



PINS NOTE 42/2013r1

To: All Inspectors

Date of Issue: 19 November 2013

Currency: review at 6 months after issue

Last updated: 27 November 2013 following a high court challenge issued in respect of the Revised Early Minor Alterations to the London Plan

The London Plan – Revised Early Minor Alterations

Action

1. Inspectors should be aware that on 11 October 2013, The Mayor of London published Revised Early Minor Alterations (REMA) to the London Plan. From this date, the REMA are operative as formal alterations to the London Plan (The Mayor's spatial development strategy) and form part of the development plan for Greater London.
2. Planning appeals must be determined on the basis of the development plan as it exists at the time of decision.
3. Inspectors are required to consider the policy position and if such matters raised in the REMA need to be addressed as part of the appeal then the Inspector should ask the case officer to issue an appropriate letter (see Annex A for text).
4. It may also be the case that Inspectors are contacted by the Despatch team asking them to consider the impact of the REMA for any unissued decisions.
5. For appeals proceeding via Hearing or Inquiry, the matter can be addressed at the event. Writing out to the parties in advance may be appropriate depending on any time constraints. It is for the Inspector to consider the wording in those cases as they may wish to specifically identify relevant REMA passages.

Background

6. A number of alterations have been made to the plan to ensure it is as up-to-date as possible, in particular regarding references to Government guidance and national legislation enacted since 2011, most notably the NPPF.

7. The Mayor has carefully considered the extent to which the policies in the Plan are consistent with those in the Framework and is satisfied that the Plan reflects the intent of the Framework and in particular the presumption in favour of sustainable development. He will consider publishing supplementary guidance about the application of the policies in the Plan in the light of the relationship between the London Plan and the Framework, in conjunction with the Government and London Stakeholders.

8. Case Officers will initially correspond with the LPA when requested to send a letter by the Inspector on the basis that it allows the case officer to establish whether

- there is no policy change relevant to the appeal proposal introduced by the new policy document
- relevant policy content is effectively the same, but new policies are in place. (This may occur where the wording of any 'replacement' policy simply replicates policy content from the replaced plan document, e.g. the plan may have been given a new reference/number)
- the LPA's decision is no longer supported by the original policies quoted in the decision (and possibly already provided with the questionnaire)
- there are entirely new policy objections to the proposal.

9. If the LPA identifies relevant matters, casework staff will then write to the appellant asking for their views according to current desk instructions. The time limit for response being 7 days (from the date of the letter, not 7 working days)

10. For Local Plans casework, Inspectors should refer to the step-by-step guide at Annex B

11. Inspectors should be aware that a high court challenge has been issued in respect of the Revised Early Minor Alterations to the London Plan (REMA) brief details of which are set out in Annex C. Inspectors who are met with arguments about the weight to be attached to the Plan should bear in mind that unless and until any part of the Plan is quashed by the courts, it continues in full force and effect (see paragraph 2 above).

12. Please contact XXXX if you have any queries on this Note generally. For specific casework queries please contact XXXX (WR and H) or XXXX (LI), XXXX (Enforcement Appeals) or XXXX (Local Plans queries)

XXXX

Chief Planning Inspector

Text of letter to be sent to LPAs

It has been brought to my attention that Revised Early Minor Alterations to the London Plan (REMA) have recently been adopted. As you will appreciate, planning appeals must be determined on the basis of the development plan as it exists at the time of the Inspector's (or the Secretary of State's) decision.

If you consider the reasons for refusal/LPA's planning objections are supported by newly adopted REMA policies please supply copies of relevant extract(s), stating the date on which each new policy was adopted and which of the policies originally relied upon it replaces.

Alternatively, if you consider the reasons for refusal/LPA's planning objections might no longer be supported as a result of the REMA policies please clearly explain the LPA's current policy position in respect of this appeal.

In order to avoid any unnecessary delay to the progress of this appeal please ensure that you provide a full reply within seven days of the date of this letter. Please note we must receive a response to this letter.

Local Plans

1. Inspectors should seek to minimise delays, while giving parties an opportunity to make representations in the interests of fairness. The first guiding principle in development plan work is where possible to ensure that sessions where representations may currently rely on parts of the London Plan that have been superseded or amended by the Revised Early Minor Alterations (REMA) are re-programmed, and substituted with sessions not so affected, or that space is provided for relevant issues to be revisited before the examination is completed. As the starting point, the London Borough Council should be invited to consider the implications of the REMA for its plan that is undergoing examination, having regard to the requirement for general conformity with the London Plan.

2. Preparation before the pre-hearing meeting (PHM) (if applicable) – At the PHM (or in any event, in the Inspector's Guidance Notes for the Examination), make it clear that sessions where representations may currently rely on previously existing parts of the London Plan will be scheduled so as to give all parties the opportunity to take into account in their representations the potential effect of the REMA.

3. Preparation after the pre-hearing meeting (PHM) and relevant sessions scheduled – Defer discussion of policy topics where representations potentially reflect previously existing parts of the London Plan until the parties have been given an opportunity to consider the potential effect of the REMA as in step 2. Substitute with sessions not so affected.

4. Examination hearings in progress – Programme discussion of policy topics where representations potentially reflect previously existing parts of the London Plan to allow an opportunity to consider the potential effect of the REMA as in step 3 (if not possible go to step 5).

5. Examination hearings in progress where previously existing London Plan policy-related issues are the current topic - Continue on the basis of the REMA but where necessary, after canvassing the views of the parties, allow a suitable adjournment as in step 4.

6. Examination hearings in progress but previously existing London Plan policy-related issues are already dealt with – Inform examination parties that it will be necessary to re-open the issue(s) to allow an opportunity as in step 5.

7. Report is being prepared - Seek the views of the parties on the implications of the REMA. Be prepared to re-open the issue(s) to allow an opportunity as in step 6.

8. Report completed but not yet sent for fact check – On the basis that one of steps 1 to 7 has already been implemented, proceed to send the report. If none of the steps before 8 have been completed, return to step 7.

Information for Inspectors relating to the Legal Challenge to REMA

On 19 November 2013 the London Boroughs of Islington, Camden, Brent, Enfield, Greenwich, Lambeth, Southwark and Tower Hamlets applied to the High Court under s. 113 (3) Planning and Compulsory Purchase Act 2004 (against the Mayor of London) to quash paragraphs 3.63 and 3.68 of the Revised Early Minor Alterations to the London Plan (REMA).

Inspectors may wish to be aware of the grounds of the challenge that are summarised below. The challenge however does not allege any wrongdoing on the Secretary of State's part and the Secretary of State is therefore restricting his action to a watching brief. The claim does not seek any interim order suspending the plan either wholly or in part so it continues in effect pending the outcome of the challenge.

The Boroughs claim the Affordable Rent levels set out in the REMA would render much of the affordable rented housing which would be delivered on that approach, unaffordable to the majority of eligible households in those boroughs who should be allowed to establish their own criteria for the Affordable Rent product so it meets affordable housing needs and satisfies NPPF requirements. Although the EiP inspector supported this position and recommended deletion of the above paragraphs of REMA, the Mayor did not accept his recommendations, in effect stating that more weight should be given to ministerial letters (which confirmed the position as carried forward in REMA was in accordance with national policy); that it was not appropriate to set affordable rent levels through the planning system; and that the Mayor's approach would render impossible delivery of affordable housing in accordance with existing policies.

The challenge is accordingly on the grounds that:

1. The Mayor's reasoning is in error in relying impermissibly on ministerial statements in his interpretation of NPPF;
2. Paragraphs 3.63. and 3.68 REMA are contrary to paragraph 47 NPPF; and
3. The Mayor erred in concluding that London represented a single housing market area.

Inspectors confronted with arguments on these lines should however bear in mind that REMA are formal alterations to the London Plan and form part of the development plan for London on the basis of which planning appeals must be determined unless there are clearly overriding other material planning considerations.