

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2430

Title: Heythrop College planning appeal – Public Inquiry legal and consultant costs

Executive Summary:

On 23 April 2019, the Deputy Mayor for Planning, Regeneration and Skills (acting under delegated authority) directed the Royal Borough of Kensington & Chelsea (RBKC) to refuse planning permission for the Heythrop College planning application (Ref: GLA/4491a), which RBKC duly did on 10 May 2019. On 15 May the applicant appealed this decision and on 2 October the Planning Inspectorate (PINS) determined that this case will be decided by way of a Public Inquiry, which will open on 28 January 2020. The Mayor will be a principal party in the proceedings. The planning application was for a residential and extra care development that was referable to the Mayor under the Mayor of London Order 2008 and found to be contrary to the London Plan, as it does not provide the maximum amount of affordable housing. Leading Counsel advice and specialist consultant input is required to support GLA staff in presenting the Mayor's case.

Part of the preparatory work has been completed by GLA officers, Counsel and appointed consultants, however, the majority of work will be completed throughout the remainder of December and January. This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves expenditure of £119,000 to allow the GLA to present the Mayor's planning case at the public inquiry in January 2020. The costs will be spent in the 2019-20 financial year.

Decision:

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

Expenditure of up to £119,000 (part of which has already been incurred) to support GLA officers in expanding on and presenting the Mayor's planning case at the forthcoming public inquiry on the Heythrop College appeal as follows:

1. Up to £79,000 for external legal representation;
2. Up to £20,000 to AECOM for external consultant input; and
3. Up to £20,000 to a procure consultant for advice relating to daylight, sunlight and overshadowing.

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:

12/12/19

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 Heythrop College planning application (the 'Application') on 19 September 2018 and the Mayor considered a Stage 1 report on the Application on 15 October 2018. The planning application proposed *"Reinstatement of three townhouses (Class C3), (part of 23 and 24 Kensington Square); refurbishment of college building (part of 23 Kensington Square) and use as an extra care facility (Class C2). Demolition of all other buildings on site. Erection of deck over adjacent London Underground line and construction of 5 buildings (ranging between 1 and 8 storeys in height) for use as an extra care facility including units, communal facilities and services areas, community hall and on-site affordable housing and associated access parking, servicing and landscaping."*
- 1.2 The Mayor's Stage 1 response advised that the application did not 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 5 intermediate rented units was unacceptable and advised that GLA officers were robustly interrogating the applicant's viability assessment.
- 1.3 On 27 November 2018, RBKC resolved to grant planning permission for the Application. On 23 April 2019 the Deputy Mayor for Planning Regeneration & Skills (acting under delegated authority) directed RBKC to refuse planning permission for the following reasons.
 - *Affordable Housing: The Use Class of the specialist older persons housing element of the proposal is considered to be C3 therefore affordable housing policies apply to this element in addition to three townhouses. Five affordable units are included within the proposal however on the basis of the evidence presented, the applicant has failed to demonstrate that the scheme would deliver the maximum reasonable amount of affordable housing and the proposals are therefore contrary to the NPPF, London Plan Policy 3.12, draft London Plan Policies H5 and H6 and the Mayor's Affordable Housing and Viability SPG, and Kensington and Chelsea Local Plan Policy CH 2.*
 - *Section 106: Inadequate provision has been made in the draft s.106 agreement to secure the required affordability levels and delivery of the five affordable units and for viability review mechanisms. The absence of adequate and robust affordable housing clauses within the drafts.106 does not therefore support the delivery of the maximum reasonable amount of affordable housing on the site and is contrary to London Plan Policy 3.12 draft London Plan Policy H6 and the Mayor's Affordable Housing and Viability SPG and Kensington and Chelsea Local Plan Policy CH 2.*
- 1.4 RBKC issued the decision, including these reasons for refusal, on 10 May 2019. The applicant subsequently appealed the decision, initially requesting the written representations procedure. The Planning Inspectorate (PINS) subsequently decided to deal with the case by way of a public inquiry, commencing on 28 January 2020. The Inquiry is scheduled to take 4 days, although GLA officers consider it will likely take longer than this (up to 8 days).
- 1.5 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 affordable housing/financial viability. Legal representation by Leading Counsel will be required at the public inquiry, as well as specialist viability input.
- 1.6 A timetable for the public inquiry has been set by the Planning Inspectorate as follows:

13 November 2019: Submit Statement of Case to Planning Inspectorate

31 December 2019: Submit Proofs of Evidence to Planning Inspectorate

28 January 2020: Public inquiry opens and sits for 4 days (although this is expected to increase).

- 1.7 Legal (Counsel) fees are estimated to be up to £79,000 based on the breakdown reported verbally. :
- 1.8 Professional specialist cost consultant fees (AECOM) are estimated to be up to £20,000 based on the expected requirements to put forward the Mayor's case. Professional special consultant fees for advice relating to daylight, sunlight and overshadowing are estimated to be up to £20,000 based on the expected requirements to put forward the Mayor's case.
- 1.9 The external costs consultant (AECOM) was appointed following a competitive tendering process in accordance with the GLA's Contracts and Funding Code. Any daylight, sunlight and overshadowing consultant will also be appointed in line with the Code. Counsel was appointed by TfL Legal.
- 1.10 It is therefore requested that the Executive Director approves expenditure up to £119,000 from the Planning Smoothing Reserve to be topped up as required. These figures are based on fee quotes from counsel and a further quote from AECOM. The daylight and sunlight consultant has not yet been appointed but the figure allowed for is based on past experience. 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.
- 1.11 This decision therefore seeks approval for up to:
- £79,000 for external legal representation;
 - £20,000 to AECOM for external consultant input; and
 - £20,000 to a procure consultant for advice relating to daylight, sunlight and overshadowing.
- 1.12 Part of the preparatory work for this case has been completed by GLA officers, Counsel and AECOM due to the urgent need to obtain specialist advice to support the Mayor's case. However, the majority of work will be completed throughout the remainder of December 2019 and January 2020. As such, GLA officers had to proceed with procurement of Counsel and AECOM and start to incur costs for this prior to the submission of this report. This decision therefore also seeks retrospective approval for such already incurred costs.

2. Objectives and expected outcomes

- 2.1 To enable preparation for, and presentation of a robust Mayoral case at, the forthcoming Public Inquiry in January 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 Mayors 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 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 Inspector 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 appellant and/or RBKC) should he be found to have acted unreasonably or unlawfully, for example by not substantiating his reasons for refusal. 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 £119,000 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 costs of £119,000 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 that part of the preparatory work for this case has already been completed by Counsel and AECOM and therefore some of the costs already incurred, for the reasons set out at paragraph 1.12 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 1.9 of this report that the costs consultancy services where a contract has been 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 that the legal support was appointed by TfL Legal.

7. Planned delivery approach and next steps

Activity	Timeline
Preparation of case and evidence	November 2019 - January 2020
Public inquiry	January 2020

Appendices and supporting papers:

1. Stage 1 report.
2. Stage 2 report.

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 9 December 2019.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allen

Date

9.12.19