

REQUEST FOR DIRECTOR DECISION – DD2534

Title: Former Westferry Printworks planning appeal – Public Inquiry legal and consultant costs

Executive Summary:

An appeal was submitted to the Planning Inspectorate (PINS) on 26th March 2019 against the London Borough of Tower Hamlets (LBTH) non-determination of the Westferry Printworks planning application (Ref: GLA/3363b) and subsequently the Secretary of State stated the he shall determine the appeal. The Public Inquiry (PI) was held in August/September 2019. On 20 November 2019 the Inspector issued his report to the SoS recommending that the appeal be dismissed. On 14 January 2020, against the Inspector's recommendation, the SoS decided to allow the appeal and grant planning permission. The GLA and LBTH made applications to challenge the SoS's Decision and the SoS consented to judgment accepting that his decision was unlawful by reason of apparent bias. On 21 May 2020 the High Court quashed the SoS's Decision. On 21 December 2020, the SoS confirmed that the PI would be reopened. The reopened PI will primarily focus on the planning balance, the conflicts with the Development Plan on heritage and affordable housing and any material changes since the previous SoS decision. Counsel advice and specialist consultant input is required to support GLA staff in presenting the Mayor's case at the PI. This Director Decision asks that the Executive Director of Good Growth approve expenditure of up to £130,000 which will be required for the GLA to present the Mayor's planning case at the reopened PI likely to take place in late spring/early summer 2021. The costs will be spent in the 2021-22 financial year.

Decision:

That the Executive Director of Good Growth approves:

Expenditure of up to £130,000 to support GLA officers in presenting the Mayor's planning case at the forthcoming public inquiry on the reopened Westferry Printworks planning appeal as follows:

1. up to £100,000 for external legal representation; and
2. up to £30,000 consisting of: £20,000 for heritage consultancy services and £10,000 for viability cost / residential value consultancy services.

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: Philip Graham

Position: Executive Director – Good Growth

Signature:

Date:

9 March 2021



PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 The London Borough of Tower Hamlets (LBTH) formally consulted the Mayor on the Westferry Printworks appeal application (the 'Application') on 12 September 2018 and the Mayor considered a Stage 1 report on 17 December 2018. The Westferry Printworks appeal application relates to the "Comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafés, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1) car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works".
- 1.2 The Mayor's Stage 1 response advised that, whilst the principle of development was supported in strategic planning terms, it did not yet comply with the London Plan and required LBTH to refer the application back to the Mayor once it resolved to determine it. The Stage 1 report raised a number of issues with the primary concerns as follows:
 - the inclusion of Tower T5 and its impact on the provision of open space;
 - the height of the proposed buildings and their impact on the setting of Tower of London; and
 - the failure of the appellant to demonstrate that they are providing the maximum reasonable amount of affordable housing.
- 1.3 An appeal was submitted to the Planning Inspectorate (PINS) on 26 March 2019 against LBTH non-determination of the application and on 10 April 2019 PINS advised that the Secretary of State shall determine the appeal instead of an Inspector. As the Mayor raised significant concerns within his Stage 1 response, the GLA requested 'Rule 6' status from PINS. 'Rule 6' status means that the GLA is considered to be a main party for the purposes of the Inquiry. The Council (local planning authority) and appellant are normally the main parties at Inquiries. On 11 June 2019 PINS confirmed, by letter, that the GLA would have 'Rule 6 status' and take a full part in the PI.
- 1.4 The public inquiry was held by Inspector David Prentis BA BPI MRTPI between 7 August 2019 and 22 August 2019 and for a further day on 9 September 2019. The GLA's case focused primarily on heritage impacts, open space with reference to the Opportunity Area Planning Framework (OAPF) and affordable housing/financial viability. On 20 November 2019 the Inspector issued his report to the SoS recommending to the SoS that the appeal be dismissed. The Inspector agreed with the GLA's case that the proposal would result in harm to the significance of Tower Bridge and that the affordable housing offer would not represent the maximum reasonable amount.
- 1.5 On 14 January 2020, against the Inspector's recommendation, the SoS decided to allow the appeal and grant planning permission. The GLA and LBTH made applications to challenge the SoS's Decision and the SoS consented to judgment accepting that his decision was unlawful by reason of apparent bias. On 21 May 2020 the High Court quashed the SoS's Decision. On 21 December 2020, the SoS confirmed that the would be reopened and, since that date, discussions have been ongoing to agree the matters to be considered at the reopened PI.
- 1.6 A date for the PI has not yet been confirmed but it is likely to be held late Spring/ Early Summer 2021. The duration of the Public Inquiry is not yet known and will largely depend on the identity of the Inspector. Inquiry time will be minimised if the previous Inspector is appointed. The reopened PI will primarily focus on the planning balance and the conflicts with the Development Plan identified in relation to heritage impacts and affordable housing. The SoS has also identified the following matters to be considered:

- a) the implications of the adoption of the London Borough of Tower Hamlets Local Plan 2031;
- b) the impact of the adoption by the London Borough of Tower Hamlets of a CIL Charging Schedule which took effect on 17 January 2020;
- c) the implications of progress on the London Plan;
- d) the implications for the proposal of these changes and any other changes of circumstances on the viability of the proposal; and
- e) any material change in circumstances, fact or policy, that may have arisen since his decision of 14 January 2020 was issued and which the parties consider to be material to the Secretary of State's further consideration of this appeal.

- 1.7 Legal representation by Leading Counsel will be required at the public inquiry. Melissa Murphy represented the Mayor in relation to the first public inquiry and has been retained for the forthcoming inquiry. Legal fees to be incurred are likely to be up to £100,000. Counsel has been instructed by TfL legal. Professional specialist consultant services may also be required with fees up to £30,000 consisting of £20,000 for heritage consultancy services and £10,000 for viability cost / residential value consultancy services. Should specialist consultants be required we would seek single source supplier procurement as we would want the same consultants who represented the GLA at the first PI.
- 1.8 These fees are based on initial fee quotes from the barrister chambers and our experience of likely costs of obtaining professional consultancy services. We have sought to minimise the overall expenditure through the use of the same Counsel and consultants who supported the GLA at the previous PI.. It should also be noted that the overall expenditure is likely to reduce significantly if the previous Inspector is appointed to redetermine the appeal. All of the main parties, including the GLA, have requested the reappointment of the previous Inspector
- 1.9 It is therefore requested that the Executive Director approves expenditure up to £130,000 from the Planning Smoothing Reserve.

2. Objectives and expected outcomes

- 2.1 To enable the preparation for, and presentation of a robust Mayoral case at, the reopened Public Inquiry due to take place late Spring / Early Summer 2021.

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, 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 during the Mayors stage 1 decision and in presenting evidence at the previous Public Inquiry, 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 will comply 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 case is not robustly presented there is a very real risk that the London Plan and Publication London Plan would be undermined and London's strategic planning interests would not be properly taken into account by the Secretary of State when considering the planning appeal, thereby impacting the Mayor's ability to carry out his statutory duties. This case is relevant to several of the Mayoral strategies and priorities but the Mayors London Housing and Cultural Strategies are of particular relevance.
- 4.2 There are no conflicts of interests by anyone involved in the drafting or clearance of this form requesting approval of expenditure for the reopened Westferry Printworks Pl.

5. Financial comments

- 5.1 Approval is sought for expenditure of up to £130,000 on legal and professional representation to support the GLA and officers in presenting the Mayor's planning case at the public inquiry.
- 5.2 The costs of up to £130,000 will be incurred in the 2021-22 financial-year and will be funded from the GLA's Planning Smoothing Reserve that is to be topped up as part of the Authority's 2021-22 Budget setting process.

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, gender, 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 – Good Growth.

- 6.4 Officers confirm that any consultancy services required will be procured in accordance with the GLA's Contracts and Funding Code and that the legal support has been appointed by TfL Legal.

7. Delivery approach

Activity	Timeline
Preparation of case and evidence	March to May 2021
Public inquiry	May to June 2021

Appendices and supporting papers:

Appendix 1: SoS letter dated 21 December 2020 confirming that the Public Inquiry would be reopened.

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:

Richard Green has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

Lucinda Turner 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.

✓

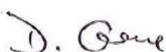
Corporate Investment Board:

The Corporate Investment Board reviewed this proposal on 1 March 2021.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature



Date

9 March 2021