

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD3190

Title: Delegation of Mayoral Powers to Homes England for Brownfield Infrastructure Land funding in London

Executive Summary:

This Mayoral Decision seeks approval of a delegation of Mayoral powers to Homes England (legal entity: Homes and Communities Agency (HCA)) to enable Homes England to administer the London allocation of the Brownfield Infrastructure Land (BIL) funding in London.

Decision:

That the Mayor:

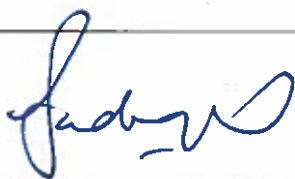
1. delegates the exercise of the Mayor's powers in sections 30 and 34 of the Greater London Authority Act (GLA Act) to Homes England for the purposes of administering the BIL funding in London, on the basis specified in the Instrument of Delegation (Appendix A)
2. notes the proposed establishment of the London BIL Board and delegates authority to the GLA's Executive Director of Housing and Land to agree on behalf of the GLA (without the need for a Director Decision form) the terms of reference and associated governance arrangements of the London BIL Board and the GLA's participation in that Board, and further delegates authority to the GLA's Executive Director of Housing and Land or their nominee to act as the GLA's representative on the London BIL Board.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

12/12/23

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. Homes England, the Government's housing and regeneration agency (legal entity Homes and Communities Agency) does not have the legal power to operate in Greater London. This power was transferred to the GLA under the Localism Act 2011. The Mayor may authorise Homes England to exercise his functions by delegating powers to Homes England to enable it to carry out activities specified in the delegation.
- 1.2. In the October 2021 budget, government announced the £1.8bn Brownfield Infrastructure Land (BIL) funding. Since then, GLA officers have engaged with government about London's allocation and delivery of this funding, on the expectation and understanding it would be devolved to London in the same way as the previous Land Fund was, or like BIL has been for the other Mayoral Combined Authorities.
- 1.3. In July 2023, the Secretary of State for Levelling Up, Housing and Communities, announced that £53m BIL funding would be provided to the Old Oak and Park Royal Development Corporation (OPDC) but that the remaining £150m of BIL funding allocated to London would not be devolved to the Mayor of London for delivery using his devolved housing powers.
- 1.4. MD3138 approved the GLA receiving up to £53m, and payment of this money to OPDC to support land acquisitions at Old Oak West within the OPDC boundary.
- 1.5. Since the July announcement, officers have been working closely with officers from the Department for Levelling Up, Housing and Communities (DLUHC) and Homes England with a view to ensuring that the remaining £150m is spent in line with the parameters and timings of the programme on the most strategic sites to ensure it delivers as many homes as possible.
- 1.6. The outcome of the discussions and negotiations is that it is proposed Homes England will be commissioned by DLUHC to deliver BIL in London, which would require a delegation to it by the Mayor.
- 1.7. The proposed mechanism is for Homes England to assess, contract and manage the portfolio of BIL strategic sites in London in line with Homes England's established mechanisms. It is proposed that a London BIL Board will be established that will form part of the process and will determine site prioritisation for progression into Homes England's processes.
- 1.8. The proposed London BIL Board is to be chaired by the DLUHC Senior Responsible Officer, and will also comprise in equal numbers representatives from the GLA, Homes England and other DLUHC officers. The GLA will be represented on the Board by the Executive Director of Housing and Land or their nominated representative, under delegation from the Mayor as requested in this Decision. The London BIL Board will meet monthly to consider and approve which sites progress through the Homes England approval processes (in accordance with its governance arrangements) to decide approval of funding. Decisions of the London BIL Board will be taken by the chair, DLUHC's Senior Responsible Officer, upon advice and recommendations of the rest of the Board. Terms of Reference and the associated governance arrangements of the London BIL Board would need to be agreed. The GLA's agreement to such arrangements and participation in the London BIL Board would be sought from the GLA's Executive Director Housing and Land, under delegation from the Mayor requested in this Decision.
- 1.9. An initial list of strategic sites considered to be in scope for BIL funding have already been agreed for further due diligence. Any additional sites that may be identified to form part of the pipeline of sites for consideration of London BIL funding, would be subject to the same approvals process.

- 1.10. The activities Homes England would undertake under the proposed delegation of authority from the Mayor to administer BIL in London include: helping to establish and then participate in the London BIL Board; working with the GLA to identify and maintain a pipeline of sites which meet the BIL funding criteria (as set out in paragraphs 2.2 – 2.5); identifying which of these should be prioritised for due diligence; undertaking due diligence to ensure that the objectives of the funding are met (see paragraphs 2.2 – 2.5); submitting projects to the London BIL Board and onwards for approval; entering into the necessary funding contractual arrangements; monitoring the contracts and providing quarterly updates, annual reports and responding to ad hoc queries from DLUHC regarding the London BIL funding.
- 1.11. Without this delegation in place, it is almost certain that London would not be provided with any BIL funding.

2. Objectives and expected outcomes

- 2.1. The objective of this decision is to enable Homes England to administer and deliver in London the BIL funding allocated to London. BIL funding will be used to fund a range of interventions including land acquisition and infrastructure that will unlock housing delivery. There is no target associated with the number of homes that would be unlocked currently; DLUHC has indicated a target will be developed.
- 2.2. BIL delivery in London will support housing supply, and economic growth where there is evidenced need and opportunity. It will tackle market failures to build housing and barriers which prevent the private sector intervening alone. Public sector intervention will boost supply and address the worsening affordability pressures across the capital.
- 2.3. Key eligibility criteria used for prioritising sites for the BIL funding in London as required by government are:
- projects must unlock strategic housing sites in London including housing-led, mixed-use opportunities where brownfield, infrastructure or land projects face delivery and/or viability challenges
 - projects will need to demonstrate that without this funding the scheme would not progress as quickly, or at all (assessed through market failure)
 - projects will lead to the development of new housing – the counterfactual should be that fewer/no homes would come forward without funding (there are no restrictions on the timeframe of when the housing would come forward)
 - projects must represent value for money
 - funding must be spent by March 2026
 - funding granted should lead to a measurable outcome which is not dependent on funding (not yet secured) after 2025-26 (though the project may have future phases which may separately in future be considered for funding)
 - projects funded must be in London.
- 2.4. Projects have been and will continue to be prioritised according to the above criteria, and consideration will also be given as to the scale of the development and whether the projects could be considered to fall within a 'Docklands 2.0' area. As part of the Secretary of State's housing speech in July 2023, he set out his vision for a "Docklands 2.0"¹ in East London, encompassing 65,000 new homes. Government sees BIL funding as a first phase of intervention to bring about

¹ There is no specific boundary for what "Docklands 2.0" might cover, beyond "East London."

'Docklands 2.0', with priority to sites in East London that would be considered to be in a 'Docklands 2.0' area.

- 2.5. It is understood that the eligibility and prioritisation criteria may be updated by Homes England from time to time to reflect government priorities.
- 2.6. An initial list of priority sites has already been identified and have been prioritised for the first round of due diligence. These were agreed by representatives from DLUHC, Homes England and GLA who would form the London BIL Board once established, and were prioritised according to criteria above.

3. Equality comments

- 3.1. Under section 149 of the Equality Act 2010, the Mayor is subject to the public sector equality duty and must have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act
 - advance equality of opportunity between people who share a relevant protected characteristic and those who do not
 - foster good relations between people who share a relevant protected characteristic and those who do not.
- 3.2. The protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage/civil partnership status. The duty involves having due regard to these matters as they apply in the circumstances, including having regard to the need to: remove or minimise any disadvantage suffered by those who share or is connected to a protected characteristic; take steps to meet the different needs of such people; encourage them to participate in public life or in any other activity where their participation is disproportionately low. This can involve treating people with a protected characteristic more favourably than those without one.
- 3.3. The equality considerations of each specific project will be considered as part of the due diligence process to be undertaken by Homes England as they progress through the funding authorisation process. However, all of the sites brought forward under BIL will drive the delivery of housing and in particular affordable housing. This, as set out in detail below, is likely to help many of those with protected characteristics, as increasing the supply of housing in London will help to address problems such as overcrowding and homelessness, which evidence indicates disproportionately affect specific groups, including Black and Minority Ethnic groups and women.
- 3.4. Evidence presented in the Housing Research Note 8 (Housing and race equality in London: An analysis of secondary data)² demonstrates that Black Londoners and those from most other minority ethnicity groups experience worse housing conditions, less tenure security, higher rates of housing need, worse affordability and lower wealth than White Londoners. It also concludes that Black Londoners stand to benefit most from new housebuilding.
- 3.5. The Equality Impact Assessment (EqIA) undertaken for the Affordable Homes Programme 2021-26³ states that "protecting the delivery of new homes in London... would have a positive impact on the groups of Londoners who are most adversely affected by the shortage of good quality, affordable housing and secure tenures." Section 2.3 of that EqIA highlights groups of Londoners who share some particular protected characteristics are more likely to experience poverty which is both a cause

² <https://data.london.gov.uk/housing/research-notes/>

³ https://www.london.gov.uk/sites/default/files/homes_for_londoners_-_affordable_homes_programme_2021-2026_-_equality_impact_assessment.pdf

and a symptom of them struggling with the cost of housing. This includes Londoners from Black, Asian and Minority Ethnic backgrounds, deaf and disabled residents and women.

- 3.6. Housing Research Note 10 (The affordability impacts of new housing supply: A summary of recent research) concludes that “building new market-rate homes makes other housing more affordable” and “building market-rate housing therefore indirectly increases the availability of homes affordable to low-income households, although not as directly as building social housing and other kinds of affordable housing.”
- 3.7. Homes England is also subject to the public sector equality duty, and the proposed delegation places an obligation on Homes England to specifically consider the equality impacts of site proposals, in undertaking relevant due diligence.

4. Other considerations

Key risks and issues

- 4.1. The key risks relating to this decision can be split into those that might occur if this delegation is not implemented, and those that might occur if this delegation is implemented.
- 4.2. Without a delegation, it is almost certain that London would miss out on BIL funding. This is because to enable the spend to occur in the time available (i.e. by March 2026), work needs to progress immediately to allow time for due diligence and contracting. Given the position made clear by government not to devolve the funding to the Mayor, a delegation to Homes England is the best way to enable it to be spent effectively in that timeframe.
- 4.3. With the delegation, there is scope for further BIL funding to be more easily be allocated to London, enabling London to potentially benefit from more than £150m allocated to it.
- 4.4. Key risks and issues if the delegation is implemented:

<i>Description</i>	<i>Mitigating Actions</i>	<i>RAG Rating</i>
Issue: It will not be possible to invest the funding in a recoverable manner that sees the money repaid to the GLA for future investment in London (as has happened with the Homes for Londoners Land Fund).	It is not possible to change this position, however, GLA officers have been working to ensure the funding is spent on the most strategic sites to ensure it delivers as many homes as possible. The London BIL Board will have GLA representation and will approve schemes progressing into Homes England’s approval process, so as to maintain this focus.	Amber
This sets a direction of travel that more programmes would be delegated to Homes England in London, or London will miss out on funding	This delegation will be specific to BIL funding only. GLA officers will continue to build the strategic relationship with Homes England and DLUHC to ensure close working and enable as much funding as possible to come to London. Political engagement, and further engagement with DLUHC will continue, to ensure clarity of position regarding delivery in London.	Amber
Homes England does not sufficiently resource the due diligence and	Homes England has a dedicated London team to take this work	Green

contracting work, or they prioritise BIL projects outside of London, meaning the projects do not meet the timeframes, funding is not spent and is therefore returned to Treasury.	forwards. GLA officers will also continue to work closely with Homes England to provide input and support.	
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Links to Mayoral strategies and priorities

- 4.5. The table below highlights links to key Mayoral strategies and priorities which will be delivered through the schemes which receive BIL funding.

Document	Strategic fit
London Housing Strategy	<ul style="list-style-type: none"> - Identifying and bringing forward more land for housing - Ensuring homes are genuinely affordable - Working towards half of new homes being affordable
London Plan	<ul style="list-style-type: none"> - Optimising density in sustainable locations - Development on brownfield land - Good Growth priority GG4 – delivering the homes Londoners need
Affordable Housing & Viability Supplementary Planning Guidance	<ul style="list-style-type: none"> - 50 per cent affordable housing on public land - 35 per cent affordable housing on private land - Potential for Build to Rent - An interventionist approach to the land market and housing delivery
Covid-19 Recovery Programme	<ul style="list-style-type: none"> - Economic recovery - Improved health outcomes through quality housing

Consultations and impact assessments

- 4.6. For the purposes of this Mayoral Decision, the GLA has consulted with Homes England and DLUHC. Both organisations support the proposed delegation. Officers do not consider it necessary or appropriate to consult with any other bodies for the purposes of seeking the Mayor's approval to the proposed delegation.
- 4.7. It is very unlikely that personal data will be collected and/or stored or transferred as part of this project as the funding is related to sites, rather than people. However, there will be commercially sensitive information shared between the organisations as part of the due diligence process. All data will be dealt with in line with each organisation's security policies and if appropriate Non-Disclosure Agreements will be entered into.

Declarations of interest

- 4.8. Rachael Hickman, Head of Housing Delivery & Compliance has been involved in drafting this document. She is also a Board Member of Barking Riverside which is a key strategic housing site in East London. However, she is not responsible for the selection of the sites that will be funded by BIL. In addition, this Mayoral decision is only concerned with a delegation of the Mayor's powers to Homes England. It is not therefore considered that there is a conflict of interest in the proposed decision. Tom Copley, Deputy Mayor for Housing and Residential Development is also a Barking Riverside Board Member. For the same reasons, he is not considered to have conflict of interest in the proposed decision.

5. Financial comments

- 5.1. This decision is seeking approval to delegate authority to Homes England to administer BIL funding in London. No costs will be incurred by the GLA in implementing the delegation as set out in the "Instrument of Delegation" paragraph 7-xi.
- 5.2. The GLA may retain legal liability for Homes England's exercise of those delegated powers, subject to the specific provisions of the Instrument of Delegation, see para 6.9 below.

6. Legal comments

Delegation to Homes England

- 6.1. Homes England's objects are specified in the Housing and Regeneration Act 2008 (the HRA 2008) and include improving the supply and quality of housing in England, and securing the regeneration or redevelopment of land or infrastructure in England. The HRA 2008 provides that Homes England may do anything it considers appropriate for the purposes of its objects, or for purposes incidental to those purposes.
- 6.2. Homes England's powers in the HRA 2008 used to cover the whole of England, including Greater London. From 1 April 2012 Homes England's powers to operate in Greater London ceased, by virtue of the Localism Act 2011. As a consequence, Homes England no longer has the legal power to operate in Greater London; its property, rights and liabilities in Greater London were transferred to the GLA by statutory transfer scheme.
- 6.3. The housing and regeneration functions of the GLA are undertaken by the Mayor further to the GLA's powers contained in sections 30 and 34 of the Greater London Authority Act 1999, and subject to provisions contained in Part 7A of that Act. Section 30 of the GLA Act allows the Mayor, acting on behalf of the GLA, and after appropriate consultation, to do anything that the Mayor considers will further the promotion of economic development and wealth creation, social development or the improvement of the environment within Greater London. Section 34 of the GLA Act provides a further power for the Mayor to do anything that is calculated to facilitate, or is conducive or incidental to, the exercise of any of his functions (including his functions under section 30).
- 6.4. The Mayor's power under section 30 of the GLA Act is subject to section 31 of that Act, which provides that the power cannot be used to incur expenditure in doing anything which may be done by Transport for London, unless this is for the purposes of, or relating to, housing or regeneration (subsections 1(a) and 5B). Section 31 also provides that, in determining whether to exercise the power conferred by section 30(1) above, the Mayor must seek to secure that the Authority does not incur expenditure in doing anything which is being done by a Mayoral development corporation (subsection 1A).
- 6.5. Sections 38(1) and (2) of the GLA Act allows the Mayor to authorise Homes England to exercise his functions under the Act on behalf of the GLA, including those contained in sections 30 and 34. It is necessary that the Mayor delegates his powers under sections 30 and 34 to Homes England, to enable it to carry on the activities specified in this MD in Greater London on behalf of the GLA.
- 6.6. Section 38(3) of the GLA Act requires that Homes England must consent to the delegation in writing. Homes England has agreed to the delegation and will be asked to sign the Instrument of Delegation once it has been approved and signed by the Mayor.
- 6.7. Section 38(7) of the GLA Act gives Homes England the power to exercise any functions delegated to it by the Mayor pursuant to section 38, whether or not Homes England would otherwise have had that power and irrespective of the nature of that function.

- 6.8. Section 38(10) of the GLA Act requires the delegation to be in writing. The proposed Instrument of Delegation is attached at Appendix A. The Mayor may impose conditions on any delegations under section 38(1), and a number of conditions have been included in addition to the delegation.
- 6.9. Where Homes England exercises the Mayor's powers under delegation, the GLA may retain legal liability for Homes England's exercise of those delegated powers, subject to the specific provisions of the Instrument of Delegation.
- 6.10. The Mayor has the power to vary or revoke a delegation (section 38(9) of the GLA Act). This power must be exercised personally by the Mayor (section 38(6) of the GLA Act).
- 6.11. Section 149 of the Equality Act 2010 requires that GLA and the Mayor have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act; and to advance equality of opportunity, and foster good relations, between people who share a protected characteristic and those who do not. Pursuant to this duty, section 3 of this Mayoral Decision above sets out the equality implications of the proposed decision. As is noted in that section, Homes England is also subject to statutory duties under the Equality Act 2010.

London BIL Board

- 6.12. The proposed delegation empowers Homes England to help establish the London BIL Board, participate in it, and exercise functions exercisable by Homes England under the terms of reference and associated arrangements governing the operation of the London BIL Board, which are yet to be agreed. The GLA's agreement to the terms of reference and associated governance arrangements would be sought from the GLA's Executive Director of Housing and Land, under delegated power from the Mayor requested in this Decision. The Mayor has the power to delegate such authority by virtue of section 38(1) of the GLA Act.
- 6.13. It is anticipated that decisions of the London BIL Board will be taken by the chair, DLUHC's Senior Responsible Officer, upon advice and recommendations of the rest of the Board. The role of Homes England representatives (under delegated authority from the Mayor) and the GLA's Executive Director of Housing and Land or their nominee (also under delegated authority from the Mayor) will therefore be advisory. The Mayor has the power to delegate such authority by virtue of section 38 of the GLA Act.

7. Planned delivery approach and next steps

- 7.1. The next steps are set out in the following table.

Activity	Timeline
DLUHC to obtain final authorisation for delivery of BIL in London from Treasury	November 2023
DLUHC provide commissioning letter to Homes England	December 2023
Due diligence of projects, approval and contracting	November 2023 – October 2024
Delivery of projects	April 2024 – March 2026
Evaluation	March 2026 – September 2026

Appendices and supporting papers:

Appendix 1: Instrument of Delegation.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 - Deferral

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 - Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form - NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Rachael Hickman has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Tim Steer has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Tom Copley has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

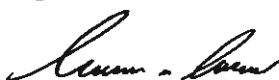
This decision was agreed by the Corporate Investment Board on 11 December 2023.

✓

INTERIM CHIEF FINANCE OFFICER:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature:



Date:

11/12/2023

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature:



Date:

11/12/2023

