

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2329

Title: Harrow School planning appeal – Public Inquiry legal and consultant costs

Executive Summary:

Following a planning decision by the Mayor to direct Harrow Council to refuse a planning application, the applicant (The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School)) has appealed the Council's subsequent refusal. The appeal will proceed by way of a public inquiry held by an inspector. The inspector will make a recommendation to the Secretary of State who will determine the appeal as he has recovered it for his own determination. The public inquiry opens on 30 April 2019.

The planning application was for a sports and science building that was referable to the Mayor under the Mayor of London Order 2008, and found to be contrary to the London Plan, as it represents inappropriate development on Metropolitan Open Land and very special circumstances have not been demonstrated to outweigh the harm. Leading Counsel advice and specialist consultant input is required to support GLA staff in presenting the Mayor's planning case at the forthcoming public inquiry.

This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves expenditure of up to £135,000 to allow the GLA to present the Mayor's planning case at a forthcoming public inquiry in April/May 2019. The majority of this would be spent in financial year 2019/20.

Decision:

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

Expenditure of up to £135,000 on legal representation and consultant input to support GLA and TFL officers in expanding on and presenting the Mayor's planning case at the forthcoming public inquiry following the Mayor's direction that Harrow Council refuse planning permission in respect of an application by Harrow School.


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: 6.3.2019

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 On 29 April 2016, Harrow School submitted a planning application to Harrow Council for new sports and science buildings. The application was referred to the Mayor under the Mayor of London Order 2008 for his Stage 1 consideration in May 2016. The Mayor initially considered the planning application in June 2016 and advised Harrow Council that the application did not comply with the London Plan, details of which are set out in the attached at Appendix 1.
- 1.2 Harrow Council resolved to grant planning permission for the development on 6 September 2017. In accordance with article 5 of the Town and Country Planning (Mayor of London) Order 2008, the application was referred back to the Mayor for Stage 2 consideration.
- 1.3 The Mayor of London formally directed Harrow Council to refuse the planning application on 29 January 2019 because he found it was contrary to the London Plan given that the 'very special circumstances' case presented fails to justify the proposed development, which is considered to be inappropriate on Metropolitan Open Land (see attached letter and accompanying report dated 29 January 2019 at Appendix 2). The stated reason for the direction was:
- "The proposed sports building is inappropriate development within Metropolitan Open Land and causes substantial harm to the openness of the Metropolitan Open Land - by reason of its excessive footprint and its location. The harm to Metropolitan Open Land by reason of the proposed inappropriate development, and the harm to openness, to which substantial weight is attached, is not clearly outweighed by other considerations. Very special circumstances do not exist. The proposed sports building is contrary to London Plan Policy 7.17, Policy G3 of the draft London Plan, Core Policy 1 of the Harrow Core Strategy, Policy DM16 of the Harrow Development Management Policies DPD and the National Planning Policy Framework."*
- 1.4 The applicant subsequently appealed Harrow Council's decision to refuse planning permission to the Planning Inspectorate. The Secretary of State has decided to determine the appeal himself. As the Mayor directed Harrow Council to refuse the planning application, the Mayor will be a principal party in the appeal and is required to set out and present his decision at the public inquiry. This in turn requires him to prepare and present detailed technical information and opinions; most notably in respect of Metropolitan Open Land and the application of 'very special circumstances', in terms of whether the need for, and benefits of, the sports and science buildings in this location outweighs the harm caused to the Metropolitan Open Land. Legal representation by Leading Counsel will be required at the public inquiry, as well as specialist consultant input.
- 1.5 A bespoke timetable for the public inquiry has been set by the Planning Inspectorate as follows:
- **5 March 2019:** Submit Statement of Common Ground to Planning Inspectorate.
 - **April 2019:** Submit Proofs of Evidence to Planning Inspectorate
 - **30 April 2019:** Public inquiry opens and sits for 8 days at Harrow Council Civic Centre.
- 1.6 Legal fees are estimated to be up to £90,000 (excluding VAT) based on the following breakdown:
- Brief fee: £45,000

- Daily Refresher of £4,000 for 7 days: £28,000
- Contingency (including conferences, preparation, drafting/amending of documents): £17,000

- 1.7 Professional specialist consultant fees are estimated to be up to £45,000. Procurement will be carried out in accordance with the Contracts and Funding Code.
- 1.8 No current budget allocation exists to cover the cost of these legal and consultant fees. It is therefore requested that the Executive Director approves a budget and authorises expenditure up to this figure. This figure is based on fee quotes from a barrister chambers and respective professional consultancies. 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.

2. Objectives and expected outcomes

- 2.1 To enable preparation for, and presentation of a robust Mayoral case at, the forthcoming Public Inquiry in April/May 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 protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only). This duty has been taken into account, but no additional equality impact assessments are required beyond those considered in the relevant planning documentation for the Mayor to make these decisions.

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 Secretary of State when he considers the planning appeal, 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.

5. Financial comments

- 5.1 Approval is sought for the Executive Director of Development, Enterprise and Environment to approve expenditure of up to £135,000 on legal and professional representation to support GLA and officers in expanding on and presenting the Mayor’s planning case at the forthcoming public inquiry following the Mayor’s direction that Harrow Council refuse planning permission in respect of an application by Harrow School.
- 5.2 The legal costs of up to £135,000 are to be funded from Planning Smoothing Reserve and the majority are to be spent in 2019-20.

6. Legal comments

- 6.1 Section 30 of the Greater London Authority Act 1999 (as amended) ('GLA Act') gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA. The principal purposes, as set out in section 30(2), of the GLA Act are:
- i. Promoting economic development and wealth creation in Greater London;
 - ii. Promoting social development in Greater London; and
 - iii. Promoting the improvement of the environment in Greater London.
- 6.2 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:
- a) pay due regard to the principle that there should be equality of opportunity for all people;
 - b) 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
 - c) consider consulting with appropriate bodies.
- 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.

7. Planned delivery approach and next steps

Activity	Timeline
Preparation of case and evidence	December 2018 – April 2019
Public inquiry	April – May 2019

Appendices and supporting papers:

1. Stage 1 report and letter to Harrow Council dated 27 June 2016.
2. Mayor of London's Direction to Harrow Council dated 29 January 2018 and Harrow Council decision notice dated 13 February 2018.

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 4 March 2019

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allge

Date

7.3.19

