

Transitional Arrangements Protocol: Arrangements Secured for 1st September to 30th November 2024

The aim of this protocol is to ensure clarity and consistency between LLDC Planning Policy & Decisions Team (the LPA for the LLDC) and the London Boroughs of Newham, Hackney, Tower Hamlets and Waltham Forest, thereby reducing delays and uncertainties for borough colleagues, developers and other stakeholders involved.

This protocol is complementary to the Statutory Instrument (a draft of which both LLDC and Growth Boroughs have reviewed in August 2024) which will revoke LLDC's planning powers. This protocol does not duplicate the transitional provisions set out in the Schedule to the SI, but where appropriate does set out working arrangements to ensure that those provisions are successfully implemented.

Interim Delegation Scheme

As part of the transitional arrangements, LLDC and the growth Boroughs have agreed an interim delegation scheme and related protocol which covers development management activity between 01-September-30 November 2024. This is set out at Annex 1.

The interim delegation scheme and protocol sets out the procedural framework for managing planning applications, appeals and enforcement (and related activity on pre-application advice, s.106 agreement drafting and data and information) during this period and enables a seamless transition that maintains the integrity and efficiency of the planning process.

- This scheme and protocol set out specific responsibilities and procedural steps to be followed by both the LLDC and the boroughs, ensuring continuity and consistency in planning decisions.
- Support sessions if requested, and individual case officer contact details, will be provided prior to 1st September to borough planning staff to familiarise them with the interim processes, provide a contact point for borough staff, and ensure a seamless transition.
- On or before 30th August 2024, LLDC PPDT will share a list of relevant stakeholders with each of the subsequent LPAs to assist with the validation of applications and the undertaking of consultation on new applications.

2. Planning Applications

Starting from September 1st, 2024, all new planning applications submitted within the affected areas will be managed solely by the respective boroughs. This shift is aimed at enabling the Boroughs to exercise full control over new developments in their jurisdictions.

- **Borough Responsibility:** Borough planning departments will take full responsibility for receiving, reviewing, and deciding on planning applications submitted after September 1st.
- **Resource Allocation:** Boroughs will allocate necessary resources, including staff and technological support, to handle the increased volume of applications efficiently.

- Public Communication: Clear communication should be provided to the public and developers regarding the change in process, ensuring they are aware of the new points of contact and procedural requirements.

Exceptions for LLDC Applications That Can Be Determined by PPDT Before Transfer

- It is expected that the majority of planning applications post 1st September 2024 will be managed by the boroughs. However, it is anticipated that there will be exceptions for a small number of applications for which there are robust grounds for being retained and determined by LLDC PPDT.
- Criteria for Exceptions: Only applications that meet the following criteria will be retained for assessment by LLDC PPDT post 1 September 2024:
 - a) Where there is specific knowledge held by PPDT Officers which is relevant to the assessment of the application i.e. an application to approve material samples where the site visit has already taken place.
 - b) An application submitted by LLDC where there have been detailed pre-application discussions prior to 01 September 2024 and where it is considered that the application can be determined before 30 November 2024.
 - c) Where the application will help resolve and is a direct result of an open/'live' enforcement case.
 - d) Where it is reasonably considered that the application can be determined prior to the transition of planning powers on 30th November 2024.
- Case-by-Case Review: Exemptions for each of these applications to be retained and determined by LLDC PPDT will need to be received in writing from the Director of Planning or Head of Planning & Transformation to ensure that there are valid reasons why they are not being delegated to the subsequent LPA.
- Transparent Decision-Making: Decisions on whether an application will be determined by the LLDC or transferred will be made transparently, with clear communication to the applicants and stakeholders involved.

3. Weight Given to LLDC Local Plan and SPDs – in relation to applications delegated to the Boroughs from 1st September

On or before 30th August 2024, LLDC PPDT agree to provide bespoke wording for each of the subsequent LPAs setting out the approach to determining the weight given to the LLDC Local Plan and Supplementary Planning Documents. This wording can then be inserted into the Officer Report's to assist with the determination of applications from 1st September 2024.

Recommended wording: While the determination of the application has been delegated to the Council by the LLDC, the LLDC remains as the Local Planning Authority and the relevant decision-making framework remains as the London Plan 2021 and the LLDC Local Plan 2020, along with any relevant supplementary planning documents that have been adopted by the LLDC. Adopted borough Local Plans and supplementary planning documents do not apply within the LLDC area boundary and are not a part of the decision-making framework.

Relevant at this stage only to LB Newham, LB Tower Hamlets and LB Waltham Forest:

The Council is in the process of preparing a new Local Plan which will include the current LLDC area once it has been adopted. The emerging policies in the draft Local Plan may be given some material weight where the tests in Paragraph 48 of the NPPF are met. However, the policies in the LLDC Local Plan and the guidance in relevant adopted SPD's will remain as the relevant local decision-making framework until such time as these have been withdrawn by the Council after the date at which planning powers have been returned to it and it has adopted the new borough Local Plan.

A new Local Plan may be given weight according to the stage of preparation of the emerging local plan, the extent to which there are unresolved objections to the relevant policies, and the degree of consistency between the relevant policies in the draft plan and the policies in the NPPF.

4. Planning Applications – Not Determined before 30th November 2024

- **Major Planning Applications with Resolution to Grant**

It is agreed that where an application benefits from an LLDC Planning Decisions Committee resolution to grant planning permission (and where there was no substantive objection to the application raised by the Borough Planning Team in which the development is located), but LLDC PPDT have not been able to issue a decision prior to the transfer of planning powers, that the subsequent LPA will take the necessary steps to conclude any remaining tasks (e.g. Stage 2 referral; conclusion of s106 agreement; agreement of final planning conditions) and issue the planning permission in accordance with their scheme of delegations, including referral to planning committee where necessary.

Text for LLDC Committee Reports

This is proposed text for use in committee reports where the application is being considered by LLDC, but LLDC is unlikely to issue the decision.

- *From 1st December 2024 all LLDC planning powers will transfer to (Newham/ Hackey, Tower Hamlets/ Waltham Forest)*
- *The resolution to grant permission is not the formal planning decision, this occurs when a decision notice is issued.*
- *It is likely that INSERT BOROUGH and not LLDC who will issue the decision notice. INSERT BOROUGH has full decision-making discretion and is not legally obliged to issue a decision in accordance with this recommendation, however:*
- *There is caselaw establishing that a previous decision is a material consideration in planning decisions so XXX will also need to take into account the resolution above (Paragraph xxx) and the contents of this report⁴.*
- *All local authorities should be consistent in their decision making. If INSERT BOROUGH takes a different decision it will need to justify this formally.*

- **Ensuring agreement on Planning Conditions and Heads of Terms:**

It is agreed that where a detailed list of planning conditions and/or Heads of Terms have been agreed between LLDC PPDT and an applicant, that the subsequent LPA will not

seek to delete or make substantive alterations which impact the principle of what the condition/obligation is seeking to achieve. Achieving a mutual understanding and formal agreement on how planning decisions will be made is of upmost importance and as such PPDT will share details of these draft conditions and obligations with the subsequent LPA by 31st October 2024 to allow opportunity for discussion and input by Borough officers and LLDC PPDT will seek to positively respond to any requests for comments or discussion on conditions/draft HOTs. This agreement is crucial for maintaining consistency and fairness in planning decisions.

- **Section 106 legal agreements and GLA Stage 2 referrals:**

To ensure that sufficient time is built into the decision-making process to allow for s106 agreements to be executed, and GLA Stage 2 referrals to be made, ahead of the transition of planning powers, the below deadlines will be imposed for all remaining applications that LLDC will determine:

- **GLA Stage 2 referrals: 18th November 2024**
- **S106 agreements executed: 22nd November 2024**

After these dates all GLA Stage 2 referrals and execution of s106 agreements will be undertaken by the subsequent LPA.

The goal is to expedite the decision-making process and ensure that all applications are processed in a timely manner by the 30th November.

- **Close out cases with a resolution to approve within 2-3 months of LLDC transfer, especially where Boroughs didn't object on substantive matters:**

Where applications benefit from an LLDC Planning Decisions Committee resolution to grant planning permission, but the s106 agreement has not yet been completed prior to the transition of planning powers, LLDC PPDT commit to providing limited resource between 1st December 2024 and 31st March 2025 to help close out the drafting of these s106 agreements. The execution of these agreements would then be the responsibility of the subsequent LPA. This requires effective coordination and communication among all involved parties to ensure a smooth transition and to minimise any potential disruptions or delays.

5. LLDC's Commitment to Addressing the Planning Application Backlog

The LLDC recognises the importance of addressing the existing backlog of planning applications before transferring responsibilities back to the boroughs. Our aim is to not handover any out of date applications and to that end bullet points 1 and 2 below apply. Where we are unable to close out all out-of-date applications, bullet points 3 and 4 apply

This commitment involves:

- **Resource Allocation:** Allocating additional staff and resources to process outstanding applications expediently.
- **Streamlined Processes:** Implementing streamlined procedures and prioritising communication with applicants to prioritise the issue of decisions.
- **Regular Updates:** Providing regular progress updates to stakeholders, including boroughs and applicants, to maintain transparency and manage expectations.

- Collaboration with Boroughs: Working closely with borough colleagues to ensure a seamless handover of ongoing cases and sharing best practices to aid in future case management.

Focus on Major Planning Applications

- During the transitional period (1st September to 30th November), there will be a concentrated effort on progressing major planning cases to minimise the amount of work that may be transferred to Boroughs. This focus will include:
 1. **Prioritising major cases:** LCS Split-Out, Bow Goods Yard, Legacy Wharf, Stratford Waterfront, IQL North, 90 White Post Lane etc
 2. **Stakeholder Engagement:** Engaging with key stakeholders, including developers, local authorities, and community groups, to facilitate the resolution of major cases.
 3. **Clear Timelines:** Providing regular updates on progress relating to major cases that have been reported to LLDC Planning Decisions Committee, to ensure certainty for all parties involved.

Enforcement Cases

During the transitional period (September to November), LLDC will seek to close out existing enforcement cases by way of:

- **Active Monitoring:** Maintaining active monitoring of ongoing and potential enforcement cases to ensure compliance with planning regulations.
- **Swift Action / Close Out: Taking swift and decisive action on enforcement cases** to prevent unauthorised developments, address breaches, and reduce the overall number of live enforcement cases
- **Collaboration and Handover:** Collaborating with borough enforcement teams/officers to ensure a smooth transition of live enforcement cases, including sharing detailed case information and strategies.
- **Public Communication:** Communicating enforcement actions and outcomes to the public to uphold transparency and confidence in the planning system.

6. Pre-Applications Management

From 1st September 2024 onwards, responsibility for all pre-application requests will be managed by the subsequent LPA. It will be the responsibility of the LPA case officer to contact LLDC PPDT in order to receive a briefing on the site and pass on any knowledge of the relevant planning history (if applicable).

On or before 30th August 2024, LLDC PPDT will share a list of relevant stakeholders to each of the subsequent LPAs to assist with stakeholder involvement in new pre-application requests.

7. Knowledge Transfer

- Design Quality and Inclusive Design scheduled for 1st October 2024

- Knowledge transfer on key Section 106 agreements
 1. General 'template' LLDC obligations (e.g., architect retention).
 2. Process for transfer of funds and associated Grant Funding Agreements is covered in the agreed "Approach to CIL/106 Monies" protocol which forms part of the STS. Monies and Grant Funding Agreements will be transfer to the Council on or shortly after 30 November and will continue to be administered by the LLDC until 1st December 2024.

8. Community Infrastructure Levy administration and planning decisions

- The LLDC will continue to administer its CIL Charging processes until 1st December 2024 and its CIL Charging Schedules will continue to apply.
- Where an application is received by the Council from 1st September until 1st December, and the application is CIL liable, any CIL forms received from the applicant shall be copied to the LLDC. Where planning permission is issued for a CIL liable development in this period, the LLDC shall be notified and sent a copy of the decision notice to enable it to issue relevant CIL notices. If the Council becomes aware that a CIL liable development commences, it will notify the LLDC to enable the CIL demand notice and any other relevant notice to be issued.

9. Engagement with Developers and Agents

LLDC PPDT has undertaken a series of engagement workshops with key developers and planning agents to make them aware of the arrangements for the transition of planning powers. A final agent/developer session has been scheduled for 18 September where LLDC and Boroughs can set out the arrangements in place until 30 November.

LLDC PPDT will continue to engage with a range of stakeholders in advance of 30th November 2024 and will commit to updating the advice page on its Transfer of Planning Powers webpage, together with the information contained within email signatures.

10. Appeals

LLDC PPDT commit to ongoing engagement with subsequent LPAs in relation to any appeals received on or before 30th November 2024. Where the written representations, hearing or inquiry fall before the transition of planning powers, it is anticipated that it would be the responsibility of LLDC PPDT to manage and complete this process.

For appeals where written representations deadlines, hearings or inquiries that are due after the transfer of planning powers, these will be the responsibility of the subsequent LPA. For such cases, the amount of support that LLDC PPDT can provide for the appeal, either administrative or technical/professional will be discussed and agreed with the Borough in question on receipt of the appeal.

PPDT will provide a monthly update to the relevant LPA on possible appeal cases that may be received either during September-November 2024 or after transfer of planning powers.

11. Boroughs' Resource Commitment/Preparedness

- Statement from Boroughs on their resource commitment and preparedness for the transition.

12. Final Elements of Communications Plan

- Coordination with Boroughs on notification of transfer.
- See Annex 2 – Internal & External Comms Plan. Please note this will be refreshed as appropriate.

13. Existing Panels

- The LLDC Quality Review Panel (QRP) will be disbanded after 30th November 2024. However, boroughs have agreed to consider involving former members of the LLDC QRP when refreshing their own Design Review Panels, to maintain continuity.
- The LLDC Community Review Panel (CRP) will be disbanded post Transition, after the 30th November.
- Construction Transport Management Group (CTMG) will remain in situ Chaired and managed by LLDC (revised Terms of Reference to follow).
- LLDC Built Environment Access Panel (BEAP) will remain in situ post Transition and run by LLDC, the cost-neutral Service would be made available to the Boroughs (see attached note).

14. Compensation in connection with planning functions

- The Statutory Instrument revoking LLDC's planning powers makes transitional provision for compensation in connection with planning functions. Liability for compensation related to relevant sections of the Planning Act, Listed Building Act and Tree Preservation Regulations resulting from LLDC actions will remain with LLDC after transfer of planning powers. This liability does not include action taken by a Borough on behalf of LLDC under delegated planning powers during the period 01 September - 30 November 2024.
- Prior to transfer of planning powers LLDC agrees to act reasonably in discharging its planning functions to ensure that it mitigates its exposure to any compensation claims.
- During the period between 01 September-30 November 2024 the Boroughs agree to act reasonably in discharging the functions delegated to it by LLDC to ensure that it mitigates its exposure to any compensation claims.
- After transfer of planning powers, the Boroughs agree to act reasonably in connection with an appeal, enforcement case or other planning action which has been transferred to the Borough under the transitional arrangements in the Statutory Instrument, in order to mitigate LLDC's exposure to any compensation claims.
- Following transfer of planning powers where there is a claim for compensation in relation to planning action taken by LLDC, the Borough will inform the LLDC of this claim and the actions it has reasonably undertaken to mitigate the claim.

Where it is clear that the Borough has behaved reasonably, LLDC will pay the claim for compensation.

- Following transfer of planning powers LLDC will remain responsible for liability which may arise under the 'planning guarantee' in relation to planning applications submitted to it prior to 01 September 2024.

15. Data Transfer & Amended Technical Procedures during the Delegation Period – September to November 2024

- Data Transfers

In agreement with the boroughs, the data transfer process for the months of September, October and November will be as follows:

- All data up to the end of August 2024 will be transferred as per the agreed processes and established folder structure
- Individual monthly folders have been created within each borough's SharePoint site for the 3 months through to December.
- From September 2024 monthly 'closed case' reports will be generated for each borough on the first Monday of the month proceeding the previous month.
- The reports will be based on established criteria and identified database fields from the LLDC APAS planning system.
- Identified case folders, together with the applicable report, will be uploaded from LLDC's file servers to the corresponding borough's folder for that month, from the Tuesday after the Monday report.
- Emails will be circulated to the nominated borough representatives, once the uploads are complete.

16. PPDT Run-On Roles post 30th November

The aim of the temporary Run-On Roles is to provide the necessary support and continuity to the LPAs during the transitional period while ensuring clarity and maintaining consistency for all stakeholders involved.

Support:

- **Advisory Role:** Individuals in temporary Run-On Roles (Dec 2024 – March 2025) will primarily be available to offer advice and guidance on planning matters. This includes interpretation of the LLDC Local Plan, SPDs etc, and providing insights based on historical precedents.
- **Resource Allocation:** Access to LLDC databases, planning documents, and administrative support will be available to the temporary role holders only to ensure we can effectively perform the advisory functions.

Continuity:

- **Knowledge Transfer:** Implement a structured handover process from current case officers to those in Run-On Roles to ensure continuity of knowledge. This

includes detailed briefings on ongoing cases, access to case files, and historical context.

- **Document Management:** Ensure all relevant documents, including past decisions, correspondence, and planning applications, are systematically organised and accessible to support continuity in advisory services.
- **Communication Channels:** Establish clear communication channels between temporary role holders, permanent staff, and other stakeholders to maintain a seamless flow of information and updates.

Activity:

- **Advisory Meetings:** Schedule regular weekly meetings with LPAs where individuals in the Run-On Roles can discuss ongoing cases, provide updates, and receive feedback from borough colleagues.

Support Boroughs and Provide Consistency for Developers

- **Regular Updates:** Keep borough colleagues regularly updated on any changes in planning policies or procedures to ensure all parties are working with the most current information.

Clarity that Any Advice is Advisory

- **Explicit Disclaimer:** All advice provided by individuals in temporary Run-On Roles includes an explicit disclaimer stating that the advice is non-binding on LLDC and should be considered as guidance rather than definitive decisions. The role is to support and guide rather than make final decisions, which remain the responsibility of the appointed boroughs and their case officers.
- **Transition Schedule:** A transition schedule outlining site, status update, contact details and milestones will be handed over on the 30th November.

Conclusion: This document outlines the secured arrangements and key discussion points for the transitional arrangements protocol, ensuring a smooth and coordinated transfer of responsibilities and powers. The aim is to maintain consistency and efficiency throughout the transition period, with clear roles and support systems established for all involved parties.