

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2022

Title: Direction to Transport for London concerning the disposal and/or development of land at Kidbrooke

Executive summary

Transport for London (TfL) is currently considering the disposal and/or development of its land at Kidbrooke. The land is no longer required for the purposes of TfL's functions. The Mayor is committed to ensuring that a higher level of affordable housing is available for Londoners and has pledged to find ways of ensuring that public sector land can be used for that purpose. The delivery of 50% affordable housing on the land at Kidbrooke could benefit the local community and the local economy. It is proposed that the Mayor direct TfL that when either disposing or developing its land at Kidbrooke, TfL shall take such steps and measures as it considers reasonably necessary and practicable to ensure that not less than 50% of any residential accommodation that may be constructed on the land will be used as affordable housing.

Decision

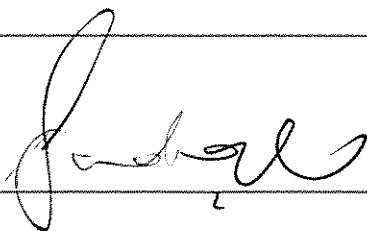
That the Mayor directs TfL in relation to the disposal or development of its land at Kidbrooke, which is contemplated to be to a joint venture company (JVCo), in the form at Appendix A to this decision form.

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:

17/8/16

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 Transport for London (TfL) is currently considering the disposal or development of its land at Kidbrooke (the land). The land is no longer required for the purposes of TfL's functions, and TfL is considering either its disposal or development so as to raise money to invest in the transport network in London. Any disposal or development will be in accordance with TfL's normal processes and will be subject to professional valuation advice on the value of the land and the options available.
- 1.2 The land is located adjacent to Kidbrooke railway station in the Royal Borough of Greenwich (RBC). The site is 1.67ha (4.12 acres) net (1.9ha (4.7 acres) gross) in total, of which 1.27ha (3.14 acres) is within the ownership of TfL and 0.4ha (0.98 acres) is within the ownership of Network Rail. The proposed redevelopment of the site includes circa 400 residential homes, circa 5,000sq.ft of commercial floor spaces, with ancillary ground floor retail floor space, set around open space and public realm.
- 1.3 The Mayor's aspiration is that 50% of all new homes in London are genuinely affordable. The development of the land could be delivered with significant levels of affordable housing, being no less than 50%. This report proposes that the Mayor should issue a specific direction to TfL under section 155(1) (c) of the Greater London Authority Act 1999 (GLA Act), so that it is clear that TfL may proceed on that basis consistently with its legal obligations.
- 1.4 TfL has been consulted on the terms of the specific direction at Appendix A.
- 1.5 Following consideration of the issues arising, it is now proposed that the Mayor directs TfL in the form set out in Appendix A to this decision form.
- 1.6 This form contains the following appendix:
 - Appendix A: Proposed Mayor's direction to TfL.

2 Issues

Direction

- 2.1 The Mayor has a statutory power to do anything which he considers will further the promotion of the social and economic development of Greater London, which includes housing and regeneration. The Mayor is committed to ensuring that public sector land is used for housing purposes and to provide a significant level of affordable housing across London. The Mayor's aspiration is that 50% of all new homes in London are genuinely affordable, recognising London's current housing crisis. There is very significant need and demand for affordable housing in London to ensure that local people can afford to buy or rent new housing being constructed in their areas. The Mayor intends to embed this strategic target in the planning system through changes to the London Plan, but he has made it clear that other measures will also be required to ensure it is achieved overall. In particular, the Mayor intends where possible to use affordable housing grant and public sector land to secure higher proportions of affordable housing than might be possible through planning obligations alone. Some surplus sites owned by TfL may be suitable in achieving this. The Mayor is working with TfL as well as other functional bodies in the GLA group to ensure, where possible, sites can be brought forward which can be accelerated, delivered quickly or provide significant levels of affordable housing. For the purposes of this Mayoral Decision Form and the Direction, affordable

housing has the meaning given in the London Plan and any supplementary planning guidance issued by the Mayor in force at the date of grant of planning permission. The definition of “affordable housing” is currently set out in chapter 3 of the London Plan (dated March 2016).

- 2.2 Having identified that the land is surplus for the purposes of TfL’s functions, the development of the land can be delivered with significant levels of affordable housing, being not less than 50%. The provision of 50% affordable housing exceeds the minimum provision set out in RBC’s Core Strategy (Policy H3) which seeks to provide at least 35% affordable housing. However, it is noted that Policy 3.12 of the London Plan provides that the maximum reasonable amount of affordable housing should be sought on individual private and residential mixed used schemes. It is hoped that RBC would be supportive of a development which provided 50% affordable housing.
- 2.3 Affordable housing is important in the Greenwich area due to long waiting lists for social housing and because private housing is unaffordable for many. Rising rents, reduction in welfare support, reduction in the level of social housing being constructed, and an increase in the level of private housing constructed over the last few years has contributed to the current crisis in the area.
- 2.4 When developing its land either directly or through a subsidiary, TfL is obliged by paragraph 29 of Schedule 11 of the GLA Act to act as if it were a company engaged in a commercial enterprise or exercise its control over that subsidiary so as to ensure that the subsidiary, in carrying on those activities, acts as a company so engaged. As the development of the land with 50% affordable housing will lead to less than the maximum return available and reduce TfL’s financial return, TfL would not itself be able to develop the land in line with the Mayor’s aspirations for affordable housing. However, the same statutory provisions do not apply to the disposal of the land, nor to any involvement of TfL in its subsequent development if it is involved through a non-subsidiary company. It is therefore contemplated that TfL will dispose of the land to such a company.
- 2.5 Although the GLA Act does not contain express constraints upon TfL’s power to dispose of land, the principal reason to do so would normally be to raise money to invest in the transport network in London. TfL does not have any general social well-being functions, and neither does it have any responsibilities for housing in London. However, the Mayor has wider functions in relation to the promotion of social development, economic development and wealth creation as well as specific responsibilities for housing in London. The Mayor may therefore take these matters into account when exercising his power to give directions to TfL. The Mayor is also in a position to be able to assess and have regard to the impact of an increased level of affordable housing in the Kidbrooke area including the consequent benefits on the workforce and the economy. The legal comments below explain how the proposed direction is intended to permit TfL to dispose of the land on terms that will include a 50% affordable housing requirement.
- 2.6 Whilst the disposal of the land with 50% affordable housing could significantly reduce the land’s residual land value and return to TfL, the significant provision of affordable housing will provide much needed housing for local people. The Mayor may conclude that on this occasion this benefit justifies the financial impact of the lower land value and reduced return to TfL. The reduced land value and return in this instance would not prevent TfL from continuing to discharge its statutory functions in providing public passenger transport. Financial details are contained in part 2.
- 2.7 The Mayor is therefore invited to direct TfL that when either disposing or developing the land, it shall take such steps and measures as it considers reasonably necessary and practicable to ensure

that not less than 50% of any residential accommodation that may be constructed on the land will be used as affordable housing.

- 2.8 The Mayor should note that the financial viability of the scheme can only be fully determined at the time of the planning application submitted by the JVCo, via an Affordable Housing Toolkit Appraisal. If the scheme is less financially viable due to increased build costs and reductions in revenue generated from the sale of residential and commercial units, the overall quantum of affordable housing may need to be reduced. However, there are a range of other mitigation options available to the Mayor including the provision of grant funding for any proposed development scheme.
- 2.9 TfL has been consulted on the terms of the direction set out in Appendix A and this Mayoral Decision form.

Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities must have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2 The obligation in section 149(1) is placed upon the Mayor, as decision maker. Due regard must be had at the time a particular decision is being considered. The duty is non-delegable and must be exercised with an open mind.
- 3.3 Taking into account the obligations under section 149(1) of the Equality Act 2010, the requirement to develop the land with 50% affordable housing will help to increase the supply of affordable housing in Greenwich and benefit residents with low incomes. It is likely to have a positive impact upon protected groups as it will enable low income households and those which are vulnerable to access affordable housing.

4. Financial comments

- 4.1 Although the Mayor recognises the need for TfL to maximise its assets, the requirement that the land is developed with 50% affordable housing will reduce the land value significantly, and impact on the capital receipt generated from the disposal as well as TfL's financial return. The Mayor notes that the reduced land value and return would not prevent TfL from continuing to discharge its statutory functions in providing public passenger transport in this instance. Further financial details are set out in Part 2 of this decision form.

5. Legal comments

- 5.1 Section 155(1) of the Greater London Authority Act 1999 (GLA Act) provides that the Mayor may issue to TfL:
- a) general directions as to the manner in which it is to exercise its functions, or
 - b) specific directions as to the exercise of its functions.

- 5.2 Section 155(3) of the GLA Act also provides that directions which may be issued by the Mayor under subsection (1) may include, in particular, directions as to the manner in which TfL is to perform any of its duties.
- 5.3 Any directions issued under section 155(1) must be issued in writing and notified to the Commissioner of TfL.
- 5.4 The Mayor is obliged to exercise the power of direction under section 155 (1) in accordance with public law principles of reasonableness and rationality.
- 5.5 TfL's functions include the disposal of land: paragraph 12 of Schedule 11 of the GLA Act. The Mayor can therefore direct TfL as to the disposal of land. There are no express statutory provisions relating to best consideration on disposal or development of land. However, TfL is subject to a general duty to act rationally and by reference to relevant considerations in the exercise of its powers. Because TfL's functions and purposes are to provide transport to, from and within London, and do not include housing functions, there is a question as to whether, in the absence of a direction, TfL would be entitled to adopt a financially disadvantageous approach to disposal or development on the basis of advantages relating to the provision of housing.
- 5.6 Under section 30 of the GLA Act, by contrast, the GLA has the power to do anything which furthers one or more of its principal purposes, which includes promoting social and economic development in Greater London. This will include supporting the provision of housing for those working and living in Greater London. The Mayor is therefore entitled to give a direction to TfL in pursuit of housing objectives.
- 5.7 If the Mayor directs TfL to ensure, on any disposal of the land, a minimum level of affordable housing, then TfL's specific statutory duty to comply with that direction means that it will be lawful for TfL to do so, notwithstanding any resulting financial disadvantage. For completeness, the proposed direction has been drafted so as to refer also to development by TfL. However, it should be noted (see paragraph 2.4 above) that TfL has a specific statutory duty to act commercially if it engages in the development of land itself or through a subsidiary. In most circumstances, that will mean that any development by TfL itself cannot include more affordable housing than is required to secure planning consent, regardless of anything in a direction (and so it would not be "reasonably necessary and practicable" to develop the land on that basis).
- 5.8 The Mayor has to take into account all relevant considerations, including the impact on TfL's finances. The requirement to develop the land with 50% affordable housing is likely to result in a lower residual land value. Should TfL retain an ongoing interest in the development following disposal, its income share will be less than it would be if the land was developed with 35% affordable housing. However, TfL's ability to carry out its statutory functions would not be affected.

6. Investment & Performance Board

- 6.1 This approval falls outside the terms of reference of the Investment & Performance Board.

Appendices and supporting papers:

- Appendix A: Proposed Mayor's direction to TfL.

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:

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 – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Justin Carr has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Simon Powell has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

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

✓

Mayoral Adviser:

James Murray has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Bellamy

Date

16.8.16

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

17/8/2016



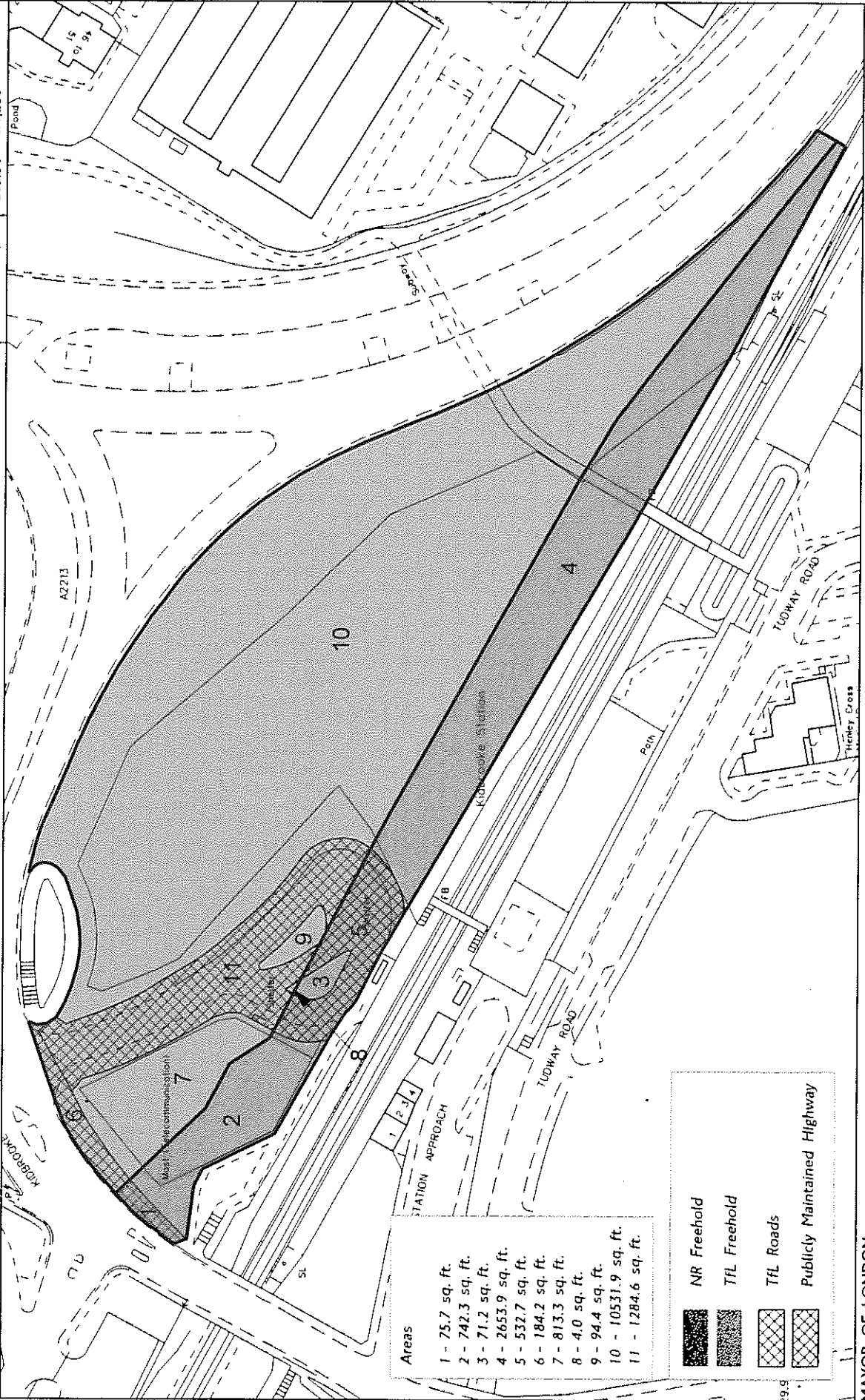
Transport for London
TfL Operational Property
Commercial Development
Whndor House
42-50 Victoria Street
SW1H 0TL

Tear Drop Site Kidbrooke



Date: 21/12/2015
Initials: PS
Drg No.: MM-TDKB-10
Rev: -
Scale: 1:1,250

A4 Landscape



Areas

- 1 - 75.7 sq. ft.
- 2 - 742.3 sq. ft.
- 3 - 71.2 sq. ft.
- 4 - 2653.9 sq. ft.
- 5 - 532.7 sq. ft.
- 6 - 184.2 sq. ft.
- 7 - 813.3 sq. ft.
- 8 - 4.0 sq. ft.
- 9 - 94.4 sq. ft.
- 10 - 10531.9 sq. ft.
- 11 - 1284.6 sq. ft.

- NR Freehold
- TfL Freehold
- TfL Roads
- Publicly Maintained Highway

MAYOR OF LONDON

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I, SADIQ KHAN, MAYOR OF LONDON, in exercise of the powers conferred on me by section 155(1)(c) of the Greater London Authority Act 1999 hereby direct Transport for London (TfL) as follows:

1. When either disposing of, or developing, the land described in paragraph 2 below, TfL shall take such steps and measures as it considers reasonably necessary and practicable to ensure that not less than 50% of any residential accommodation that may be constructed on the land will be used as affordable housing as defined in paragraph 3 below.
2. The land currently owned by TfL and situated at Kidbrooke (shown edged red on the attached plan) together with adjoining or nearby land which will form part of an overall development and that may be acquired by TfL in the future.
3. For each part of the land described in paragraph 2 above, "affordable housing" has the meaning given in The London Plan and any supplementary planning guidance issued by the Mayor in force at the date of grant of planning permission for that part.
4. If TfL considers that it is not reasonably necessary or practicable to impose or enforce a requirement or requirements so as to ensure the objective set out in paragraph 1 above on the ground that to do so would mean that the development of the land was not financially viable, it must obtain the agreement of the Mayor before proceeding on that basis.

Dated this 17th day of August 2016.

Sadiq Khan
Mayor of London

