

RESPONSE TO THE CONSULTATION PAPER: PROPOSED NEW FUNDING CONDITION TO REQUIRE RESIDENT BALLOTS IN ESTATE REGENERATION

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Context of respondents

Dr Pablo Sendra is Lecturer in Planning and Urban Design at the Bartlett School of Planning, University College London. His research focuses on social housing regeneration and collaborative planning and urban design processes. Currently, Dr Pablo Sendra is Principal Investigator of the research project “Community-led social housing regeneration: between the formal and the informal”.

Dr Daniel Fitzpatrick recently completed a PhD at the Bartlett School of Planning on mutual housing developments and is Researcher on the above-mentioned project on community-led social housing regeneration.

Dr Pablo Sendra and Dr Daniel Fitzpatrick, in collaboration with the London-wide network of activists and community organisations - Just Space - are currently developing the aforementioned research project “Community-led social housing regeneration” (<http://communityled.london>), which is funded through a British Academy / Leverhulme Small Grant. The project first analyses the strengths and limitations of the existing planning framework and tools for community engagement in regeneration processes. Secondly, it explores which strategies community groups are using to oppose social housing demolition and propose alternative community-led plans.

The project uses an action-research methodology; it works closely with community organisations and produces outputs that can support community-led initiatives. As part of this project, we are collaborating with Just Space in elaborating responses to consultation documents. Previously, we have contributed Just Space response to the Draft Housing Strategy (December 2017) and currently we are contributing to the consultation on ballots (April 2018). For the avoidance of doubt, this response is different from Just Space’s response. While it may have many points in common, it differs in others.

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 or redevelopment schemes. However, it is not enough to make it a “funding condition”. The Mayor should use its planning powers to stop any estate regeneration or redevelopment scheme that does not run

a resident ballot or does not achieve a positive vote on the ballot, regardless of whether there is GLA funding involved. Given that estate regeneration is a very important issue, as Sadiq Khan expressed in his Manifesto when running for Mayor, this should be considered a Mayoral priority.

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 says “require”. This requirement should extend to any social housing regeneration or redevelopment scheme where demolition of social housing is being proposed, not just to those receiving GLA funding.

We welcome that there is a section that explains in detail how to apply the policy. This is something that should be done for every policy on social housing estate regeneration outlined on the Good Practice Guide for Estate Regeneration (February 2018), the Draft Housing Strategy (September 2017), and the Draft New London Plan (December 2017). However, we do not agree on how this policy is being applied:

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.”

However, according to paragraphs 2.5 and 2.6, this proposal is only using the second way to achieve this: through conditioning GLA funding to resident ballots but not utilising the Mayor’s planning powers to require ballots. As stated above, giving the importance of estate regeneration, the Mayor should use its planning powers to stop those developments that do not run a ballot with a positive outcome.

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.” However, there are legal precedents, known as Gunning Principles, which came out of the case *R v Brent London Borough Council, ex p Gunning, (1985) 84 LGR 16*, that have set the legal principles for meaningful consultation. These 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.

Recently, on *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

Given these legal precedents, the Mayor should use his planning powers to stop estate regeneration and redevelopment schemes that do not run a resident ballot with positive outcome.

It is also not clear what happens when the result of the ballot is a no. There are precedents, such as the Aylesbury Estate, where residents voted against demolition and stock transfer, and revised proposal of the local authority (London Borough of Southwark) still included demolition and stock transfer⁴ (see Appendix 1, extract of article by Sendra, 2018). When the result of the ballot is no, the landlord should work *together* with residents in agreeing on a revised proposal, with substantial changes that respond to the resident’s demands, and run a new ballot once they have agreed on a revised proposal with the residents.

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 and propose the following amendments:

Paragraphs 3.2 and 3.3 state that there should be trigger for ballot based on threshold of amount of homes constructed based on the definition of strategic estate regeneration schemes, which is 150 homes. Therefore, a scheme that demolishes 100 homes and builds 149 would receive funding with the current policy and would not fall under purview of a compulsory ballot. Demolition Watch’s petition says that “The minimum number of homes demolished to trigger a ballot should be 10 homes”⁵ and we endorse this. For one thing, the evidence is that the demolition of existing homes causes more disruption than construction of new ones.

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

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.

⁴ London Borough of Southwark (2005). The Aylesbury Estate: Revised Strategy. <http://modern.gov.southwark.gov.uk/Data/Executive/20050927/Agenda/Item%2007%20-%20The%20AylesburyEstate%20Revised%20Strategy%20-%20Report.pdf>. Accessed 30 May 2017.

⁵ <https://www.change.org/p/sadiq-khan-ensure-votes-for-residents-on-estates-facing-regeneration>

Regeneration, Draft New London Plan and Draft Housing Strategy? i.e. like-to-like, no net loss of social housing, etc.

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

We have the following reservations about the proposed scope of the ballot and propose amendments:

In paragraph 3.6. it is stated that the ballot should include the “broad vision, priorities, and objectives for estate regeneration” etc. Included in this list should also be the details on the homes to be demolished and how the demolition and rehousing process will be carried out. Furthermore, if residents chose to endorse a development, the development should be more specific.

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 remains a vague statement and implies a heavily top-down process. It leaves residents completely outside the substantive decision-making stages in the process.

In paragraphs 3.10 and 3.11 it is stated that there should not be a further ballot about the “development partner”. We do not endorse this and believe that all evidence points towards the need for another ballot at this stage or alternatively the development partner should be included as part of the ballot. The premise is that residents should be able to decide about any change on their landlord. Otherwise residents will be giving again a blank cheque to the council to partner with a private developer of the council’s choice. The estate regeneration proposed would end up being a “stock transfer”, in which case there would be a requirement of a ballot for stock transfer⁶.

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

The main issue we have here is that ballot should happen *after* a comprehensive engagement process, not before which we think would be too early. In the same way that a Neighbourhood Plan goes to referendum once the Neighbourhood Forum has developed a plan, has agreed to it, and it has gone through the different examinations, an equivalent process should be followed in estate regeneration. Otherwise, the risk of the ballot could mean the residents are signing a “blank cheque” to the landlord. Therefore, to have the ballot at the Options Appraisal stage would be appropriate.

A problem with an early ballot would be if there are substantial changes to the scheme, not only design-wise but also in financial or legal terms. Regeneration schemes in the past have taken sometimes a decade or longer, and therefore there would need to be certainty at the time of ballot around levels of loss and demolition of social-rented homes, number of replacement homes, tenure, rent and service charges.

⁶ DCLG/HCA/MoL 2016 Housing Transfer Manual
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/329907/140704_Manual_2014_Final_2_.pdf

Residents should also have the choice to be able to call for a further ballot when there are changes to the scheme and to ensure that the intention of para.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 proposals stages. Furthermore, there is little information on the “period of consultation, engagement and negotiation between residents and their landlord” (para. 3.10). The consultation, engagement and negotiations should also extend to reaching an agreement with the neighbours through a committee or community-led decision-making body on the questions of the ballots. Funding should therefore be provided for a community group to organise and form a decision-making body on the scheme.

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. Therefore, there is a need for a London Social Housing Commission or Commissioner that responds to residents, as suggested in the Just Space response to the Mayor’s Draft Housing Strategy⁷. The role of the London Social Housing Commission or Commissioner would be as a watchdog to follow the process of these developments, especially in contentious cases which could require clawback.

Paragraph 3.14 needs clarification. The application of the policies proposed should include the power to stop the development and GLA funding in the event they are not being met. The proposed London Social Housing Commission or Commissioner should follow up whether these policies are being met throughout the delivery of the project and the Mayor should use its 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 proposed amendments that would extend the eligibility criteria:

In paragraph 3.17 regarding the eligibility to vote, dependants and resident family members of those eligible to vote should be also eligible to vote even if they are not on the Local Authority housing register. The minimum voting age should be clarified. Our suggestions would be 16.

There should be a count on the total of the ballot and a count breakdown by types of tenancy, which can provide more information on how the redevelopment/regeneration may affect the different types of tenure. The total votes of yes/no should be the one that decides whether to stop or go ahead with the development.

⁷ <https://justspacelondon.files.wordpress.com/2017/12/js-response-to-housing-strategy-2017.pdf>

There should be clarification as to whether there is a link between eligibility to vote and right to return.

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 amendments to paragraph 3.26, which will be 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 majority of over 50% for a vote to be valid.
- To require a minimum percentage turn-out to guarantee a meaningful engagement, for example a 25% minimum turnout.
- It is not clear what happens when there is no result. See the problems that arose in Aylesbury Estate, where residents rejected stock transfer and demolition in a ballot and yet the counter-proposal of the council was still stock transfer and demolition (see Appendix 1).
- Results to be broken down by tenancies so the landlord has more information.

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

We agree if there is a London Social Housing Commissioner or a form of a London Social Housing Commission (as we have proposed and discussed earlier in this document and in Just Space response to the Draft Housing Strategy) that responds to the interest of the residents and makes sure that demolition is the only option to deliver a key infrastructure scheme. It is very important to avoid that this exemption becomes an opportunity to avoid ballots in estate regeneration and redevelopment schemes near infrastructure projects. This would mean that future schemes such as Crossrail 2 would make easier to demolish and displace social housing residents without adequate and appropriate provision of options for the residents.

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

We believe that these cases should be scrutinized and therefore we propose amendments. In paragraph 3.30 there should be a requirement that an independent expert carries out an evaluation to determine that homes are not safe, commissioned by the London Social Housing

Commission or Commissioner or, while this body is appointed, by the GLA, not by the landlord. The safety exemption can be misused by landlords to avoid balloting residents.

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. In paragraph 3.31 the exemption proposed can be misused by landlords. Landlords can try to deliver this type of housing by infill or by demolishing no more than 10 homes. Otherwise, this should also be balloted.

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

No further proposals.

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 ballot should be applied retrospectively. The Mayor has approved funding in some cases very recently to many estates that where demolition is proposed⁸ (Appendix 2). 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 the case of 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 to all developments that have already received funding. If they don't run a ballot, the funding should be withdrawn, and the development should be stopped by using the Mayor's statutory power. Therefore, funding would then be removed, clawed back AND the scheme stopped for those that do not run ballot or where the result of the ballot is no.

⁸ https://www.london.gov.uk/sites/default/files/mgla060218-2820_-_foi_attachment.pdf

Appendix 1:

Extract from Sendra, P. (2018). 'Community-led social housing regeneration: from government-led programmes to community initiatives'. In J. Clark, N. Wise (Eds.), *Urban Renewal, Community and Participation: Theory, Policy and Practice*. Berlin: Springer

“NDC Partnerships worked differently in each of the 39 areas and it is necessary and the involvement of the residents in the regeneration had different outputs. As the final report suggests, the involvement of residents has a very positive effect on how they feel about the regeneration scheme (Batty et al. 2010). The response of residents to the scheme also depends on whether the regeneration considers refurbishment or demolition. In the case of Aylesbury Estate NDC, the original NDC plan was the stock transfer from the council to a ‘community-based housing association’ and the demolition and redevelopment of the estate—based on how the council describes it in its report ‘The Aylesbury Estate: Revised Strategy’ (see LBS 2005). This would secure additional £400m from the stock transfer in addition to the £52m funding from the government. The residents rejected with a large majority this stock transfer and redevelopment scheme in a ballot, where 73% of the residents voted against it and 73% turnout. In the council report to revise the strategy for the Aylesbury Estate (LBS 2005), several factors that caused residents to vote against the redevelopment were identified. These included perceptions that the campaign for redevelopment was weak, that the residents organised a campaign against the scheme, and that residents were concerned that the stock transfer would result in higher rents and service charges. Despite the result of the resident ballot, the council’s revised strategy still consisted of a demolition and redevelopment approach (LBS 2005). The report showed figures indicating the costs of refurbishment, presenting this option as non-viable and explaining that the only viable option is demolition and redevelopment.” (Sendra 2018).

Appendix 2:

Estate regeneration schemes in London with full or outline planning permission and/or named in a GLA funding contract (as at 9 March 2018)

https://www.london.gov.uk/sites/default/files/mgla060218-2820_-_foi_attachment.pdf

FOI - Estate regeneration schemes in London (March 2018)

Transitional arrangements for the Mayor’s final Best Practice Guide to Estate Regeneration propose that the requirement for ballots will not be retrospective, so it will not apply to schemes where the GLA already has a contract to allocate grant to a registered provider (RP). But it doesn’t list which schemes already have such contracts. Could you provide a list – with the names of schemes, RP, and borough?

<https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information/foi-disclosure-log/foi-estate-regeneration-schemes-london>