

## **Mayors Planning Powers consultation – Northern Housing Consortium response**

### **About us**

The Northern Housing Consortium (NHC) is a membership organisation based in the North of England. We are the ‘Voice of the North’ working with councils, social housing providers and Mayoral Strategic Authorities to develop insight, influence and solutions to create better homes and places. NHC members provide the vast majority of social housing across the North, and we bring them together to access better value in procurement, share good practice and collaborate through Housing Partnerships.

### **Consultation response**

We support the broad direction of these proposals. Mayors should have the tools to shape strategic development in their areas, and these powers have real potential to support housing delivery and regeneration across the North. Our response raises some concerns around deliverability and seeks further clarification in several areas. These include:

- insufficient capacity within strategic authorities to currently use these powers to their full potential, and the need for additional capacity funding at the Autumn Budget to address this.
- the need for flexibility, so that mayors can respond to the varied housing and land markets found across the North, including the many places where viability is persistently challenging, and tailor the use of these powers to their local priorities.
- the governance differences between London and combined authorities found across the rest of England, and the resulting implications of these powers for key relationships between mayors and constituent authorities.
- the effect on local planning authority finances of transferring planning functions and the fee income attached to them.
- the case for government to consider making regeneration a distinct category of strategic importance and allowing MCIL to be used to fund affordable housing.
- the need for strategic authorities to collect MCIL themselves where local authorities are unable to do so on their behalf, including where no constituent council currently charges CIL.

### **PART 1: APPLICATIONS OF POTENTIAL STRATEGIC IMPORTANCE**

#### **Question 1: Do you agree with the proposed PSI application categories for areas outside of London, as set out in Annex A?**

Partially agree.

The three broad themes make sense as a starting point, and basing them on London's established practices gives developers working across several areas a degree of predictability.

Our concern is with the assumption that single national thresholds work across different markets. The strategic importance of housing development is relative to scale and will differ significantly across different areas. A scheme of 150 homes is routine in a major city, but in a rural area, a coastal settlement or smaller town it may represent a substantial share of planned supply, with proportionately greater implications for local infrastructure and services. Several strategic authority areas in the North contain both types of market within a single geography. The risk with the proposals as currently drafted is that a single set of thresholds captures routine development in the major cities while leaving genuinely strategic schemes in smaller markets outside the mayor's reach altogether.

We therefore support the principle of localised thresholds, which the consultation refers to but does not commit to. Once a Spatial Development Strategy (SDS) is adopted, a mayor should be able to propose categories and thresholds for their area where they will be able to use these powers. These will need to be developed in consultation with constituent local planning authorities and subject to approval by the Secretary of State, where they can evidence that changes are needed to capture strategically significant development in their area.

Separately, the categories consulted on focus principally on new development and are largely silent on regeneration. In much of the North the development carrying genuine strategic significance is the renewal of an existing place rather than a greenfield scheme. Category 3A (loss of 200 homes, or prejudicing four hectares of land in residential use) is the closest the proposals come to addressing this, but it is a direct refusal power only. It gives a mayor the ability to block the loss of housing while offering no route to support a regeneration scheme that is struggling to come forward.

Furthermore, this carries a particular risk for estate regeneration. Schemes that demolish and replace homes reaching the end of their viable life necessarily involve the loss of existing stock, often at scale, and are typically complex, phased and dependent on decant arrangements assembled over years. A refusal power triggered by the loss of those homes could halt schemes that would deliver better homes in regenerated areas in the future. We do not see the utility in introducing potential new levers that could delay or obstruct the delivery of housing-led regeneration in the North. We would also question how much this category adds in practice, since regeneration schemes involving the loss of 200 homes will in most cases propose 150 or more new homes and so already fall within Category 1A, where both call-in and direct refusal are available. The government should instead consider making regeneration of existing communities and town or city centres a distinct category that mayors can support, as set out in our answer to Question 2.

Finally, we recommend that government commits to reviewing these categories after commencement. These categories and thresholds are being established before any mayor outside London has operated the powers and before any SDS has been adopted. There is therefore no evidence base for whether they capture the right development across the wide range of housing markets found in the North. A review would allow them to be tested against actual referral volumes across different market types, including whether the case for local

calibration has been borne out. If mayors have not by then been able to localise categories and thresholds, the review would be an opportune point to revisit this.

The review should also look more broadly at how powers have operated, including how often they have been used and by whom, the outcomes of interventions, and how the arrangements have worked alongside constituent local planning authorities. This is a significant extension of mayoral involvement in decisions previously taken locally, introduced without prior experience, and all parties would benefit from a scheduled point to take stock. This could take place, for example, two years following implementation.

**Question 2: Do you propose any other categories of development which should be considered a PSI application, including in London?**

As set out in our response to Question 1, we propose that regeneration is added as a category of potential strategic importance, with the definition developed through further consultation with mayors, local planning authorities and the housing sector.

In much of the North, the development carrying genuine strategic significance is the regeneration and renewal of an existing place: estate regeneration, town centre repurposing, remediation of strategically significant brownfield land, and the replacement or reconfiguration of existing stock. These schemes are typically dependent on complex land assembly and cross-boundary coordination and are therefore likely to be a priority for mayors.

As set out at Question 1, Category 3A does not fill this gap. It operates as a direct refusal power only, gives a mayor no positive route to support a scheme they may wish to help deliver, and risks catching estate regeneration schemes that replace homes at the end of their viable life.

We do not propose a numerical threshold for any new regeneration category. Strategic significance in regeneration derives from complexity, location and the relationship between a scheme and the wider place, which a unit count or floorspace figure will not always capture fully. We would rather government developed a workable definition with those who will operate it than hastily adopt a figure now.

More broadly, we recommend that the framework allows mayors to bring forward categories reflecting the specific housing priorities of their area. Pressures differ markedly across northern strategic authorities, including acute demand for temporary and supported accommodation in some, unmet need for later living accommodation in others, and student accommodation markets that materially affect housing supply in the core cities. A fixed national list is unlikely to fully anticipate these. This is a judgement best made once an SDS is adopted, developed with constituent local planning authorities and subject to approval by the Secretary of State.

**Question 3: Should mayors outside of London be able to call in Category 3J (50 homes or more) applications where local planning authorities are minded to refuse?**

Yes.

Following our engagement with strategic authorities in the North, the clearest use case for this power is in smaller and rural markets, where 50 homes are genuinely strategic. In rural districts, coastal settlements and market towns, a scheme of that size can represent a significant share of the year's planned supply, and the view that 50 homes are too small to be considered strategic does not hold. As already laid out, the localisation of thresholds would enable mayors covering these types of areas to set thresholds calibrated to these markets.

**Question 4: Do you agree that the scope of powers to intervene in relation to PSI applications should expand as a SDS is progressed?**

Strongly agree.

We support scope expanding as the SDS is progressed and would support government going further by making clear that intervention before adoption is expected to be exceptional.

An adopted SDS provides a robust, agreed basis against which strategic significance can be judged, as well as a shared vision for the area that all are working towards. Where a mayor can show that a scheme would materially affect the implementation of the strategy, intervention is testable and implements something constituent authorities helped shape. Before adoption, the same intervention is not based on a shared evidence base or strategic goal that has been agreed to by the bodies being effectively overruled, in the same way.

This matters more outside London than the consultation acknowledges. The Mayor of London is separately elected, and the boroughs hold no seat in Greater London Authority (GLA) decision-making, so intervention there is intervention by a distinct tier. Everywhere else, mayors govern through a cabinet of constituent authority leaders, and in most combined authorities' significant decisions require those leaders' consent or a qualified majority.

The consequences of a contested decision are therefore different. In London they fall largely on the relationship between the mayor or GLA with a single borough. Outside London they are felt in the cabinet through which the mayor governs, and can affect delivery across transport, housing investment and skills. Those cabinets are also increasingly divided along political lines, which adds a further dimension the London model never had to accommodate: an intervention against an authority led by a different party risks being characterised as politically motivated regardless of the planning merits, and the mayor has limited separate institutional standing or evidence base to fall back on.

Relationships are therefore a key consideration as to whether these powers work in practice, and an intervention that damages them carries costs well beyond the application in question. Feedback from strategic authority officers in the North is that their strong preference is for decisions to be taken locally, with the strategic authority supporting local determination rather than substituting for it. As a result, we expect that use of these powers will generally be low in the period before SDS adoption.

Staging the powers so that scope grows following SDS adoption protects mayors as much as local planning authorities. It gives mayors an agreed basis to point to rather than leaving them exposed to the charge that an intervention is political, and it preserves the relationships

with constituent authorities on which all other delivery across transport, housing, skills, regeneration and more ultimately rests.

**Question 5: Do you agree that where a SDS is not yet adopted, a decision by a mayor to either direct refusal or call in a PSI application will need to be justified in respect to growth?**

Partially agree.

As mentioned above, our starting point is that these powers should be, and are likely to be, used exceptionally before an SDS is adopted. This is because the SDS will provide the strategic basis for decision-making and the use of these powers across mayoral areas.

On the proposed test, we agree that any basis for intervention must be clear and well evidenced, but growth alone is too narrow. A mayor may have compelling reasons to intervene that are not solely about growth. These include meeting local affordable housing need or addressing the consequences of poor-quality housing stock on health and wellbeing. Paragraph 47 of the consultation makes clear that whether an authority is meeting its housing targets will be used as a proxy for 'growth' for residential applications, but meeting the prescribed housing target is not a guarantee of meeting housing need. In our response to the 2024 NPPF consultation we criticised the lack of consideration given to the type and tenure of housing being measured through these targets and this criticism remains relevant today.

As an alternative, the test could be framed differently so that where an SDS has not been adopted, a mayor should be able to intervene where there is an overwhelming case for doing so, aligned to the currently agreed priorities of the area. As set out in Question 4, an intervention carries much greater weight where it rests on something constituent authorities helped shape. In the period before an SDS has been adopted, these priorities exist in other documents such as Local Growth Plans and other agreed regional strategies.

Finally, however the test is drawn, it should be clear before the powers commence rather than being established through contested cases. Government should consider whether additional guidance or a common framework is required on how the test is expected to operate in practice, particularly during the period before an SDS has been adopted. Greater clarity would help ensure that interventions are consistent and grounded in priorities that have already been agreed across an area, reducing the risk that decisions are perceived as politically motivated rather than based on strategic considerations. Given the governance arrangements described at Question 4, this would provide greater confidence to all parties and support constructive relationships between mayors and constituent local planning authorities.

**Question 6: Do you agree with the proposed criteria for mayors to use their PSI application powers following adoption of a SDS?**

Strongly agree.

Intervention is justified where a proposal is of a nature or scale that would significantly affect implementation of the strategy, and direct refusal where granting permission would be contrary to the SDS.

**Question 7: Do you agree with the proposed approach to written representations for called-in PSI applications?**

Agree.

**Question 8: Do you agree to the approach to exclude centrally led UDCs or NTDCs from a mayor's powers to direct refusal and call in PSI applications?**

Agree.

**Question 9: Do you have any suggestions for minor and/or technical changes to the PSI application procedure?**

Yes.

Secondary legislation or guidance should make clear how applications that have already been submitted and undetermined at commencement will be treated, and whether new powers will apply to them, to avoid any disputes in the first months of operation.

**PART 2: MAYORAL DEVELOPMENT ORDERS**

**Question 10: Do you agree that Mayoral Development Orders cannot be used for Schedule 1 EIA Development?**

Agree. MDOs should be focused on housing and regeneration.

**Question 11: Do you agree that Mayoral Development Orders cannot be used for minerals development?**

Agree. MDOs should be focused on housing and regeneration.

**Question 12: Do you agree with the proposed approach to preparing a Mayoral Development Order?**

Partially agree.

We support MDOs and see real potential in them. Our recent Renew report into housing-led regeneration identified giving mayors the ability to prioritise regeneration sites for planning permission as a means of increasing delivery, and MDOs are a direct route to doing that. An upfront grant of permission that establishes the principle of development and sets a clear

consenting framework could de-risk exactly the kind of complex, marginal regeneration site that struggles to come forward through conventional applications in the North. Our concerns are about strategic authority capacity and about the effect on local authority finances. Neither is an argument against the power, but both will need to be addressed if it is to be usable.

On capacity, the assessments, consultation and technical work described here are precisely the stages at which the existing application system slows down. An MDO essentially front-loads that work rather than removing it. Unless strategic authorities have the specialist capacity to carry it out, the effect will be to relocate delay into organisations that in most cases currently have no development management function at all. The clearest message from the strategic authority officers we engaged with in preparing this response was that the people and the systems are not there to use these powers, including MDOs, at any significant scale. We would ask government to confirm that low initial use of these powers will not be treated as underperformance or taken to suggest that the powers are unnecessary.

Paragraph 27 states that ongoing resourcing is expected to come from general resources, supplemented by discretionary pre-application income. We do not think, however, that reflects what is required. Establishing this capability will mean recruiting experienced development management, viability, heritage and environmental assessment staff, and building new systems, before the powers come into force in early 2027. Additional funding will need to be confirmed at the Autumn Budget to make that possible, including for this year of the Integrated Settlement for Established Mayoral Strategic Authorities. Guidance and the sharing of learning from London are welcome, but neither can substitute for people with the right skills.

The capacity question is not confined to strategic authorities. An MDO removes applications from the local planning authority permanently, for the life of the order. Local authority planning services are substantially fee-funded, and for an authority containing a significant MDO site the loss of application fee income could be material and sustained, while the authority continues to be consulted and, in many cases, to discharge conditions. The result is that capacity is drawn away from local authorities at the same time as it is being built up at strategic authority level. The consultation does not consider the potential impact of this for local authorities, including on the government's stated ambition to deliver "the largest council housebuilding programme since the post-war era", which will depend on the same authorities having capacity to bring their own schemes forward.

**Question 13: Do you agree with the proposed approach to publicity and consultation of a Mayoral Development Order?**

Agree.

**Question 14: Do you agree with the proposed arrangements for making a Mayoral Development Order?**

Agree.

**Question 15: Do you agree with the proposed approach to approval of conditions following the grant of permission through a Mayoral Development Order?**

Partially agree.

The existing system of approving conditions is well understood by applicants and authorities alike.

We would seek further clarity on two related points.

The first is how the choice of approving body will be made in practice. The consultation makes clear that approval of conditions can be done by a Local Planning Authority or the mayor but does not indicate how that choice is expected to be made, or whether the authority would have any say in it. Given that the authority will retain the local knowledge, the relationships and in most cases the operational capacity to handle this work, clarity on this would be helpful.

The second is fees. As set out at Question 12, an MDO permanently removes application fee income from the local planning authority while that authority may continue to be consulted and to discharge conditions, and reduced income will further reduce local authority planning capacity. We would welcome an early indication of how government intends to address this loss of fee income.

**Question 16: Do you agree with the proposed approach to revisions and revocations of a Mayoral Development Order?**

Partially agree.

The safeguards are proportionate for revocation and material revisions, but not for minor amendments such as correcting errors or adjusting a condition without changing the scope of the permission. Requiring 30 days' publicity, a newspaper notice and notification of every previous representor for changes of that kind would discourage mayors from keeping orders current.

We recommend a two-tier approach, with a lighter procedure for non-material revisions.

**PART 3: MAYORAL COMMUNITY INFRASTRUCTURE LEVY**

**Question 17: To what extent, and in what ways, could evidence and analysis used to prepare a Spatial Development Strategy (SDS) inform work to prepare a CIL charging schedule?**

Evidence used to prepare a Spatial Development Strategy should play a significant role in informing a MCIL charging schedule wherever possible. Using a shared evidence base would help ensure that infrastructure priorities are aligned with the long-term objectives of the SDS.

However, while SDS evidence should inform infrastructure priorities, the primary consideration when setting MCIL rates, especially in the North where land values are lower, must remain development viability. MCIL rates should support, rather than undermine, the delivery of housing and economic growth objectives set out in the SDS. To do so, charging schedules will need to be based on robust assessments of local market conditions and the cumulative impact of planning obligations, with more granular assessment on different types, locations and scales of development than necessary for an SDS.

**Question 18: Should SDS examination generally take place at the same time as CIL charging schedule examination, and where would greater flexibility be justified?**

Agree.

In principle, SDS examinations and MCIL charging schedule examinations should take place concurrently. This approach would encourage alignment between strategic priorities, infrastructure requirements and funding mechanisms, while reducing duplication of evidence gathering and examination processes.

There will, however, need to be flexibility where justified by local circumstances. The ability to examine the documents together will depend on the maturity of SDS preparation and capacity within strategic authorities. Some authorities may be in a position to carry out both pieces of work simultaneously, while others may need to phase their introduction. This would generally mean adopting the SDS first, as the strategic basis for subsequent decision making, and then establishing an MCIL charging schedule.

We therefore support a general expectation that MSAs seek to prepare and examine SDSs and MCIL charging schedules together, but with sufficient flexibility to accommodate differing stages of development and institutional capacity.

**Question 19: How might the requirements for updating a MCIL charging schedule best ensure mayors of strategic authorities can keep rates reflective of market conditions?**

The requirements for updating a charging schedule should be light enough that mayors can adjust rates as conditions change, in consultation with constituent local planning authorities and with the agreement of their cabinet.

The critical case is downward adjustment. Where market conditions deteriorate and a rate begins to threaten the viability of the development it applies to, a mayor needs to be able to reduce or suspend it quickly. This matters comparatively more in the North, where development viability across much of our members' operating areas is marginal, and the margin between a scheme proceeding and stalling is often small enough that a fixed levy set in better conditions can make a meaningful difference. A process that takes too long to complete will mean schemes stalling while an out-of-date rate remains in force. We recommend a proportionate procedure for reducing rates, or for suspending them in defined circumstances, which does not require full re-examination.

In addition to this, the government may wish to require MCIL charging schedules to be subject to periodic review to ensure rates remain evidence-based and reflective of market conditions.

**Question 20: Should the CIL regulations require mayors to take account of local tier authority CIL rates when setting their own rates?**

Yes.

Mayors will need to take account of local authority CIL rates when setting MCIL rates and vice versa. The key consideration is the cumulative impact of developer contributions on viability, rather than either of the charges individually.

This is particularly important in many parts of the North, where viability challenges are often more acute. Without both authorities considering what other development contributions are in place within their areas, there is a risk that the combined burden could undermine housing and regeneration delivery, as well as deter investment.

**Question 21: Are there further conditions or requirements that mayors should need to fulfil before they can charge MCIL?**

No.

We would ask government to confirm that choosing not to charge MCIL remains a legitimate outcome, rather than the conditions implying an expectation or requirement to set a levy.

**Question 22: Do you agree that MCIL outside of London should be capable of funding a broader range of strategic infrastructure than the current model in London?**

Strongly agree.

The challenges and opportunities facing places across the North differ significantly from those experienced in London. Transport is a strategic priority across the North, but it is not the only one, and a levy restricted to it would leave mayors unable to direct receipts to the infrastructure their own strategies identify as most needed.

Strategic authorities outside of London require flexibility to respond to local priorities and invest in the infrastructure most needed to support economic and housing growth.

Allowing a broader range of strategic infrastructure to be funded will enable local leaders to make decisions based on the specific needs of their areas and ensure that MCIL can support the delivery of locally defined strategic objectives.

**Question 23: What type of strategic infrastructure do you think MCIL should be capable of being used to fund, and how might this affect rate-setting?**

MCIL should be able to fund a broad range of strategic infrastructure, including transport, utilities, digital connectivity, energy infrastructure, flood resilience and community infrastructure where these support the agreed strategic growth objectives of the area.

We would also ask government to consider bringing affordable housing within the scope of eligible expenditure. The case for this is rooted in why CIL has been taken up so unevenly. In the North, approximately 30% of local authorities currently charge CIL, compared to all London boroughs. This is principally because lower development values in the North make it difficult to secure contributions through both CIL and section 106 while maintaining viability, and because CIL is a fixed charge taken from the same development value, every pound raised through it reduces what remains available for affordable housing through section 106. In areas where viability is marginal, a levy that a strong market can absorb alongside full affordable housing provision will, in a weaker one, come straight out of the number of affordable homes delivered. Given that CIL receipts cannot themselves be used to fund affordable housing, many councils have preferred to prioritise securing developer contributions via section 106 alone.

There is a risk that extending the same restriction to MCIL reproduces that pattern at strategic authority level. In many parts of the North, affordable housing is one of the most significant barriers to sustainable growth and inclusive economic development. If MCIL is intended to give mayors tools to address the key strategic challenges facing their areas, there is a strong case for allowing it to contribute to affordable housing delivery, and doing so would make it more likely that these powers are taken up.

**Question 24: Could there be exceptional cases where it would be appropriate for MCIL to fund matters in an area that would usually sit within a single local tier authority's responsibilities?**

Yes.

MCIL should be able to fund infrastructure located within a single local authority area where that infrastructure delivers strategic benefits across a wider functional geography. However, we do not believe this should be treated as an exceptional circumstance. Rather, this should be a core element of how MCIL works outside of London.

Many significant infrastructure projects will be physically located within one authority boundary while delivering economic, transport or housing benefits across an entire mayoral area.

This is particularly relevant for strategic authorities which contain very large constituent local authorities, such as York & North Yorkshire or Hull and East Yorkshire, where infrastructure of strategic importance may sit wholly within one local authority area but remain critical to regional growth and connectivity. Restricting MCIL funding in these circumstances would create unnecessary barriers and reduce the effectiveness of the levy.

**Question 25: How can the collection of MCIL work simply and effectively in all circumstances, including when the local tier authority does not charge its own CIL?**

Collection arrangements should be flexible and reflect local administrative realities.

Where local authorities already operate and collect CIL, acting as collection authorities for MCIL may be the most practical approach. However, in mayoral areas where constituent authorities do not currently charge or collect CIL, responsibility should sit with the MSA itself.

This is particularly relevant in areas such as the **Tees Valley Combined Authority** and the **Liverpool City Region Combined Authority**, where no constituent authorities have existing CIL collection systems in place. In these circumstances, requiring local authorities to develop separate collection functions could create unnecessary cost and complexity.

**Question 26: Do you have any other observations or comments on the expanded MCIL proposals?**

One point of principle. It is essential that these are enabling powers rather than expectations. Mayors must be able to set MCIL rates at zero and to apply a levy in some parts of their area and not others.

Viability across the North is highly variable, and there are substantial areas where any additional levy on development would render schemes undeliverable or would do so at the cost of affordable housing secured through section 106. In those places local leaders will often conclude that the right answer is a zero rate or no levy, and they should be able to reach that conclusion without it being read as a failure to use available powers. We would ask government to state this explicitly in guidance, and to ensure that the government does not treat the introduction of MCIL as a requirement.

**Question 27: Do you agree to removal of the restriction that LDOs cannot be used to grant planning permission for development affecting listed buildings?**

Agree.

Our recent Renew report found planning to be a major obstacle to delivering housing-led regeneration, including where heritage assets are involved. We therefore support changes that remove unnecessary barriers to these schemes, alongside appropriate retained safeguards.

**Question 28: Do you agree that Local Development Orders cannot be used for minerals development?**

Agree.

**Question 29: Do you have any further minor technical changes to the Local Development Order procedure?**

No.

## EQUALITIES AND ENVIRONMENT

**Question 30: Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic?**

No.

**Question 31: Is there anything that could be done to mitigate any impact identified?**

N/A

**Question 32: Do you have any views on the implications of these proposals for the considerations of the 5 environmental principles identified in the Environment Act 2021?**

No.