

GREATER LONDON AUTHORITY

REQUEST FOR ASSISTANT DIRECTOR DECISION – ADD2050

Title: Westferry Printworks: Financial Viability Independent Assessment and Review Mechanism

Executive Summary:

Approval of additional expenditure to cover the costs of consultancy fees accumulated during the determination of the Westferry Printworks planning application and the finalising of the associated Section 106 agreement. The costs will be reimbursed to the Greater London Authority (GLA) under the terms agreed in associated planning performance agreement (PPA).

Decision:

The Assistant Director of Planning approves:

- expenditure of up to a total of £24,960 on (additional) consultancy costs for viability review work and consultants' attendance at Section 106 meetings, the cost of which is to be fully recovered from the applicant; and
- a related exemption from the requirement of the GLA's Contracts and Funding Code to procure such services competitively, instead varying the GLA's contract with Gerald Eve without competition, to carry out the Financial Viability Independent Assessment and Review Mechanism.

AUTHORISING ASSISTANT DIRECTOR/HEAD OF UNIT:

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: Colin Wilson

Position: Acting Assistant Director of Planning

Signature:



Date:

6.12.16.

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 On 25 January 2016, the Mayor received a request to become the local planning authority for the purpose of determining the planning application at the Former Westferry Printworks site in the London borough Tower Hamlets. This request was made by DP9 on behalf of the applicant of the planning application, pursuant to article 7 of the Town and Country Planning (Mayor of London) Order 2008. On 4 February 2016, having considered a report on the case, the Mayor notified Tower Hamlets that he would act as the local planning authority for the purposes of determining the planning applications (under article 7 of the Mayor of London Order and the powers conferred by Section 2A of the 1990 Town and Country Planning Act) (Planning Act) .
- 1.2 The Westferry Print Works Mayoral Planning Hearing was held on 27 April 2016, in order to allow the former Deputy Mayor of Planning to reach a decision. Specialist advice was required with regard to whether the application proposed the maximum reasonable amount of affordable housing. The advice involved scrutinising the applicant's Financial Viability Assessment and the subsequent related correspondence between the applicant consultants instructed by the Local Planning Authorities. Furthermore advice was also required to inform an appropriate review mechanism, in order to allow future increases in site value to be captured and used for public benefit.

2. Justification for Single Source Procurement

- 2.1 As the final total value of the work will be £34,710 a tender process would normally have been required in accordance with section 4 of the GLA's Contracts and Funding Code. The engagement of Gerald Eve for the provision of the services was originally approved by Delegated Authority Record (DAR) (the services having an original value of £9,750) on 11 March 2016.
- 2.2 BNP Paribas, Carter Jonas and Gerald Eve were approached by email to carry out the work approved under the above-mentioned DAR. Gerald Eve was chosen as BNP Paribas had a conflict of interest on the site, and Carter Jonas was unable to carry out the work in time. Gerald Eve had previously been appointed for similar work on other call-in cases (Convoy's Wharf & Bishopsgate Goodsyards) and were therefore familiar with the GLA's requirements, in addition to being available to carry out the work in the necessary time frame. In the view that they have provided similar advice on similar schemes and to good effect, the decision was to contract Gerald Eve for this purpose.
- 2.3 The additional costs were associated with formulating an appropriate review mechanism which required Gerald Eve to attend section 106 meetings following the former Deputy Mayor's decision to grant permission for the application, and while hourly rates were set out in the accepted fee proposal, given the unknown length of negotiations and number of subsequent meetings required for all parties to reach an agreed position, it was not possible to know the additional costs. The Council also procured its own independent review of Gerald Eve's assessment before the representation hearing which in turn had to be taken into consideration by Gerald Eve in giving their final advice to officers which also attracted additional work/time and costs.
- 2.4 Officers acknowledge the need to procure services will a value of the expenditure proposed competitively. In this instance however, officers are of the opinion that section 5 of the GLA's Contracts and Funding Code applies in that an exemption from that requirement may be justified on the basis that, as noted above, Gerald Eve have had previous involvement in the project.

3. Objectives and expected outcomes

3.1 Objective

The GLA's objective is to obtain specialist financial services advice in order to inform the detailed drafting and finalisation of an affordable housing review mechanism to ensure that the maximum reasonable amount of affordable housing would be delivered as part of the scheme in line with the Former Deputy Mayor's planning decision.

3.2 Outcome

The outcome of the work commissioned is a written advice statement, and a finalised affordable housing review mechanism. The finalised review mechanism will be incorporated within the Westferry Printworks Section 106 agreement which will be publically available on the GLA website here:

<https://www.london.gov.uk/WHAT-WE-DO/PLANNING/PLANNING-APPLICATIONS-AND-DECISIONS/public-hearings/former-westferry-printworks>

4. Equality

4.1 The Review Mechanism (of which Gerald Eve's work for the GLA is intrinsically related) is necessary to support the delivery of an increased provision of affordable housing for Tower Hamlets, and was a condition of the Mayor's approval of the Westferry Printworks planning application. The Equality Act 2010 provides that in exercising its functions (which includes the functions exercised by the Mayor as Local Planning Authority), the Mayor as a public authority shall amongst other duties have due regard to the need to a) eliminate discrimination, harassment, victimisation and any other conduct that's is prohibited under the Act; b) advance equality of opportunity between persons who share a relevant protected characteristics and persons who do not share; c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

4.2 The protected characteristics set out in the Equality Act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Act acknowledges that compliance with the duties set out may involve treating some persons more favourably than others, but that this does permit conduct that would otherwise be prohibited under the Act.

4.3 With regard to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation there are no identified equality considerations which arise in respect of this request for Assistant Director Decision.

5. Other considerations

5.1 Links to Mayoral strategies and priorities

The work is fundamental to the implementation of the Mayor's London Plan, which identifies that the delivery of additional affordable housing is a key Mayoral priority. The completion of this work enables the Westferry Printworks Section 106 to be completed by allowing planning permission to be issued. Accordingly, this enables the Mayor to fulfil his statutory duty under The Greater London Authority Acts 1999 and 2007 and, The Town and Country Planning (Mayor of London) Order 2008.

5.2 Recovering Costs

Northern & Shell Investments No2 Limited has agreed in writing to reimburse the GLA for the cost of the consultancy work required in order for the Authority to determine the Westferry Printworks planning application. The commitment is contained within a Project Planning Performance Agreement which provides various covenants (between the Greater London Authority, the applicant and Transport for London).

5.3 Retrospective approval

Approval for expenditure on this work up to £9,750 is in place, however the GLA officers were notified in August 2016 that the this threshold did not cover the costs of unforeseen additional consultancy fees accumulated during the determination of the Westferry Printworks planning application and the finalising of the associated Section 106 agreement. The work carried out by Gerald Eve comprised the independent review of submitted financial viability information and attendance at subsequent Section 106 meetings to formulate advice on, and agree an appropriate affordable housing review mechanism. Moving forward GLA officers will seek additional estimated costs to be included within the submitted fee proposals in order to avoid this situation in the future, although it is acknowledged that costs will be approximate given the uncertainty associated with the length of such negotiations.

- 5.4 The additional cost of £24,960 is based on Gerald Eve's attendance at 7 Section 106 meetings with the GLA (and, if required, the consultants, or the Council and the Applicant) following the Former Deputy Mayor's decision to grant planning permission (refer to section 2.3), commenting on review mechanism, agreeing Section 106 review schedule with DS2, reviewing appropriate sections of Section 106 drafting and advising the GLA as appropriate.

6. **Financial comments**

- 6.1 Retrospective approval is being sought for expenditure of up to £24,960 to cover additional consultancy costs which have been accrued through additional viability review work and consultants' attendance at Section 106 meetings.
- 6.2 The cost is to be funded from Planning's 2016-17 Call-In Budget. However, the GLA will be reimbursed in full by Northern & Shell Investments No.2 Limited under the terms of a Project Planning Performance Agreement.
- 6.3 Any changes to this proposal including budgetary implications will be subject to further approval via the Authority's Decision Making Process.
- 6.4 All appropriate budget adjustments will be made. The Planning Unit within the Development, Environment and Enterprise will be responsible for managing this contract and work.

7. **Legal Comments**

- 7.1 Pursuant to section 2A of the Planning Act, the Mayor may direct that he is to be the local planning authority for the purposes of determining a planning application of potential strategic importance (PSI Application). In these circumstances, the GLA will become responsible for processing the application and negotiating a section 106 agreement.
- 7.2 A PPA is a project management tool which a local planning authority and applicant can use to agree timescales, actions and resources for handling a planning application and in the case of a Mayoral call-in, is agreed voluntarily with the applicant and the GLA after the Mayor exercises his power.
- 7.3 Planning applications of potential strategic importance relate to large and complex development proposals and a PPA will usually provide for voluntary contributions which the applicant has offered to pay to assist with the significant costs of processing an application and to ensure that adequate resources are available to achieve the agreed timetable for determination.
Pursuant to section 30 of the Greater London Authority Act 1999, the GLA has the power to do anything which it considers will further economic development, wealth creation, social development and improvement of the environment in Greater London. Consequently, the GLA has statutory

powers to enable it to conclude a PPA with an applicant for planning permission in circumstances where the Mayor has exercised his powers to determine a PSI Application.

- 7.4 Section 93 of the Local Government Act 2003 requires that any charge must be on a not-for-profit basis year by year and taking one year with another, the income from charges for planning services must not exceed the cost of providing them.
- 7.5 Section 4 of the GLA's Contracts and Funding Code ("Code") requires that contracts with values of this level be awarded following competitive procurement activity. However, section 5 of the Code also provides that an exemption from this requirement may be justified where a service provider has had previous involvement in a specific current project or where the continuation of existing work which cannot be separated from the new project or work. Officers have indicated in section 2 of this report that this is the case. Therefore, the assistant director may approve the proposed award and exemption if satisfied with the content of this report.
- 7.6 Officers must ensure that appropriate variation documentation is put in place and signed by the Authority and Gerald Eves to record the variation] of the services in question.
- 7.7 Officers are reminded of the importance of ensuring that appropriate documentation is put in place and executed by the GLA and service providers before the variation of services.
- 8. Planned delivery approach and next steps**
- 8.1 At the time of finalising this ADD the work commissioned in this case has been completed and the planning approval for Westferry Printworks (including Section 106 agreement) has been issued in accordance with the Mayor's planning decision.

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:**

Jonathan Finch has drafted this report in accordance with GLA procedures and confirms that the Finance and – if relevant – Legal teams have commented on this proposal as required, and this decision reflects their comments.

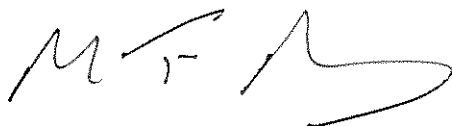
Corporate Investment Board:

The Corporate Investment Board reviewed this proposal on 14 November 2016.

HEAD OF FINANCE AND GOVERNANCE:

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

Signature:



Date:

05.12.16