

REQUEST FOR ASSISTANT DIRECTOR DECISION – ADD207

Title: Mount Pleasant – Financial Viability and Daylight/Sunlight Appraisal

Executive Summary:

The Mayor has directed that he will act as the Local Planning Authority for the purposes of determining a planning application at the Mount Pleasant Sorting Office in Farringdon, within the boroughs of Camden and Islington.

In order to satisfy the Mayor that the proposed development would deliver the maximum reasonable amount of affordable housing, the GLA needs to commission an independent financial appraisal of the scheme.

Furthermore, in order to be satisfied about the daylight and sunlight implications of the scheme, noting that the two boroughs have raised objections on this aspect of the scheme, an independent daylight and sunlight appraisal is also required.

The GLA will subsequently recover the full cost of the work from the applicant.

Decision:

That the Assistant Director approves:

1. Expenditure of up to £23,000 on independent financial services and £12,000 on daylight/sunlight services from GVA Grimley, both recoverable from the applicant; and,
2. A related exemption from the requirements of the GLA's Contracts and Funding Code (which normally requires the GLA to seek three or more quotations for goods or services between £10,000 and £150,000).

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: Stewart Murray

Position: Assistant Director - Planning

Signature:

Date: 21 July 2014

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1. On 21 January 2014 the Mayor of London issued a direction to Islington Council and Camden Council [the boroughs] setting out that he would act as the Local Planning Authority for the purpose of determining two strategic planning applications at the Mount Pleasant Sorting Office in Farringdon. The GLA is currently considering these applications, which propose redevelopment of the 3.5 hectare site that straddles the two boroughs to create a new neighbourhood with 680 new homes, new business and open spaces, whilst retaining the Sorting Office building for use by Royal Mail Group.
- 1.2. The Mayor's decision to take over the applications is exceptional, and could not reasonably have been foreseen when the Mayor first considered the applications at Stage 1 on 3 September 2013. It was only following a request from the applicant (on 10 January 2014) that the Mayor subsequently decided to take over the applications on 21 January 2014. Key to this decision was the Mayor's view that the applications should be determined swiftly. The boroughs originally identified "Autumn" 2013 target for determining the applications, but a key stalling factor in them being processed has been a difference of opinion between the applicant and the boroughs on the way in which the affordable housing viability of the site has been assessed. The Mayor's full reasons for taking over the applications are available to review on the GLA website here:

<http://www.london.gov.uk/priorities/planning/public-hearings/mount-pleasant-sorting-office>
- 1.3. Since the Mayor's decision was made, the boroughs have reported the applications to their committees in order to seek a steer from Members as to the decision they would have made had they remained the local planning authority. GLA officers have carried regular weekly meetings with the boroughs and the applicant's agents to identify and resolve the outstanding issues on the case, and to establish a programme to allow for the case to be considered by the Mayor at a Representation Hearing. During this time it has become apparent that further work was required on viability and daylight matters in order to robustly inform the Mayor on the applications.
- 1.4. At the time of commencing work on this ADD, the intention was that the hearing be held in June 2014, and hence there was expediency sought in commissioning the consultancy work and have it completed in May 2014 to enable the representation hearing report to be completed. However, due to a number of delays in sharing of information by the applicant and outstanding issue remaining, particularly in relation to viability and daylight (the subject of this ADD), the hearing was then rescheduled for July. At the time of final draft of this ADD, the hearing has now been moved to September in order to avoid the holiday period and allow re-consultation over the outcome of the viability work to take place. These delays were not foreseen at the time the initial ADD was commenced and the consultants commissioned.
- 1.5. In acting as the local planning authority the Mayor must accurately and fairly consider all aspects of the submitted planning applications. A key issue relates to affordable housing as noted in 1.2 above, and demonstrating that the maximum reasonable amount would be provided. The boroughs commissioned their own viability review to explore this issue, and GLA officers originally envisaged that it would be possible to use this to inform the GLA's own assessment. However, the boroughs subsequently dismissed their consultant and appointed a new consultant, with new issues and concerns being raised subsequently. Whilst a number of key principles have been agreed between the applicant's and the Council's consultants, there remained various important points of detail which still needed to be reconciled. In light of the fundamental difference of opinion between the

boroughs and the applicant, and to enable a full and accurate reporting by officers and a judgement to be made by the Mayor on this matter, the GLA has been required to commission a further review of the viability, to be paid for by the applicant.

- 1.6. Furthermore, as part of the call-in process a review of the applicant's submitted daylight and sunlight assessment is required as this also remained an outstanding issue for the boroughs at the point when the Mayor took over the applications. The GLA does not have the in-house expertise to undertake a review itself, therefore, an independent review has been necessary. The review is required to verify that the information and methodology used to prepare the applicant's daylight and sunlight report is fair, and that the conclusions are reasonable. This review will be used to inform the Mayor as part of his decision making process.
- 1.7. Accordingly, the GLA is seeking independent professional advice in order to assist it when considering outstanding viability issues and ultimately agreeing the provision of affordable housing within the scheme and to assess the daylight and sunlight implications of the scheme. In order to adhere to the Mayor's determination programme GLA officers did seek to have these points substantially assessed by the end of May 2014. However, due to the initial findings of the consultants and the delays noted in 1.4 above, the final reporting is now due to be completed in mid-July 2014.
- 1.8 Given the value of the proposed contract, GLA officers acknowledge that section 3.6 of the GLA's Contracts and Funding Code ("Code") requires that at least three quotations be sought. However, section 5 of the Code provides that exemptions from that requirement may be approved where the risks of not complying with the Code would be outweighed by the risks of not approving an exemption. For the reasons set out in section 2 below GLA officers are of the view that an exemption is applicable in this case.

2. Justification for single source procurement

- 2.1 As discussed in section 1 and 4, this work is essential in order to support the Mayor's statutory duties under Section 2A of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Mayor of London) Order 2008, and fundamental to the proper implementation of the London Plan – the Mayor's spatial development strategy for Greater London. The Mayor's decision to take over this application is exceptional, and could not reasonably have been foreseen. It only became apparent following the resolution of the boroughs at their committees in February/March 2014, and a subsequent officer level review of the viability information in April 2014, that the GLA was required to procure its own independent studies. Agreement from the applicant to pay for these services was also required. The Mayor has publically stated that he will determine the Mount Pleasant planning applications swiftly.
- 2.2 In addition, the circumstances of this particular case are unique in that to date, four viability consultants have already been involved in this scheme to date and are therefore ruled out from bidding (BPS, DVS, BNPP, Gerald Eve). This is a very specialist field and there are a limited number of consultants available locally to assist at short notice. It would be difficult to find three consultants capable of carrying out this complex piece of work.

Potential for delay

- 2.3 The GLA's Contracts and Funding Code requires officers to seek three or more quotations for goods or services between £10,000 and £150,000. This form of tender process generally requires five working days to allow reasonable time for potential suppliers to prepare a quote/business pitch. GLA officers must then take time to fully consider all pitches received, before selecting and instructing a preferred supplier, and providing feedback to the unsuccessful parties. Past practice indicates that this commonly takes between three to four working days. This would have added two weeks to an

already tight timetable, noting that between April and May the report would have had to be finalised, any changes made to the scheme by the applicant with view to reporting the application in June 2014. There is at least a four week lead in time from finalisation of information and the actual hearing, due to community consultation, checking of reports by barristers etc.

- 2.4 In order to deliver the Mayor's determination programme (a timetable that the GLA is also committed to adhere to under contractual agreement with the applicant) GVA's assessment work is was initially required to be completed by the end of May 2014. With a procurement programme of at least two weeks to factor in, followed by the undertaking of the work by the successful bidder (which could take over three weeks), the work programme would have been compromised by the standard tender process.

Implications of delay

- 2.5 Delay in the commencement of these assessments would have impacted on the overall timetable for bringing the application to a public Representation Hearing - meaning that the initially scheduled June 2014 hearing date would have been missed. Given the constraints of the Mayor's availability, and minimum time periods associated with public notification of a new hearing date (14-day minimum notification period to speakers at the hearing), even a marginal push back of the application assessment programme would have resulted in a significant delay in the case being brought before the Mayor at a public Representation Hearing. Such postponement being as a result of the procurement would reflect badly on the GLA and the Mayor, given that expediency was cited as a factor to consider in taking over the application. As it turns out, the findings of the consultants has resulted in more work being required of the applicant in order to make the scheme acceptable and to enable officers to report to the Mayor on the scheme. This has meant that the date for the Representation Hearing has been delayed however the work was still required to be commenced in the time initially reported.
- 2.6 Also of relevance is that a local Community Infrastructure Levy (CIL) that was scheduled to be introduced by Islington Council on 14 July 2014. The CIL is a non-negotiable charge that authorities can place on most types of new development in their area (the Mayor of London adopted his own CIL in April 2012). The CIL is a useful tool for authorities to generate income in order to help pay for the infrastructure required to support growth and development. Noting the timescales involved in this case, the design of the Mount Pleasant scheme did not take the proposed levy costs into account. Furthermore, the decision notice can only be issued following the conclusion of a section 106 legal agreement - such agreements typically take approximately three months but this was expected to be expedited in order to meet the tight timeframe. Therefore, were the Mayor's determination programme to be delayed (and the proposed development therefore becoming subject to the levy), there would have been an additional financial burden on the scheme. Subsequently it is noted that the CIL adoption has been delayed until September 2014 however this was not forecasted at the time the work was commissioned.
- 2.7 Accordingly, the risks associated with not approving this proposed exemption to the GLA's Contracts and Funding Code are:
- GLA in breach of its Planning Performance Agreement contract with the applicant;
 - Negative reflection on Mayor and GLA for failing to deliver a timely decision on this high profile case, particularly since swift determination was a principal reason for the Mayor intervening;
 - A major regeneration scheme would be subject to further unwelcome delay; and,
 - Adverse impact on financial viability, and potential threat to delivery of the scheme (where Islington Council's CIL would be introduced prior to issue of a decision notice).

The preferred supplier

- 2.8 The GLA's preferred supplier in this instance is chartered surveyors and property management consultants, GVA Grimley. The consultant has confirmed that there would be no conflicts of interest in respect to this work, on both daylight/sunlight and viability matters.
- 2.9 This is of particular relevance given that four viability consultants in the market (in what is a very specialist field), are already ruled out of tendering due to their involvement in this scheme to date. The consultant's proposed project lead for the viability work is well respected within the field, and has worked on a wide range of major schemes for developers and boroughs as well as carrying out work for the GLA in formulating a Development Infrastructure Fund for the Vauxhall Nine Elms Battersea Opportunity Area, in valuing sites (such as Royal Albert Dock and Peel Centre). This consultant has also been instrumental in the development of RICS guidance on financial viability in planning.
- 2.10 In relation to daylight and sunlight assessments, GVA (Schatunowski Brooks) advises a wide range of clients, including developers and adjoining owners on the potential impact of new development and has been retained by a number of local authorities to provide expert advice on daylight issues. These services include analysing the impact of proposed development, preparation and presentation of technical and expert evidence leading to the presentation of that expert evidence at planning appeals, public inquiries and the High Court. GVA were recently retained by the GLA to advise on daylight issues in relation to the Holy Trinity School in Hackney, another application that was called-in by the Mayor.

Securing value for money

- 2.11 Based on a detailed quote provided, GLA officers initially expected the work required to cost up to £23,500. Whilst there are a number of complexities relating to the scheme, a lot of groundwork has been done and GVA has excellent experience and a proven record of undertaking such assessments rigorously and delivering them to challenging deadlines. The pricing schedule provided (including hourly rates for meetings) is in line with previous rates competitively agreed by TfL (and formerly the LDA), and accordingly GLA officers are satisfied that the quote would offer value for money. Whilst the GLA must pay for this work in the first instance, the applicant has agreed to reimburse the GLA for the cost of this consultant work. Therefore, the service will ultimately be delivered at no net cost to the GLA. Since the work was commissioned and ADD was drafted, the consultant has confirmed that there has been a significant amount of extra work that has been required due to the complexities of the work. It is on this basis that the cost for the work has been extended by 50% to £35,000 so as to ensure that a new or amended ADD is not required to be completed in advance of paying the invoice.

Evaluation of alternatives

- 2.12 The GLA has explored various alternatives to single sourcing. These are summarised below.

- *Using the boroughs' viability assessment and daylight/sunlight assessment rather than commissioning a new one*

This was the initial approach that GLA officers sought to undertake. However, on receipt of the boroughs' committee reports it was apparent that there remain various important points of detail that still need to be reconciled and that there remained fundamental points of disagreement between the applicant and the boroughs that required adjudicating. This was also in light of the fact the boroughs had terminated the contract of their original viability consultant. Accordingly a new assessment is required by the GLA, given this complicated history, outstanding issues and points of contention.

In relation to the daylight and sunlight assessment, officer level assessments have been undertaken by the borough case officers, but in light of the objections received from local residents it was considered prudent to commission the services of professional consultants rather than rely on the boroughs appraisals.

- *Undertaking (or at least starting) the work in-house*

This option was swiftly discounted because the GLA does not have the relevant in-house expertise to undertake this work itself.

- *Extending the application assessment programme*

This option would allow for a tender process to be run in accordance with the GLA Code. However, for the reasons set out in paragraphs 2.4 to 2.6 above this is not proposed.

- 2.13 Accordingly, GLA officers are of the view that there are no available alternatives to single sourcing in this instance.

Conclusion

- 2.14 Having had regard to the circumstances in this case (including the Mayor's reasons for intervention and the public commitment to a speedy resolution); the clear link to corporate priorities and statutory duty; value for money; and, the implications of delay, GLA officers are of the view that an exemption from the requirements of section 4.1 of the GLA's Contracts and Funding Code is justified on the basis of the lack of competition for the services in this instance (given that other providers from whom bids would have been sought are conflicted in this instance) and the risks of not facilitating GVA's swift engagement.

3. Objectives and expected outcomes

Objective

- 3.1 The GLA's objective is to secure a full and independent financial appraisal of the abovementioned planning application to inform planning negotiations and Mayoral decision making, and to ensure that the maximum amount of affordable housing would be delivered.

Outcome

- 3.2 The outcome of the work procured will be a consultant report. Whilst the consultant report itself will be commercially sensitive, the conclusions within it will feed into a GLA planning report - which will be published on the GLA website, and used to inform the Mayor's consideration of the Mount Pleasant planning application.

4 Equality comments

- 4.1 The public sector equality duty requires the identification and evaluation of the likely potential impacts, both positive and negative, of the decision on those with protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, gender, religion or belief, sexual orientation).
- 4.2 The commissioning of this work is connected to a redevelopment proposal for a large central London site. The work is necessary to highlight any impact in terms of daylight/sunlight so as to enable the Mayor to make an informed decision about the scheme, which ensures that the quality of life is

maintained for local residents of Camden and Islington and that the new development can be accommodated sustainably. It is also to enable the Mayor to make an informed decision over whether the affordable housing offer is reasonable. The provision of a range of housing types will assist in the creation of communities which are mixed in terms of income and profile, thereby assisting in fostering good relations between different groups, including between people from different ethnic backgrounds. The provision of affordable housing is particularly pertinent for people with protected characteristics who disadvantaged by problems of overcrowding, homelessness and living in unsuitable housing. The outcome of this work may benefit groups of Londoners with shared protected characteristics who experience higher rates of housing need thereby having positive equality impacts for any protected characteristics or any human rights.

5. Other considerations

Confidentiality

- 5.1 The consultancy work involves the assessment of information that is commercially sensitive for the applicant, and the output report will need to be treated as confidential by the GLA. However, GLA officers commonly handle such information, and have processes in place to ensure commercial confidentiality. Accordingly, subject to normal due diligence, and notwithstanding duties under the Freedom of Information Act and Environmental Information Regulations, GLA officers are of the view that the procurement and completion of this work is of low risk to the Authority and the Mayor.

Impartiality

- 5.2 It is important that the Authority procures this work in the first instance – so that the consultant's duty is to the GLA (therefore ensuring that the appraisal is seen as truly independent). The applicant has, nevertheless, agreed to reimburse the GLA for the cost of this consultant work. Accordingly, the work will ultimately be undertaken at no net cost to the Authority.

Links to Mayoral strategies and priorities

- 5.3 This 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. Given that there remain outstanding concerns for the boroughs in relation to this and daylight and sunlight impacts, the completion of this work will enable GLA officers to provide a robust planning assessment for the Mayor to consider at a Representation Hearing, thereby supporting the Mayor in fulfilling his statutory duty under The Greater London Authority Acts 1999 and 2007, and The Town and Country Planning (Mayor of London) Order 2008.

Recovering costs

- 5.4 DP9, on behalf of the applicant, Royal Mail Group, has agreed in writing to reimburse the GLA for the base cost of the consultancy work required in order for the Authority to determine the Mount Pleasant planning application. This commitment is being secured within a bespoke 'Project Planning Performance Agreement' between the applicant, GLA and TfL, covering this and various other obligations associated with the case. The agreement still requires signature, but is substantially agreed by all parties. This decision includes a contingency for an increase in fees costs based on the need for further work beyond the initial quote being required, the precise invoice amount still needs to be confirmed and agreed by the applicant.

Retrospective approval

- 5.5 Whilst drafting and consultation on this ADD request form commenced prior to any procurement, having had regard to the circumstances in this case, advice from the Assistant Director, an officer level decision was taken to instruct GVA Grimley to commence work prior to final approval of this ADD request. This was necessary so as not to jeopardise delivery of the overall programme (refer to section 2).

6. Financial comments

- 6.1 Approval is being sought to commission the independent financial services of GVA Grimley to complete a financial viability study and daylight/sunlight study for the Mt Pleasant Sorting Office redevelopment proposal.
- 6.2 The estimated cost of this work is £35,000. This will be initially met by the 2014-15 Planning Decisions budget held within the Development, Enterprise & Environment Directorate, with subsequent recovery of the full costs from the applicant.
- 6.3 All appropriate budget adjustments will be made.
- 6.4 Any changes to the proposal, including budgetary implications will be subject to further approval via the Authority's decision making process.
- 6.5 The Planning Unit within the Development, Enterprise & Environment Directorate will be responsible for managing the contract, ensuring compliance with the Authority's Financial Regulations and Contracts and Funding Code.

7. Legal comments

- 7.1 The above sections of this report indicate that the decisions requested of the Assistant Director – Planning may be considered to be facilitative of, or conducive, or incidental, to the exercise of the Mayor's powers under Section 2A of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Mayor of London) Order 2008.
- 7.2 Section 4.1 the Code requires that three or more quotations be sought for the services or that they be called off from an existing framework. However, section 5 of the Code provides that exemptions from that requirement maybe approved where there is an absence of competition in the relevant market. Officers have indicated, at section 2, that such circumstances exist in this case. Therefore, if satisfied with the content of this report, the Assistant Director – Planning may approve the exemption.
- 7.3 Officers must ensure that:
- The GLA enters into legally binding arrangements with the applicant for the reimbursement of the GLA's costs; and,
 - an appropriate written contract is put in place between and executed by the GLA and the proposed contractor as a matter of urgency.

8. Planned delivery approach and next steps

- 8.1 The chosen consultant has been instructed to review the viability and daylight information available in order produce draft reports which specifically addresses a number of financial viability issues and daylight/sunlight impacts. Whilst it was initially envisaged that this could be provided within five working days from the GLA instruction to undertake the work, there have been delays in this reporting, caused largely by the applicant's inability to turn information around in sufficient time, the need for a number of specialist meetings and engagement with the boroughs. The draft report will be reviewed by GLA planning officers, who, where necessary, may seek a response from the applicant and/or the boroughs - for further review and consideration by the GLA's chosen

consultant. Where necessary, the chosen consultant may also be asked to attend dedicated viability meetings in support of the GLA.

- 8.2 Following the conclusion of any technical discussions and/or clarifications, the GLA will instruct the chosen consultant to finalise its report. The finalised report will be submitted to the GLA in electronic form, in PDF. The table below sets out the key activities and timetable.

| Activity | Timeline |
|--|-----------------|
| Assessment work commenced | 22.04.14 |
| Delivery of draft reports | W/C 19.05.14 |
| Review of draft report (and meetings if necessary) | W/C 26.05.2014 |
| Report finalisation and delivery | W/C 7.07.2014 |

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:

Samantha Wells, Principal Strategic Planner has drafted this report in accordance with GLA procedures.

✓

HEAD OF GOVERNANCE AND RESILIENCE:

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

Signature:

Date: 18 July 2014