

REQUEST FOR MAYORAL DECISION – MD2335

Title: Direction to TfL concerning its Affordable Housing Programme 2018/19

Executive Summary:

The Mayor is committed to increasing the proportion of new homes that are affordable, to the benefit of local communities and the economy.

To support his ambition, the Mayor is prioritising affordable homes delivery on surplus or under-utilised land owned by the GLA Group, including Transport for London (TfL). The draft Housing Strategy sets a target for the GLA Group to achieve an average of 50 per cent affordable homes by habitable room on their land and delivery of 50 per cent affordable housing on public land is identified as a specific measure to achieve the strategic target of 50 per cent affordable housing.

TfL shares the Mayor's commitment to delivering affordable housing - targeting 50% affordable in both its business plan and within the Mayor's Transport Strategy. In order to achieve these joint aims, a Mayoral Direction is needed to allow TfL to do so. TfL has a programme for housing delivery on its surplus sites and it estimates that at least 3,000 homes could be delivered on sites identified for development or disposal in 2018/19. TfL's Business Plan includes a target of 50 per cent affordable homes by habitable room across its programme.

It is proposed that the Mayor gives a direction to TfL that will require it to take such steps and measures as it considers reasonably practicable to achieve this objective, and to do so consistently with its legal obligations and in a manner which meets the Mayor's requirements. The proposed Direction, whose detailed terms are set out in Appendix A, is explained in this decision.

Decision:

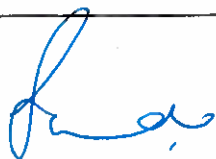
The Mayor directs TfL in relation to the disposal or development of its land in 2018/19 in the form at Appendix A to this decision form.

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:

21/8/18

PART 1 - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1 Introduction and background

- 1.1 Transport for London (TfL) is currently considering the disposal or development of a number of parcels of its land. In 2018/19, it intends to bring to market land that could accommodate at least 3,000 homes. TfL's current forecast is that land proposed to be brought forward in 2018/19 will exceed this figure.
- 1.2 The Mayor is committed to increasing the proportion of new homes that are affordable for Londoners. To support his ambition, the Mayor is prioritising affordable homes delivery on surplus or under-utilised land owned by the GLA Group, including Transport for London (TfL). The Mayor has set a target for the GLA Group to achieve an average of 50 per cent affordable homes by habitable room on their land. The delivery of affordable housing is important to provide Londoners with much needed housing benefiting local communities and the local economy.
- 1.3 In general terms, this Mayoral Decision seeks to ensure the sites that TfL programmes to dispose of or develop during 2018/19 are brought to the market on the basis that, on average across the sites, no less than 50 per cent of any homes built are affordable housing (measured by habitable room). This is in line with the Mayor's policies set out in his draft London Plan, and once those policies have full weight a Direction may not be necessary. Whilst his policies are still gaining weight through the plan-making process, this Direction requires TfL to make decisions beyond existing planning policy in relation to these sites in line with the Mayor's requirements, provided that the land value foregone across all of the land marketed in 2018/19 is no more than £20m.
- 1.4 It is proposed that the Mayor issues a specific direction to TfL under section 155(1) (c) of the Greater London Authority Act 1999 (GLA Act), so that TfL may proceed on that basis consistent with its legal obligations.
- 1.5 TfL has been consulted on the terms of the specific direction at Appendix A.
- 1.6 Following consideration of the issues arising, it is now proposed that the Mayor directs TfL in the form set out in Appendix A to this decision form.

2 Direction

- 2.1 The Mayor has a statutory power to do anything which he considers will further the promotion of the social and economic development of Greater London, which includes housing and regeneration. London's housing crisis is the single biggest barrier to prosperity, growth, and fairness facing Londoners today. Building the right number and the right mix of new homes, and addressing the consequences of the housing crisis, are essential parts of the Mayor's vision for 'good growth'. Meeting London's housing needs in full, particularly the need for genuinely affordable homes is important to ensuring the vibrancy and economic success of the city.
- 2.2 Affordable homes play a vital role in supporting Londoners on low incomes who are unable to access the private market. This group plays a crucial role in the success of the capital's businesses and public services yet is most disadvantaged by the rising living costs associated with that success. A recent report estimated that around one third of London's shift workers (such as those working in caring professions and cleaners), as well as 'blue-light' workers (such as police and ambulance drivers), currently live in London's social housing. Furthermore, a shortage of affordable housing has been linked to difficulties in recruiting and retaining public sector workers.

- 2.3 Affordable homes also have an important role to play in supporting Londoners on low to middle incomes, particularly those in the private rented sector who are struggling to save for a deposit to buy a home. Addressing this need is important to avoid London becoming a city where only the wealthy are able to afford market housing and only people on relatively low incomes are able to access social housing. The industries that drive London's economy and support its public services depend on a steady supply of highly-skilled professionals who need access to homes they can afford.
- 2.4 The Mayor also wants to see the public sector leading by example when it comes to releasing land for high quality and genuinely affordable homes. TfL continues to review all of its landholdings with a view to supporting additional housing delivery and has committed to bring forward land for more housing, starting on sites which will deliver 10,000 homes by March 2021.
- 2.5 Policy H5 of the draft London Plan sets a strategic target for 50 per cent of all new homes delivered across London to be affordable. Delivery of 50 per cent affordable housing on public land is identified as one of the specific measures to achieve this target. Draft Policy H6 sets a threshold of affordable housing of 50 per cent for public sector land. Proposals that do not meet this threshold are required to follow the viability tested route unless an agreement is in place with the Mayor to deliver 50% affordable homes on a portfolio basis. Paragraph 4.6.5 notes that where there is an agreement with the Mayor to deliver at least 50 per cent across the portfolio of sites, then the 35 per cent threshold should apply to individual sites.
- 2.6 The draft London Plan is a material consideration in decision making. The weight attached to these draft policies will increase as the draft plan progresses through the plan-making process, having regard to the guidance set out in paragraph 48 of the National Planning Policy Framework. Consideration as to whether a further MD is required for TfL's 2019/20 housing programme will be made next year, based on the status of the new London Plan and other factors.
- 2.7 Policy 4.2 C of the draft London Housing Strategy states that the Mayor will prioritise the delivery of affordable homes on publicly-owned land, including setting a target for Mayoral organisations for an average of 50 per cent of homes on land brought forward under the current administration to be affordable.
- 2.8 The Affordable Housing and Viability Supplementary Planning Guidance (SPG) sets out guidelines for public land which the Mayor sees as playing an important role in delivering 50 per cent housing overall.
- 2.9 Paragraph 2.33 of the SPG states that:
- "It is widely recognised that land in public ownership should make a significant contribution towards the supply of new affordable housing. Land that is surplus to public sector requirements typically has a low value in its current use, allowing higher levels of affordable housing to be delivered. For these reasons, the Mayor has an expectation that residential proposals on public land should deliver at least 50 per cent affordable housing to benefit from the Fast Track route."
- 2.10 Paragraph 2.34 in the SPG also sets out:
- "Where a public landowner has an agreement in place with the Mayor to provide 50 per cent affordable homes across a portfolio of sites, individual sites which meet or exceed the 35 per cent affordable housing threshold and required tenure split may be considered under the Fast Track Route. Where such an agreement is not in place, schemes that do not provide 50 per cent affordable housing will be considered under the Viability Tested Route."
- 2.11 The Mayor's Transport Strategy, states that the Mayor:
- "intends to ensure that TfL surplus land is used to maximise affordable housing and so reduce the inequalities in housing provision for those who are from low-income households, younger

people and disabled people. By 2020/21, TfL will start on the property development sites that will deliver 10,000 homes. The Mayor intends that, overall, 50 per cent of homes (as measured by habitable rooms) built on TfL land and brought to market since May 2016 will be affordable.”

- 2.12 TfL has committed to achieving the Mayor’s target of an average of 50 per cent affordable housing across the portfolio of new sites it brings forward. It proposes to do so by way of an overall programme approach in each financial year, which means that some sites will be taken forward for disposal or development with more than 50 per cent affordable housing by habitable room and other sites may proceed with lower levels of affordable housing. By taking this approach, TfL can deliver affordable housing in a way that delivers greater value for money. This approach will also provide much needed affordable housing in the areas where there are currently significantly lower levels of affordable housing than the London average.
- 2.13 When developing its land either directly or through a subsidiary, TfL is obliged by paragraph 29 of Schedule 11 of the GLA Act to act as if it were a company engaged in a commercial enterprise or exercise its control over that subsidiary so as to ensure that the subsidiary, in carrying on those activities, acts as a company so engaged. This has the consequences discussed in the legal comments below.
- 2.14 Local planning policy requirements will generally require the provision of at least 35 per cent affordable housing, but the figure may be higher or lower in some cases.
- 2.15 Although the GLA Act does not contain express constraints upon TfL’s power to dispose of land, the principal reason to do so would normally be to raise money to invest in the transport network in London. TfL does not have any general social well-being functions, and neither does it have any responsibilities for housing in London (although TfL must have regard to the Mayor’s Transport Strategy).
- 2.16 However, the Mayor has wider functions in relation to the promotion of social development, economic development and wealth creation as well as specific responsibilities for housing in London. The Mayor may therefore take these matters into account when exercising his power to give directions to TfL.
- 2.17 Although the disposal or development of the sites with levels of affordable housing that exceed local planning policy requirements will tend to reduce the residual land values to TfL, the increased provision of affordable housing will provide much needed affordable housing for Londoners. TfL’s valuations indicate that the land value foregone on the sites with levels of affordable housing that exceed local planning policy requirements will not be more than £20m but could deliver an estimated 633 additional affordable homes measured by habitable rooms. The Mayor may conclude that this social benefit justifies the financial impact of the lower land values to TfL. TfL is mindful of its duties to deal prudently with its resources but believes that the financial impact of the proposed Direction can be managed and accommodated within its current budget and business plan and that TfL can continue to discharge its public transport functions. Note that once the London Plan has full weight as described in 2.6, the issue of foregone land value will no longer be a consideration.
- 2.18 The proposed Direction at Appendix A is intended to give effect to these policy objectives, consistently with TfL’s legal obligations. It operates by requiring TfL to decide which sites it is able to bring to market in 2018/19 and to allocate them into two categories. In the first category are the sites judged to be appropriate for affordable-led development schemes, and TfL is directed to ensure, so far as reasonably practicable, that disposals of those sites are on terms that ensure delivery of affordable housing at levels which exceed 50 per cent on average, in order that such sites are net contributors to the Mayor’s overall 50 per cent target.

- 2.19 For each of its affordable-led schemes, TfL will set the appropriate level of affordable housing to meet this objective. The remaining sites allocated for private-led schemes will therefore be disposed of, or developed, on a commercial basis.
- 2.20 In making decisions about its sites, TfL must take account of the following:
- value for money (i.e. lowest levels of value foregone for highest levels of affordable housing);
 - speed of delivery, including obtaining all necessary consents; and
 - levels of affordable housing within the local area.

*This list is non-exhaustive.

- 2.21 TfL is to produce a programme of disposal or development for TfL's affordable-led sites and a parallel programme of disposal or development for TfL's private-led sites.
- 2.22 TfL is required to provide regular updates to the Mayor as to TfL's compliance with the proposed Direction until development has started on all of the sites disposed of during the period of the proposed Direction. If updated financial information becomes available or circumstances change during this time (particularly once planning consent delivers greater certainty with respect to affordable housing numbers and land value), TfL may need to adjust each of its programmes such that, overall, the 50 per cent policy objective will be met (subject always to the £20m cap intended to ensure that the financial cost of the proposed Direction remains acceptable). TfL's regular reports to the Mayor would include this information.

3 Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that in the exercise of their functions, public authorities must have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2 The obligation in section 149(1) is placed upon the Mayor, as decision maker. Due regard must be had at the time a decision is being considered. The duty is non-delegable and must be exercised with an open mind.
- 3.3 Considering the obligations under section 149(1) of the Equality Act 2010, the requirement to develop these sites at high levels of affordable housing will help to increase the supply of affordable housing in London and benefit residents with low incomes. It is likely to have a positive impact upon groups with Protected Characteristics, such as Age, Disability, Pregnancy and Maternity, Race and Sex – all of which can be overrepresented on Local Authority housing waiting lists, as it will enable low income households and those which are vulnerable, to access affordable housing.
- 3.4 The homes also will be built in compliance with the London Plan. As this requires 10 per cent of all new homes to be built as wheelchair accessible it will significantly increase the number of accessible homes in the local area. Designated disabled persons parking will be provided where required in accordance with the London Plan.

- 3.5 The Mayor expects TfL to consider its obligations under section 149(1) of the Equality Act 2010 when disposing or developing of the sites referred to in this decision.

4 Financial comments

- 4.1 The Mayor recognises the need for TfL generally to maximise returns from its assets, and that any requirement that the sites are developed with levels of affordable housing above local planning policy will reduce the land value. TfL is mindful of its duties to deal prudently with its resources but believes that the financial impact of the proposed Direction can be managed and accommodated within its current budget and business plan and that TfL can continue to discharge its public transport functions.
- 4.2 As discussed above, draft Policy H6 in the draft London Plan sets a threshold of affordable housing of 50 per cent for public sector land. Proposals that do not meet this threshold are required to follow the viability tested route. Paragraph 4.6.5 notes that where there is an agreement with the Mayor to deliver at least 50 per cent across the portfolio of sites, then the 35 per cent threshold should apply to individual sites.
- 4.3 Over the course of the next 18 months, it is expected that the draft London Plan will be formally adopted. A shift is expected in the value of public sector land to reflect the new policy reality, in that sites will either need to come forward individually with 50 per cent affordable housing, or as part of a portfolio package that delivers 50 per cent affordable housing. In the intervening period, public sector land values are expected to adjust gradually towards this new policy reality.
- 4.4 This means that there may be a lower value foregone from those sites that would have not been developed or disposed of for some time because, in all likelihood, the value of these sites would have been reduced over the course of the next 18 months as a result of draft Policy H6.
- 4.5 This view of land value would be supported by the outcome of the recent Parkhurst Road case, in which the High Court favoured Islington Council's argument that the site value used in the viability assessment needed to factor in the borough's 50 per cent affordable housing target.
- 4.6 Further financial details are set out in Part 2 of this decision form. The Mayor is invited to take the view that on balance, the financial impact of the proposed Direction on TfL is outweighed by the benefits that will accrue to London as a result of the increased amount of affordable housing that will result from the proposed Direction and that the value foregone by TfL is justified.
- 4.7 The requirements of the proposed Direction will be subject to the land value foregone not exceeding £20m. Based on TfL's indicative programme it is anticipated that the actual value foregone will be lower. A contingency has been provided to allow for market fluctuations. Again, further details are set out in Part 2.

5 Legal comments

- 5.1 Section 155(1) of the Greater London Authority Act 1999 (GLA Act) provides that the Mayor may issue to TfL:
- a) general directions as to the manner in which it is to exercise its functions, or
 - b) specific directions as to the exercise of its functions.
- 5.2 Section 155(3) of the GLA Act also provides that directions which may be issued by the Mayor under subsection (1) may include, in particular, directions as to the manner in which TfL is to perform any of its duties.

- 5.3 Any directions issued under section 155(1) must be issued in writing and notified to the Commissioner of TfL.
- 5.4 The Mayor is obliged to exercise the power of direction under section 155 (1) in accordance with public law principles of reasonableness and rationality.
- 5.5 TfL's functions include the disposal of land: paragraph 12 of Schedule 11 of the GLA Act. The Mayor can therefore direct TfL as to the disposal of land. There are no express statutory provisions relating to best consideration on disposal or development of land. However, TfL is subject to a general duty to act rationally and by reference to relevant considerations in the exercise of its powers. Because TfL's functions and purposes are to provide transport to, from and within London, and do not include housing functions, there is a question as to whether, in the absence of a direction, TfL would be entitled to adopt a financially disadvantageous approach to disposal or development on the basis of advantages relating to the provision of housing.
- 5.6 Under section 30 of the GLA Act, by contrast, the GLA has the power to do anything which furthers one or more of its principal purposes, which includes promoting social and economic development in Greater London. This will include supporting the provision of housing for those working and living in Greater London. The Mayor is therefore entitled to give a direction to TfL in pursuit of housing objectives.
- 5.7 If the Mayor directs TfL to ensure, on any disposal of the land, a minimum level of affordable housing, then TfL's specific statutory duty to comply with that direction means that it will be lawful for TfL to do so, notwithstanding any resulting financial disadvantage.
- 5.8 The Mayor has to take into account all relevant considerations, including the impact on TfL's finances. The requirement that TfL brings forward its programme with an average of 50 per cent affordable housing is likely to result in a lower aggregate residual land value on the sites in that programme. However, TfL's ability to carry out its statutory functions would not be affected and the Mayor takes the view that on balance, the financial impact of the proposed Direction on TfL is outweighed by the benefits that will accrue to London as a result of the increased amount of affordable housing that will result from the proposed Direction and that the value foregone by TfL is justified.
- 5.9 Without this direction, TfL cannot participate directly or through a subsidiary in the development of any of its land on which the specified levels of affordable housing exceed local planning policy requirements, as to do so would not be compliant with paragraph 29 to Schedule 11 of the GLA Act.
- 5.10 Under section 149 of the Equality Act 2010, due regard must be had, when the Mayor exercises a function such as the making of this decision, to the equalities obligations referred to in the "Equality comments" above. Consideration is given above to the likely effects of the proposed Direction on protected groups.

6 Planned delivery approach and next steps

- 6.1 Any disposals or developments will be in accordance with TfL's normal processes and will be subject to professional valuation advice on the value of the land and the options available. Sites will be brought to market between June 2018 and March 2019. The route to market will vary, however, it is intended that development will have started on many of these sites by the end of 2020/2021.

Appendices and supporting papers:

Appendix A - Direction

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) 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 approval or on the defer date.

Part 1 Deferral:

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

If YES, for what reason: We would want to ensure that this direction forms the basis of an announcement at an agreed time.

Until what date: n/a

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Margaret Kalaugher has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

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

✓

Mayoral Adviser:

Heidi Alexander 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 the 6 August 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allen

Date

6.8.18

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

7/8/2018.