

REQUEST FOR MAYORAL DECISION – MD1359

Title: Direction to LFEPA – 8 Albert Embankment

Executive Summary

The London Fire and Emergency Planning Authority (LFEPA) is currently overseeing the disposal of its former headquarters building at 8 Albert Embankment (8AE). LFEPA has confirmed (by letter dated 24 April 2014 to the Mayor's Chief of Staff) that it will not implement its decision of 17 March 2014 to proceed to a disposal of the site on the open market, pending a decision from the Mayor on whether to direct LFEPA to carry out soft market testing through the London Development Panel (LDP).

The Mayor has now decided to direct LFEPA to carry out soft market testing through the LDP before any decision is taken on the appropriate method of disposal of the site. Relevant correspondence setting out the Mayor's rationale for the direction is included at Appendix 1.

The Mayor's covering letter is at Appendix 2 and the direction itself is included at Appendix 3.

Decision

That the Mayor directs LFEPA in the manner set out at Appendix 3 to this decision form, namely:

- Not to proceed to, or take any preparatory steps in relation to, the disposal of 8 Albert Embankment except for and pending completion of the actions set out below;
- To write to all members of the London Development Panel, no later than 31 July 2014, inviting them to provide informal advice and input on issues relating to the development and its viability, by way of soft market testing; and
- Within eight weeks of the receipt of the information from the soft market test, to report back to the Mayor of London on the conclusions reached as a result of that test and to await the Mayor of London's response before taking any action in relation to the disposal of 8 Albert Embankment.

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: 16 June 2014

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

Decision required – supporting report

1. Introduction and background

- 1.1 The London Fire and Emergency Planning Authority (LFEPA) is currently overseeing the disposal of its former headquarters building at 8 Albert Embankment (8AE).
- 1.2 At a meeting of its Resources Committee on 17 March 2014, LFEPA considered a number of options for disposal of the 8AE site. No decision has yet been taken on which of those options should be pursued. As part of its consideration of the options, LFEPA has been considering the merits of carrying out “soft market testing” of those options. Soft market testing could be carried out either in the open market, or using the London Development Panel (LDP).
- 1.3 The Mayor’s budget guidance for 2014-15 sets out certain expectations as to how the Greater London Authority (GLA) and its functional bodies should seek to meet his policy objectives and to obtain value for money across all their functions. In supplementary budget guidance issued in September 2013, the Mayor included the following requirement:
“Functional bodies will need to seek the prior agreement of the Single Property Steering Group for them not to use the LDP for all major land, property and development procurements where the scale is likely to involve a planning application that may be referable to the Mayor.”
- 1.4 The Single Property Steering Group comprises senior representatives of the GLA and its functional bodies. The Group seeks to implement the Mayor’s property policies and achieve value for money in the management and operation of the GLA Group’s estate.
- 1.5 The LDP is a multi-supplier framework panel established by the GLA to accelerate the release of public land for residential-led development by speeding up the procurement of development partners, increasing efficiency and significantly reducing costs by pre-qualifying suppliers under set terms and conditions. It consists of 25 panel members procured to provide the range of services and works necessary to deliver housing and associated infrastructure. It started operating on 10 May 2013 and will exist for a fixed four year period.
- 1.6 The LDP’s terms of reference expressly envisage that it can be used to undertake soft market testing, as a way of informally gaining the market’s views on the viability of a proposal.
- 1.7 The scale of the re-development at 8AE is such that it will be referable to the Mayor. Consequently, in accordance with the supplementary budget guidance, the matter was referred to the Single Property Steering Group. LFEPA officers reported to the Steering Group on 12 February 2014 that they were minded to recommend that LFEPA should go to the open market through its own OJEU process at the same time as inviting interested parties from the LDP to bid for 8AE. The recommendation of the Steering Group was to soft market test with the LDP first, to confirm capacity and interest.
- 1.8 At LFEPA’s Resources Committee meeting of 17 March 2014 it was resolved that the Assistant Commissioner, Technical and Service Support, be authorised to complete the disposal process for 8AE, proceeding directly to an EU regulated procurement. A proposal that LFEPA should first conduct soft market testing through the LDP was rejected.

- 1.9 The Mayor's Chief of Staff wrote to the Chairman of LFEPA on 26 March (see Appendix 1) stating that the Mayor was minded to direct LFEPA to soft market test its disposal of 8AE via the LDP following the decision on 17 March not to pursue that option. The Mayor set out the following reasons for his proposed direction.
- There would be no cost or obligation to LFEPA arising from market testing through the LDP;
 - The Mayor's budget guidance sets out a reasonable expectation that GLA Group housing developments of this size are market tested through the LDP;
 - Market testing through the LDP would assist LFEPA in demonstrating that it is achieving best consideration in its disposal of the site;
 - The Mayor procured the LDP so as to speed up the release of public sector land and so it could well be the most advantageous option open to LFEPA in terms of timing; and
 - The initial response LFEPA would obtain from the LDP would be useful in assessing the disposal options available to it.
- 1.10 The Chairman of LFEPA responded on 28 March (following a meeting of LFEPA's Appointments and Urgency Committee on 27 March) to say that LFEPA:
- Opposed the issuing of a direction;
 - Had taken professional advice on this matter; and
 - The decision taken by LFEPA Members followed lengthy consideration of the issues arising at the Resources Committee meeting of 17 March.
- 1.11 The Mayor's Chief of Staff responded to the Chairman of LFEPA on 3 April to:
- Restate the reasons why soft market testing through the LDP would be beneficial;
 - Highlight the shared service and budget issues arising; and
 - Request that further information be provided to the GLA on the rationale for LFEPA's objection to soft market testing through the LDP.
- 1.12 The London Fire Commissioner responded on behalf of LFEPA on 24 April to provide the information requested by the GLA and to state that:
- A majority of LFEPA Members at a meeting of an Appointments and Urgency Committee on 10 April 2014 continued to oppose a direction;
 - However, the Committee was also of the view that it would not regard it as in the public interest to seek to mount a legal challenge to any direction properly decided upon by the Mayor in this case; and
 - The decision of LFEPA's Resources Committee on 17 March to proceed directly to the disposal of 8AE was not being implemented pending a decision from the Mayor on whether to direct LFEPA on this matter.
- 1.13 The Mayor has carefully considered the further information provided by LFEPA and the issues arising and remains of the view that soft market testing of the 8AE site via the LDP will be beneficial and should be pursued. The Mayor has therefore decided to issue the direction included at Appendix 3.
- 1.14 As set out in the letter from the Mayor to the Chairman of LFEPA at Appendix 2, the rationale for issuing the direction is, in summary, that the Mayor remains of the view that the points set out at paragraph 1.9 above continue to apply and that it is premature to rule out soft market testing through the LDP as it has the potential to inform the ultimate decision-making process on the method of disposal.

2. Objectives and expected outcomes

- 2.1 The Mayor's objective in issuing this direction is to ensure that when a decision is taken on how to dispose of 8AE, that decision is taken on a fully informed basis. This is a matter in which the Mayor has a clear interest given his responsibility for raising the GLA council tax precept and the fact that LFEPA makes the second biggest call on that precept.

3. Equality comments

- 3.1 There are no equality issues directly arising from this decision, which does not commit the GLA or LFEPA to any specified method of disposal of the site.
- 3.2 Any equality issues arising at future stages of the property processes in question will be addressed by LFEPA in the first instance. Should there be further Mayoral action, future Mayoral decision forms will address any equality issues arising for the GLA.

4. Other considerations

- 4.1 The Mayor has considered all of the information provided by LFEPA, including the advice of LFEPA's estate agents, Dron & Wright. The following points in particular are noted:
- Dron & Wright has expressed the view that a disposal of the 8AE site through the LDP would not result in LFEPA receiving the best consideration reasonably obtainable. This view is based on the fact that the LDP does not include some potential purchasers who might in theory be prepared to offer more for the site than the best bid received from the LDP;
 - The Mayor recognises that by their very nature, framework panels do not include every potential bidder in the open market. However, in order to achieve the objective of speeding up the procurement process to deliver housing in London, the Mayor has established the LDP. Dron & Wright acknowledges that, despite having received a number of expressions of interest from non-LDP developers, there is no definitive evidence to support its views at this stage;
 - Dron & Wright's view that using the LDP to conduct soft market testing would be inappropriate is based principally on its conclusion that disposal through the Panel will not achieve best consideration and that a decision to sell on the open market is therefore inevitable;
 - As noted above, there is at present no definitive evidence for Dron & Wright's opinion that disposal on the open market is inevitable. Further, it is not necessarily the case that a full EU procurement exercise would be necessary for a disposal of the site on the open market. This would not be necessary if it were decided to pursue the option of a land sale falling outside the EU procurement rules; and
 - Whilst the Mayor has considered the points raised by Dron & Wright, he remains of the view that their objection to soft market testing is based on their premature conclusion that there will inevitably have to be a disposal of the 8AE site on the open market. The Mayor wishes to ensure that all options are kept open at this stage.

5. Financial comments

- 5.1 There are no financial issues directly arising for the GLA from this decision.
- 5.2 Any financial issues arising for LFEPA will be addressed as part of the annual budget setting process for the GLA Group.

6. Legal comments

- 6.1 Under section 328A (1) of the Greater London Authority Act 1999 (the GLA Act) the Mayor may issue general and specific directions to LFEPA as to the exercise of its functions.
- 6.2 Section 328A (5) provides that in exercising the power of direction, the Mayor must have regard to each of the following:
- a. The Fire and Rescue National Framework prepared under section 21 of the Fire and Rescue Services Act 2004; and
 - b. The fire safety enforcement guidance under article 26 of the Regulatory Reform (Fire Safety) Order 2005.
- 6.3 Section 328A (4) provides that the Mayor must send a copy of the direction to the Fire Commissioner.
- 6.4 By virtue of section 146A Local Government Act 1972, LFEPA is deemed to be a “principal council” for the purposes of section 123 of that Act. Section 123 provides that a principal council may dispose of any land held by it in any manner it wishes. However it must not, except with the Secretary of State’s consent, dispose of land for a consideration less than the best that can reasonably be obtained on the market.
- 6.5 Soft market testing in relation to the site through the LDP will not bind LFEPA subsequently to dispose of the site through the LDP. Once the results of the soft market testing have been obtained it will be for LFEPA to decide on the appropriate method of disposal, taking due account of the statutory duty in section 123 of the 1972 Act and all other relevant factors.

7. Investment & Performance Board

- 7.1 This decision does not fall with the Investment & Performance Board’s terms of reference.

Appendices and supporting papers:

Appendix 1: Relevant correspondence between GLA and LFEPA

Appendix 2: Mayor’s covering letter

Appendix 3: Direction

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:

Tom Middleton 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:

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

✓

Sponsoring Director:

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

✓

Mayoral Adviser:

Sir Edward Lister 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

Date

CHIEF OF STAFF:

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

Signature

Date