

COUNCIL			
Report Title	Report of the New Bermondsey/Surrey Canal Independent Inquiry Committee		
Key Decision			Item No.
Ward	All		
Contributors	Executive Director for Children and Young People		
Class	Open		

1. Purpose

- 1.1 On 22nd February 2017, at both a meeting of the full Council and of the Mayor and Cabinet it was decided to establish the New Bermondsey/Surrey Canal Independent Inquiry. The Chair of the Bar Council nominated Lord Dyson, former Master of the Rolls and Supreme Court judge, to lead the Inquiry. The report of the Inquiry was published on the Inquiry's website on 28th November 2017. This report presents the Inquiry Report formally to the Council and makes recommendations. The Inquiry Report and Executive Summary are attached as Appendix A and Appendix B to this report.

2. Recommendations

- 2.1 That the Council receive Lord Dyson's Report on the New Bermondsey/Surrey Canal Independent Inquiry, acknowledging its authority and independence
- 2.2 That the Council welcome the report's findings, in particular that "*there was no impropriety, lack of due diligence or breach of a code of practice on the part of any Council officer or member in relation to:*
- (i) *the decisions to make a Compulsory Purchase Order and the appraisal of the financial viability of Renewal's scheme and its ability to deliver it*
 - (ii) *the grant of Outline Planning Permission*
 - (iii) *the decision to enter into a conditional contract of sale of the Millwall Land to Renewal*
 - (iv) *the decision of the Mayor and Cabinet to pledge £500,000 to Surrey Canal Sports Foundation*
 - (v) *the Council's support for Renewal's Housing Zone bid*

noting also that Lord Dyson concluded that "*(a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to make the pledge of £500,000; and (b) there was no inadequacy in*

the Council's inquiry into the circumstances surrounding the production of the Lambert Smith Hampton brochure."

- 2.3 That the Council records its thanks to Lord Dyson for the thoroughness and timeliness of his report.

3. Background

- 3.1 At the Council meeting on 22nd February 2017, the Council received a report which described concerns which had arisen surrounding the proposal to issue a Compulsory Purchase Order (CPO) in respect of land at New Bermondsey/Surrey Canal to facilitate a complete development of the area by a developer. The report referred to serious allegations made in articles in The Guardian relating to Surrey Canal Foundation Trust (SCFT), Renewal, council officers and members.
- 3.2 The Council (and a Mayor and Cabinet meeting on the same evening) agreed to establish an Independent Inquiry to investigate matters related to the CPO. Given the nature of the Inquiry, Council determined that it must be led by an individual who was demonstrably independent of all parties involved, sufficiently knowledgeable, and generally recognised to be a person of suitable integrity and authority to conduct the business in the rigorous, open-minded and unbiased manner that the public would expect. It was agreed that Executive Director for Children and Young People would be the Council's officer lead in relation to the establishment and conduct of the Inquiry. In accordance with the Council decision, she approached the Chair of the Bar Council, Mr Andrew Langdon QC to nominate a suitably qualified and independent person to lead the Inquiry. He nominated Lord John Dyson, former Master of the Rolls and Supreme Court Judge who had the qualifications and availability to undertake the Inquiry. Lord Dyson was appointed to carry out the Inquiry on 16th March 2017. A barrister within Lord Dyson's Chambers, 39 Essex, was appointed to assist Lord Dyson, to help the Inquiry to proceed at pace. He agreed a timescale for the report to be published by the end of 2017, a timescale which he met.

4. Inquiry terms of reference

- 4.1 At its meeting on 22nd February 2017, the Council agreed terms of reference as follows, but with the important proviso that if the person conducting the Inquiry was of the view that there were any other matters which ought to be explored in the context of the Inquiry, they should investigate those matters and include them in the report. This meant that Lord Dyson had complete discretion to pursue issues raised by critics of the Council, which he duly did

Terms of reference agreed by Council 22nd February 2017

1. To consider the pledge of £500,000 by the Council to SCFT in June 2014 and to establish:-
 - (a) Whether the report on which it was based was accurate in its reference to support from Sport England.
 - (b) If not accurate, whether the Council was misled by SCFT, Renewal and/or their employees and/or agents, and/or by Council officers.

- (c) If the report is not accurate, whether any Member and/or officer committed a breach of the Member and/or employee Code of Conduct in relation to this matter.
 - (d) If the report was accurate as at June 2014, whether the circumstances have changed since and if so, how, when and whether such change ought to have been reported to Mayor and Cabinet and why it was not.
 - (e) If the allegations are accurate what is the impact on the overall redevelopment scheme.
2. To consider statements made by Renewal/SCFT to the Council in relation to funding pledges from other sources and to establish whether those statements were misleading and if so, whether Renewal, SCFT, their employees and/or agents and/or Council officers have misled the Council. If the Council has been misled to comment on the impact on the overall development scheme.
 3. To consider the bid for Housing Action Zone funds from the GLA in relation to this proposed development and to establish whether statements in it in relation to pledges of funding are misleading and if so, whether Renewal, SCFT, their employees and/or agents and/or Council officers have misled the Council. If the Council has been misled, to comment on the impact on the overall development scheme.
 4. To establish whether the Council's Inquiry into the instruction of Lambert Smith Hampton by Renewal and/or its investors was appropriately conducted and reported to Mayor and Cabinet. If not, what further action ought the Council to have taken in this respect.
 5. In all the circumstances as to the adequacy of the due diligence of Council officers in advising the Mayor and Cabinet on the proposal for a CPO at New Bermondsey; and
 6. The propriety or otherwise of the behaviour of all Members and officers involved in all stages of the process of consideration of the proposed CPO.
 7. If in the course of the investigation the person conducting the Inquiry is of the view that there are any other matters which ought to be explored in the context of the Inquiry, to investigate those matters and report on them to the Council.

5. Inquiry opening statement

- 5.1 On 15th May 2017, having undertaken a preliminary investigation, Lord Dyson published his opening statement on the Inquiry website.

The opening statement as made by Lord Dyson on 15th May 2017

"Scope of Inquiry

The Inquiry will examine the circumstances surrounding the regeneration of land at New Bermondsey/Surrey Canal with a view to determining whether the Council, its Members and officers have acted properly and with due diligence when taking decisions in relation to the regeneration of this land. The Inquiry's investigation will include, but not necessarily be Council during this period:

(1) The resolution of the Mayor and Cabinet dated 7 March 2012 that, in principle, the Council use its compulsory purchase powers to acquire or appropriate land falling within the New Bermondsey site for the purpose of enabling development of the land by Renewal Group Limited ("Renewal").

(2) The grant of outline planning permission on 30 March 2012 (ref: DC/11/76357) for the comprehensive phased mixed-use development of the New Bermondsey/Surrey Canal site.

(3) The Council's decision to enter into the conditional land sale agreement with Renewal dated 20 December 2013 for the disposal of the Council's freehold interest in land leased to Millwall Football Club and Millwall Community Trust.

(4) The decision of the Cabinet (in the absence of the Mayor) dated 25 June 2014 to pledge £500,000 to Surrey Canal Sports Foundation Limited.

(5) The Council's support for Renewal's Housing Zone bid in relation to New Bermondsey/Surrey Canal land.

(6) The resolution of the Cabinet (in the absence of the Mayor) dated 7 September 2016 to make a compulsory purchase order to acquire or appropriate land falling within the New Bermondsey site.

(7) The adequacy of the Council's inquiry into issues surrounding the production of a marketing brochure in relation to land falling within the New Bermondsey site

(8) The adequacy of the Council's appraisal of the financial viability of Renewal's proposed scheme for regeneration of land at New Bermondsey/Surrey Canal and the ability of Renewal to deliver the scheme.

The focus of the Inquiry will be to establish: (i) whether Members and officers acted with propriety, due diligence and in compliance with the applicable codes of conduct in relation to these actions and decisions; and, (ii) whether there is any evidence that decision-makers within the Council were misled by misrepresentations, misinformation or the withholding of information in relation to any of these actions and decisions.

The Inquiry process

The process will be inquisitorial in nature. It will take place in three phases.

Phase 1: Preliminary investigations The Chairman of the Inquiry will carry out a preliminary investigation in order to determine the scope of the Inquiry. This phase will have been completed by the publication of this statement defining the scope of the Inquiry.

Phase 2: Evidence gathering The Chairman has identified the following individuals and organisations as key participants on the basis that all have

had a significant role in relation to the matters to which the Inquiry relates: (i) Lewisham Council; (ii) Renewal Group Limited; (iii) Millwall Football Club; (iv) Millwall Community Trust; and (v) Surrey Canal Sports Foundation Limited. The Chairman will call for representations and witness statements from the key participants. The Chairman may request that some or all of the witnesses attend oral hearings to answer further questions. In view of the sensitive and confidential nature of some of the matters raised by this Inquiry, all such hearings will be held in private and attended only by the Chairman, the assistant to the Inquiry, the witness who is giving evidence and his or her legal representative(s). It is envisaged that such hearings will take place in the period between 26 June and 28 July 2017. Individuals and organisations other than the key participants identified by the Chairman who wish to make representations may do so in accordance with the guidance and procedure set out below.

Phase 3: Report The outcome of this Inquiry will be reported to Lewisham's full Council and the report will be made public.

Procedure and guidance for making submissions to the Inquiry

The Chairman will write to the key participants to request representations and witness statements on the issues falling within the scope of the Inquiry. Further individuals and organisations who wish to make representations or submit material in relation to this Inquiry must do so before 16 June 2017. Material may be submitted to the Inquiry by email to contact@newbermondseysurreycanalindependentinquiry.com. These further individuals and organisations are urged to confine representations and material to that which is strictly relevant to the scope of the Inquiry as defined above. Representations should be accompanied by a brief statement explaining why the individual or organisation considers that they have an interest in the outcome of the Inquiry and should be entitled to make representations. The Inquiry will not consider representations from individuals and organisations who the Chairman considers do not have a real interest in the outcome of the Inquiry."

6. Conduct of the Inquiry

- 6.1 Lord Dyson carried out the Inquiry in line with the process and procedures which he laid out above. These processes and procedures were independently determined by Lord Dyson throughout the Inquiry.

7. Findings of the Inquiry

- 7.1 Lord Dyson's report was published on the Inquiry website on 28th November 2017. His findings were as follows (Paragraph 415 of the Inquiry Report):

"there was no impropriety, lack of due diligence or breach of a code of practice on the part of any Council officer or member in relation to (i) the decisions to make a Compulsory Purchase Order and the appraisal of the financial viability of Renewal's scheme and its ability to deliver it (issues 1, 6 and 8); (ii) the grant of Outline Planning Permission (issue 2); (iii) the decision to enter into a conditional contract of sale of the Millwall Land to Renewal (issue 3); (iv) the decision of the Mayor and Cabinet to pledge £500,000 to Surrey Canal Sports Foundation (issue 4); and (v) the Council's support for Renewal's Housing Zone bid (issue 5). I have also concluded that (a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to

make the pledge of £500,000 (issue 4); and (b) there was no inadequacy in the Council's inquiry into the circumstances surrounding the production of the Lambert Smith Hampton brochure (issue 7)."

7.2 Lord Dyson also made a number of wider observations which are set out in paragraphs 416 of the report onwards.

8. Next steps

8.1 The Council's future decision-making as it relates to the New Bermondsey/Surrey Canal site will be for the appropriate decision making forum depending on the nature of the decision. It is not for Council to determine at this time, but rather to receive and note Lord Dyson's report.

9. Legal Implications

9.1 The Council established and commissioned the external inquiry using its powers under Section 2 of the Localism Act 2011.

9.2 The establishment of the investigation by law is an executive function and so was technically a decision for the Mayor and Cabinet to make, therefore meetings of the Council and Mayor and Cabinet were called simultaneously to ensure that decisions were made in by the appropriate decision-making body with separate decisions taken and recorded.

9.3 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.4 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

9.5 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

9.6 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Council, bearing in mind the issues of relevance and proportionality. The Council must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The

extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.7 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

9.9 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. Financial Implications

10.1 The cost of the Inquiry has comprised the fees for Lord Dyson and his assistant. It has also been necessary to incur some additional QC fees and agency administrator costs. Final invoices have not yet been received, but it is expected that the final cost will be in the region of £250,000. The Council had allocated £500,000 from its contingency budget to meet the costs of the Inquiry so the costs were well contained within the budget.