

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2223

Title: Howbury Park planning appeal – Public Inquiry legal costs

Executive Summary:

Following a planning decision by the Mayor to direct Bexley Council to refuse a planning application, the applicant (Roxhill Development Ltd) appealed the Council's subsequent refusal and the Secretary of State decided to determine the appeal himself. The public inquiry closed on 28 September 2018. The planning application was for a rail freight interchange facility that was referable to the Mayor under the Mayor of London Order 2008, and found to be contrary to the London Plan, as it represents inappropriate development in the Green Belt and very special circumstances have not been demonstrated to outweigh the harm. This Director Decision asks that the Executive Director of Development, Enterprise and Environment approves the expenditure up to £150,000 on legal representation received to support GLA and TfL officers in expanding on and presenting the Mayor's planning case at the Public Inquiry.

Decision:

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

Expenditure up to £150,000 on legal representation received to support GLA and TfL officers in expanding on and presenting the Mayor's planning case at the Public Inquiry following the Mayor's direction that Bexley Council refuse planning permission in respect of an application by Roxhill Development Ltd.

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: Lucy Owen

Position: Executive Director –Development, Enterprise & Environment

Signature:



Date:

7/11/18

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

Howbury Park

- 1.1 On 20 November 2015, Roxhill Developments submitted planning applications to Bexley Council and Dartford Borough Council for a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, and new access arrangements. The Bexley Council application was referred to the Mayor under the Mayor of London Order 2008 for his Stage 1 consideration in April 2016. The Mayor initially considered the Bexley planning application in June 2016 and advised Bexley Council that the application did not comply with the London Plan, details of which are set out in the attached at Appendix 1.
- 1.2 Bexley Council resolved to grant planning permission for the development on the 16 February 2017. In accordance with article 5 of the Town and Country Planning (Mayor of London) Order 2008, the application was referred back to the Mayor for Stage II consideration.
- 1.3 The Mayor of London formally directed Bexley Council to refuse the planning application on 17 July 2017 because he found it was contrary to the London Plan given that the 'very special circumstances' argument presented fails to justify the proposed development, which is considered to be inappropriate, in the Green Belt (see attached letter dated 17 July 2017 at Appendix 2). The stated reason for the direction was:

"The proposal is inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm. The development is therefore contrary to Policy 7.16 of the adopted London Plan 2016 and the National Planning Policy Framework."
- 1.4 The applicant subsequently appealed Bexley Council's decision to refuse planning permission to the Planning Inspectorate. The Secretary of State decided to determine the appeals himself. As the Mayor directed Bexley Council to refuse the planning application, the Mayor has been a principal party in the appeal and as such the GLA has prepared and presented detailed technical information and opinions in support of the Mayor's position; most notably in respect of Green Belt and the application of 'very special circumstances', in terms of whether the need for, and benefits of, the strategic rail freight interchange in this location outweighs the harm caused to the Green Belt. Legal representation by Leading Counsel (Dan Kolinsky QC at Landmark Chambers) has assisted the preparation and presentation of the Mayor's position at the Public Inquiry. The Public Inquiry lasted for 5 weeks and closed on 28 September 2018.
- 1.5 The expenditure in relation to legal representation received totals £150,000 and comprises:

Brief fee: £60,000
Daily Refresher of £4,500 for 9 days: £40,500
Daily Refresher of £4,000 for 7 days: £28,000
Conferences, preparation, drafting/amending of documents up to: £21,500
- 1.6 No current budget allocation exists to cover the cost of these legal fees. It is therefore requested that the Executive Director approves a budget and authorises expenditure up to this figure. This figure is based on a fee quote from a barrister chambers, Landmark Chambers.

2. Objectives and expected outcomes

- 2.1 Legal representation from Leading Counsel enabled preparation for, and presentation of a robust Mayoral case at, the Public Inquiry in 2018.

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, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only). This duty has been taken into account, but no additional equality impact assessments are required beyond those considered in the relevant planning documentation for the Mayor to make these decisions.

4. Financial comments

- 5.1 Approval is sought for the Executive Director of Development, Enterprise and Environment to approve expenditure up to £150,000 on legal representation received to support GLA and Transport for London officers in expanding on and presenting the Mayor’s planning case at the Public Inquiry following the Mayor’s direction that Bexley Council refuse planning permission in respect of an application by Roxhill Development Ltd.
- 5.2 The legal costs of up to £150,000 are to be funded from Revenue Grants Unapplied Reserve and is to be spent in 2018-19.

6. Legal comments

- 6.1 Section 30 of the Greater London Authority Act 1999 (as amended) (“GLA Act”) gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA. The principal purposes, as set out in section 30(2), of the GLA Act are:
- i. Promoting economic development and wealth creation in Greater London;
 - ii. Promoting social development in Greater London; and
 - iii. Promoting the improvement of the environment in Greater London.
- 6.2 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:
- i. pay due regard to the principle that there should be equality of opportunity for all people;
 - ii. 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
 - iii. consider consulting with appropriate bodies.
- 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.

7. Planned delivery approach and next steps

Activity	Timeline
Preparation of case and evidence	March – June 2018
Public inquiry	June – September 2018

Appendices and supporting papers:

1. Stage 1 report and letter to Bexley Council dated the 6 June 2016.
2. Mayor of London's Direction to Bexley Council dated the 17 July 2016 and Bexley Council decision notice dated 20 July 2017.

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 5 November 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Llc

Date

6.11.18

