

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2542

### **Title: Community led housing stock transfer delegation of Mayoral powers relating to applications made under the right to transfer from a local authority landlord**

#### **Executive Summary:**

The GLA is responsible for assessing applications to transfer local authority owned homes in London to a new landlord, made by tenant groups under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, and deciding whether an application should be approved (or, where Government funding support for debt write-off is required, making an assessment alongside the Ministry for Housing, Communities and Local Government (MHCLG) and HM Treasury for recommendation to Government ministers as to whether the application should be approved). The GLA's role includes:

- supporting applicant tenants' groups to develop their proposals
- assessing their applications
- approving the information provided to tenants to consider through formal consultation and a ballot on whether they want their homes transferred to a new landlord
- in the event of a positive ballot result, agreeing a transfer date with the local authority and tenant group, subject to the Secretary of State's agreement and regulatory requirements being satisfied.

The assessment of applications centres on the business case to be detailed within the application. The criteria for assessment are outlined in the Housing Transfer Manual published by the Ministry of Housing Communities and Local Government in July 2014. Where, following assessment, the GLA does not approve a business case this will not stop the transfer process for an application but the statutory guidance notes that "it is unlikely the Secretary of State would consent to transfer if the GLA's approval has not been provided and, in practice, it is likely that it would lead to either the tenant group stopping the process or the local authority requesting a determination from the Secretary of State." The Secretary of State retains the discretion to determine applications throughout the transfer process.

The Mayor's approval is sought to establish a delegation to specified GLA staff to make and publish the findings of assessments (either deciding whether an application should be approved or, where support for debt write-off is required, making an assessment alongside MHCLG and HM Treasury for recommendation to Government ministers) and assess and approve formal consultation information in accordance with the above Regulations, statutory guidance in respect of the Regulations and the Housing Transfer Manual according to the delegation set out in paragraph 1.11 of this report.

#### **Decision:**

That the Mayor approves the delegation to specified GLA staff to decide whether to approve each transfer application received (or in respect of transfer applications requiring support for debt write-off, making an assessment alongside MHCLG and HM Treasury for recommendation to Government ministers as to whether the application should be approved), publish the findings of assessments and to assess and approve formal consultation information in accordance with the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, statutory guidance and the Housing Transfer Manual, as set out in paragraph 1.11 of this report.

#### **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:**

18/3/2

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

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. The GLA is responsible for assessing applications to transfer local authority owned homes in London to a new landlord, made by tenant groups under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, and deciding whether an application should be approved (or, where Government funding support for debt write-off is required, making an assessment alongside the Ministry for Housing, Communities and Local Government (MHCLG) and HM Treasury for recommendation to Government ministers as to whether the application should be approved).
- 1.2. Applicants seeking to transfer local authority owned homes in London must submit a transfer application to the GLA for approval. The Housing Transfer Manual, published by MHCLG in July 2014, advises applicants on the necessary requirements of their application for transfer. GLA officers can provide advice and guidance on making an application, and tenant groups may submit an application in draft form prior to formal submission. This engagement helps to ensure that applications are sufficiently developed and valid to go through assessment.
- 1.3. The assessment of the application by the GLA is undertaken in accordance with the relevant Regulations, statutory guidance in respect of the Regulations and the guidance contained within the Housing Transfer Manual. The GLA's formal assessment includes an assessment of value for money, based on reliable evidence of how the proposal delivers Mayoral priorities and central government priorities. The Manual states that assessment should consider how the proposed transfer will deliver relevant housing and social policy objectives including:
  - estate regeneration;
  - greater tenant and resident empowerment;
  - the contribution to growth through additional homes;
  - investment in the existing stock; and
  - local economic activity.
- 1.4. The assessment of value for money is captured in the evaluation of the full business case for the transfer, using the five dimensions detailed below:
  - Strategic - present a strong case for transfer, including drivers for change;
  - Economic - deliver value for money, a positive benefit to cost position;
  - Commercial - are viable, covering indicative fundability of the transfer, asset management, delivery risks and landlord selection;
  - Financial - are affordable to government, covering specific public sector costs and benefits of the proposed transfer; and
  - Management - can be delivered within an agreed timetable.
- 1.5. The GLA's assessment also considers whether the proposed transfer has the support of the tenants involved and provides them with the protection of a regulated landlord (specifically a 'private registered provider' of social housing). The GLA may contact the local authority directly as part of the assessment, for clarification or confirmation of facts.
- 1.6. Where, following assessment, the GLA does not approve a business case this will not stop the transfer process for an application but the statutory guidance notes that "it is unlikely the Secretary of State

would consent to transfer if the GLA's approval has not been provided and, in practice, it is likely that it would lead to either the tenant group stopping the process or the local authority requesting a determination from the Secretary of State." The Secretary of State retains the discretion to determine applications throughout the right to transfer process.

- 1.7. The statutory guidance states that where Government funding support for debt write-off is sought, the Government, as well as the GLA, will need to approve the business case. The Housing Transfer Manual clarifies that in such circumstances the GLA's assessment process will be undertaken alongside MHCLG and HM Treasury and, following the assessment process, a recommendation will be made to ministers who will approve the application (potentially subject to certain conditions) or reject the application, ending the transfer process.
- 1.8. If a tenant group's business case for transfer is approved, the relevant local authority is required to formally consult with tenants in the affected houses. Tenant information must be provided in a form compliant with the relevant Regulations governing transfer, and the GLA is required to ensure that local authorities follow statutory guidance and good practice during the formal consultation, including assessing and approving tenant information provided in the formal consultation (the Offer Document).
- 1.9. In reviewing both the application and the tenant information, it is vital that consistency between the offer made to tenants and the evidenced business case for transfer is assured.
- 1.10. If, following consultation, a ballot of secure and introductory tenants indicates that a majority of secure and introductory tenants wish the proposal to proceed and the tenant group wishes to proceed, the GLA will recommend to MHCLG that the Secretary of State consents to the transfer, as required under sections 32-34 and/or 43 of the Housing Act 1985. The GLA's scrutiny throughout the process provides assurance to MHCLG and the Secretary of State that the application has complied with the Regulations at all stages of the process. However, the Secretary of State retains the discretion throughout the entire process to determine applications themselves.

### **Community led housing stock transfer delegation**

- 1.11. The decision whether or not to approve (or, in respect of transfer applications requiring Government funding support for debt write-off, the findings of the GLA's assessment of) an application to transfer local authority owned homes to a new landlord made under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, assessed in accordance with any relevant statutory guidance and the Housing Transfer Manual published by MHCLG in July 2014 (as updated or replaced from time to time), will be made by the Executive Director of Housing and Land in consultation with the Deputy Mayor for Housing and Residential Development, unless it is deemed to be novel, contentious or repercussive (see further below) in which case it will be made by the Mayor. A Decision will then be published in one of three forms:
  - If an application does not meet the criteria for applications set out in the Housing Transfer Manual published by MHCLG in July 2014 (as updated or replaced from time to time), the Director Decision (DD) will normally state that the application is not approved by the GLA (or, where the application requires debt write-off, that the GLA's assessment is the application does not satisfy all the required criteria and this will be confirmed to MHCLG/HM Treasury) .
  - If an application does meet the criteria for applications set out in the Housing Transfer Manual published by MHCLG in July 2014 (as updated or replaced from time to time), either:
  - The DD will approve the application (or, where the application requires debt write-off, approve that the GLA's assessment is the application satisfies the required criteria and this will be confirmed to MHCLG/HM Treasury) and delegate authority, subject to Government's approval of the transfer application where there is a requirement for debt write-off, to the relevant GLA Housing and Land Head of Area to liaise with the Tenants Group and Local Authority to approve the subsequent tenant information in the formal consultation required under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013; or

- If the Director's findings identify that a decision to approve the application (or to approve the GLA's assessment is that the application satisfies the required criteria) could be novel, contentious or repercussive, the matter will be passed to the Mayor to consider through a Mayoral Decision (MD) form.

1.12. In the context of assessing Right to Transfer applications, the following examples illustrate the type of proposed transfers that could be considered novel, contentious or repercussive. This is a non-exhaustive list. A proposed transfer could be considered:

- novel, where there is no precedent for the type of landlord which is intending manage the stock; for example, a for-profit Registered Provider of social housing;
- contentious, where a formally recognised group, separate to the applicant tenant's group but comprised of affected residents, is formally opposed to the transfer. This could include a Tenants Association, Residents Association, or Tenants and Residents Association; or
- repercussive, where the transfer of affected homes would, if approved, materially impact the local authority's ability to deliver on existing and planned commitments against the Mayor's Housing Strategy and any other relevant programmes administered by the GLA.

1.13. This delegation will be incorporated into the "Mayoral Decision-Making in the GLA" document at the point it is next revised.

## **2. Objectives and expected outcomes**

2.1. This scheme of delegation will provide:

- certainty to tenants' groups about the way in which:
  - a) their applications will be assessed; and
  - b) the findings of assessments will be made available.
- certainty to Londoners that assessments and approvals for tenants' groups to pursue (via consultation and ballot with social housing tenants) a transfer of landlord from a local authority to a new landlord will be made in a transparent manner in accordance with the GLA's policy of transparency.

2.2. The expected outcome is that applications made under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 will be handled efficiently and with appropriate scrutiny from officers and the public.

## **3. Equality comments**

3.1. In defining a process for assessing 'right to transfer' applications, the GLA has complied with the public sector equality duty. GLA officers have had due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not.

3.2. There is a chronic shortage of affordable housing in London and those with protected characteristics are more likely to disproportionately suffer as a result of that shortage. A full equality impact assessment was conducted to inform the development of the Mayor's London Housing Strategy, which defines the Mayor's priorities for housing, including enhanced tenant involvement in estate regeneration.

- 3.3. This scheme of delegation sets a framework for making decisions about proposals brought forward by Tenants Groups to transfer from a Local Authority landlord to a new landlord. The proposed delegation prescribes that assessments of proposals will be made with reference to Mayoral priorities. It is likely that proposals will impact significantly on BAME Londoners; while 13.5 per cent of London's households rent from a Local Authority, this rises to 17.7 per cent for households where the Reference Person (as defined in the Census 2011) was a BAME Londoner.
- 3.4. In providing support to tenants groups bringing forward applications under the right to transfer process, the GLA recognises that tenants with protected characteristics are more likely to face disadvantages which result in being less able to access professional support to prepare and submit transfer applications.
- 3.5. By creating a robust, transparent and fair process for assessing 'right to transfer' applications, the GLA anticipates creating a positive impact in equalities terms and to advance equality of opportunity for those with protected characteristics who are currently disadvantaged by the housing situation in London.

#### **4. Other considerations**

##### *Links to Mayoral strategies and priorities*

- 4.1. The Mayor's Housing Strategy has five priorities:
  - building homes for Londoners;
  - delivering genuinely affordable homes;
  - high quality homes and inclusive neighbourhoods;
  - a fairer deal for private renters and leaseholders; and
  - tackling homelessness and helping rough sleepers.
- 4.2. At Para 5.81 of the Mayor's Housing Strategy, he states he believes "it is essential that tenants, leaseholders, freeholders, and other residents and users of estates be reassured that, where regeneration is being considered, they will be fully involved in the process, and that councils, landlords and others will abide by a common minimum set of standards."
- 4.3. The Mayor's Good Practice Guide to Estate Regeneration - 'Better Homes for Local People' - outlines that social housing residents must be at the heart of decisions about the ongoing management and future of their estates.
- 4.4. The New London Plan states at Policy H10 - Loss of existing housing and estate redevelopment - that:
  - before considering the demolition and replacement of affordable homes, boroughs, housing associations and their partners should always consider alternative options first.
  - demolition of affordable housing, including where it is part of an estate redevelopment programme, should not be permitted unless it is replaced by an equivalent amount of affordable housing floorspace
- 4.5. The Mayor's Strategy 'A City for All Londoners' sets out the Mayor's strategy to:
  - help Londoners participate in London's economy, understand the opportunities generated by the businesses on their doorstep and the pathways to get there.
  - encourage active participation in community and civic life, including supporting Londoners of all ages to volunteer and to act to improve our city.



### *Impact assessments and consultations*

- 4.6. Under certain circumstances concerning proposed stock transfer, consultation with the Regulator of Social Housing will be necessary for the GLA to complete a proper assessment of a transfer application as executed in accordance with the proposed delegation set out in this report.

### *Risks*

- 4.7. There is a risk that without approving a clear decision-making process for Right to Transfer applications, the GLA will not be able to perform its role to support tenants' groups and assess applications in a fair and transparent way. Furthermore, tenants' groups would potentially be disadvantaged in pursuing transfer applications if a clear GLA decision-making process was not adopted. To mitigate this risk, this Decision specifies the process by which the GLA will make and publish assessments in the public domain. Publication of detailed assessment of applications will be subject to consideration as to whether any of the assessment contains commercially sensitive information provided by the tenant group or local authority, the publication of which would be likely to prejudice the commercial interests of the tenant group or local authority, and whether the public interest in withholding it outweighs the public interest in releasing it.
- 4.8. There are no conflicts of interest to note for any of the officers involved in the drafting or clearance of this decision form.

## **5. Financial comments**

- 5.1. The process of assessing applications represents a demand on officer time which currently is being met from within the Housing and Land (H&L) Directorate. In certain circumstances, officers may require resources to commission external bodies to undertake technical aspects of assessments. At this stage these costs are expected to be minimal and will be met from within the H&L Directorate. Any procurement will be undertaken in accordance with the GLA's contracts and funding code.

## **6. Legal comments**

- 6.1. The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 (the 2013 Regulations) enable tenant groups to explore and apply for transfer of local authority owned homes to a private registered provider of social housing. The Regulations set out the procedure to be followed by tenant groups and local authorities, together with the circumstances in which a determination might be made by the Secretary of State.
- 6.2. Regulation 3 of the 2013 Regulations provides that local authorities must have regard to any guidance given by the Secretary of State relating to these Regulations. Statutory guidance was issued by the Secretary of State in November 2013 and it is this guidance, together with the Housing Transfer Manual to which the guidance refers, which set out those areas that require GLA assessment or approval.
- 6.3. The foregoing sections of this report indicate that the GLA's role pursuant to the above statutory guidance and the Housing Transfer Manual fall within the statutory powers of the Authority under sections 30 and 34 of the Greater London Authority Act 1999 to promote and/or to do anything which is facilitative of or conducive or incidental to the promotion of social development in Greater London and in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:
- (i) pay due regard to the principle that there should be equality of opportunity for all people;

(ii) consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and

(iii) consult with appropriate bodies.

- 6.4. The Mayor may delegate the exercise of Mayoral powers to staff of the GLA generally or specifically and subject to conditions under sections 38(1) and (2) of the GLA Act 1999.
- 6.5. The "Mayoral Decision Making in the GLA" document (MDM) sets out the default framework of delegations in exercise of those powers but the Mayor may by a Mayoral Decision form (MD) amend or give free-standing delegations outside that framework at any time.
- 6.6. In taking the decisions requested, the Mayor must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010, and to advance equality of opportunity between persons who share a relevant protected characteristic (race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) 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 (section 149 of the Equality Act 2010). To this end, the Mayor should have particular regard to section 3 (above) of this report.
- 6.7. The intention is to incorporate this specific delegation into the MDM at the point it is next revised, which satisfies good local government practice in making publicly available the list of delegations made by the Mayor.

**Appendices and supporting papers:**

None.

**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:**

Jonathan Schifferes has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

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

✓

**Mayoral Adviser:**

Jules Pipe 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 16 March 2020.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

*M. J. Ellis*

Date 16.3.20

**CHIEF OF STAFF:**

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

Signature

*D. Bellamy*

Date 17 / 3 / 2020.