

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2408

Title: Former Westferry Printworks planning appeal – Public Inquiry legal and consultant costs

Executive Summary:

An appeal was submitted to the Planning Inspectorate (PINS) on 26th March 2019 against the London Borough of Tower Hamlets (LBTH) non-determination of the Westferry Printworks planning application (Ref: GLA/3363b) and on 10 April 2019 PINS advised that the Secretary of State shall determine the appeal instead of an Inspector. On 11 June 2019 PINS confirmed that the GLA would have 'Rule 6 status' and take a full part in the Public Inquiry. The public inquiry opened on 7 August 2019.

The planning application was for a residential led development that was referable to the Mayor under the Mayor of London Order 2008, and found to be contrary to the London Plan, for three principal reasons: relating to heritage impacts, open space and the Opportunity Area Planning Framework (OAPF) and affordable housing/financial viability. Counsel advice and specialist consultant input was required to support GLA staff in presenting the Mayor's planning case at the public inquiry. This Director Decision asks that the Executive Director of Development, Enterprise and Environment retrospectively approves expenditure of up to £130,750 which was required for the GLA to present the Mayor's planning case at the public inquiry which took place in August 2019. Invoices have not yet been paid and the costs will be spent in the 2019-20 financial year.

Decision:

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

Expenditure of up to £130,750 to support GLA officers in expanding on and presenting the Mayor's planning case at the forthcoming public inquiry on the Westferry Printworks planning application as follows:

- up to £90,750 to Melissa Murphy QC for external legal representation; and
- up to £40,000 consisting of: £13,000 to Nigel Barker Mill for heritage consultancy services; £16,000 to Turner and Townsend for viability cost consultancy services and £11,000 to Hamptons International for residential valuer consultancy services.

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:

07/11/2019.

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 The London Borough of Tower Hamlets (LBTH) formally consulted the Mayor on the Westferry Printworks appeal application (the 'Application') on 12 September 2018 and the Mayor considered a Stage 1 report on 17 December 2018. The Westferry Printworks appeal application relates to the "Comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafés, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1) car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works".
- 1.2 The Mayor's Stage 1 response (attached at Appendix 1) advised that, whilst the principle of development was supported in strategic planning terms, it did not yet comply with the London Plan and required LBTH refer the application back to the Mayor once it resolved to determine it. The Stage 1 report raised a number of issues with the primary concerns as follows:
 - the inclusion of Tower T5 and its impact on the provision of open space;
 - the height of the proposed buildings and their impact on the setting of Tower of London; and
 - the failure of the appellant to demonstrate that they are providing the maximum reasonable amount of affordable housing.
- 1.3 An appeal was submitted to the Planning Inspectorate (PINS) on 26 March 2019 against LBTH non-determination of the application and on the 10 April 2019 PINS advised that the Secretary of State shall determine the appeal instead of an Inspector.
- 1.4 As the Mayor raised significant concerns within his Stage 1 response, the GLA requested 'Rule 6' status from PINS. 'Rule 6' status means that the GLA is considered to be a main party for the purposes of the Inquiry. The Council (local planning authority) and appellant are normally the main parties at Inquiries. On 11 June 2019 PINS confirmed, by letter, that the GLA would have 'Rule 6 status' and take a full part in the upcoming Public Inquiry. It has been decided that the Mayor should be a principal party in the appeal and this required GLA officers to prepare and present detailed technical information and opinions; most notably in respect of heritage impacts, open space with reference to the Opportunity Area Planning Framework (OAPF) and affordable housing/financial viability. Legal representation by Counsel was required at the public inquiry, as well as specialist consultant input.
- 1.5 A bespoke timetable for the public inquiry was set by the Planning Inspectorate as follows:
 - **10 July 2019:** Submit Proofs of Evidence to Planning Inspectorate.
 - **7 August 2019:** Public inquiry opens and sits for 12 days.
- 1.6 Melissa Murphy QC was appointed as the legal advisor on this matter. Legal fees incurred are up to £90,750 based on the following breakdown:
 - Brief fee: £32,500.
 - Daily Refresher of £3,250 per day for 11 days: £35,750.
 - Contingency (including conferences, preparation, drafting/amending of documents): £22,500.
- 1.7 Professional specialist consultant services were required and the consultants named below were appointed to provide these services. The consultancy fees incurred are up to £40,000 based on the following breakdown:

Heritage consultant (Nigel Barker Mills)

- Preparing Proof of Evidence, attendance at 2 days of the Public Inquiry and 1 conference: £5,000.
- Contingency (including additional conferences, attendance at additional days of the Public Inquiry and preparation of further evidence): £8,000.

Construction Cost consultant (Turner and Townsend)

- Preparing Proof of Evidence - £8,000.
- Contingency (including attending conferences, attendance at the Public Inquiry and preparation of further evidence): £8,000.

Sales Valuer (Hamptons International)

- Preparing Proof of Evidence - £3,000.
- Contingency (including attending conferences, attendance at the Public Inquiry and preparation of further evidence): £8,000.

- 1.8 The external consultants named above were appointed following a competitive tendering process carried out by GLA officers in accordance with the GLA's Contracts and Funding Code . Melissa Murphy QC was appointed by TfL Legal.
- 1.9 It is therefore requested that the Executive Director approves expenditure up to £130,750 from the Planning Smoothing Reserve to be topped up by the Corporate Legal Reserve as required. These figures are based on fee quotes from a barrister chambers and further quotes obtained from professional consultancies.
- 1.10 The timeframes in this case have been very tight and evidence had to be produced quickly. Legal support and consultants had to be procured as quickly as possible to assist GLA officers in the preparation of their evidence, submission of which is subject to statutory timeframes. As such, GLA officers had to proceed with procurement prior to the submission of this DD. This decision for therefore seeks retrospective approval for:
- up to £90,750 to Melissa Murphy QC for external legal representation; and
 - up to £40,000 consisting of:
 - £13,000 to Nigel Barker Mills for Heritage consultancy services;
 - £16,000 to Turner and Townsend for viability costs consultancy services and
 - £11,000 to Hamptons International for Residential Value consultancy services.

2. Objectives and expected outcomes

- 2.1 To enable the preparation for, and presentation of a robust Mayoral case at, the Public Inquiry in August 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, 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 during the Mayors stage 1 decision and in presenting evidence at the Public Inquiry, 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 was not robustly presented there was a very real risk that the London Plan and OAPF 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 have also incurred 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 expenditure of up to £130,750 on legal and professional representation to support the GLA and officers in expanding on and presenting the Mayor's planning case at the public inquiry.
- 5.2 The legal costs of up to £130,750 are to be funded from the Planning Smoothing Reserves 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, gender, 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 This approval is sought retrospectively, the reasons for which are set out at paragraph 1.10 of this report. Accordingly, the Director should take account of those reasons in considering whether to approve the recommendations of this report.
- 6.5 Officers have indicated in paragraph 1.8 of this report that (i) the consultancy services required were procured in accordance with the GLA's Contracts and Funding Code and (ii) that the legal support was appointed by Tfl Legal.

7. Delivery approach

Activity	Timeline
Preparation of case and evidence	July 2019
Public inquiry	August/September 2019

Appendices and supporting papers:

Appendix 1: Stage 1 report.

Appendix 2: PINS letter dated 11 June 2019 granting the Mayor Rule 6 Status.

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


~~Tom Middleton~~ TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

28.10.19