4.11 We also note paragraph 4.2.6 which says: “*To ensure that permissions for new housing are built out in a timely fashion, developers should provide information on the expected completion date for new residential development.*”
- 4.12 The reality, however, is that the provision of information by the developer will not *guarantee* when authorised works will complete, and so consideration should be given to rephrasing 4.2.6 to explain that the provision of such information will assist the City in understanding *when* works are likely to complete.
- 4.13 The Committee notes the inherent flexibility provided in paragraph 4.2.15 with regard to the “*various types of affordable housing*” and the need to strike a balancing compliance with the City Plan on the one hand and the London Plan on the other. The Committee does wonder, however, whether in light of the terms of paragraph 4.2.15 the following paragraph 4.2.16 dealing with “intermediate” housing may add to the complexity of provision and perhaps requires further clarification?
- 4.14 Whilst it is accepted, for the reasons indicated, that there is no need to “*allocate sites in the local Plan to meet housing targets*” (paragraph 4.3.2) the Committee does query, despite the obvious geographical limitation of the “City” *per se*, whether this paragraph is phrased in necessarily absolute terms?

5 **Offices**

- 5.1 This chapter clearly forms one of the principal hubs of the City plan going forward. The Committee does query, however, whether by referencing “*significant*” growth in office development, (**Strategic Policy S4: Offices**), the draft Plan may possibly be over-emphasising the Plans underlying objective which should surely take a holistic approach.
- 5.2 Whilst it is accepted that office growth in the City will always be a key objective of the Corporation, the Committee queries in the context of an evolving market place, whether the City Corporation should be facilitating “*appropriate and realistic*” growth in office development rather than “*significant*” growth which could as a consequence enable the Corporation to resist untenable speculative office development?
- 5.3 The Committee would expect some consideration of office attendance projections to be factored into these policies. For example, paragraph 5.1.2 of **Strategic Policy**

S4: Offices states that “*The central target is aligned with GLA 2022-based long term employment projections for London and the Square Mile.*” It is not clear that employment projections alone are sufficient for the purposes of determining office-need, on the basis that a general shift towards remote working has been observed following Covid-19. Without an assessment of this, it is hard to see how these policies are positively prepared or justified.

- 5.4 Paragraph 5.2.1 supplements **Policy OF1: Office Development**. Paragraph 2 of the Policy references “other commercial” development whilst paragraph 5.2.1 references “*complementary uses*”. To avoid any misrepresentation as to intention the Committee queries whether the word “*commercial*” should be inserted between “*complementary*” and “*uses*” in that paragraph?
- 5.5 It is also noted that paragraph 5.2.3 of **Policy OF1: Office Development** states that “*Revolving entrance doors are not accessible to a range of people*”. We would suggest generalising this slightly to emphasise that office development generally should consider accessibility to a wide range of people, rather than focusing on one example of a barrier to accessibility. It may also be prudent to include reference to accessibility directly in the wording of the policy itself, rather than by way of supporting information.
- 5.6 In addition, whilst identify what should probably be viewed as the ideal components of an office lobby, the Committee would query whether the list should be qualified by the words “*where appropriate*”?
- 5.7 Whilst fully understanding the objective that the City Corporation is trying to achieve by the inclusion of sub paragraph (c) in **Policy OF2: Protection of Existing Office Floorspace** and fully accepting that this sub paragraph has been included to meet scenarios that have occurred, the committee does query whether there is a risk of contradiction bearing in mind the overriding thrust of **Strategic Policy S4: Offices and Policy OF 1: Office Development**?
- 5.8 Overall, the environmental impacts of such significant growth need to be carefully managed and references could perhaps be made to policies elsewhere in the draft Plan?

6 **Retail**

- 6.1 The Committee notes that paragraph 6.2.7 of **Policy RE1: Principal Shopping Centres** states that - “*Timed restrictions on vehicular access to Bank Junction...provide[s] an opportunity to achieve greater pedestrian movement*”.
- 6.2 This policy is not, however, further elaborated. The Committee queries, therefore, whether this aspiration on its own, constitutes an appropriate, effective, or proportionate measure.
- 6.3 Furthermore, it is not clear to the Committee how this policy would support **Policy RE1: Principal Shopping Centres**, which aims to allocate certain areas as PSCs. We note that the same paragraph proposes several public realm improvements in order to facilitate pedestrian movement in the Cheapside PSC area.
- 6.4 In light of the fact that the timed vehicle restrictions are likely to generate an adverse impact on traffic, it should be explained why this is necessary in conjunction with public realm improvements - i.e., are the public realm improvements alone sufficient to increase footfall and is the intention that parts of the roads will be pedestrianised during the restricted hours?

- 6.5 **Policy RE2: Active Frontages** at paragraph 3 references the fact that the loss of convenience retail units located to meet a local residential need will be resisted “*unless it is demonstrated that they are no longer required*”. The Committee queries whether this qualification, which weakens the thrust of the policy, should actually be included. It will always be open for a developer to explain why local need no longer exists?

7 **Culture and Visitors**

- 7.1 Paragraph 7.5.1 of **Policy CV4: Hotels** makes the assertion that “*the demand for business accommodation is likely to increase*.” It is not clear, however, that this is evidence-based but is rather based upon a general projection of increased office space in the future, which we have noted at 5.1 above is perhaps contrary to general trends observing an increase in hybrid working.
- 7.2 The Committee considers that some form of data should be provided to support this basis.

8 **Infrastructure**

- 8.1 There is potential for policy conflict between the Infrastructure policies and the City Plan’s sustainability goals.
- 8.2 The Committee is bound to question whether the application of **Strategic Policy S7: Infrastructure and Utilities** to “*all development*” is appropriate, or even achievable, as explained further below.
- 8.3 It is suggested that appropriate caveats should be included to avoid any risk of challenge on the basis that policy S7 could arguably be considered to be contrary to the NPPF, paragraph 16(d) which requires that local plans contain “*policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals*”.
- 8.4 In addition, **Strategic Policy S7: Infrastructure and Utilities**, provides at paragraph 1 that:
- “1. To coordinate and facilitate infrastructure planning and delivery and the transition towards a zero carbon and climate resilient City, all development should:*
- a. Minimise the demand for power, water and utility services;*
 - b. Incorporate sustainable building design and demand management measures;”*
- 8.5 The feasibility of achieving these goals for “all development” should, it is suggested, be reviewed. Such an absolute goal, whilst certainly to be applauded, may not be achievable and could be viewed as being contradictory to the other objectives, for example, **Policy HL6:Public Toilets** – which requires provision of a range of directly accessible public toilet facilities – including additional toilets in proposed developments - suitable for a range of users (providing inclusive and accessible toilet provision in accordance with paragraph 3.7.0 (“Reasons for the policy”) which clarifies that: “*It is important when designing toilet provision to include cubicles for people with ambulant mobility impairments which can also be suitable for some older people and people who require additional space*”.

- 8.6 Such provision may by its nature be contrary to sustainable building design and minimised demand for water and power required by **Policy S7** for all development – requiring large spaces, and other necessary modifications such as automated taps to cater for disabled users (using more water and energy) etc. being necessary modifications.
- 8.7 Similarly, a possible conflict arises with **Policy IN1: Infrastructure Provision and Connection**, paragraph 1.a. which requires that - “*account should be taken of the need to conserve resources and deliver energy and water efficient buildings to minimise future demands*”.
- 8.8 **Strategic Policy S7: Infrastructure and Utilities**, provides at paragraph 4 that:
- “4. The improvement and extension of utilities infrastructure should be designed and sited to minimise adverse impacts on the visual amenity, character and appearance of the City and its heritage assets.”*
- 8.9 The Committee is concerned that its requirement fails to include an appropriate qualification such that it is required to the extent that is possible to be achieved – in other words, “where feasible” – given that it may well not be the case in that the policy is dealing with improving or extending existing infrastructure, already in place within the setting of heritage assets.
- 8.10 Indeed, it is queried whether there may be conflict with paragraph 1.c. of the policy which requires that all development should - “*Connect to existing pipe subways where feasible, particularly where there is pipe and cable congestion under the streets*”.

9 Design

- 9.1 The Committee is concerned that it could be argued that **Policy DE3: Public Realm** lacks an evidential basis for its core principle. Some form of assessment as to public use within the city should be provided (whether based on historical or projected data) to support policy as to how the public realm can best cater to the public within the City.
- 9.2 Paragraph 9.5.3 of **Policy DE4: Terraces and Elevated Public Spaces** states that “*Public access to tall buildings within the City is important in creating an inclusive city.*” The Committee queries whether the rationale for this statement – whilst certainly aspirationally laudable - is actually supported within the wording provided to support the policy.
- 9.3 The Committee queries whether the wording could be amended along the following lines would be “*Public access to tall buildings within the City creates additional amenity opportunities, which can be enhanced by ensuring that, where appropriate and practical, such terraces are designed to be accessible for a wide range of people*” – or words to that effect?
- 9.4 The Committee notes that below paragraph 9.6.5 is a separate paragraph beginning “Retail entrances –”. For consistency, this should be numbered paragraph 9.6.6.

10 Transport

- 10.1 The Committee’s comments on this chapter of the draft Plan are brief in that it fully recognises that any policies on transport in the City will inevitably be influenced by

the London Plan and its strategic aspirations and the operational powers and duties of Transport for London.

- 10.2 That said, it is noted that paragraph 10.6.2 refers to use of drones in the City, but this is not referenced in **Policy VT5: Aviation Landing Facilities** which only refers to heliports. The use of drones in the City is still an evolving practice, with mixed use on a professional investigation/research level and personal usage.. This paragraph may require further expansion with a specific reference in the Policy itself?
- 10.3 Paragraph 10.9.3 of **Policy AT2: Active Travel including Cycling** states that “*new developments should provide shower and storage facilities to encourage employees to engage in active travel*”. The use of the word “employees” probably casts as a degree of qualification but is this requirement intended to be limited to office development only or to be rather more inclusive, for example to retail employment., to ensure that this is proportionate.
- 10.4 The Committee queries whether some additional provision to the effect that planning conditions may be included to require that such developments provide these for the lifetime of the development would be appropriate?

11 Heritage and Tall Buildings

- 11.1 **Strategic Policy S11: Historic Environment**, paragraph 3.a. provides that the City’s historic environment will be protected, celebrated and positively managed by seeking wider social, cultural, economic and environmental benefits by: “*delivering high quality buildings and spaces which enrich and enhance the settings of heritage assets*” (our emphasis).
- 11.2 The requirement for the development of buildings and spaces to ‘enhance’ the setting of heritage assets appears to impose a requirement on all development proposals, which may not be achievable.
- 11.3 The Committee queries whether consideration should be given as to whether that paragraph should be amended as follows - ‘*...which enrich and where possible, enhance the setting...*’ – which would be to use the wording in **Policy HE1: Managing Change to the Historic Environment**, paragraphs 7 and 8: “*and where possible,*” – acknowledging that enhancement may not be achievable in respect of every development proposal.
- 11.4 As an alternative, wording such as ‘*seek to enhance*’ could be adopted, as used in **Policy HE3: Setting of the Tower of London World Heritage Site**, paragraph 1.
- 11.5 **Strategic Policy S11: Historic Environment**, paragraph 3 looks to “*Seeking wider social, cultural, economic and environmental benefits by:*”
- “e. encouraging sites adjacent to and near heritage assets to work collaboratively with owners and operators of heritage assets to seek improvements to environmental performance, accessibility or other aspects of the functioning of heritage assets that are challenging to address.”*
- 11.6 This sub-paragraph however, appears to be imposing a requirement upon a developer to deliver improvements to heritage assets on neighbouring land which would, certainly theoretically at least, be outside the given developer’s control and in any case, may relate to assets which will potentially be unaffected by the development. It is not clear from the policy commentary how the policy is work.

- 11.7 **Policy HE1: Managing Change to the Historic Environment.** The Committee queries whether paragraph 2 which provides as follows - *“There will be a presumption against heritage harm and development causing harm to, or total loss of, the significance of designated heritage assets will be refused unless it is clearly demonstrated that the heritage and/or wider public benefits outweigh that harm or loss...”* requires review as the meaning unclear - wording may have been omitted in error?
- 11.8 **Policy HE2: Ancient Monuments and Archaeology,** paragraph 3 provides - *“... Where it can be demonstrated that found archaeological features or artefacts are of lesser significance or substance, proper investigation and recording of archaeological remains will be required as an integral part of a development programme, including timely publication and archiving of results to advance understanding.* The Committee queries the use of the word *“proper”* investigation of archaeological remains. In this respect, the Committee notes the detailed requirements outlined in paragraph 11.3.10 of the commentary, and would suggest more appropriate phraseology for paragraph 3 could be adopted.
- 11.9 **Strategic Policy S12: Tall Buildings,** paragraph 10.h. requires that:
“The design of tall buildings must:...
h. incorporate publicly accessible open space within the building and its curtilage, including free to enter, publicly accessible elevated spaces at upper levels, which may include culture, retail, leisure or education facilities, open spaces including roof gardens or public viewing galleries;”
- 11.10 The Committee queries whether such provision of publicly accessible open space is intended to be mandatory (and is indeed realistic, achievable and/or appropriate) in every case? The Committee suggests that alternative wording along the lines - *“seek to incorporate”* would be more appropriate.
- 11.11 In this context, it is also noted that the commentary only addresses the policy at paragraph 11.5.8 in very general terms as follows:
“They can provide a range of activities and public spaces at ground level for people to walk and spend time. They can also benefit communities by providing publicly accessible viewing terraces and galleries.”
- 12 **Open Spaces and Green Infrastructure**
- 12.1 The Committee queries whether paragraph 12.4.3 of **Policy OS3: Biodiversity** should provide some reference to the wider regulations regarding biodiversity net gain - it is not clear whether the stated intention that new developments should seek to protect and enhanced biodiversity is intended to go beyond the current legislative requirement of a 10% biodiversity net gain.
- 12.2 Similarly in this context, the Committee notes that paragraph 12.5.0 of **Policy OS4: Biodiversity Net Gain** provides that - *“the mandatory 10% BNG is not an appropriate mechanism for delivering meaningful improvements in the Square Mile”.* Instead it is proposed that a biodiversity unit per hectare approach.
- 12.3 Whilst fully understanding the rationale for such an approach, the Committee does query whether such an adaptation of policy may conflict national policy and guidance.

- 12.4 The BNG regulations clearly states that on-site provision is not the only means for providing 10% BNG as developers are able to meet this requirement through off-site gains and biodiversity credits. As such, at present, it is suggested that insufficient reasoning has been applied to justify the adoption of a biodiversity metric that is contrary to the Environment Act 2021 and the inclusion of a degree of flexibility in the circumstances of each given case may be appropriate.

13 **Climate Resilience**

- 13.1 **Policy CR2: Flood Risk** includes Table 2 which provides the flood risk vulnerability classifications relevant to the City. The Committee notes that this is largely based on Annex 3 to the National Planning Policy Framework. With respect to the 'less vulnerable' category, 'car parks' are cited as an example under the National Planning Policy Framework but are not referred to in this table. The Committee queries whether this should be included as being highly relevant to the City environment.
- 13.2 Table 3 provides a table of where the 'exception test' as set out in the National Planning Policy Framework is required. It is not clear to the Committee as to how the decisions have been made as to why the test is required for certain categories within different zones (for example in EA Zone 2 it is only required for the 'Highly Vulnerable' category but in EA Zone 3a it is required for 'Essential Infrastructure' and 'More Vulnerable' categories (but not 'Highly Vulnerable')).
- 13.3 The Committee suggests that some clarification would be helpful to show why the exception test is only required in certain circumstances as it appears (without context) to be arbitrary in terms of when it is required.
- 13.4 **Strategy Policy 16: Circular Economy and Waste** - Paragraph 13.6.4 references an agreement between the City Corporation and the London Borough of Bexley (supported by the South-East London Joint Waste Planning Group) to identify waste management capacity up to 2036. Paragraph 13.6.5 also states that some other waste will be transported outside of London.
- 13.5 The Committee notes that the London Plan states that '*waste should be disposed of in one of the nearest appropriate installations (proximity).*' On that basis, the Committee queries whether the draft City Plan should show that the off-site proposals to deal with waste management have given consideration to the idea of proximity, perhaps with consideration of alternative off-site options that are closer to the City?

14 **The Temple, the Thames Policy Area and the Key Areas of Change**

- 14.1 The Committee, in terms of its brief, does not have any comments on this section.

If you need any further information, please do not hesitate to contact the CLLS.

Matthew White

Chair, PELC

City of London Law Society

<https://cls.org/>

