

REQUEST FOR MAYORAL DECISION – MD2647

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

Executive Summary:

Following the Deputy Mayor for Planning, Regeneration & Skills' direction to the Royal Borough of Kensington & Chelsea (RBKC) to refuse planning permission for the Heythrop College planning application, the applicant appealed this decision and a public inquiry was held, which opened on 28 January 2020. The Mayor was a principal party in the proceedings.

In December 2019, a Director Decision (DD2430) approved expenditure of £119,000 to allow the GLA to present the Mayor's planning case. Subsequently, the public inquiry was extended from four to nine days, a change of Leading Counsel was required because of the extended public inquiry timetable and further consultant work was required to support the case. As such, this Mayoral Decision asks that the Mayor approves additional expenditure of £148,500 (taking the total approval limit to £267,500). This expenditure has already been incurred, with expenditure across the 2019-20 and 2020-21 financial years.

Decision:

That the Mayor approves:

Additional net expenditure of £148,500 (taking total expenditure to £267,500) to support GLA officers in expanding on and presenting the Mayor's Heythrop College planning case at the public inquiry, as follows:

1. £100,000 for external legal representation; and
2. £67,000 to AECOM for external consultant input;

and noting £18,500 of this will be offset by a saving on advice relating to daylight, sunlight and overshadowing, approved previously.

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: 2 July 2020

PART I NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 The full background to the case is set out in DD2430, which is appended at Annex 1. At the time of this decision, the public inquiry was expected to take four days, although allowance was made for up to eight days. Following directions from the Planning Inspectorate, this was subsequently increased to nine days. This was principally due to the involvement of residents' groups, two of whom were legally represented, and extensive inquiry time spent dealing with matters that were not directly relevant to the Mayor's case. Despite this, the Mayor was required to be represented by Leading Counsel throughout. Furthermore, the extension of the inquiry required the Mayor to appoint different Leading Counsel in December 2019 due to unavailability resulting from the extension of the inquiry, necessitating further preparatory work. As such the legal (Counsel) fees increased from £79,000 to £179,000.
- 1.2 Prior to and following the submission of proofs of evidence on 30 December 2019, the Mayor's build costs consultants, AECOM, were required to undertake additional work, including reviewing detailed cost information and extensive discussions with the Appellant's build costs consultants with a view to narrowing down the areas of disagreement. This additional work continued during the inquiry. Build costs evidence was a significant part of the Mayor's viability case to the inquiry. Planning appeal guidance is clear that parties must work together to minimise areas of disagreement. The additional work undertaken by AECOM enabled a number of items to be agreed and for a robust case to be made to the inquiry in relation to the areas of disagreement. As such the consultant fees increased from £20,000 to £87,000.
- 1.3 The Mayor's daylight and sunlight consultant was not required to undertake additional work or appear at the inquiry and so these costs are £1,500, below the original budget figure of £20,000.
- 1.4 The public inquiry started on 28 January 2020 for nine days over a two-week period. A decision is expected in early-July. The Mayor was a principal party and GLA officers were required to prepare and present detailed technical information and opinions; most notably in respect of affordable housing/financial viability. Legal representation by Leading Counsel was required throughout the public inquiry, as well as specialist viability input.
- 1.5 The external costs consultant (AECOM) was appointed following a competitive tendering process in accordance with the GLA's Contracts and Funding Code. Leading Counsel was appointed by TfL Legal.
- 1.6 It is therefore requested that the Mayor approves additional expenditure of £148,500 (total £267,500 spend on the case) from the Planning Smoothing Reserve to be topped up as required. These figures are based on actual costs invoiced.
- 1.7 This decision therefore seeks approval for:
 - an additional £100,000 for external legal representation;
 - an additional £67,000 to AECOM for external consultant input; and
 - a reduction of £18,500 for advice relating to daylight, sunlight and overshadowing.

2. Objectives and expected outcomes

- 2.1 To enable preparation for, and presentation of a robust Mayoral case at, the public inquiry which opened 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 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 If the Mayor’s decision was 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 have incurred 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 or not engaging with the Appellant before and during the inquiry.
- 4.2 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 £148,500 on legal and professional representation already incurred to support the GLA and officers in expanding on and presenting the Mayor’s planning case at the public inquiry. This is additional to the £119,000 previously approved under DD2430, taking the total expenditure relating to the planning inquiry to £267,500.
- 5.2 The costs of £267,500 are to be funded from the Planning Smoothing Reserve and have been spent across 2019-20 and 2020-21 financial years.

6. Legal comments

- 6.1 Sections 1 to 5 of this report indicate that:
 - (i) the decisions requested of the Mayor (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 Mayor must, as was done under delegated authority when this matter was first considered, 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 Mayor should have particular regard to section 3 (above) of this report.

6.3 Section 34 of the GLA Act allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions. Section 38 of the GLA Act allows the Mayor to delegate to any member of staff functions of the GLA that are exercisable by him. The foregoing sections of this form indicate that the decision requested is one which is not delegated to a director under the GLA scheme of delegation (May 2020) and falls within the above statutory powers of the GLA exercisable by the Mayor. The reason being that the decision involves expenditure of more than £150,000.

6.4 Officers have indicated that the work for this case, as initially approved under DD2430, has been completed by Counsel and AECOM and therefore the costs already incurred. Accordingly, the Mayor should take account of those reasons in considering whether to approve the recommendations of this report.

6.5 Officers have indicated 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:

None.

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:

✓

Sponsoring Director:

Philip Graham has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Advisor:

Jules Pipe has been consulted on the proposal and agrees the recommendations.

✓

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 22 June 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

26 June 2020

CHIEF OF STAFF:

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

Signature



Date

26 June 2020