

Mayor of London
Greater London Authority
City Hall
The Queen's Walk
More London
London
SE1 2AA

By email (mayor@london.gov.uk) and post

Your ref: D&P/2656b/02

Our ref: SR

6 October 2015

Dear Sirs,

NORTON FOLGATE - LAND AT BLOSSOM STREET, SPITALFIELDS
PA/14/03548 AND PA/14/03618

1. This is a pre-action letter under the Judicial Review Pre-Action Protocol in support of an application for permission to apply for judicial review to quash the direction of the Mayor of London that he will act as the local planning authority for the current planning application and conservation area consent application for development at Norton Folgate.

Our Client:

2. The Spitalfields Trust of 18 Folgate Street, London E1 6BX.

The Decision in question:

3. The direction of the Mayor of London that he will act as the local planning authority for the current planning application (PA/14/03548) and listed building consent application (PA/14/03548) for development at Norton Folgate (reference D&P/2656b). The direction was made on 23rd September 2015.

Orders Sought:

4. The following orders will be sought from the Court:
 - (i) a quashing order quashing the direction;
 - (ii) costs.

Factual Background:

5. A planning application for redevelopment at Land bounded by Elder Street, Folgate Street, Blossom Street, Norton Folgate, Shoreditch High Street and Commercial Street, E1 was submitted to the London Borough of Tower Hamlets ("the Council") by British Land Property Management Limited under reference PA/14/03548. Associated with that was a listed building consent application for works to Fleur de Lis Street (reference PA/14/03548).

6. Stage 1 observations were made on behalf of the Mayor on 18th March 2015.

7. On 21st July 2015 the Council resolved to refuse planning permission, a decision reiterated on 27th August 2015.
8. A Freedom of Information Act request was received by the Mayor of London requesting information on all discussions relating to the application between the Mayor, Deputy Mayor, the GLA and British Land on 16th September 2015.
9. The Mayor gave notice on 22nd September 2015 that he had received the documents
10. On 23rd September 2015 the Mayor of London directed that he be the local planning authority for the planning application and the listed building consent application.

Legal background

11. The Mayor is able to direct that he is the local planning authority for particular applications of potential strategic importance which are within Parts 1 or 2 of the Schedule to the Mayor of London Order 2008. If such a direction is made then the Mayor will also become the local planning authority or hazardous substances authority for any listed building consent or hazardous substances consent applications which are connected with that application.¹
12. For applications of potential strategic importance, the local planning authority is required to send to the Mayor:²
 - “(i) a copy of any representations made to the authority in respect of the application;
 - (ii) a copy of any report on the application prepared by an officer of the authority;
 - (iii) a statement of the decision the authority proposes to make; and
 - (iv) where the authority proposes to grant permission, a statement of any conditions it proposes to impose and a draft of any planning obligation it proposes to enter into and details of any proposed planning contribution.”
13. The Mayor must then notify the authority of the date on which these documents were received.³
14. The Mayor may give a direction if he considers that:⁴
 - “(a) the development or any of the issues raised by the development to which the PSI application relates is of such a nature or scale that it would have a significant impact on the implementation of the spatial development strategy;
 - (b) the development or any of the issues raised by the development to which the application relates has significant effects that are likely to affect more than one London Borough; and
 - (c) there are sound planning reasons for issuing a direction.”
15. All three criteria must be satisfied except that sub-paragraph (b) does not apply to Category 1A development (more than 150 residential units): a proviso which is not relevant in the present case.⁵ In deciding whether to give a direction the Mayor must take into account:⁶

¹ Town and Country Planning Act 1990, s 2B(4) to (7).

² Mayor of London Order 2008, Article 5(1)(a).

³ Mayor of London Order 2008, Article 5(1)(b)(i).

⁴ Mayor of London Order 2008, Article 7(1).

⁵ Mayor of London Order 2008, Article 7(4).

⁶ Mayor of London Order 2008, Article 7(3).

(a) in Category 1A cases the extent to which the borough is achieving, and has achieved the applicable development plan targets for new housing, including affordable housing;

(b) in all cases, the extent to which the borough is achieving, and has achieved any other relevant targets set out in the development plan.

16. A direction will state that the Mayor is becoming the local planning authority for the application and any connected application.⁷ Included in the direction will be the Mayor's reasons,⁸ in particular, how development plan targets affected his decision.⁹

17. The Greater London Authority's *Planning Code of Conduct for elected and co-opted Members of the Authority* applies to the Mayor. It provides:

"6. Pre-determination

6.1 If the Mayor is to take a decision on a planning matter, he must not do anything from which he could reasonably be regarded as having a closed mind as to the outcome of the decision. If it is possible to reasonably regard the Mayor as having a closed mind, the decision should be delegated to an appropriate person. There is no pre-determination by virtue of the Mayor taking over a planning application for his own determination, or by the Mayor doing anything (including expressing views or campaigning on planning matters) from which he could not reasonably be regarded as having a closed mind, or having predetermined, a future planning decision, application or matter.

7. Pre-application/post submission discussions

7.1 In the interests of open consultation the Mayor may agree to presentations on potential planning applications or applications, or have meetings with potential applicants or applicants, local authorities and other interested parties, provided that relevant Authority staff are also present, for the purpose of discussion and clarification only and:

7.1.1 ensure that a note is kept and filed of any such meetings and placed on the website in the event of such an application being formally notified to the Mayor in due course;

7.1.2 may seek to involve other interested parties in such meetings;

7.1.3 shall ensure that no indication of opinion is given or a view expressed that may give the impression that a final view on the application/matter in question has already been reached;

7.1.4 shall ensure that discussions do not develop into negotiations and confirm that such meetings do not form part of the formal determination process."

18. Similar provisions apply in the *Greater London Authority Planning Protocol for staff exercising Mayoral delegated authority* which governs Deputy Mayors dealing with planning and the *Greater London Authority Planning Protocol for staff (except those with delegated planning powers)*

⁷ Mayor of London Order 2008, Article 7(2).

⁸ Town and Country Planning Act 1990, s 2B(2).

⁹ Mayor of London Order 2008, Article 7(7).

The grounds

19. All three of the criteria in Article 7(1) have to be satisfied before the Mayor is able to direct that he be the local planning authority. He must do so correctly understanding the meaning in law of the provisions, reaching judgments having regard to relevant considerations and omitting irrelevant considerations, reach a rational conclusion on the application of imprecise terms¹⁰ and giving adequate and intelligible reasons.
20. The tests of significance are important and high as they are one set of criteria which mean that the Mayor can take over fewer planning applications than he can direct the refusal of.
21. The Mayor said that all three criteria were satisfied and adopted the reasoning in the officer report.
 - (i) *The Mayor erred in law as to the meaning of 'significant impact on the implementation of' the London Plan and took into account matters which were not relevant and failed to take into account relevant matters, alternatively provided inadequate reasoning.*
22. Reliance is placed by the Mayor on the impact of the proposed development, not on any issues raised by it. That requires there be an assessment of the impact of the development on the implementation of the Plan which relates to the whole of Greater London. The scheme is not significant in that context. It is, on the Mayor's own analysis, less than 1% of the total office development envisaged in the Central Activities Zone and the North of Isle of Dogs [see stage 2 report, para 15]. It is between 7 and 9.4% of the additional office space proposed in the City Fringe Opportunity Area in a 10 year period [report, para 17, 18]. The report does not attempt to explain how the implementation of the London Plan would be significantly affected by the scheme. It says that it is 'significant office floorspace' and a 'major development' but not why the London-wide plan would be significantly affected. The report overlooks the more modest increase in net employment floorspace, since there is an existing 10,826 m² of B8 (storage and distribution) floorspace on the site, so the net change in employment floorspace is 16,300 m². This underlines the lack of significance of the development.
23. The significant effect on transport is solely said to be that there would be a £4.37 million contribution to Crossrail. That is well under 1% of the proposed developer contribution to the scheme and has no effect on whether Crossrail will happen, which is the most that the London Plan is concerned with. This could not be a significant impact on the implementation of the London Plan in respect of its transport policies, indeed, it has no impact at all on implementing the London Plan's transport policies.
24. An error as to the transport significance shows a failure to understand significance in economic terms – both matters are said to satisfy the test [report para 25].
25. The Mayor failed to have regard to the Spitalfields Trust letter to him which explained why the first two criteria for the exercise of the direction power were not satisfied. The report refers to the letter [para 103] but says that the issues raised are included in the summary of objections in para 82 [para 104]. Paragraph 82 and the following text sets out objections to the merits of the planning application but makes no mention of submissions on whether the Mayor had the power to take over the application and whether he should do. The Mayor did not address and his reasoning does not answer the issues raised on whether the criteria were met.

¹⁰ See *R(Goodman) v London Borough of Lewisham* [2003] Env LR 28 at para 8.

26. The Mayor therefore misunderstood the test of significance, had regard to the funding of Crossrail which was irrelevant for these purposes, and alternatively provided inadequate reasons.

(ii) *The Mayor erred in law as to the meaning of 'significant effects that are likely to affect more than one London Borough' and failed to take into account matters which were relevant, alternatively provided inadequate reasoning.*

27. Again the Mayor relied upon alleged significant economic and transport effects.

28. The rationale for economic effects is solely that the site is within the Central Activities Zone and the City Fringe Opportunity Area. The report says that the development has a 'clear relationship' with other boroughs [para 30]. However it is not said why such an effect would be significant, indeed the detailed reasoning on economic effects [para 26 to 30] omits any reference to the significance of the impact. None of this can amount to a significant impact.

29. Similarly the claimed significant effect on transport is of a proportionately very small amount of funding for the Crossrail project which is happening anyway. Whether the Norton Folgate scheme will make a contribution to Crossrail will have no effects on other London boroughs, significant or otherwise.

30. The Mayor again failed to have regard to the Spitalfields Trust representations that this criterion was not met. If he did have regard to it (and evidence would need to be provided in this respect) he did not give adequate or intelligible reasons in response to those points.

What the Defendant is asked to do:

31. Agree to submit to the quashing of the decision and to payment of our costs. If the Defendant does not agree, please explain why not.

Further information required:

32. Please provide copies of:

(i) all emails, notes, letters, memoranda or other records of communications or discussions (including references to such discussions) between information on all discussions relating to the application between the Mayor, Deputy Mayor, the GLA and British Land Property Management Limited, any other British Land company or their agents, consultants and professional and legal advisers about the present planning application;

(ii) all Mayoral or GLA documents, not so far published, about this planning application;

(iii) a list of all of the documents on this matter which were read by (a) the Mayor and (b) the Deputy Mayor of Planning in advance of the decision of the Mayor to direct that he should be the local planning authority;

(iv) the notice issued by the Mayor on 22nd September under Article 5(1)(b)(i) of the Mayor of London Order in respect of this scheme.

Interested Parties:

33. The Interested Parties are:

London Borough of Tower Hamlets

British Land Property Management Limited

Other applications made:

34. An application for disclosure will be made with the judicial review claim if the information requested has not been disclosed.

Legal Advisers dealing with this claim:

35. Richard Buxton Solicitors (contact: [REDACTED]) and Richard Harwood QC 39 Essex Chambers, London.

Address for reply and service of Court Documents:

Richard Buxton,
19B Victoria Street
Cambridge CB1 1JP

Period for reply

Please reply substantively within 14 days of the date of this letter.

Yours faithfully,



RICHARD BUXTON

c.c. [REDACTED] Tower Hamlets Council, Development & Renewal
[REDACTED] Associate, DP9 Ltd, 100 Pall Mall, London SW1Y 5NQ