
**Just Space Written Statement on Mayor's Additional Equalities
Evidence
25 February 2019**

Introduction

1. The Mayor's Integrated Impact Assessment ("IIA") was the subject of discussion under Matter 2 on the opening day, 15 January 2019, of the Examination in Public ("EiP") of the draft New London Plan ("NLP"). Following written and oral representations from a range of organisations including Just Space ("JS"), expressing concerns about the adequacy and lawfulness of the equalities impact assessment and the lack of available equalities information, the Panel required the Mayor's team to publish the underlying equalities data on which it had based the IIA by 21 January 2019 (see Panel Note No.7).
2. The GLA published its Supplementary Equalities Information comprising (i) the matrices supporting the Equality Impact Assessment (EqIA) relating to the final draft policies (July 2018) and (ii) a supplementary supporting document¹ ("SD") (21 January 2019) prepared by its consultants Arup. According to the GLA, "*This document provides supplementary information on the process and a summary of findings of the Equality Impact Assessment (EqIA) of the draft London Plan.*"
3. People were given until 25 February 2019 to comment on the new information. This is the response prepared on behalf of Just Space ("JS"). It should be read in conjunction with JS' first written statement in respect of Matter 2.
4. Just Space is an community network representing about 250 community organisations pan-London and is participating throughout the Examination in Public making representations on a wide range of topics.

¹ GLA, Integrated Assessment, Supplementary Equality Impact Assessment Information, 21 January 2019

5. Whilst JS welcomes the publication of the further information, this should have been made available prior to the opening of the EiP. In any event, the publication fails to address the fundamental concerns which JS has raised to the nature and adequacy of the equalities assessment. In its view, for the reasons set out below, the equalities assessment in the IIA, which in turn informs the draft NLP, does not come close to discharging the Mayor's duty under s.149 of the Equality Act 2010 ("the PSED").
6. Moreover, the Panel, which is itself subject to the PSED, has not been provided with sufficient information or the right sort of information which would enable it to reach its own view on the draft Plan's equalities impacts. When examining the NLP, the Panel is carrying out a "*public function*" under the Equality Act 2010 ("EA 2010"). The Panel's function under the Planning and Compulsory Purchase Act 2004 is to assess whether the submitted draft plan is 'sound'. One of the tests of soundness is whether the plan is consistent with national planning policy and legislation. In its overall assessment of soundness, the Panel will need to reach a view on whether the equalities information presented by the GLA satisfies the requirements of the Public Sector Equality Duty ("PSED"). The Panel must take into account the equalities evidence provided by the GLA in support of their own plan. Since that evidence, as JS considers, is deficient the Panel's ability to have "due regard" will be compromised.

Requirements of Equalities Legislation

7. Section 149 of the Equality Act 2010 provides (as relevant) that a public authority must "in the exercise of its functions" have due regard to the need to:

"149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

[...]

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

8. The legal principles on the PSED are well-established and were helpfully summarised in *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; [2014] EqLR 60 at § 26 McCombe LJ summarised the principles to be derived from the authorities on section 149 (which summary was approved by the Supreme Court in *R (Hotak) v London Borough of Southwark* [2015] UKSC 30; [2016] AC 811 per Lord Neuberger at § 73). The relevant points from the Bracking summary (and from the case law more generally) for present purposes are as follows:

a. The PSED is “not a duty to achieve a result”, but a duty to have due regard to the need to achieve the goals identified in section 149(1) of the EA 2010 (*R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2008] LGR 239 per Dyson LJ at § 31).

b. The equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-

discrimination legislation (*Bracking* at § 28(1) and § 60; *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293; [2006] 1 WLR 3213 per Arden LJ at § 274).

- c. It is insufficient for the decision-maker to have a vague awareness of his legal duties. Rather, he must have a focused awareness of each of the section 149 duties and their potential impact on the relevant group (*R (MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13; [2014] PTSR 584 (per Dyson MR at § 91) (which passage was approved by the Supreme Court in *R (Carmichael and Rourke) v Secretary of State for Work and Pensions* [2016] UKSC 58; [2016] 1 WLR 1550 (per Lord Toulson at § 68)).
- d. The duty must be fulfilled before and at the time when a particular policy is being considered, and not as a “rear-guard action” following a concluded decision (*Kaur & Shah v LB Ealing* [2008] EWHC 2062 (Admin) per Moses LJ, sitting as a Judge of the Administrative Court at § 23-24).
- e. The PSED involves a duty of inquiry. The PSED requires a public authority to be properly informed before taking a decision, and if the relevant material is not available, there will be a duty to acquire it, frequently through consultation with relevant groups (*Bracking* at § 28(8); and *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) per Elias LJ at § 89-90).

9. In cases in which there are large numbers of vulnerable people, very many of whom fall within one or more of the protected groups, the due regard necessary to discharge the duty is “very high” (*R (Hajrula) v London Councils* [2011] EWHC448 (Admin), the High Court held (at § 62)). This is applicable in the context of the promotion of the NLP which potentially affects protected persons right across the capital.

GLA’s Methodology for Assessing Equalities

10. The approach and methodology of the GLA’s consultants to discharging the PSED is described in the high level SD. The SD provides, in summary,:

- i. The EqIA (as part of the IIA) has considered potential impacts on all protected characteristic groups and socio-economic status at all stages of the plan preparation (pg 4, 9);
- ii. The EqIA is based on what the consultants refer to as “*objectives-led approach*” (pg 7). 24 objectives for the plan’s strategy were identified including, in particular, objectives on (a) equality and inclusion (b) social integration (pg.6);
- iii. The objectives gave rise to “guide questions” informed by “baseline evidence” for assessing the plan (pgs. 6, 7);
- iv. “*This qualitative approach allows for the identification and description of impacts and effects*” in equalities terms (pg. 7);
- v. In the EqIA, each policy was appraised against the 24 objectives. For each policy the EqIA identified affected groups. “*It identified where each group was likely to be specifically impacted by the policy either positively or negatively*” (pg.7)
- vi. The appraisal provides “*an overall narrative*” summarising the main impacts for each policy (pg. 8)
- vii. At the draft stage, the policy assessment included assessment tables on potential mitigation which were considered by the GLA (pg. 8).
- viii. The final EqIA policy tables were published as part of the Post Consultation IIA Addendum Report in July 2018 (pg. 9)

11. The Supplementary Document by Arup (SD) does not explain how equalities data was gathered. It is not clear what data sources the GLA have relied on, whether the EqIA was an entirely desk-based exercise or whether further inquiry/consultation took place with representative groups of those with protected characteristics in terms of understanding the impacts of particular policies.

GLA's equalities conclusions

12. In Section 4 of the SD, the GLA states that “the *majority* of policies relating to, or that are likely to impact, communities across London will help advance equality of opportunity, eliminate discrimination and foster good relations”. It then highlights those policies which, in very broad terms, it says will have a positive impact on equalities (pgs 10-12). It does not say which policies will not meet those aims and which will give rise to differential negative impacts.

Analysis of the supplementary Equalities Evidence

13. The fact that the GLA says that it has identified whether particular policies are likely to have a differential impact on protected groups as required does not mean that it has actually done so (SD pg 7).
14. In the case of each policy, the GLA has now provided:
- (a) a description of the policy and its effects (“the narrative assessment”) (in the IIA and addendum);
 - (b) a matrix assessing the effects by reference to the 24 objectives of the NLP (“final matrix”) (in the IIA and addendum); and
 - (c) following the Panel’s request of 15 January 2019, the “assessment tables” which underpin the matrices.
15. The starting point is that the IIA and IIA Addendum do not in themselves disclose any information about the equalities impacts of the draft policies on particular protected groups. That appears to be common ground and is the reason why the GLA was required to publish the underlying assessment tables in which it claims it assessed those particular impacts. The issue for the Panel is whether the additional information in the assessment tables and SD “corrects” the serious omission in the IIA itself.

16. In JS view, and as set out by reference to specific examples below, the presentation of the GLA's chosen approach is difficult to follow and obscures the specific, and in particular, negative differential impacts of the policies on particular groups. There is no, or no proper, explanation in any of the assessment tables/matrices of *how* protected groups will be impacted.

Equalities Assessment of Policy H10 Estate Redevelopment

17. Take the example of Policy H10 - Redeveloping existing housing and estate regeneration. The policy "supports the redevelopment of existing housing to achieve higher densities where possible". The policy expressly anticipates and, in certain circumstances, provides support for the loss of existing housing where that is replaced at existing and higher densities.
18. To test whether this material discharges the PSED, it is necessary to ask whether, taking together all of this evidence, it is possible to ascertain what will be the particular equalities impacts on protected groups of this policy? For the reasons given below, the answer is no.
19. Despite the fairly obvious potential negative impacts for certain protected groups arising from the displacement from and loss of existing homes none of those are reflected in the GLA's equalities assessment for H10.
20. Prior to consultation on the IIA and draft plan (Stage D) the IIA did not refer to any negative equalities impacts whatsoever from H10. Following consultation, and in particular the response of JS, the narrative assessment in the IIA addendum noted the policy's "potential to fragment community networks" "reduce the security of residents" and to "cause disruption to families and communities"(4.20, pg 59).² However, the assessment recognised the potential for disruption *generally* to communities in the narrative, no due regard was had, as required by the PSED, to the *particular* impacts on protected groups.

² IIA Addendum, 59

For example, there was no consideration of the particular impacts that the redevelopment of long-standing social housing would have on older people, the disabled and BAME groups who are disproportionately likely to live in housing which will be the subject of these policies. That people with such protected characteristics are likely to be disproportionately affected by redevelopment policies and forced relocation is obvious and reflected in case law.³ However, none of those impacts are reflected in the IIA.

21. Is that error “corrected” by the assessment table for H10?

22. The table comprises the following headings:

- Topic;
- Objective (objectives 1 and 2 relate specifically to equality and social integration)
- Assessment Criteria (this relates to the guide questions)
- Assessment (records short, medium, long term, direct/indirect, temporary, permanent impacts and whether those are positive or negative).
- Receptors and/or affected groups (this lists the protected categories. For each objective the table records “Y/N” next to the protected category).
- Narrative Summary against overall objective
- Potential cumulative effects (recorded as not being applicable to this policy).

23. Taking the example of how H10 performs against objective 1 (equality and inclusion), against the affected groups, the table records:

“Low income: Y Disability: Y Age: Y Sex: N Race: Y Religion: Y Sexual orientation: N Gender reassignment: N Marriage & civil partnership: N Pregnancy & maternity: N”

The assessment says the effects will all be positive in short to long term and will produce direct, temporary and permanent local effects.

³ see R (oao Buckley) v Bath and North East Somerset [2018] EWHC 1551 (Admin)

The summary against the overall objective provides:

“The policy supports the regeneration of London's housing, to support higher density and high quality development. There is emphasis within the policy on delivering equivalent or higher densities to increase London's housing stock. The policy also encourages estate regeneration and where possible to deliver an uplift in affordable housing and reproviding appropriate tenure mixes. These factors are likely to promote a culture of equality, and social inclusion, especially for more vulnerable groups and those more likely to be impacted by poverty. The policy permits residents to participate in the process of regeneration.”

24. In relation to the affected groups the recording of whether the policy is “Y/N” in terms of a particular objective, does not explain *how* those groups will be impacted by the policy. The table suggests that people who are on a low income, disabled, who may be young/old (unclear which?), BAME or of a particular religion may be affected by H10. However, the table does not describe in qualitative or quantitative terms *how* the affected groups will be affected (i.e. whether that will be positive or negative, in what way they will be impacted and to what extent).
25. The “assessment” column does not relate specifically to the protected groups in the “receptor column”. Moreover, it appears to aggregate the impacts for each and every groups. The aggregation of the impacts is impermissible as it obscures the differential impacts of the policy. In this context whilst it may be the case that the overall provision of the replacement housing is beneficial in equalities terms that does not “cancel out” or mean there will not be negative differential impacts that arise, for example, for those persons with protected characteristics who will be displaced from their existing homes.
26. The assessment table is thus presented in such a way that it is simply not possible to tell how protected groups will be impacted by the policies, whether positively or negatively, on what scale and in what way and therefore what may be done to mitigate such impacts.

Given the obvious negative effects of estate redevelopment, which is accepted in the IIA narrative itself (p.59), one would expect to see at least some minus signs in the assessment column and an explanation of how those relate to the protected characteristics. However, there is no evidence that the differential impacts have been assessed at all still less presented clearly for the decision maker.

27. The final matrix in the IIA for H10 claims that all the policy's including short term impacts will be positive (for all groups) except in relation to objective of "contributing to security" which is found to be "neutral or minor negative" (IIA, pg 60). The final matrix makes not reference whatsoever to particular protected groups and thus completely fails to examine the policy's impacts on particular groups as required. The final matrix is a further abstraction from the already unclear, summary assessment table from which the obvious equalities impacts of H10 have been missed.

28. Because neither the assessment table and nor the final matrices in the IIA explain how particular groups are affected by the various policies and they both aggregate the impacts on persons with protected characteristics to come up with an (almost invariably) overall positive assessment, the decision-maker, be it the Mayor or the Panel, lacks the equalities evidence to enable them to discharge the PSED.

Further examples

29. The flaws in the approach identified in respect of policy H10 are repeated in the context of other policies. The following exemplify just some of the more glaring shortcomings of the EqIA:

Policy H3 Monitoring Housing Targets.

30. The assessment table only records impacts in respect of objectives 5 (housing supply, quality, choice and affordability) and 11 (infrastructure). In respect of all the remaining 22 objectives and particularly those concerned with equality i.e. objectives 1 and 2 the

table records that the impact assessment is “*not applicable*”. Such a conclusion seems surprising when considering the impacts of housing policy and progress towards delivery of targets on persons with protected characteristics.

31. Under objective 5, the table records the policy impacts on those with protected characteristics by virtue of disability, age and sex but does not say *how* in respect of those characteristics. Reading across to the “Assessment” column this records either positive or unknown short, medium and long term impacts. However, once again, it is entirely unclear which protected group is being referred to in that assessment. All that is identified is an overall or “net” positive effect. The overall summary hardly clarifies this picture and simply provides:

“This policy supports the appropriate monitoring of housing delivery against London Plan targets. This includes ensuring smaller sites, and non self contained accommodation, are suitably counted as contributing to the overall stock. The policy does not directly influence housing delivery, or unlocking sites for residential development, however does contribute to the overall understanding of housing need across a range of accommodation types. This policy complements policies that support accessibility to housing and increasing London’s housing supply over time.”

32. The assessment table thus fails to explain how the GLA under H3 will collect and monitor the delivery of housing targets and how this will impact on protected groups. For example, there is no explanation of how the supply of social housing or family sized, which caters to those disproportionately likely to come from protected groups, is to be monitored.

33. In the context of the infrastructure objective, the assessment records the impacts on a short to long term basis are all “unknown” denoted by a “?”. It is not clear, how, if at all this enables the decision-maker to have due regard to the impact of this policy.

Policy H12 on Housing Size Mix

34. This policy seeks a range of housing sizes from one to two bedrooms to family homes. The policy provides that Boroughs should

not set policies or guidance that requires set proportions of different sized market or intermediate units to be delivered. Such an approach is regarded by the authors of the plan as inflexible.

35. The approach to Housing Size Mix may be justified but before examining and adopting such a policy, the decision-maker needs to know what the equalities impacts of that policy choice are. The information in the IIA falls well short of what is required by the PSED and does not provide the decision-maker with the full picture of information required to have “due regard” to the equalities impacts of H12.⁴ The IIA and final matrix certainly contains no evidence of the particular impacts on protected groups. Even when this is supplemented by the assessment table this defect is not corrected. The table which records only a single short term negative impact in respect of objective 11 (infrastructure) and even then it is entirely unclear how that is said to be a negative impact, in respect of which group and on what scale.

36. The assessment table tells the reader that except in respect of infrastructure the policy’s impact will be entirely positive. That is to present a Panglossian view which ignores the real impacts of the policy decision not to prescribe family-size housing delivery requirements. For example, as Trust for London note in its submission to the EiP certain BME groups (e.g. Somali community, ultra-Orthodox Jewish community) are far more likely to have larger families and therefore have a greater need for large family-sized homes. Such groups are therefore impacted by the current scarcity of affordable large family size homes and the policy decision not to specifically require their provision. The experience of such groups has been that, during regeneration, they are being asked to move from e.g. three bedroom properties to new-build properties with one or two bedrooms. Such impacts, for example, are not reflected at all in the EqIA.

Policy E2 Low Cost Business Space and E4, E5, E6

37. This policy is considered at 9.5.2 in the IIA (p.189-190). The stated aim of the policy is to support the protection of low cost B1

⁴ IIA, 159-160

business space to meet the needs of micro, small and medium sized enterprises.

38. The EqIA records exclusively positive impacts for the policy. There is not a single negative impact recorded in the IIA or assessment table. The EqIA assessment matrices relating to E4, E5 and E6, the key sections on the matter of meeting London's industrial accommodation needs, are cursory and generic.

38A Cut and pasted paragraphs such as follows are deployed: 'This policy aligns with policies that support local economic growth within London boroughs, social integration and the development of SMEs. Additionally, this policy complements policies that support access to employment and reduced unemployment.'

38B Text of this type demonstrates no awareness of the fact that the weak framing of the policies will allow further substantial shrinkage of London's industrial accommodation, magnifying the several hundred hectare shortage that the GLA's own research reveals is already inevitable, and thus will cause premises costs to rise further and expulsions to accelerate. There is no recognition in the EqIA matrix text that shortages of accommodation and increased premises costs will very likely have a disproportionately adverse impact on BAME peopled businesses across London, and will certainly not support access to employment and reduced unemployment as is glibly claimed (likely the reverse as enterprise is stifled).

39. However, the failure to relate the assessment element to the receptor groups and explain the nature of the impacts arising in the table and the failure to consider this policy in the context of other competing policies in the NLP mean that key impacts have been omitted. For example, no consideration has been given to the impacts of redevelopment (and in particular the pressures for housing development e.g. small sites policy) on clusters of specialist economic activity which disproportionately tend to support BAME businesses supporting BAME populations or to the constrains on or to the loss of affordable industrial space which tends to be disproportionately occupied by BAME businesses. Moreover, those groups most likely to be affected by redevelopment and regeneration schemes are those who are least likely to be able to easily absorb the costs of displacement.

Policy S1 Social Infrastructure

40. Further deficiencies have been identified in relation to the policy S1 (social infrastructure). The assessment tables do not explain how the identified protected groups have been impacted – the nature or scale of that impact and how it may be overcome. Instead the “objectives-led” approach which fails to relate the “impacts” to the protected groups leaves the reader with the misleading impression that the all of the NLP’s impacts are overwhelmingly positive. The PSED does not preclude the policy choices which have been made but it does require that the consequences of those choices, and the trade-offs involved, are acknowledged. Based on the evidence presented this has not happened. There is further elaboration in the supporting statement from LGBTQ+ organisations (attached).

Consultation and Deficient Evidence Base

41. The Mayor’s flawed EqIA is the consequence of its failure to properly discharge its duty of inquiry in respect of equalities considerations.⁵ Where there was a lack of information on the draft policies’ equalities impacts, the Mayor, through his consultants was required to obtain such information. In practice, this should have involved evidence gathering and consultation with stakeholder groups representing those with protected characteristics (for example older person’s charities, mental health groups, LGBT+ and faith groups). There is no evidence of this having happened in a rigorous fashion in the GLA’s SD. The fact that the Mayor has generally consulted on the draft NLP does not discharge his duty of inquiry specifically in respect of discharging the PSED.

42. The flaws in the Mayor’s approach to consultation and gathering information on equalities are reflected in the responses to some of the comments from stakeholder groups at the start of the IIA addendum. Inclusion London, a disability group, specifically raised the lack of a detailed EqIA. The circular response they received was that the IIA

⁵ R (Bracking) v Secretary of State for Work and Pensions [2013] EWCA Civ 1345 McCombe LJ at [25]

Framework included an EqIA.⁶ Stonewall housing, which represents the interests of the LGBT+ community, raised the fact that the policies did not address LGBT housing aspirations and needs. The response states that those needs have been considered in line with the 2010 Act and that LGBT people are specifically referenced within policies HC5 and HC7 which relate to cultural provision.⁷ Such a response evidences the shallowness of the IIA's analysis. The PSED is not discharged by the mere fact that it is said to be discharged and by the fact that certain policies within the NLP reference groups with protected characteristics.

Conclusion

43. The effect of the Mayor's flawed approach has been to produce a Panglossian EqIA (as part of its IIA) which bleaches out any negative effects arising from the policies because it fails to ask the right questions, namely, what is the likely differential impact of X policy on persons with protected characteristics, and to inquire after the right sort of information on which to base such an analysis.

44. The Mayor, the Panel and the Secretary of State need to take into account equalities impacts prior to adopting the NLP. However, the flawed approach taken in the IIA, is only underscored by the assessment tables which have now been published. These do not correct the deficiencies of the IIA and taken together, the total information provided does not come close to discharging the PSED. Were the plan to proceed on the basis of the current IIA it would do so unlawfully.

Just Space
25 February 2019

⁶ IIA Addendum, 12

⁷ IIA Addendum, 8