

REQUEST FOR MAYORAL DECISION – MD1486

Title: Direction to LFEPA to dispose of the former fire station site at Southwark to Hadston

Executive Summary:

The Mayor is committed to supporting new school developments in London by identifying sites and targeting areas of local need. The Southwark former fire station site would be ideal for the establishment of a new secondary school and, in order to facilitate this, the Mayor is issuing a direction to the London Fire and Emergency Planning Authority (LFEPA) so that it disposes of the Southwark fire station site to Hadston, a developer who is committed to building a new secondary school on the site. In order to provide reassurance to LFEPA, a letter of comfort will be provided to it by the Mayor confirming that he will increase LFEPA's funding if legal proceedings are issued as a result of the direction.

Decision:

That the Mayor directs the London Fire and Emergency Planning Authority (LFEPA) in relation to the disposal of Southwark former fire station site in the form attached at Appendix B to this decision form.

That the Mayor provides a letter of comfort to LFEPA as to its financial position in the form attached at Appendix C 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:

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 completing the sale of nine of its former fire station sites at Belsize, Bow, Clerkenwell, Downham, Kingsland, Silvertown, Southwark, Westminster and Woolwich. The fire stations were closed on 9 January 2014 in accordance with the Fifth London Safety Plan 2013 - 2016 (LSP5).
- 1.2 LFEPA's Resources Committee on 11 November 2013 agreed the disposal strategy for the stations which was based on LFEPA's Code of Practice on Disposal of Land. LFEPA agreed, in all cases, to secure appropriate professional valuation advice on the value of the asset and the value of the bids received.
- 1.3 On 17 March 2014, LFEPA's Resources Committee agreed that the nine former fire station sites would be advertised together on the open market as soon as possible, and accordingly advertised them via the Estates Gazette with a closing date for initial bids set for 11 July 2014.
- 1.4 The Mayor issued a direction to LFEPA on 11 July 2014 that it must report to him with all available information on the bids for the nine former fire stations submitted to LFEPA within 12 weeks of their receipt and to await the Mayor's response before entering into any agreements to dispose of the sites. The Mayor has a legitimate interest in overseeing the future development and use of the former fire stations. The direction ensured that the Mayor was fully informed about future proposals for their use.
- 1.5 The 11 July 2014 direction was considered by LFEPA's Appointment and Urgency Committee on 16 July 2014 and the Committee resolved that the report and letter enclosing the direction be received subject to the London Fire Commissioner (Commissioner) writing formally to the Mayor setting out Member's concerns. The Commissioner wrote to the Mayor on 17 July 2014 stating:
 - LFEPA is concerned that the direction has the potential to disrupt the timetable and confuse the market;
 - The Mayor could have asked for sight of the bids via the Single Property Unit;
 - LFEPA has a statutory duty to get best consideration for any sites it chooses to sell and it expects the Mayor's response to the bids to reflect this.
- 1.6 The Mayor's Chief of Staff, Sir Edward Lister, replied to that letter on behalf of the Mayor on 21 July 2014 stating:
 - Mayoral directions should not be seen as confrontational;
 - It is not the intention to disrupt the timetable and confuse the market;
 - LFEPA had rejected the approach advocated by the Single Property Unit in relation to another site and it would not be sensible to rely on it for information to be shared on the former fire station sites;
 - The best consideration dimension of the process is acknowledged and there is no attempt to undermine this.
- 1.7 LFEPA considered Sir Edward Lister's letter at its meeting on 2 October 2014, at which details of all the bids received for the sites were considered. LFEPA agreed to send the details of the bids to the Mayor and did so on 3 October 2014.
- 1.8 On 16 October 2014, Sir Edward Lister wrote to the Commissioner seeking confirmation that LFEPA had provided all available information and sought details for the planned use proposed for each site

by the bidders. This letter was considered by the Appointments and Urgency Committee on 28 October and additional information requested was sent on 29 October 2014.

- 1.9 LFEPA considered a report at its meeting on 27 November 2014 which described a second round bidding process for the nine sites and it was provided with the identity of the bidders and their bids. This information was provided by LFEPA to the Mayor on 16 December 2014 in accordance with the 11 July 2014 direction.
- 1.10 LFEPA agreed to authorise the Assistant Commissioner, Technical and Support Service to complete the disposals for all stations closed under LSP5 subject to approvals set out in a closed report. It also agreed that any decision to enter into agreements to dispose of the former fire station sites was subject to a final response from the Mayor in respect of his direction dated 11 July 2014.
- 1.11 On 22 December 2014, the Mayor sent a letter to LFEPA noting that it had agreed to progress the disposals of Belsize, Clerkenwell, Downham, Kingsland, Westminster and Woolwich at the best prices reasonably obtainable and encouraged LFEPA to progress these disposals as soon as possible. The Mayor:
- Noted that a bid had been made for the Southwark site for a joint development involving housing and the provision of a new school although the bid was significantly lower in value than the highest bid received for the site;
 - Was minded to direct LFEPA to accept the bid made for the Southwark site which includes provision for a new school, and to direct it to seek the consent of the Secretary of State (SoS) to dispose of the site for less than best consideration;
 - Had the provisional view that there is good reason for LFEPA receiving less than best consideration for the Southwark site because there is significant need for a secondary school in the north Southwark area, and that the Education Funding Agency (EFA) considers that the only viable site in the area for a new school is the former fire station site;
 - Had the provisional view that the social need for a new school outweighs the financial loss to LFEPA; and
 - Requested LFEPA's views on his proposal.

At that time, the bid submitted by Hadston was less than the highest bid received for the site. In order to take all relevant matters into account when making the decision as to whether to direct LFEPA about the disposal of the Southwark site, the Mayor indicated that he would ask Hadston to consider increasing its bid for the site in order to match the highest bid received.

- 1.12 LFEPA's Appointments and Urgency Committee on 12 January 2015 considered the Mayor's letter of 22 December 2014. It agreed to:
- Authorise the Assistant Commissioner, Technical and Service Support, to complete the disposals of Belsize, Clerkenwell, Downham, Kingsland, Westminster and Woolwich;
 - Refer a decision as to its formal response to the Mayor's letter to the meeting on 29 January 2015, when final legal advice would be available; and
 - Ask the Mayor what, if any, confidential information relating to the bid for the Southwark site had been passed to other bidders.

A letter setting out the various decisions made was sent to the Mayor on 12 January 2015.

- 1.13 The Mayor replied to LFEPA on 21 January 2015 and confirmed that no confidential information had been disclosed and that the only information passed to the partner bodies involved in the consortium bidding for a school on the Southwark site was the level of the highest bids.

- 1.14 At its meeting on 29 January 2015, LFEPA considered its response to the Mayor's letter of 22 December 2014 and:
- Noted that it would have preferred to have seen the former fire stations used for public good, but has a clearly defined statutory duty to obtain the best price reasonably obtainable;
 - Had legal concerns about the proposals made by the Mayor;
 - Asked the Chairman of LFEPA to write to the Mayor informing him that while LFEPA reserves the right to resist any direction it considers unlawful, it is willing to enter into discussions with the Mayor and his advisers with a view to resolving the legal, financial and procedural issues and any other issues that might arise as a result of these discussions;
 - Instructed the Commissioner to report back to the Appointments and Urgency Committee on the discussion no later than 28 days.

Letters confirming LFEPA's decisions were sent on 2 February 2015.

- 1.15 Sir Edward Lister wrote to LFEPA on 19 February 2015 confirming that:
- There has been no breach of confidence by the Mayor or GLA staff and that the only information disclosed was the level of the highest bid;
 - These details were disclosed as part of the Mayor's consideration of issuing a direction to LFEPA as to the disposal of the fire stations;
 - That the Mayor was taking legal advice as to the Southwark site due to the range of uses.
- 1.16 The Appointments and Urgency Committee considered the letter of 19 February at its meeting on 25 February 2015. It agreed to defer a decision on the disposal of the Southwark site until the Mayor had responded to LFEPA's legal concerns about a possible direction to sell to the Mayor's preferred bidder at an undervalue and to request the Mayor to respond urgently to those legal concerns. A letter confirming LFEPA's decision was sent to Sir Edward Lister on 27 February 2015.
- 1.17 Following consideration of the issues arising, it is now proposed that the Mayor writes to the LFEPA Chairman in the form set out at Appendix A to this decision form, enclosing the direction in the form set out at Appendix B, and the letter of comfort at Appendix C.

2. Issues

Direction

- 2.1 Whilst the Mayor does not have statutory responsibilities in the area of education, he does have a responsibility to promote the social and economic development of Greater London, which includes educational opportunities (e.g. section 31(4A) of the Greater London Authority Act 1999 permits the GLA to incur expenditure on sponsoring Academies or facilitating their sponsorship). The Mayor has made a strong commitment to prioritising young people in the capital by expanding their opportunities.
- 2.2 The Mayor recognises the importance of providing a good school place for every child and ensuring they have the skills, knowledge and creativity to succeed in life. Therefore, on 10 November 2011 the Mayor announced that he was establishing an Education Inquiry to explore the critical challenges facing London's primary and secondary schools and make practical recommendations for key stakeholders, including Government and local borough councils.

2.3 The Education Inquiry produced a final report which made several recommendations to the Mayor. Of particular relevance to the consideration of issuing the direction is that the report examines the growing crisis in school places and the negative consequences this will have for families across the city. The final report notes that London desperately needs more good quality provision. The Mayor wants to encourage a new generation of free schools in the capital, to help address the shortage of school places and give parents more genuine choice.

2.4 One of the recommendations made by the Education Inquiry was:

Recommendation 11: The Mayor's office should work with boroughs, London Councils and the DfE to play a more strategic role in supporting free school developments in London, by identifying sites and targeting areas of local need.

2.5 The Mayor accepted and adopted recommendation 11 and set up a unit in the GLA, called New Schools for London, which works in partnership with the London borough councils and Department for Education (DfE) to help find sites for approved new school groups. The Mayor also committed to auditing the GLA group estate for 10 buildings or sites for purchase by the DfE for new school developments.

2.6 The Mayor considered the list of bids received for the Southwark site and noted that only one bid had been made by Hadston, a developer, which included a proposal to build a school. Hadston is committed to build a secondary school on the site providing 1100 much needed places in the Southwark area. The Mayor has been provided with several letters of support for a new secondary school in the Southwark area, including a letter from the Leader of Southwark London Borough Council stating that the only viable site for the construction of a secondary school in the area is the Southwark fire station site. The Education Funding Agency (EFA) has confirmed that it considers that the only viable site for the construction of a new secondary school in the Southwark area is the former fire station site. Hadston also proposes to retain a museum on the former fire station site.

2.7 Hadston's bid was not the highest bid made for the site and, taking into account LFEPA's disposal strategy for the sites, it was noted that LFEPA would not dispose of the Southwark site to Hadston. Noting the strong support for a new school in Southwark, and noting that Hadston was the only bidder that had expressed an intention and a commitment to build a school on the site, the Mayor was of the provisional view that he would direct LFEPA to dispose of the site to Hadston and direct it to seek the consent of the SoS to dispose of the site at less than best consideration.

2.8 The Mayor stated in his letter of 22 December 2014 that his provisional view was that the social need for a new school in Southwark outweighed the financial loss to LFEPA. However, the Mayor sought to alleviate any financial shortfall to LFEPA which may be likely if he directed it to dispose to Hadston at less than best consideration and asked Hadston to consider increasing its bid for the site so as to meet the highest bid received. The Mayor also considered whether he should direct LFEPA to re-run the bidding process with a condition that bids submitted must include a secondary school providing 1,100 places. Hadston has confirmed that it will increase its bid accordingly and therefore any direction to dispose of the site to Hadston will not adversely affect the financial receipts which LFEPA could receive for the site. Actual figures are contained in part 2.

2.9 LFEPA has confirmed that it would prefer to dispose of the site for the public good. The Mayor notes that LFEPA has agreed to comply with a direction to dispose of the Bow and Silvertown fire

station sites at best consideration to the Secretary of State via the Education Funding Agency for the purposes of building a school. Accordingly, there would be no reasons that would justify LFEPA resisting a direction to dispose of Southwark fire station site at best consideration to Hadston.

- 2.10 The Mayor is committed to ensuring that new schools are established in London and considers that the former fire station site is the most appropriate and only available site in the northern area of Southwark with strong support from the local area, as well as strong support and commitment from the Government. The Mayor also recognises the significant benefits which would arise for the whole community from implementation of a new secondary school. LFEPA will not dispose of the site to Hadston itself due to its bidding process, and therefore in order to ensure that the site is used for the building of a new secondary school, a direction to LFEPA to dispose of the site to Hadston is considered the most appropriate way forward. The Mayor will therefore direct LFEPA to end its current bidding process and complete and process disposal of the site to Hadston.

Indemnity

- 2.11 LFEPA requested that the Mayor gives it an indemnity in relation to the direction to dispose of the Bow and Silvertown sites. Noting that similar circumstances may arise in relation to the direction to LFEPA to dispose of the Southwark site and anticipating that LFEPA will seek an indemnity from the Mayor if a direction is issued to it, a letter of comfort should be provided to it in similar terms to that provided in relation to the Bow and Silvertown sites direction. This will enable the disposal of the Southwark site to Hadston to be progressed as quickly as possible, which means that the building of the secondary school can be facilitated sooner.

Compensation

- 2.12 The Mayor stated in his letter of 22 December 2014 to LFEPA that he noted that it might be appropriate to provide financial compensation to the highest bidder of the Southwark site to cover the costs incurred in making its bid should he decide to direct.
- 2.13 Early discussions with the highest bidder would be useful in this regard so as to ascertain whether financial compensation is appropriate.

Regard to statutory guidance

- 2.14 The Mayor must have regard to the following when exercising the power of direction:
- The Fire and Rescue National Framework prepared under section 21 of the Fire and Rescue Services Act 2004; and
 - The fire safety enforcement guidance under article 26 of the Regulatory Reform (Fire Safety) Order 2005.
- 2.15 LSP5 is consistent with these documents and their principles in the professional view of the London Fire Commissioner. LSP5 states that Southwark former fire station site, together with 8 other sites should be closed.

3. 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, there are no equality implications arising from this decision.

4. Financial comments

- 4.1 The Mayor's letter of 22 December 2014 giving the go ahead to proceed with the disposal of six sites – Belsize, Clerkenwell, Downham, Kingsland, Westminster and Woolwich – means that LFEPA will be able to generate sufficient capital receipts to fund its new capital programmes for 2015-16 and 2016-17. The receipts from the disposal of Southwark, and those anticipated from the disposal of Bow and Silvertown covered by the Direction issued on 10 March 2015, will add to the amount of capital receipts available to LFEPA. Further financial advice is set out in Part 2 of this decision form.

5. Legal comments

- 5.1 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. LFEPA's functions include the disposal of land: section 123 of the Local Government Act 1972. The Mayor can therefore direct LFEPA as to the disposal of land, and where the disposal is for best consideration there is no need for LFEPA to obtain the specific consent of the Secretary of State or rely on the General Consent 2003 to disposal at less than best value.
- 5.2 Sections 328A(5) provides that in exercising the power of direction, the Mayor must have regard to the following: (a) the Fire and Rescue National Framework; and (b) fire safety enforcement guidance. (These have nothing of any significance to say on the present matter).
- 5.3 Section 328A(4) provides that the Mayor must send a copy of the direction to the Commissioner.
- 5.4 Under section 30 of the GLA Act, 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 education for those living in Greater London (see section 31(4A) of the GLA Act). Providing a letter of comfort to LFEPA in order to enable the disposal of the sites to Hadston for the building of schools would be consistent with the power contained in section 30.
- 5.5 Under section 34 of the GLA Act, the Mayor could give a letter of comfort to LFEPA as it is incidental to the Mayor's powers in section 328A.
- 5.6 In order to make a lawful decision, the Mayor has to take into account all relevant considerations, including the circumstances in which the initial bids were made to LFEPA and whether these gave rise to a legitimate expectation that the highest bid would be accepted by LFEPA. The Mayor is able to override any legitimate expectation if he has good reason to do so, and the Mayor will demonstrate a proper exercise of the power of direction by compensating the highest bidder for its tender costs.

5.7 Further legal advice is set out in Part 2 of this decision form.

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: Mayor's covering letter to LFEPA Chairman;
- Appendix B: Mayor's direction to LFEPA; and
- Appendix C: Mayor's letter of comfort to LFEPA.

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 – YES

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