

# GREATER LONDON AUTHORITY

## REQUEST FOR DIRECTOR DECISION – DD2407

**Title: Newcombe House planning application – Public Inquiry legal and consultant costs**

### Executive Summary:

On 31 January 2018, the Royal Borough of Kensington and Chelsea (RBKC) resolved to refuse planning permission for the Newcombe House planning application (Ref: GLA/3109a) against RBKC officer's recommendation and on 26 March 2018 the Mayor directed RBKC that he would act as the Local Planning Authority given the potential contribution of the scheme to the delivery of an accessible and inclusive public transport network, and to the vitality and viability of the town centre, as well as its contribution to housing and affordable housing. On 18 September 2018 the Mayor resolved to grant planning permission in line with the recommendation of GLA officers, subject to conditions and the conclusion of a S106 agreement.

Following the Mayor's decision, the Secretary of State called in the application for his determination on 14 March 2019 and the Planning Inspectorate (PINS) has subsequently confirmed the date for the Public Inquiry. Counsel advice and specialist consultant input is required to support GLA and TfL staff in presenting the Mayor's planning case at the forthcoming public inquiry. Part of the preparatory work has been completed by GLA officers, Counsel and the appointed Heritage Consultant, however, the majority of work will be completed throughout the remainder of October and November. This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves expenditure of up to £148,000 to allow the GLA to present the Mayor's planning case at a forthcoming public inquiry in November 2019. The costs will be spent in the 2019-20 financial year.

### Decision:

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

Expenditure of up to £148,000 to support GLA officers in expanding on and presenting the Mayor's planning case at the forthcoming public inquiry on the Newcombe House planning application as follows:

- up to £102,000 to Reuben Taylor QC for external legal representation; and
- up to £46,000 to Turley Associates Ltd (Heritage) for external consultant input.

### 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 and Environment

**Signature:**



**Date:**

01/11/19.

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

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

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

- 1.1 The Royal Borough of Kensington and Chelsea (RBKC) formally consulted the Mayor on the Newcombe House planning application (the ‘Application’) on 15 September 2017 and the Mayor considered a Stage 1 report on the Application on 29 November 2017. The current Newcombe House planning application relates to the *“Demolition of existing buildings and redevelopment to provide office, 55 residential units, retail uses, and a flexible surgery/office use, across six buildings (ranging from ground plus two storeys to ground plus 17 storeys), with two-storey basement together with landscaping to provide a new public square, ancillary parking and associated works.”*
- 1.2 The Mayor’s Stage 1 response advised that, whilst the principle of development was supported in strategic planning terms, it did not yet comply with the London Plan and required RBKC to refer the application back to the Mayor once it resolved to determine it. The Stage 1 report concluded that the proposed on-site affordable housing provision of 9 social rented units equivalent to 17% by habitable room was the maximum viable level, subject to early and late stage viability review mechanisms being secured.
- 1.3 On 31 January 2018, RBKC resolved to refuse planning permission for the Application, against RBKC officer’s recommendation. On 26 March 2018 the Mayor directed RBKC that he would act as the Local Planning Authority for the purposes of determining the application. In making his Direction, the Mayor noted the potential contribution of the scheme to the delivery of an accessible and inclusive public transport network, and to the vitality and viability of the town centre, as well as its contribution to housing and affordable housing.
- 1.4 Following the Mayor’s Direction, amendments were made to the scheme increasing the number of residential units from 46 to 55, an increase in office space, an increase in the amount of affordable housing from 17% to 35% and additional storeys to two of the buildings. On 18 September 2018, a public Representation Hearing (Stage 3 report attached at Appendix 1) was held and the Mayor resolved to grant planning permission in line with the recommendation of GLA officers, subject to conditions and the conclusion of a S106 agreement.
- 1.5 On 29 November 2018 a Holding Direction was issued by the Secretary of State, preventing the Mayor from granting planning permission. The Secretary of State called in the application for his determination on 14 March 2019. Following the ‘call in’ letters were received from the Planning Inspectorate (PINS) confirming the start date and the date for the Public Inquiry.
- 1.6 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 heritage impacts, urban design, transport benefits and affordable housing/financial viability. Legal representation by Leading Counsel will be required at the public inquiry, as well as specialist heritage consultant input.
- 1.7 A bespoke timetable for the public inquiry has been set by the Planning Inspectorate as follows:
  - 8 October 2019:** Submit Statement of Common Ground to Planning Inspectorate
  - 8 October 2019:** Submit Proofs of Evidence to Planning Inspectorate
  - 5 November 2019:** Public inquiry opens and sits for 8 days.

- 1.8 Legal fees are estimated to be up to £102,000 based on the following breakdown:
- Brief fee: £50,000.
  - Daily Refresher of £4,000 per day for 8 days: £32,000.
  - Contingency (including conferences, preparation, drafting/amending of documents): £20,000.
- 1.9 Professional specialist consultant fees are estimated to be up to £46,000 based on the expected requirements to put forward the Mayor's case.
- 1.10 The external heritage consultant (Turley Associates Ltd (Heritage)) was appointed following a competitive tendering process in accordance with the GLA's Contracts and Funding Code. Reuben Taylor QC (Counsel) was appointed by TfL Legal.
- 1.11 It is therefore requested that the Executive Director approves expenditure up to £148,000 from the Planning Smoothing Reserve to be topped up as required by the Corporate Legal Reserve. These figures are based on fee quotes from a barrister chambers and further quotes from 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. As above, part of the preparatory work for this case has been completed by GLA officers, Counsel and the appointed Heritage Consultant, however, the majority of work will be completed throughout the remainder of October and November

## **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 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 Secretary of State 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 applicant and/or RBKC) should he be found to have acted unreasonably or unlawfully.

## **5. Financial comments**

- 5.1 Approval is sought for expenditure of up to £148,000 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 legal costs of up to £148,000 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 Officers have indicated in paragraph 1.10 of this report that (i) the heritage consultancy services in respect of which it is proposed that a contract is to be awarded have been procured by GLA officers in accordance with the Public Contracts Regulations 2016 in accordance with the GLA's Contracts and Funding Code and (ii) that the legal support was appointed by TfL Legal.**

## 7. Planned delivery approach and next steps

Activity	Timeline
Preparation of case and evidence	September/October 2019
Public inquiry	November 2019

### Appendices and supporting papers:

Appendix 1: Stage 3 report.

Appendix 2: SoS 'call in' letter dated 14 March 2019.

**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:**

Richard Green 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 28 October 2019.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

Date

28.10.19

TOM MIDDLETON ON BEHALF OF MARTIN CLARK