

PART 2 – CONFIDENTIAL FACTS AND ADVICE

MD2705

Title: Relocation of City Hall to the Royal Docks

This information is not for publication until the stated date, because:

The information in Part 2, and in accompanying Appendices 1 to 4, contains commercially confidential information and information relating to the business affairs of the GLA, including information relating to the planning risk, lease negotiation with partners and employment law considerations.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: December 2021.

Legal recommendation on the grounds of keeping the information confidential:

As above

Legal Adviser -

Name: Mike Lancaster

Date: 23 October 2020

Confidential decision and/or advice:

Decision required – supporting report

1. Planning risk

Because of the strict deadline for exercising the break clause in the lease of City Hall and because the break notice cannot be revoked once it has been served unless the landlord agrees (which is entirely at the landlord's discretion), it is possible that the break clause will have been exercised at a time when either the planning permission for the necessary change of use at The Crystal has not been granted, or if it has been granted, it is still vulnerable to legal challenge. The planning risks are set out below.

Delay in obtaining planning permission / Refusal of planning permission

2. It is possible that the London Borough of Newham does not determine the GLA's planning application for change of use at The Crystal before the date on which the break clause must be exercised. The issue of the planning permission will be conditional on completion of a section 106 agreement securing any planning obligations required to make the development acceptable. Even if planning committee members resolve to grant permission, the permission will not be issued until any section 106 agreement is completed which, again, might mean that the permission has not been granted by the date on which the break clause must be exercised.
3. The planning permission will be subject to various conditions set out in the decision notice which will need to be discharged/complied with at various stages of the development. National guidance requires that planning conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. It is not possible to say, at this stage, what the conditions will consist of but we currently have no reason to anticipate any onerous conditions. It is not unusual for conditions to be imposed that need to be discharged prior to commencement of the development authorised by the planning permission.
4. If planning permission is refused a decision notice will be issued setting out the reasons for refusal. The applicant is entitled to appeal against that decision under Town and Country Planning legislation. A planning appeal can be determined by way of written representations, hearing or public inquiry; whichever route is followed, it is likely to take several months before the appeal is determined. It is not possible to give a precise estimate but, depending on the appeal route, it could take between 6-12 months for an appeal to be determined. Neither a planning refusal nor a planning appeal will have any impact on the contractual effect of having served the break notice and the GLA will still have to comply with the obligation to give up City Hall, with full vacant possession, at the expiry of the break period on 24 December 2021.

Secretary of State call-in or holding direction

5. Up until the planning permission is issued, the Secretary of State has the power to call in the application for his/her determination by way of an inquiry. Alternatively, the Secretary of State has the power to issue a holding direction preventing Newham Council from issuing the permission while the Secretary of State considers if the application should be called in for his/her determination. The criteria for calling in an application generally relate to applications involving planning issues of more than local importance but the Secretary of State will have some discretion in applying the criteria. This could delay determination of the application given that the application would then be subject to a public inquiry. Again, it is not possible to give an exact timetable for holding an inquiry but an estimate would be 6-12 months from call-in. The Secretary of State's decision cannot be challenged other than by way an application for judicial review.
6. If the decision is called in by the Secretary of State, the call-in will have no impact on the contractual effect of having served the break notice. Likewise, if the Secretary of State refuses the permission

the GLA will still have to comply with the obligation to give up City Hall, with full vacant possession, at the expiry of the break period on 24 December 2021.

Judicial Review

7. Any person with sufficient standing could bring a judicial review of the Mayor's decision to relocate the GLA and MOPAC to the Crystal and Union Street, including a decision to exercise the break notice under the City hall lease.
8. The grant of planning permission may be subject to challenge from a third party by way of an application for judicial review in the Planning Court on grounds that the local planning authority: failed to take into account relevant considerations, took into account irrelevant consideration, did not follow the correct procedure or made an irrational decision. The challenge will be to the London Borough of Newham's decision but the GLA, as applicant for planning permission, may be joined into the proceedings as an interested party. A challenge by way of judicial review must be made no later than 6 weeks following the issuing of the planning permission. Such challenges can be decided within 6 months, but often take longer.
9. The City Hall lease break notice is going to have to be served (given the timetable) before the period for the judicial review of Newham's decision has expired. If the break notice is served and if the decision is judicially reviewed the break notice will still be a valid break notice and the GLA will have to comply with it.

Options if planning permission not granted

10. Should the GLA not achieve planning permission to relocate to The Crystal (or is unable or willing to comply with onerous conditions), the GLA's options are:

- *Seek to reach an agreement with the landlord to remain at City Hall.*

As mentioned in Part I, break notices are irrevocable; the penalties for not giving up vacant possession can be onerous. If GLA has not vacated City Hall in time the Landlord will be able to choose between:

- Agreeing that the GLA can withdraw the break notice – meaning the GLA must stay until the end of the Lease in 2026, under the existing terms:
 - Compelling the GLA to pay double rent between the expiry of the notice and the date on which the GLA is finally able to comply with the obligation to give up vacant possession:
 - Offer the GLA new terms for a new lease.
11. While it is true that the GLA is an excellent tenant and the Landlord would prefer to have it stay on, the scenario above means the GLA would be in a very poor negotiating position when trying to agree new terms if has or is likely to fail to comply with the break notice. In this scenario it is unlikely that the full and final landlord offers described below would be repeated by the Landlord.
- *Vacate City Hall, in accordance with the break clause.*

The Crystal could still be used without the current planning application being successful – presumably could use it for offices but not the chamber etc. In this scenario Option 3 might be the fall-back contingency as an alternative to negotiating with the landlord to remain in City Hall.

Comments on City Hall Lease negotiations and Union Street

12. The GLA currently leases space at the London Fire Brigade's HQ in Union Street to supplement space at City Hall. However, there is a rent review pending from LFB's landlord and the information below on Union Street rental and accommodation needs to remain private and confidential. Now that the desk requirement is reduced to circa 575, it is reasonable to accommodate all staff in City Hall on the basis that staff will on average be in the office 2-3 days a week if the Mayor were to decide on Option 1. Giving up that sub-lease of Union Street when it expires in March 2021 would reduce the GLA's annual costs by approximately £1.5m and achieving further savings of £7.5m, £15m and £22.5m across 5, 10 and 15 years. These costs assume a nil increase following the rent review in December 2020.

Union Street

13. Options 2, 2A and 3 all require greater use of Union Street and would involve the GLA paying further rental costs to the London Fire Brigade, which are included in the financial appraisal at Appendix 1. The rental costs are assumed to increase from £1.5m pa to £2.6m – an increase of £1.1m pa. This increases costs by £5.5m, £11m and £16.5m across 5, 10 and 15 years. These costs assume a nil increase following the rent review in December 2020.

City Hall

14. The final offers from the landlord for the GLA staying at City Hall are summarised below:
- Five-year lease: which is [REDACTED] per annum from December 2021. [REDACTED] rent free incentive. Dilapidation charges would still apply at the end of the lease;
 - Ten-year lease: which is [REDACTED] for five years from December 2021 rising to [REDACTED] per annum from December 2026 for five years. [REDACTED] incentive [REDACTED]. No dilapidation charges would apply at the end of the lease.
 - Fifteen-year lease: which is [REDACTED] for five years from December 2021 rising to [REDACTED] per annum from December 2026 for five years with an option to extend for a further five years from Dec 2031 at [REDACTED] per annum. [REDACTED]. No dilapidation charges would apply at the end of the lease.

Details of the relevant correspondence between the GLA and the landlord is attached as Appendix 4 to this Part II Report, together with confirmation from TfL's Director of Commercial Development that the landlord's full and final offer cannot reasonably be expected to be improved by further negotiation.

Employment law considerations concerning GLA and MOPAC staff relocation

15. From an employment perspective, the legal risk is low as the GLA contracts of employment contain a mobility clause which allows the GLA to require employees to work in a different place in the Greater London area on reasonable notice. The Crystal Building and Union Street are within the Greater London area so the GLA would just need to ensure that they give sufficient notice of any move.
16. The increased journey times and costs for employees are relatively minor so the legal risk of employees being able to argue that those increases make it unreasonable for the GLA to relocate them is also low. Furthermore, given that the proposed move is permitted within the scope of the mobility clause, there is no legal reason why the GLA would need to agree to any request for reimbursement for excess travel costs from employees.

17. There may be issues if employees are expecting to move to Union Street but are then told they will be moving to The Crystal. Whilst the mobility clause allows the GLA to move staff to The Crystal, there is a risk of employee relations issues and ill-feeling among staff (which could lead to grievances and/or Employment Tribunal claims), especially if there is a perception that groups of staff are being treated differently.
18. With regards to the MOPAC staff based in City Hall, we understand that some employees have a mobility clause in their contract of employment which allows MOPAC to require them to work elsewhere within the Greater London area. For these employees, the legal risks are as set out above.
19. However, we also understand that there are some MOPAC employees who do not have a mobility clause in their contract of employment. In order to move these employees to The Crystal Building/Union Street, MOPAC would have to make a change to their terms and conditions of employment. MOPAC could either: (1) agree this change with the employees (the lowest risk option); (2) seek to impose the change on reasonable notice; or (3) dismiss the employees and offer them re-employment on the new terms (the highest risk option). In practice, MOPAC is likely to seek to agree the change with the employees and if it can't be agreed, impose it on reasonable notice. We understand that the MOPAC Allowances Policy also means that excess fares incurred by employees because of increased journey times will need to be reimbursed for those employees without mobility clauses in their contracts of employment. This will be considered on a case by case basis.

Appendices and supporting documents

Appendix 1 – Financial appraisal of relocation options

Appendix 2 – Assessment of potential future uses of The Crystal

Appendix 3 – Plans for reconfiguration of The Crystal

Appendix 4 – Correspondence between GLA and City Hall Landlord and from TfL Director of Commercial Development