

# GREATER LONDON AUTHORITY

## REQUEST FOR DIRECTOR DECISION – DD2431

### Title: VIP Industrial Estate planning appeal – Public Inquiry legal and consultant costs

#### Executive Summary:

On 29 January 2019 the Mayor held a Representation Hearing to consider the planning application. He decided to refuse the application, against the recommendation of GLA officers and this decision was issued on 13 February 2019. The applicant has subsequently appealed this decision and on 21 August 2019 the Secretary of State recovered the appeal. This case will be decided by way of a Public Inquiry, which opened on 19 November. The Mayor is a principal party in the proceedings. The planning application was for a residential-led mixed-use development that was referable to the Mayor under the Mayor of London Order 2008 and found to be contrary to the London Plan. Leading Counsel advice and specialist consultant input is required to support GLA staff in presenting the Mayor's case.

The preparatory work has been completed by GLA officers, Counsel and appointed consultants, however, the majority of work will be completed throughout the remainder of November and December 2019. This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves expenditure of up to £122,000 to allow the GLA to present the Mayor's planning case at the public inquiry. The costs will be spent in the 2019-20 financial year.

#### Decision:

That the Executive Director of Development, Environment and Enterprise approves:

Expenditure of up to £122,000 (part of which has already been incurred) to support GLA officers in expanding on and presenting the Mayor's planning case at the forthcoming public inquiry on the VIP Industrial Estate appeal as follows:

1. Up to £72,000 external legal representation;
2. Up to £10,000 to AECOM for external consultant input;
3. Up to £25,000 to Pinsent Masons to cover their fees associated with the legal agreement; and
4. Up to £15,000 for venue hire.

#### AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities. It has my approval.

**Name:** Debbie Jackson

**Position:** Executive Director –Development, Enterprise & Environment

**Signature:**



**Date:**

12/12/19

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE**

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

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

1.1 On the 9 July 2018 Greenwich Council, against officer recommendation, resolved to refuse planning permission for a residential led mixed-use development at VIP Industrial Estate site in Charlton.

1.2 The Mayor called in the planning application for his own determination on 13 August 2018. Subsequent to this Direction, amendments were made to the scheme and were subject to public consultation. The resulting description of development was:

“Demolition of existing buildings and erection of 11 buildings ranging from 2 to 10 storeys in height for Class C3 residential use (771 units), with flexible uses comprising Class B1 (Business), Class A1- A3 (Retail / Restaurant), Class D1 (Community) and Class D2 (Leisure) at ground floor and first floor level, alterations to existing vehicular access and creation of new pedestrian access from Anchor and Hope Lane and the riverside, creation of new areas of open space and landscaping together with the provision of associated car parking, cycle spaces, refuse and recycling storage, plant and all other associated works.”

1.3 On 21 January 2019 GLA officers published their recommendation to approve the application. On 29 January the Mayor held a Representation Hearing to consider the application. After hearing from GLA officers, the Council, objectors and the applicant the Mayor resolved to refuse the application. On 4 February he published his reasons for refusal and on 13 February the decision notice was issued with the following refusal reasons:

- The proposal does not constitute development of the highest quality as required by policy. Its poor design, layout and massing, gives rise to an overly constrained residential environment and to an inadequate and compromised public realm. The proposal would therefore not comprise sustainable development and would be contrary to the NPPF, London Plan (2016) Policies 3.5, 7.1, 7.4, 7.5, 7.6 and 7.7, draft London Plan Policies D1, D4, D6 and D7, Greenwich Local Plan Policies H5, DH1 and DH2 and the Charlton Riverside SPD (2017).
- The proposal fails to ensure a satisfactory relationship with the retained commercial building at Imex House. It fails to provide a safe and convenient access to the business. It introduces noise sensitive uses to the site without providing demonstrably appropriate, sufficient or deliverable mitigation measures contrary to the Agent of Change principles thus threatening the sustainability of this local business. The development would not constitute sustainable development and is contrary to the NPPF, London Plan (2016) Policy 7.15, draft London Plan Policies GG5, D12 and D13, the Mayor’s Culture & Night-time Economy SPG (2017) and the Charlton Riverside SPD (2017).
- The proposal fails to provide any floorspace suitable for the relocation of existing established local businesses on the site and fails to provide a suitable and robust mechanism to secure suitable alternative premises for these existing occupiers. The development would not constitute sustainable development and would be contrary to the NPPF, London Plan (2016) Policies 4.4, draft London Plan Policies GG5, E4 and E7, and the Charlton Riverside SPD (2017).
- The proposal, in the absence of a S106 agreement to secure affordable housing and other obligations, would fail to provide the maximum reasonable level of affordable housing or adequately mitigate the other harmful impacts of the development, contrary to London Plan (2016) Policies 3.12, 3.18, 5.2, 6.2 and 8.2, draft London Plan Policies H6, S1, E2, S12, T3 and DF1, Greenwich Local Plan Policies H3, EA(c), E1 and IM1, the Mayor’s Affordable Housing & Viability SPG and the Charlton Riverside SPD (2017).

- 1.4 The appellant appealed this decision in July 2019 and the Planning Inspectorate (PINS) determined that the appeal would be determined by way of a public inquiry. The appeal was subsequently recovered by the Secretary of State. The public inquiry has been scheduled to commence on 19 November and last up to 12 days (over 3 weeks).
- 1.5 The Mayor is a principal party and GLA officers will be required to prepare and present detailed technical information and opinions; most notably in respect of design, noise and planning. Legal representation by Leading Counsel will be required at the public inquiry, as well as specialist noise consultant input. The Mayor's Statement of Case, proofs of evidence of witnesses and other preparatory work have already taken place.
- 1.6 Barrister legal fees are estimated to be up to £72,000 based on the based on the breakdown reported verbally.
- 1.7 Professional specialist noise consultant fees (AECOM) are estimated to be up to £10,000 based on the expected requirements to put forward the Mayor's case.
- 1.8 Pinsent Masons are working on behalf of the GLA on the S106 agreement that will need to be completed prior to the closing of the inquiry. Their costs are estimated to be up to £25,000.
- 1.9 The Mayor/GLA is expected to provide the inquiry venue, given that we are the local planning authority for the purposes of determining the application. The venue has been sourced (Charlton Athletic Football Club) based on PINS specific requirements and the need to be located close to the site and conveniently for local residents. Total costs are estimated to be up to £15,000.
- 1.10 It is therefore requested that the Executive Director approves expenditure up to £122,000 from the Planning Smoothing Reserve to be topped up as required. These figures are based on fee quotes from a barrister chambers and further quotes from professional and legal consultancies and inquiry venues. These figures are estimates and may increase depending on the complexities of the case and evidence of other parties that may need to be responded to, which would require further budget approval.
- 1.11 The preparatory work for this case has already been completed by GLA officers, Counsel, Pinsent Masons and AECOM in order to comply with the planning inspector's timetable, and the work will be completed throughout the remainder of December. As such, GLA officers had to proceed with procurement of Counsel and the external consultants and start to incur costs for this prior to the submission of this report. This decision therefore also seeks retrospective approval for such already incurred costs.
- 1.12 The appointment of Pinsent Masons was carried out through the by TfL Legal via the TfL Legal panel. The barrister was appointed by TfL Legal. The noise consultant was initially appointed through the GLA Environment Team's contract with AECOM to undertake initial review work. Following this, it became clear that the GLA would need to present detailed noise evidence at the inquiry, which fell outside the scope of the GLA contract. Owing to the tight timescales involved in preparing this evidence GLA officers separately appointed AECOM to continue this work, which will not exceed a cost of £10,000. The venue was hired on the basis that it meets PINS requirements, in particular that it is close to the application site to be convenient to residents and that it is accessible by public transport.

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

- 2.1 To enable preparation for, and presentation of a robust Mayoral case at, the forthcoming Public Inquiry in November and December 2019.

### **3. Equality comments**

- 3.1 Under section 149 of the Equality Act 2010, in making these decisions “due regard” must be had to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a relevant protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only).
- 3.2 This duty was taken into account in making the Mayors stage 1, 2 and 3 decisions, but no additional equality impact assessments are required beyond those considered in the relevant planning documentation for the Mayor to make these decisions. The Mayor, in making his decisions, had regard to planning policies which are subject to Equality Impact Assessments and he also considered the full range of social impacts arising from the scheme including affordable housing. The procurement process complied with the Equality Act and set out the relevant requirements to any successful consultant/legal representation.

### **4. Other considerations**

- 4.1 If the Mayor’s decision is not robustly presented there is a very real risk that the London Plan would be undermined and London’s strategic planning interests would not be properly taken into account by the Inspector when he considers the case, thereby impacting the Mayor’s ability to carry out his statutory duties. The Mayor could also incur very significant costs (in the event of a successful application for costs award by the appellant) should he be found to have acted unreasonably or unlawfully, for example by not substantiating his reasons for refusal. There are considered to be no conflicts of interest to be declared.

### **5. Financial comments**

- 5.1 Approval is sought for expenditure of up to £122,000 on legal and professional representation to support the GLA and officers in expanding on and presenting the Mayor’s planning case at the forthcoming public inquiry.
- 5.2 The costs of up to £122,000 are to be funded from the Planning Smoothing Reserve and spent in the 2019-20 financial year.

### **6. Legal comments**

- 6.1 Sections 1 to 5 of this report indicate that:
- (i) the decisions requested of the Director (in accordance with the GLA’s Contracts and Funding Code) concern the exercise of the GLA’s general powers, falling within the GLA’s statutory powers to do such things considered to further or which are facilitative of, conducive or incidental to the promotion of economic development and wealth creation, social development or the promotion of the improvement of the environment in Greater London and;
  - (ii) in formulating the proposals in respect of which a decision is sought, officers confirm that they have complied with GLA’s related statutory duties to:
    - pay due regard to the principle that there should be equality of opportunity for all people;

- 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
- consider consulting with appropriate bodies.

6.2 In taking the decisions requested, the Director 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 and foster good relations between persons who share a relevant protected characteristic (race, disability, sex, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Director should have particular regard to section 3 (above) of this report.

6.3 Section 34 of the GLA Act, which allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions, and the Mayor's powers under section 38 of the GLA Act to delegate to any member of staff functions of the GLA that are exercisable by him, and the foregoing sections of this form indicate that the decision requested falls within the above statutory powers of the GLA exercisable by the Executive Director – Development, Enterprise & Environment.

6.4 Part of this approval is sought retrospectively as officers have indicated that part of the preparatory work for this case has already been completed by Counsel, Pinsent Masons and AECOM, the reasons and circumstances of such appointments are as set out at paragraphs 1.11 and 1.12 of this report. Accordingly, the Director should take account of those reasons in considering whether to approve the recommendations of this report.

## 7. Planned delivery approach and next steps

Activity	Timeline
Preparation of case and evidence	September 2019 - November 2019
Public inquiry	November – December 2019

### Appendices and supporting papers:

1. Stage 2 report.
2. Stage 3 report.
3. Refusal decision notice.

**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:

Until what date: (a date is required if deferring)

**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 – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer  
to confirm the  
following (✓)

**Drafting officer:**

Nick Ray has drafted this report in accordance with GLA procedures and confirms that:

✓

**Assistant Director/Head of Service:**

Juliemma McLoughlin has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

**Financial and Legal advice:**

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

**Corporate Investment Board:**

The Corporate Investment Board reviewed this proposal on 9 December 2019.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

*M. D. O'Keefe*

Date

9.12.19