

REQUEST FOR DIRECTOR DECISION – DD2484

Title: Harrow School Planning Court challenge – legal costs

Executive Summary:

On 31 October 2019, the Secretary of State for Housing, Communities & Local Government (SoS) allowed the planning appeal for Harrow School's new sports and science buildings, making a full award of costs against the Mayor for unreasonable behaviour in defending the appeal.

The Mayor subsequently challenged both decisions by way of a S288 planning statutory review claim. A virtual Planning Court hearing was conducted on 22 and 23 April 2020 and Mr Justice Holgate subsequently handed down judgement on 12 May. The Mayor's claim against the substantive decision was dismissed and the planning permission upheld. The Mayor's claim against the costs decision was allowed and the costs decision quashed.

Counsel advice and advocacy was required to present the Mayor's case. All of the work has been completed by GLA officers, TfL Legal and Counsel. This Director Decision asks that the Executive Director – Good Growth approves expenditure of £58,685. The costs have been spent in the 2020-21 financial year.

Decision:

That the Executive Director, Good Growth approves expenditure of £58,685 (all of which has already been incurred) to Counsel for advice and advocacy to present the Mayor's case at the Planning Court.

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: Philip Graham

Position: Executive Director, Good Growth

Signature:

Date:



6 July 2020

PART I NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 The Mayor directed Harrow Council to refuse the planning application for Harrow School's sports and science buildings on 29 January 2019 because he found it was contrary to London Plan policy on Metropolitan Open Land. GLA officers subsequently defended the Mayor's case at a public inquiry held in April/May 2019 (refer to DD2329 for costs related to the public inquiry). At the inquiry, Harrow School made an application for a full award of costs against the Mayor for unreasonable behaviour, which was robustly defended by Leading Counsel on behalf of the Mayor.
- 1.2 The Planning Inspector subsequently made a recommendation to the SoS, who made his decision on both the substantive case (the planning appeal) and the costs decision on 31 October 2019. The SoS decided to allow the appeal and grant a full award of costs in favour of Harrow School against the Mayor. Both decisions were in line with the Inspector's recommendations.
- 1.3 The Mayor subsequently challenged both decisions by way of a S288 planning statutory review claim and permission was granted by the Planning Court for both claims to proceed. A virtual Planning Court hearing was conducted across two days on 22 and 23 April 2020 and Mr Justice Holgate subsequently handed down judgement on 12 May.
- 1.4 The Mayor's claim against the substantive decision was dismissed and the planning permission upheld. As such the Mayor has been unsuccessful in challenging this decision and further legal action, in the form of an appeal to the Court of Appeal, is not considered to be warranted.
- 1.5 The Mayor's claim against the costs decision was allowed and the costs decision quashed. As such, the matter of the costs decision will now be returned to the SoS for re-determination. This is likely to require a further inquiry and/or hearing with a new inspector appointed to adjudicate purely on the matter of inquiry costs and unreasonable behaviour. However, this has yet to be confirmed and any future expenditure will be agreed through further budget approval.
- 1.6 Leading Counsel advice and advocacy was required to present the Mayor's case at the Planning Court. All of the work has been completed by GLA officers, TfL Legal and Counsel. The costs incurred have been discussed and approved in principle prior to being incurred and this Director Decision seeks to regularise the expenditure. This Director Decision asks that the Executive Director - Good Growth approves expenditure of £58,685. The costs have been spent in the 2020-21 financial year.
- 1.7 Legal (Counsel) and Junior Counsel were appointed by TfL Legal.
- 1.8 It is therefore requested that the Executive Director approves expenditure of £58,685 from Planning reserves to be topped up as required.

2. Objectives and expected outcomes

- 2.1 To prepare for and present a robust Mayoral case at the Planning Court in April 2020.

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 Mayor’s stage 1 and 2 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 The successful challenge of the costs decision vindicates GLA officers’ opinion that the Mayor acted entirely reasonably throughout the decision-making process on the application and in defending the appeal. A further hearing is likely to take place to enable the re-determination of the costs decision, which could lead to a partial award of costs against the Mayor and further costs would be incurred contesting this. However, the Planning Court judgement makes it clear that this would only be limited to a very small part of the case. A full award of costs would have been substantial, so the Planning Court challenge is considered to be entirely justified in this case.
- 4.2 If the SoS decisions were not robustly challenged there would have been a very real risk that the London Plan and London’s strategic planning interests would be undermined, thereby impacting the Mayor’s ability to carry out his statutory duties.
- 4.3 There are considered to be no conflicts to declare in relation to this matter.

5. Financial comments

- 5.1 Approval is sought for expenditure of £58,685 incurred on legal representation to support the GLA and officers in expanding on and presenting the Mayor’s planning case at S288 hearing in the Planning Court.
- 5.2 The costs of £58,685 are to be funded from Planning reserves and spent in the 2020-21 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 that work for this case has already been completed by Counsel and therefore the costs already incurred, for the reasons set out at paragraph 1.6 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	January 2020 - April 2020
Planning Court hearing	April 2020

Appendices and supporting papers:

1. Appeal decision.
2. Costs decision.
3. Planning Court judgement.

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:

Debbie Jackson 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 6 July 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

8 July 2020