

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2183

Title: Direction to TfL concerning its Affordable Housing Programme 2017/18

Executive Summary:

The Mayor is committed to increasing the proportion of new homes that are affordable, to the benefit of local communities and the economy.

To support his ambition, the Mayor is prioritising affordable homes delivery on surplus or under-utilised land owned by the GLA Group, including Transport for London (TfL). The Mayor has set a target for the GLA Group to achieve an average of 50 per cent affordable homes by habitable room on their land.

TfL has a programme for housing delivery on its surplus sites and it estimates that at least 3,000 homes could be delivered on sites identified for development or disposal in 2017/18. TfL's Business Plan includes a target of 50 per cent affordable homes by habitable room across its programme.

It is proposed that the Mayor gives a direction to TfL that will require it to take such steps and measures as it considers reasonably practicable to achieve this objective, and to do so consistently with its legal obligations. The proposed direction, whose detailed terms are set out in Appendix A and are explained in the accompanying report, also provides for two sites to be the subject of community led housing schemes.

Decision:

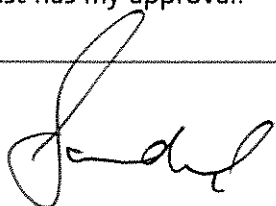
The Mayor directs TfL in relation to the disposal or development of its land in 2017/18 in the form at Appendix A to this decision form.

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:

12/12/12

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1 Introduction and background

- 1.1 Transport for London (TfL) is currently considering the disposal or development of several parcels of its land. In 2017/18, it intends to bring to market land that could accommodate at least 3,000 homes. TfL's current forecast is that land proposed to be brought forward in 2017/18 will exceed this figure.
- 1.2 The Mayor is committed to increasing the proportion of new homes that are affordable for Londoners. To support his ambition, the Mayor is prioritising affordable homes delivery on surplus or under-utilised land owned by the GLA Group, including Transport for London (TfL). The Mayor has set a target for the GLA Group to achieve an average of 50 per cent affordable homes by habitable room on their land. The delivery of affordable housing is important to provide Londoners with much needed housing benefiting local communities and the local economy.
- 1.3 In general terms, this Mayoral Decision seeks to ensure that the sites that TfL has programmed to dispose of or develop during 2017/18 are brought to the market on the basis that, on average across the sites, no less than 50 per cent of any homes built are affordable housing (measured by habitable room), provided that the land value foregone across all of the land marketed in 2017/18 is no more than £15m.
- 1.4 It is proposed that the Mayor issues a specific direction to TfL under section 155(1) (c) of the Greater London Authority Act 1999 (GLA Act), so that TfL may proceed on that basis consistent with its legal obligations.
- 1.5 TfL has been consulted on the terms of the specific direction at Appendix A.
- 1.6 Following consideration of the issues arising, it is now proposed that the Mayor directs TfL in the form set out in Appendix A to this decision form.

2 Direction

- 2.1 The Mayor has a statutory power to do anything which he considers will further the promotion of the social and economic development of Greater London, which includes housing and regeneration. London's housing crisis is the single biggest barrier to prosperity, growth, and fairness facing Londoners today. Building the right number and the right mix of new homes, and addressing the consequences of the housing crisis, are essential parts of the Mayor's vision for 'good growth'. Meeting London's housing needs in full, particularly the need for genuinely affordable homes is important to ensuring the vibrancy and economic success of the city.
- 2.2 The Mayor is committed to a long-term strategic target for half of new homes built to be genuinely affordable. To achieve this, he intends to increase the amount of affordable housing delivered through the planning system.
- 2.3 Affordable homes play a vital role in supporting Londoners on low incomes who are unable to access the private market. This group plays a crucial role in the success of the capital's businesses and public services yet is most disadvantaged by the rising living costs associated with that success. A recent report estimated that around one third of London's shift workers (such as those working in caring professions and cleaners), as well as 'blue-light' workers (such as police and ambulance drivers), currently live in London's social housing. Furthermore, a shortage of affordable housing has been linked to difficulties in recruiting and retaining public sector workers.

- 2.4 Affordable homes also have an important role to play in supporting Londoners on low to middle incomes, particularly those in the private rented sector who are struggling to save for a deposit to buy a home. Addressing this need is important to avoid London becoming a city where only the wealthy are able to afford market housing and only people on relatively low incomes are able to access social housing. The industries that drive London's economy and support its public services depend on a steady supply of highly-skilled professionals who need access to homes they can afford.
- 2.5 The Mayor also wants to see the public sector leading by example when it comes to releasing land for high quality and genuinely affordable homes. TfL is reviewing all of its landholdings with a view to supporting additional housing delivery and has committed to bring forward land for more housing, starting on sites with the potential to deliver 10,000 homes.
- 2.6 The draft London Housing Strategy states that the Mayor will prioritise the delivery of affordable homes on publicly-owned land, including setting a target for Mayoral organisations for an average of 50 per cent of homes on land brought forward under the current administration to be affordable. The Affordable Housing and Viability Supplementary Planning Guidance (SPG) sets out guidelines for public land which the Mayor sees as playing an important role in delivering 50 per cent housing overall.
- 2.7 The SPG states that:
- "It is widely recognised that land in public ownership should make a significant contribution towards the supply of new affordable housing. Land that is surplus to public sector requirements typically has a low value in its current use, allowing higher levels of affordable housing to be delivered. For these reasons, the Mayor has an expectation that residential proposals on public land should deliver at least 50 per cent affordable housing to benefit from the Fast Track route."
- 2.8 Paragraph 2.34 in the SPG also sets out:
- "Where a public landowner has an agreement in place with the Mayor to provide 50 per cent affordable homes across a portfolio of sites, individual sites which meet or exceed the 35 per cent affordable housing threshold and required tenure split may be considered under the Fast Track Route. Where such an agreement is not in place, schemes that do not provide 50 per cent affordable housing will be considered under the Viability Tested Route."
- 2.9 The draft Mayor's Transport Strategy, states that the Mayor:
- "intends to ensure that TfL surplus land is used to maximise affordable housing and so reduce the inequalities in housing provision for those who are from low-income households, younger people and disabled people. By 2020/21, TfL will start on the property development sites that will deliver 10,000 homes. The Mayor intends that, overall, 50 per cent of homes (as measured by habitable rooms) built on TfL land and brought to market since May 2016 will be affordable."
- 2.10 TfL has committed to achieving the Mayor's target of an average of 50 per cent affordable housing across the portfolio of new sites it brings forward. It proposes to do so by way of an overall programme approach in each financial year, which means that some sites will be taken forward for disposal or development with more than 50 per cent affordable housing by habitable room so that other sites may proceed with lower levels of affordable housing. By taking this approach, TfL can deliver affordable housing in a way that delivers greater value for money. This approach will also provide much needed affordable housing in the areas where there are currently significantly lower levels of affordable housing than the London average.
- 2.11 When developing its land either directly or through a subsidiary, TfL is obliged by paragraph 29 of Schedule 11 of the GLA Act to act as if it were a company engaged in a commercial enterprise or exercise its control over that subsidiary so as to ensure that the subsidiary, in carrying on those

activities, acts as a company so engaged. This has the consequences discussed in the legal comments below.

- 2.12 Local planning policy requirements will generally require the provision of at least 35% affordable housing, but the figure may be higher or lower in some cases.
- 2.13 Although the GLA Act does not contain express constraints upon TfL's power to dispose of land, the principal reason to do so would normally be to raise money to invest in the transport network in London. TfL does not have any general social well-being functions, and neither does it have any responsibilities for housing in London (although TfL will have to have regard to the Mayor's Transport Strategy, when published).
- 2.14 However, the Mayor has wider functions in relation to the promotion of social development, economic development and wealth creation as well as specific responsibilities for housing in London. The Mayor may therefore take these matters into account when exercising his power to give directions to TfL. The Mayor is also able to assess and have regard to the impact of an increased level of affordable housing at the proposed sites including the consequent benefits to the workforce and the economy.
- 2.15 Although the disposal or development of the sites with levels of affordable housing that exceed local planning policy requirements will tend to reduce the residual land values to TfL, the increased provision of affordable housing will provide much needed affordable housing for Londoners. TfL's valuations indicate that the land value foregone on the sites with levels of affordable housing that exceed local planning policy requirements will not be more than £15m but could deliver an estimated 662 additional affordable homes measured by habitable rooms. The Mayor may conclude that this social benefit justifies the financial impact of the lower land values to TfL. TfL is mindful of its duties to deal prudently with its resources but believes that the financial impact of this Direction can be managed and accommodated within its current budget and business plan and that TfL can continue to discharge its public transport functions.
- 2.16 The Mayor also recognises that Londoners should be able to play a leading role in building their own communities and deliver homes themselves, and believes that an expanded community-led housing sector is an important component in tackling the housing crisis in the capital. Policy 5.3 of the draft Housing Strategy outlines proposals to support community-led housing schemes. This includes the provision of £250,000 to establish the London Community-Led Housing Hub, which will offer advice including how to access funding and unlock land, as well as offering technical support for projects and a base for information sharing. This will tackle existing barriers and provide opportunities for the sector to grow. The Innovation Fund is also identified to support community-led housing. The draft Housing Strategy also highlights the Small Sites, Small Builders programme to support small builders, housing associations and community-led organisations to access publicly-owned small sites, including TfL sites.
- 2.17 The London Community-Led Housing Hub has identified access to sites and finance as key barriers that the sector faces. In order to help facilitate community-led housing, it is proposed that two of the sites TfL brings to market in 2017/18 will be disposed of on the basis that not less than 100 per cent of any residential accommodation that may be constructed on the land is acquired and managed by an entity which falls within the definition contained in section 79(1)(d) of the Housing and Regeneration Act 2008, namely a community land trust which owns land in England. A community land trust is a body corporate established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order to benefit the local community, controlled by members of the trust (which those who live or work in the specified area must have the opportunity to become), and with any profits from its activities being used to benefit the local community. Providing land specifically for this purpose unlocks the key barrier faced by people looking to deliver community-led housing.

- 2.18 The proposed Direction at Appendix A is intended to give effect to these policy objectives, consistently with TfL's legal obligations. It operates by dividing the sites that TfL plans to bring to market in 2017/18 into two categories. In the first category (the Schedule 1 sites) are the sites judged to be appropriate for affordable-led development schemes, and TfL is directed to ensure, so far as reasonably practicable, that disposals of those sites are on terms that ensure 100% affordable housing (or in one case 50%). The Schedule 2 sites will therefore be disposed of, or developed, on a commercial basis. However, paragraph 4 of the proposed Direction allows for some flexibility to take account of changing circumstances, and provides in effect that, if more affordable housing is stipulated for on Schedule 2 sites than normal planning policy would require, then to that extent the obligation in relation to the Schedule 1 sites is reduced. The intention is that, overall, the 50% policy objective should be met (subject always to the £15m cap intended to ensure that the financial cost of the Direction remains acceptable). There is also specific provision for three particular sites where there may be difficulties in disposing of those sites in the most effective manner within the contemplated timescales, and their replacement in those circumstances by a further Schedule 1 site (as well as specific provision for the two sites intended for community-led development). The proposed Direction requires TfL to use reasonable endeavours to bring the Schedule 1 sites to market during this financial year, or failing that within the period of 1 year following the making of the Direction.

3 Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that in the exercise of their functions, public authorities must have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic 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.
- 3.2 The obligation in section 149(1) is placed upon the Mayor, as decision maker. Due regard must be had at the time a decision is being considered. The duty is non-delegable and must be exercised with an open mind.
- 3.3 Considering the obligations under section 149(1) of the Equality Act 2010, the requirement to develop these sites at high levels of affordable housing will help to increase the supply of affordable housing in London and benefit residents with low incomes. It is likely to have a positive impact upon groups with Protected Characteristics, such as Age, Disability, Pregnancy and Maternity, Race and Sex – all of which can be overrepresented on Local Authority housing waiting lists, as it will enable low income households and those which are vulnerable, to access affordable housing.
- 3.4 The homes also will be built in compliance with the London Plan. As this requires 10 per cent of all new homes to be built as wheelchair accessible it will significantly increase the number of accessible homes in the local area. Designated disabled persons parking will be provided where required in accordance with the London Plan.
- 3.5 The Mayor expects TfL to consider its obligations under section 149(1) of the Equality Act 2010 when disposing or developing of the sites referred to in this decision.

4 Financial comments

- 4.1 The Mayor recognises the need for TfL generally to maximise returns from its assets, and that any requirement that the sites are developed with levels of affordable housing above local planning policy will reduce the land value. TfL is mindful of its duties to deal prudently with its resources but

believes that the financial impact of this Direction can be managed and accommodated within its current budget and business plan and that TfL can continue to discharge its public transport functions. For example, some of the sites that will be covered by the Direction had not been included in the original programme of disposals and were not likely to be considered for disposal or development for some time, so that current budgeting has not been based upon assumptions of any greater return than is anticipated by virtue of this Direction. Further financial details are set out in Part 2 of this decision form. The Mayor is invited to take the view that on balance, the financial impact of the Direction on TfL is outweighed by the benefits that will accrue to London as a result of the increased amount of affordable housing that will result from this Direction and that the value foregone by TfL is justified.

- 4.2 The requirements of the Direction will be subject to the land value foregone not exceeding £15m. Based on the current proposed programme it is anticipated that the actual value foregone will be lower. A contingency has been provided to allow for market fluctuations. Again, further details are set out in Part 2.

5 Legal comments

- 5.1 Section 155(1) of the Greater London Authority Act 1999 (GLA Act) provides that the Mayor may issue to TfL:
- a) general directions as to the manner in which it is to exercise its functions, or
 - b) specific directions as to the exercise of its functions.
- 5.2 Section 155(3) of the GLA Act also provides that directions which may be issued by the Mayor under subsection (1) may include, in particular, directions as to the manner in which TfL is to perform any of its duties.
- 5.3 Any directions issued under section 155(1) must be issued in writing and notified to the Commissioner of TfL.
- 5.4 The Mayor is obliged to exercise the power of direction under section 155 (1) in accordance with public law principles of reasonableness and rationality.
- 5.5 TfL's functions include the disposal of land: paragraph 12 of Schedule 11 of the GLA Act. The Mayor can therefore direct TfL as to the disposal of land. There are no express statutory provisions relating to best consideration on disposal or development of land. However, TfL is subject to a general duty to act rationally and by reference to relevant considerations in the exercise of its powers. Because TfL's functions and purposes are to provide transport to, from and within London, and do not include housing functions, there is a question as to whether, in the absence of a direction, TfL would be entitled to adopt a financially disadvantageous approach to disposal or development on the basis of advantages relating to the provision of housing.
- 5.6 Under section 30 of the GLA Act, by contrast, the GLA has the power to do anything which furthers one or more of its principal purposes, which includes promoting social and economic development in Greater London. This will include supporting the provision of housing for those working and living in Greater London. The Mayor is therefore entitled to give a direction to TfL in pursuit of housing objectives.
- 5.7 If the Mayor directs TfL to ensure, on any disposal of the land, a minimum level of affordable housing, then TfL's specific statutory duty to comply with that direction means that it will be lawful for TfL to do so, notwithstanding any resulting financial disadvantage.
- 5.8 The Mayor has to take into account all relevant considerations, including the impact on TfL's finances. The requirement that TfL brings forward its programme with an average of 50 per cent affordable housing is likely to result in a lower aggregate residual land value on the sites in that

programme. However, TfL's ability to carry out its statutory functions would not be affected and the Mayor takes the view that on balance, the financial impact of the Direction on TfL is outweighed by the benefits that will accrue to London as a result of the increased amount of affordable housing that will result from this Direction and that the value foregone by TfL is justified.

- 5.9 TfL will not participate directly or through a subsidiary in the development of any of its land on which the specified levels of affordable housing exceed local planning policy requirements, as to do so would not be compliant with paragraph 29 to Schedule 11 of the GLA Act.
- 5.10 Under section 149 of the Equality Act 2010, due regard must be had, when the Mayor exercises a function such as the making of this decision, to the equalities obligations referred to in the "Equality comments" above. Consideration is given above to the likely effects of the direction on protected groups.

6 Planned delivery approach and next steps

- 6.1 Any disposals or developments will be in accordance with TfL's normal processes and will be subject to professional valuation advice on the value of the land and the options available. Sites will be brought to market between December 2017 and March 2018. The route to market will vary, however, it is intended that development will have started on these sites by 2020/2021.

Appendices and supporting papers: Appendix A

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? YES**

If YES, for what reason: We would want to ensure that this direction forms the basis of an announcement at an agreed time.

Until what date: The defer will be reviewed on 15 February 2018.

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 – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Margaret Kalaugher has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Fiona Fletcher-Smith has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Val Shawcross 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 11 December 2017.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

11.12.17

TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

CHIEF OF STAFF:

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

Signature

Date

11/12/2017.

Appendix A

I, SADIQ KHAN, MAYOR OF LONDON, in exercise of the powers conferred on me by section 155(1)(c) of the Greater London Authority Act 1999 hereby direct Transport for London (TfL) as follows:

1. This Direction shall continue in force for a period of 1 year from the date on which it is made ("the Period"). If during the Period TfL disposes of, or offers for disposal, any or all of the sites listed in column 1 of Schedule 1 to this Direction ("the Sites"), TfL shall (subject to paragraphs 3 to 5 below) take such steps and measures as it considers reasonably practicable to ensure that the percentage of any residential accommodation that may be constructed on any such site that will be used as affordable housing, shall be not less than the percentage shown against the name of the relevant site in column 2 of the said Schedule 1.
2. For the purposes of this Direction, "affordable housing" has the meaning given in the London Plan and any supplementary planning guidance issued by the Mayor in force at the date of grant of planning permission for each site. The percentage of residential accommodation that will be used as affordable housing, or the number of affordable housing units, is to be measured by habitable room.
3. Nothing in paragraph 1 above shall require TfL to dispose of any site in a manner or on terms such that the total consideration received by TfL in respect of the disposal of the Sites will at any time, in TfL's estimation, be reduced by more than £15m, as compared with the position if the sites in question had been disposed of on a fully commercial basis. For this purpose, "on a fully commercial basis" means in a manner and on terms designed to maximise, so far as reasonably possible, the consideration received by TfL in respect of the disposal, and (in particular) without any steps being taken with a view to securing that a minimum proportion of the housing constructed on the site in question will be used as affordable housing.
4. This paragraph applies if TfL disposes of, or develops or participates in the development of, any site listed in column 1 of Schedule 2 to this Direction and does so on such terms, or in such a way, as to ensure that the percentage of any residential accommodation that may be constructed on that site that will be used as affordable housing is greater than the percentage shown against the name of the relevant site in column 2 of Schedule 2, Where this paragraph applies, the number of additional affordable housing units on that

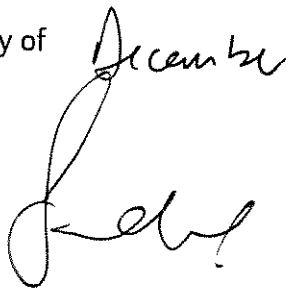
site shall be treated as reducing, by the same number, the number of additional affordable housing units (as compared with what would TfL understands would be required by normal planning requirements) that are required to be constructed on the Sites in consequence of paragraph 1 above; and the terms and manner of any further disposals of Sites by TfL may depart from what would otherwise be required by paragraph 1 to the extent that is, in TfL's estimation, appropriate to give effect to that reduced requirement.

5. TfL shall use its reasonable endeavours to commence the process of disposal of the Sites by offering them for disposal by no later than 31 March 2018, and (if that is not reasonably practicable) then to do so within the Period. If TfL considers it inappropriate or impracticable to offer for disposal the three sites at Rayners Lane, Stanmore and Canons Park within these timescales, then these sites shall be removed from the list of Sites and replaced in the list by TfL's site at Southall Sidings (with a figure of 100% shown for that site in column 2).
6. When disposing of the Sites at (i) Cable Street and (ii) Christchurch Road and Brixton Hill, TfL shall take such steps and measures as it considers reasonably practicable to ensure that all of the residential accommodation that may be constructed on that site is acquired and managed by an entity which falls within the definition contained in section 79(1)(d) of the Housing and Regeneration Act 2008.

Dated this 12th

day of December 2017

Sadiq Khan
Mayor of London



Schedule 1 – the Sites

<u>Column 1</u>	<u>Column 2</u>
Beechwood Avenue (Barnet)	50%
Cable Street (Tower Hamlets)	100%
Aylesbury Street (Brent)	100%
Land at Christchurch Road & Brixton Hill (Lambeth)	100%
Snaresbrook (Redbridge)	100%
Woodside Park (Barnet)	100%
Arnos Grove (Enfield)	100%
Sudbury Town (Brent)	100%
Hillingdon (Hillingdon)	100%
Stanmore (Harrow)	100%
Rayners Lane (Harrow)	100%
Canons Park (Harrow)	100%
Barkingside Builders Yard (Redbridge)	100%

Schedule 2 – the sites referred to in paragraph 4 of the Direction

<u>Column 1</u>	<u>Column 2</u>
Northwood Town	35%
Harrow on the Hill	35%
Site Opposite Colliers Wood Station	0%
46 Brentmead Place	0%
Albany Road	0%
286 Long Lane	0%
Land at Portree Street	0%
Land at Aspen Place	0%
Limmo	40%
Finchley Central	40%
High Barnet	40%

**Where fewer than 10 homes can be built on a site, on-site affordable housing is not a planning policy requirement (represented by 0% in Column 2).*