

JUST SPACE RESPONSE TO THE MAYOR'S CONSULTATION ON ESTATE REGENERATION BALLOTS

9th April 2018

Question 1: Do you agree that the GLA should make resident ballots a funding condition for estate regeneration schemes?

We agree that the GLA should require resident ballots for estate regeneration schemes where demolition is proposed, the results of which must be binding. The Mayor should make this a "funding condition", but must also use his planning powers, regardless of whether there is GLA funding involved.

Sadiq Khan stated in his Manifesto when running for Mayor that he would:

*"Require that estate regeneration only takes place where there is resident support, based on full and transparent consultation, and that demolition is only permitted where it does not result in a loss of social housing, or where other all options have been exhausted, with full rights to return for displaced tenants and a fair deal for leaseholders."*¹

This election promise should be considered a Mayoral priority. The Mayor must be a Mayor for all residents who face the loss of their home and community through estate regeneration and the many adverse consequences that follow.

Paragraph 2.4 says that the "GLA has considered two potential ways to achieve this:

- Utilising the Mayor's planning powers; and
- Applying a condition where GLA funding for affordable housing is sought."

Paragraph 2.5 says that "Planning decisions are a quasi-judicial process and there is no legal basis to require either holding a ballot or the results of a resident ballot to be binding on them."

We disagree. Good consultation is a legal requirement under planning legislation. Guiding principles for the form that this consultation should take, known as Gunning Principles, were set by the Supreme Court in the case *R v Brent London Borough Council, ex p Gunning, (1985) 84 LGR 16*. These legal principles are the following:

1. "Consultation must be at a time when proposals are still **at a formative stage**";
2. "The proposer must give **sufficient reasons for any proposal** to permit of intelligent consideration and response";
3. "**Adequate time** must be given for consideration and response";
4. "The product of consultation must be conscientiously **taken into account** in finalising any statutory proposals."²

¹ http://www.sadiq.london/homes_for_londoners_manifesto

² *R v Brent London Borough Council, ex p Gunning, (1985) 84 LGR 16*, p. 189. Cited in *Moseley, R (on the application of) v London Borough of Haringey [2014] UKSC 56 (29 October 2014)*. <http://www.bailii.org/uk/cases/UKSC/2014/56.html>. Just Space has already referred to these points in its response to the Draft Good Practice Guide on Estate Regeneration.

In *Moseley, R (on the application of) v London Borough of Haringey [2014] UKSC 56 (29 October 2014)*, two further considerations were added:

1. “the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting”;
2. “the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit.”³

It is a weakness that the Mayor has not put in place a formal framework for effective community engagement in London planning and Just Space has proposed a Mayoral Statement of Community Involvement (SCI) as a remedy for this.

If he so wished, the Mayor could also use his duties under the GLA Acts to promote Londoners’ health and equality of opportunity to support the mechanism of a residents ballot, which is an appropriate mechanism for achieving good consultation.

The Mayor can and should make use of the powers, duties and legal precedents cited above to stop estate regeneration schemes that do not run a residents ballot.

Question 2: Do you agree with the proposed criteria that would trigger the requirement for a resident ballot? Why/why not?

We do not agree that the trigger for ballots be limited to schemes involving at least 150 new homes.

There should be the requirement of a ballot in all estate regeneration proposals that include demolition of social rented homes, regardless of the number of units. All tenants and residents must be provided with the same right to a ballot where demolition of their homes is proposed. This would include streets of terraced homes.

We are concerned that otherwise we will see a larger number of proposed schemes of less than 150 homes as a way of avoiding tenant ballots, particularly given the Mayor’s focus on small sites in the draft London Plan.

In paragraph 3.4 it is stated that the “Applications for GLA funding of estate regeneration schemes that fall below the strategic threshold will be considered in line with the approach taken for funding other affordable housing.” It is unclear what this is a reference to and whether the reference is being made here to the criteria on the Good Practice Guide for Estate Regeneration or the Draft New London Plan? i.e. like-to-like to mean the same as or better in terms of rent level or service charge, no net loss of social rented housing, etc.

³ *Moseley, R (on the application of) v London Borough of Haringey [2014] UKSC 56 (29 October 2014)*, citing the *Baker* case, p. 91. These two additional points are also mentioned in Just Space’s response to the Draft Good Practice Guide on Estate Regeneration.

Question 3: Do you agree with the proposed scope of resident ballots? Why/why not?

We are in broad agreement, but wish to propose 2 amendments.

We have a concern that the offer document includes so much information that it could obscure the central issue of demolition of existing social rented homes. We therefore propose that the front of the offer document must include a statement as to how many existing social rented homes are proposed for demolition and details about these homes.

In paragraph 3.8 it is stated that “The offer to residents should be informed by an open and transparent options appraisal process and residents should have a clear idea of the broad scale and outcomes of the project at the point the ballot takes place.” This implies a heavily top-down process. It leaves residents completely outside the substantive decision-making stages. Similarly, paragraph 3.10 states “a ballot would be the culmination of a period of consultation, engagement and negotiation between residents and their landlord”, but fails to make any requirements.

We propose that evidence is required that residents have been :-

- fully involved in the option appraisal process
- provided with independent support selected by residents
- provided with opportunities and resources to prepare their own option as part of the process

Further detail is provided in our answer to Question 5.

Question 4: Do you agree with the proposed stage in an estate regeneration process at which ballots should happen? Why/why not?

Paragraph 3.8 suggests the ballot might occur at the completion of the option appraisal process. If so, we are in agreement but we would like this to be spelt out more precisely.

The ballot should be sooner rather than later to reduce the anxiety and detrimental impact on health and well being caused by estate regeneration proposals that include demolition going on for many years, with the estate being run down and the number of vacant homes increasing within a climate of uncertainty.

There is concern around the level of change that can occur in regeneration proposals over long periods of time – sometimes over a decade or more. Where significant changes occur in levels of demolition of social rented homes, the number of replacement homes, tenure and rent and service charge costs which landlords are proposing there must be the opportunity for residents to call for a further ballot to ensure that the intention of 3.13 is upheld.

Question 5: Do you have any other comments on the threshold, scope and timing of resident ballots?

A committee of residents should be involved in developing the proposals with the landlord through a co-design or co-production framework where engagement is carried out throughout the inception and development of options. Funding should be provided to support this involvement.

In paragraph 3.13 clawback of funding is considered if “a landlord’s offer deviates materially from that agreed in a ballot.” But it is not clear whether the Mayor can stop the developments that do not build what they promise in the ballot. This is why the Mayor should use his planning powers to stop those schemes that are not being delivered in accordance with these policies.

Question 6: Do you agree with the proposed eligibility criteria for resident ballots? Why/why not?

We propose amendments that would extend the eligibility criteria:

In paragraph 3.17 regarding the eligibility to vote, other household occupants who are partners, adult children or dependents should be also eligible to vote even if they are not named on the tenancy agreement and not on the Local Authority housing register.

The minimum voting age should be clarified. There is an opportunity for the Mayor to support more involvement for young people and so our suggestion for the age threshold would be 16.

There should be clarification as to whether there is a link between eligibility to vote and right to return. We propose that tenants who have already been decanted from an estate and have indicated that they wish to return should also be included on the ballot.

Question 7: Do you agree that eligibility criteria should be the same for all schemes? Why/why not?

We agree.

Question 8: Do you agree with the Mayor’s proposed requirements for implementing ballots? Why/why not?

We agree with the requirements in paragraph 3.25 and propose an amendment to paragraph 3.26, which is outlined in the answer to question 9.

Question 9: Do you have proposals for other potential Mayoral requirements for implementing ballots?

The amendments proposed to paragraph 3.26 are as follows:

- To require a minimum percentage turn-out to guarantee a meaningful engagement, for example a 50% minimum turnout.

Question 10: Do you agree with the proposed exemption where the demolitions are required to deliver an infrastructure scheme? Why/why not?

No. This exemption could become an opportunity to avoid ballots in estate regeneration and redevelopment schemes near infrastructure projects. This would mean that future schemes such as Crossrail 2 or tube extensions would make it easier to demolish and displace social housing residents which would be unjust.

Question 11: Do you agree with the proposed exemption where the demolitions are required to address safety issues? Why/why not?

No. The safety exemption can be misused by landlords to avoid balloting residents. Where there are important health and safety issues, full evidence of this must be provided to residents as part of the options appraisal and residents must be balloted.

Question 12: Do you agree with the proposed exemption where a specialist or supported housing scheme is being decommissioned by a local authority? Why/why not?

We do not agree.

Question 13: Do you have proposals for other potential exemptions to the proposed funding condition?

No.

Question 14: Do you agree with the proposed transitional arrangements? Why/why not?

We do not agree with the transitional arrangement and propose the following amendments:

We oppose the point made in paragraph 4.4 and believe ballots should be applied where funding agreements have been made. The Mayor has approved funding, in some cases very recently, to many estates where demolition is proposed. Some of them were approved by the Mayor in December 2017 and January 2018, only one or two months before this consultation was initiated. One of them is Cressingham

Gardens, Lambeth, where there has been strong opposition and there have been already two Judicial Reviews where the residents have taken the council to court.

The Mayor should require ballots in all developments that have already received funding and where a full planning application has not yet been determined. If they don't run a ballot, the funding should be withdrawn, and the development should be stopped by using the Mayor's statutory powers.