

## **INSTRUMENT OF DELEGATION**

### **MAYORAL DELEGATION TO HOMES ENGLAND IN REPECT OF THE BROWNFIELD, INFRASTRUCTURE AND LAND FUND, LONDON ALLOCATION**

#### **Background**

1. London has been allocated £150m from the Brownfield, Infrastructure and Land fund (confirmed in 2023) (**BIL Fund**)<sup>1</sup>. This funding will be used to fund a range of interventions including land acquisition and infrastructure in London that will unlock housing delivery. There is no target associated with the number of homes to be unlocked. London BIL funding may be approved and provided where it meets London BIL eligibility and prioritisation criteria prescribed by government from time to time (**the London BIL Criteria**). The London BIL Criteria that are currently in place are set out in the Appendix to this Instrument of Delegation, but may be subject to change.
2. Homes England (legal entity: the Homes and Communities Agency) (**Homes England**) will be responsible for administering the BIL Fund in London.
3. In accordance with the Localism Act 2011, the Homes and Communities Agency's powers to operate in Greater London ended on 1 April 2012 and the Greater London Authority (**GLA**) has since been responsible for housing and regeneration in the Capital using its general and subsidiary powers under sections 30 and 34 of the GLA Act, which are exercisable by the Mayor.
4. Accordingly, for Homes England to administer the BIL Fund in Greater London it is necessary for the Mayor to delegate these GLA powers to Homes England.

#### **Delegation**

5. Under Section 38(1) of the GLA Act I hereby delegate to Homes England for the purposes of furthering the promotion of social and economic development and furthering the promotion of the improvement of the environment in Greater London, the exercise of the Mayor's powers in sections 30 and 34 of the GLA Act to empower and enable Homes England to do the following in relation to the BIL Fund in Greater London:
  - (i) Following the establishment of the London BIL Board by the Department for Communities and Local Government (**DLUHC**) which is to comprise of representatives from DLUHC, Homes England and the GLA, to 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;
  - (ii) To identify and maintain a pipeline of sites which meet the London BIL Criteria;
  - (iii) To identify, jointly with the GLA and DLUHC, which of these sites should be prioritised for due diligence in line with the relevant London BIL Criteria;

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<sup>1</sup> The BIL Fund is a national funding programme and references to the BIL Fund in this Delegation include sums over and above the £150m identified in paragraph 1 that may become available to Greater London in the future from the current funding programme.

- (iv) In respect of all sites proposed for due diligence, to undertake such due diligence as Homes England considers necessary and appropriate;
  - (v) Further to the completion of due diligence, to submit to the London BIL Board recommendations as to which sites should receive funding from the BIL Fund, in line with the relevant London BIL Criteria,
  - (vi) Following recommendation by the London BIL Board, to approve which sites are to receive funding from the BIL Fund, and the amount of funding to be provided (**Approved Sites**);
  - (vii) To enter into contractual funding agreements with the responsible partners on Approved Sites on such terms and conditions that Homes England considers appropriate;
  - (viii) To provide funding in accordance with the contractual funding agreements entered into and bring forward to the London BIL Board proposals for variations deemed necessary – material financial and material non-financial – as projects progress;
  - (ix) To undertake post contractual monitoring (where applicable); and
  - (x) To do anything that is conducive or ancillary to the above activities.
6. The powers conferred by this Delegation are supplemental and without prejudice to any function Homes England otherwise has at common law or under any relevant legislation.

### **Conditions**

7. The delegation above is made subject to the following conditions:

- (i) That the powers delegated to Homes England under paragraph 5 above are exercised in accordance with:
  - a. the requirements of sections 30-34 of the GLA Act,
  - b. any requirements in the GLA Act relating to the exercise of the powers contained in sections 30-34 of that Act, and
  - c. any requirements contained in or applied by Part 7A of the GLA Act.
- (ii) That, in undertaking any due diligence of sites prioritised for progressing to due diligence, Homes England shall specifically consider the equality impacts of site proposals;
- (iii) The creation of the London BIL Board to cover the BIL funding in Greater London programme to be chaired by an appropriate DLUHC officer, and comprising in equal numbers representatives from the GLA, Homes England and other DLUHC officers.
- (iv) Agreement by DLUHC, GLA and Homes England of the London BIL Board's Terms of Reference and associated arrangements governing its operation (**TORs**);
- (v) Any recommendations required to be obtained from the London BIL Board are obtained in accordance with its TORs;

- (vi) Homes England will, in advance of issuing any press releases in connection with the BIL Fund in Greater London, provide the GLA with reasonable notice on proposed content to the extent it relates to Approved Sites;
- (vii) DLUHC, Homes England, and the GLA, will produce a programme evaluation to highlight the success and failures of the programme, to include a specific analysis of London BIL delivery;
- (viii) Homes England and the GLA shall assist each other in complying with their respective obligations under Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The parties will cooperate on any requests affecting them;
- (ix) The powers delegated to Homes England under paragraph 5 above are to be exercised in accordance with the Subsidy Control Act 2022 and any applicable related or replacement legislation in relation to subsidy control. Homes England will carry out subsidy control assessments as required by legislation prior to the award of any funding from the BIL Fund for Greater London and keep a record of any such assessment for the duration of the relevant funding contract.
- (x) Insofar as is necessary, Homes England may delegate the exercise of the functions specified in and conferred by this Delegation to appropriate officers of Homes England in accordance with its scheme of delegation, subject to Homes England's Accounting Officer discharging their relevant duties;
- (xi) No costs incurred in the implementation of this Delegation shall be borne by the GLA; and
- (xii) Homes England shall at all times afford the GLA's Monitoring Officer all reasonable co-operation and access to documents and facilities as may be required from time to time in respect of that person's duties under section 5(2) of the Local Government and Housing Act 1989 as substituted by section 73(6) of the GLA Act.

Signed:

  
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Sadiq Khan, Mayor of London

Date

12/12/23  
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## **Appendix - The London BIL Criteria**

1. 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. 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 25-26 (though the project may have future phases which may separately in future be considered for funding)
  - projects funded must be in London
3. 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"<sup>2</sup> in East London, encompassing 65,000 new homes. Government sees BIL funding as a first phase of intervention to bring about 'Docklands 2.0,' with priority to sites in East London that would be considered to be in a 'Docklands 2.0' area.
4. The above eligibility and prioritisation criteria may be updated by Homes England from time to time to reflect government priorities.

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<sup>2</sup> There is no specific boundary for what "Docklands 2.0" might cover, beyond "East London."