

| MAYOR AND CABINET | | |
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| Report Title | Response to Call-in of Mayor and Cabinet Decision – New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order | |
| Key Decision | Yes | Item No. |
| Ward | All | |
| Contributors | Executive Director for Resources and Regeneration, Head of Planning, Head of Law | |
| Class | Part 1 | Date: 15 December 2016 |

1. Summary

This report responds to the call-in and associated comments agreed by the Overview and Scrutiny Business Panel on 20 September 2016 in accordance with Paragraph 14 of the Overview and Scrutiny Procedure Rules. It also reports on matters which led to the reconsideration of the decision on 28 September 2016 being deferred.

2. Purpose of the Report

2.1 To inform the Cabinet of the response of Officers to the call-in and to ask the Cabinet to confirm the decision made on “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” on 7 September 2016.

2.2 To report back to the Cabinet on the matters which led to a deferral of the reconsideration of the decision on 28 September 2016.

3. Recommendation

The Cabinet is requested to confirm the decision made on “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” on 7 September 2016.

4. Background

4.1 At a meeting of Mayor and Cabinet held on 7 September 2016, the Cabinet considered a report entitled “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” and their decision was to agree the recommendations in that report. In accordance with the Constitution, this decision was notified to all members of the Business Panel within 2 days of being made.

4.2 The decision was considered at a meeting of the Overview and Scrutiny Business Panel on 20 September 2016 and their decision was to refer the matter back to Mayor and Cabinet for reconsideration.

4.3 The decision was due to be reconsidered at the meeting of Mayor and Cabinet on 28 September 2016, but the matter was deferred for the reasons set out in paragraph 7.1 of this report.

5. Overview and Scrutiny Business Panel – Reasons for Call-in

5.1 On 20 September 2016 the Overview and Scrutiny Business Panel considered the Cabinet decision, and the original report.

5.2 Following the consideration of a letter from Millwall FC, and presentations from the Executive Director for Resources and Regeneration, Jordana Malik from the Renewal Group, Richard Pickering and Willow Winston, Business Owners, and Millwall FC Advisors David Prescott, Nigel Kennedy and Andrew Barrow, the Business Panel resolved to call in the Cabinet's decision asking them to consider the issues described below:

- I. Business Panel have specific concerns and were uncertain that the officer report and presentation demonstrated the viability of Renewal's delivery mechanism for the proposed development. It is accepted by all parties that Renewal has no track record.
- II. Business Panel was concerned that the Council's reputational risk has not been fully considered.
- III. Business Panel was not convinced that the proposed CPO was in the public interest. Panel members were concerned about the lack of clarity surrounding the provision of sports facilities and affordable and social housing.
- IV. On consideration of a letter from Millwall FC presenting fresh information and evidence, Business Panel believes there are sufficient grounds for the Cabinet to reconsider their decision.
- V. Business Panel had previously raised concerns about the lack of transparency within this project and had requested the Mayor to ask the Chief Executive to review the arrangements to ensure due diligence was in place. Business Panel is concerned that to date they had not received a response to their request from the Chief Executive, having made a request directly to him after the Cabinet had declined to intercede on their behalf.
- VI. In conclusion, the Business Panel agreed that there were insufficient grounds for a compelling case in the public interest to confirm a CPO.

6. Officer Response to Issues

6.1 **Issue I**

- 6.1.1 This issue is discussed at length in the Report to Mayor and Cabinet of 7 September 2016, attached to this Report as Appendix 1 – see paragraphs 7.47 – 7.74 of the Report.
- 6.1.2 Concern has been expressed about Renewal's lack of a track record. Whilst Renewal have delivered a large number of projects, none have been on this scale, although it is fair to say that not that many developers will have a track record in projects of this size. The lack of a track record on major schemes does of course bring into sharp focus the ability of Renewal to deliver and the question of viability and deliverability and the likelihood of project delivery
- 6.1.3 GL Hearn have reported on behalf of Renewal on project viability and deliverability. This has been assessed by PwC who have advised on Renewal's overall ability to deliver the scheme and in turn the proposed funding and delivery strategy. Their advice covers the funding needs of the scheme and the assets of the shareholders. In accordance with the Local Government Act 1972, the confidential documents referred to in those paragraphs and elsewhere in the Report were made available for inspection by Members prior to the Cabinet decision on 7 September 2016 and have remained available for inspection by Members since that date.

6.2 **Issue II**

- 6.2.1 It is perhaps natural to be cautious when dealing with projects which rely on investment from overseas companies. However, overseas investment in development projects is commonplace in the UK, especially in London. Thus in 2015, the UK ranked third, after the US and Germany, for investment in development by foreign investors from emerging markets. Further, non-UK resident companies that carry on a UK property development trade are liable for UK tax on profits of that trade, regardless of whether the trade is carried on through a permanent establishment in the UK.
- 6.2.2 Concern has been expressed about the lack of information about the trusts that sit behind the shareholders (Incorporated Holdings Limited and Independent Advisors Incorporated), and the ultimate beneficiaries of those trusts. The identity of those trusts has in fact been disclosed and details are contained in the PwC Report, but the names have not been made public because to do so would enable the individual beneficiaries of those trusts to be identified which in turn would result in a breach of Data Protection legislation.

6.2.3 Whilst the concern about reputational risk is understood, the identity of the ultimate beneficiaries of the trusts is of no real relevance to the question of whether the funding is likely to be available to enable the scheme to proceed, and thus to the question of deliverability. These matters are addressed above.

6.3 **Issue III**

6.3.1 The public benefits resulting from the Scheme generally and the wellbeing objectives to be achieved are set out in the Mayor and Cabinet Report and the draft Statement of Reasons: see in particular paragraphs 7.42 and 7.43 of the Report, and paragraphs 1.20, 3.6 to 3.20, 5.3 and Sections 9 and 11 of the draft Statement of Reasons (at Appendix 1 to the Report).

6.3.2 In relation to the sports component, the issue raised by Business Panel about the Sports Facilities appeared to relate to the change from the 'Sporting Village' concept with the sports facilities dispersed around the Site to the Sports Facilities being provided in one block – 'Energize'. As is explained in the Report to Mayor and Cabinet on 7 September and the draft Statement of Reasons, this change was approved by Strategic Planning Committee (SPC) in December 2013 and the rationale for the change can be seen in the Report to SPC. This followed discussions between Renewal and prospective occupiers of the Sports Facilities regarding their operational needs and governing bodies of various sports. From this work it was concluded that the majority of the new sports facilities should be consolidated in a single location rather than split across a number of buildings. As was noted in the Report to SPC, whilst the location of the proposed D2 sports uses has changed, the overall floor space for sports uses, format and range of potential occupiers on the Site remains the same.

6.3.3 In terms of public benefits, as is set out in the draft Statement of Reasons, the Energize Facility will comprise the largest indoor sports complex for community use to be built in London since Crystal Palace in 1964. It will house four floors of sports facilities as follows:

- A multi-purpose 3000 seat arena that can be used for regional and national competitions in sports such as Basketball, Netball, Table Tennis, Amateur Boxing and Handball.
- An indoor 3G Football pitch that will be made available to Millwall Community Scheme (negotiations with MCS regarding surrender of the lease on their existing premises and relocation to the new facility are currently on-going) and which will divide into 5-a-side pitches for hire to the local leisure market.

- A third arena will be sub divided into areas for table tennis, gymnastics and a multi-use sports area.
- A fourth arena will house a 6-lane swimming pool and learner pool, a 150-station gym and a home for the London Amateur Boxing Association and two local boxing clubs.
- A large climbing/bouldering area will be provided, together with changing and showering facilities, classrooms, offices, cafes and sports related retail space and 3020 square metres for Onside, a new 'Youth Zone'.

6.3.4 Alongside sports facilities, 'Energize' will provide a series of outreach programmes from clubs and tenants from the sports centre to encourage participation in sport and provide education on nutrition, fitness and a healthy lifestyle. The existing planning permissions specifically prevent the use of this space for other purposes within Class D2 i.e. cinema, concert hall, bingo hall or dance hall. Accordingly the sport-related focus of the development is safeguarded and any change to this would require a further application to the Council.

6.3.5 The Section 106 Agreement also includes provision relating to delivery of the Sports Facilities. The relevant Phase cannot commence until detailed confirmation of the capital and revenue funding projections for the construction, implementation and running of the Sports Facilities has been provided to the Council. An occupancy restriction is also imposed preventing occupation of the Phase unless the Sports Facilities are being managed by the Surrey Canal Sports Foundation. Further obligations require a 'Sports Facilities Strategy' to be submitted and approved providing for the provision and operation of the Sport Facilities and covering such matters as a business plan for the management of the facilities, proposed opening hours and uses, charging structure/entrance fees/membership subscription and operational costs, as well as details of the measures ensuring that the Sports Facilities are available to local people at discounted rates.

6.3.6 The position regarding affordable housing was explained at the Mayor and Cabinet meeting on 7 September. The Section 106 Agreement requires a minimum of 12% affordable housing (by habitable room) to be provided, of which at least 25% must be social rent or affordable rent (in the case of the latter the rent must be no greater than the lower of (and inclusive of service charge) 60% local market rent, the local housing allowance or the maximum housing cost element of the Universal Credit). The level of affordable housing is subject to financial review whereby if actual sales values for private units exceed target sales values as prescribed, 50% of any increase is to be applied to additional affordable housing within the scheme (unless

the sum is less than the cost of providing an additional unit, in which case such sum is to be paid the Council).

- 6.3.7 As is made clear in the Mayor and Cabinet Report and draft Statement of Reasons, the revised arrangements in relation to the Housing Zone funding which mean the new station works will be grant funded by the GLA, mean that the benefit received by Renewal will be applied to the delivery of additional affordable housing. The funding could directly deliver between approximately 40 (10 social rent or affordable rent and 30 shared ownership based on the current 75:25 tenure split) and 75 (based on 100% shared ownership) additional affordable units in the early phases depending on the tenure of those homes. The Council would also be seeking to ensure that any income from those affordable units would go back into the scheme to deliver additional affordable housing. Discussions with the GLA regarding tenure are continuing, but it is understood that they wish to ensure that best endeavours are made to maximise the number of affordable units, which will then influence the final tenure mix.

6.4 *Issue IV*

- 6.4.1 On 19 September, John Berylson, Chairman of Millwall FC wrote to Councillor Hall commenting on the Mayor and Cabinet meeting on 7 September and raising a number of points which he asked Members to take into account at the Business Panel meeting on 20 September. A copy of that letter is appended to this Report at Appendix 2.

- 6.4.2 Taking each of the points raised in that letter in turn:

(a) Point 1

MFC complain that the information provided to the Mayor and Cabinet meeting on 7 September omitted two key elements: (i) no mention was made of a possible tender exercise in relation to the Council's freehold interests which was discussed in 2012 but did not proceed and the Council had not explained why; and (ii) that the Council effectively denied MFC the opportunity to bid for the Council's freehold interest before proceeding to exchange contracts with Renewal. Correspondence between MFC and the Council from late 2012 through to late 2013 is relevant to both these issues and point 3 below, and a copy of that correspondence is attached to this Report at Appendix 3.

Regarding point (i), a tender exercise was discussed with MFC and MCS in 2012. The letters dated 3 December 2012, 29 January 2013 and 18 March 2013 relate to why it did not proceed. As can be seen, MCS indicated it did not wish to participate in any such tender exercise, Demos Kouvaris of MFC indicated misgivings about the process and requested that it be dropped, or

at the very least, delayed, and the Council came to the view that the tender exercise should not proceed in any event. This was because the Council had reservations about whether such an exercise would be conducive to ensuring comprehensive re-development of the wider site within a reasonable and certain timeframe. It is not therefore correct to say that no explanation was given for the tender process not proceeding.

In relation to point (ii), MFC were professionally advised throughout the relevant period, including by well-known property consultants, CBRE. CBRE wrote to the Council on 6 November 2013 (not 7 November 2013 as referred to in MFC's letter) asking for information about the material terms, including the price and any other material issues of the proposed sale to Renewal. This information included commercially sensitive material. The Director of Regeneration and Asset Management responded in his letter of 13 November, noting MFC's interest in bidding for the land and advising that whether it chose to do so was a matter for MFC.

The fact remains that MFC did not need to have details of the offer made by Renewal in order to formulate a bid for the Council's freehold interest in the land encompassed by the MCS and MFC leases, or the part they require to carry out their proposals. They had ample opportunity to submit a bid, but chose not to do so.

Further, in terms of best consideration, the Council was not legally obliged to invite MFC to bid for the freehold interest or otherwise to conduct a tender process in order to achieve best consideration. MFC threatened to bring a legal challenge to the Council's decision to enter into the land sale agreement on best consideration grounds but did not do so. It is reasonable to infer from this that MFC did not consider that such proceedings would be sustainable.

(b) Point 2

Freedom of Information request. There are ongoing FOI/EIR proceedings which were due to be heard at the end of November, but have now been adjourned to 14 and 15 February 2017. Those proceedings were commenced by a freelance journalist, but MFC have since confirmed that the request for information was made on their behalf. The proceedings include an appeal on behalf of MFC against the Information Commissioner's decision not to require disclosure of the consideration under the land sale agreement. In the proceedings, the Council has made clear its grounds of opposition to disclosure and it is not necessary or appropriate to make any further comment at this stage.

(c) Point 3

MFC question the role of Strutt & Parker and the scope of their instruction. Strutt & Parker were appointed in February 2016 and the Mayor and Cabinet Report of 7 September explains their role and the scope of their instruction, namely, (i) to act as intermediary with the aim of bringing the parties together to see if an agreed position could be reached which would ensure comprehensive regeneration of the Site (paragraph 7.16 of the Mayor and Cabinet Report) and (ii) 'to advise on the MFC Proposals in terms of their viability, deliverability and overall fit within the Council's Core Strategy and regeneration objectives for the area' (paragraph 7.23).

Pursuant to (ii), Strutt & Parker appraised the McKay Masterplan proposals (**MFC Proposals**) which had been provided to the Council by MFC in August 2013. So far as Officers are aware, the provision of these was not made subject to any constraint on the subsequent use or disclosure of the information by the Council. They were not provided by MFC as part of the exercise referred to at (i) above, and were therefore not covered by any agreement as to non-disclosure which applied to any information provided by MFC in the context of that exercise. Further and in any event, Strutt & Parker have advised that CBRE, MFC's agents, were fully aware that they (Strutt & Parker) were reviewing the MFC Proposals.

Strutt & Parker's e-mail of 18 July to CBRE referred to in MFC's letter is in the context of a separate point, namely the prospective exchange of information between MFC and Renewal following a meeting between them and Strutt & Parker in June. In that e-mail, Strutt & Parker advised that their role in relation to any information received during that exercise would be as a conduit, and they (Strutt & Parker) would not be reviewing it, engaging in discussions or disclosing the information to the Council. It was in response to this correspondence that CBRE first referred to the revised proposals. Given that Strutt & Parker had expressly said that any information received would not be passed on to the Council, Strutt & Parker sought confirmation from CBRE that this did not apply to the revised proposals and that the information on the revised proposals could be used to update Strutt & Parker's appraisal of the MFC Proposals. Strutt & Parker advise (as at the date of this Report) that no response has yet been received from CBRE.

With regard to the plans which MFC suggest are the subject of a potential planning application, at no stage have MFC sought to commence pre-application discussions on those plans. A representative from CBRE did contact the Head of Planning on 2 September 2016, which was before the Mayor and Cabinet meeting on 7 September 2016, and in a further conversation on 5 September 2016 suggested that MFC intended to initiate pre-application discussions. CBRE then advised on 4 October 2016 that further work was being undertaken and they would be in touch to discuss 'at an appropriate time'. Nothing further has been heard since then.

(d) Point 4

MFC state that *“Renewal has stated publicly it will not work with Millwall”*. The position is that, whilst Renewal has stated that it does not envisage any JV or collaboration with MFC over the development, it has stated a wish to work towards a financial settlement with MFC and has invited MFC to quantify what it requires. In this regard, MFC state *“We have repeatedly stated in public what we require”*. It is acknowledged that MFC have said they wish to redevelop the land around the Stadium themselves or in partnership with a developer, and they have also said they wish to secure an income producing asset; but Officers are not aware of any statement from MFC quantifying the consideration/income level MFC considers it requires. That is the point the Chief Executive was making at the Mayor and Cabinet meeting on 7 September.

(e) Point 5

MFC complain they have not seen Renewal’s viability information regarding the land around the Stadium/MCS land. This information however remains confidential and commercially sensitive. Further, there are a number of significant issues regarding deliverability of the wider scheme if the MFC and MCS land is omitted from the control of the developer of the wider scheme – these are explained in paragraph 7.25 of the Mayor and Cabinet Report and the GL Hearn paper ‘Review of Implications of Omission of MFC and MCS Land for Scheme Viability’ included in the Background Papers to that Report.

(f) Point 6

“The funds [for the MFC Proposals] are available and that point has been made in public several times.” A mere statement that funding is available is not evidence of actual availability for the purposes of delivering MFC’s Proposals, even assuming those proposals were viable and that any other deliverability constraints could be overcome.

“At no stage has the Council requested further information.” As is summarised at paragraph 7.15 of the Mayor and Cabinet Report of 7 September and can be seen from the attached bundle of correspondence, between December 2012 to November 2013 MFC were advised on several occasions that if the Council was to give any consideration to MFC’s plans, it would need, amongst other things, details of specific proposals, including not only drawings and timescales, a viable business plan, funding arrangements, and details of mechanics regarding delivery in conjunction with the wider site. That information has not been forthcoming.

Reference is made to a PWC Report of September 2013. As referred to above, there are ongoing FOI/EIR proceedings which are now due to be heard in February 2017. In the proceedings, the Council has made clear its grounds of opposition to disclosure and it is not necessary or appropriate to make any further comment at this stage.

(g) Point 7

MFC asserts that taxpayers' funds are being spent by the Council on legal advice in connection with the FOI/EIR proceedings. Such costs are in fact being reimbursed by Renewal. As stated in the response to Point 2 above, the proceedings include an appeal on behalf of MFC against the Information Commissioner's decision not to require disclosure of the consideration under the land sale agreement. This means that the Council is required to take part in these proceedings to deal with that aspect in any event.

(h) Point 8

The Chair of any meeting is responsible for the conduct of the meeting and for deciding who is permitted to speak at the meeting and for how long. Although requests to speak at a meeting can be made and considered by the Chair in advance of that meeting, there is nothing to prevent the Chair permitting or requesting any other person present to speak at the meeting where the Chair considers that this would be appropriate. On this basis the Director of Renewal who was present at the meeting was invited to address the meeting and to answer questions raised by Cabinet members.

6.5 **Issue V**

- 6.5.1 The Chief Executive was made aware of the Business Panel's concerns several months ago. It is the Chief Executive's role to ensure that the best and most cost effective professional advice is available to the Council's decision makers. This includes, where necessary, procuring expert external independent advice. In the case of this scheme, the Council has commissioned appropriate external professional and legal advice. Following the Business Panel's recommendations, the Chief Executive reviewed the approach with the key officers concerned and subsequently met with the Chair of the Business Panel. In this instance, the depth of due diligence undertaken by the external advisors is considered to be appropriate to protect the Council's position. Thus in a meeting with the Chair of the Business Panel and the Executive Director for Resources & Regeneration held several weeks ago, the Chief Executive gave assurances that the known business and financial arrangements of Renewal would be made available to all Members, and this has taken place.

6.6 **Issue VI**

6.6.1 This issue is dealt with in the conclusion at Section 13 of this report.

7. **Matters arising following deferral of re-consideration of the decision on 28 September 2016**

7.1 Members will recall that the decision was due to be reconsidered by Mayor and Cabinet at its meeting on 28 September 2016. However, Mayor and Cabinet were informed that shortly before the meeting Council Officers had received a copy of a document that was the subject of external investigation and that it was therefore not possible to complete the reconsideration of the decision made on 7 September 2016. Thus, consideration of the call-in was adjourned until further notice.

7.2 The document in question is a brochure prepared by Lambert Smith Hampton (**LSH**) on behalf of International Holdings Limited (**IHL**), one of the shareholders in Renewal (**LSH Brochure**). The LSH Brochure came to light as a result of an article in the Guardian newspaper on 27 September 2016. A copy of the LSH Brochure has been provided to the Council and is appended to this Report at Appendix 4.

7.3 Following the Mayor and Cabinet meeting on 28 September 2016, the Head of Law and Executive Director of Resources and Regeneration have investigated the circumstances around the LSH Brochure. So too have LSH. As a result, the following has been established:

- IHL engaged LSH in April/May 2015 to advise on the New Bermondsey scheme as an investment opportunity.
- LSH's original proposed terms of engagement to IHL covered a review of a range of investment scenarios with potential investors, including outright acquisition, acquisition of IHL's shareholding, JV structures, partial investment, and later stage option structures. LSH noted that at this stage their objective was to source "interest in principle" commitment from potential investors.
- The scope of LSH's mandate was amended in June 2015 so as to focus exclusively on introducing and brokering financial investors into a fundraising. LSH also noted at the time that IHL might decide to sell part or all of their stake in that process.
- It is evident from subsequent correspondence that IHL's objective was to attract investment into the project, not to achieve an outright sale of its interest in it, and that wished to remain involved in the project.
- In February 2016, IHL confirmed to LSH that it had decided to put a stop to the search for a funding partner until after the CPO process, and decided not to extend LSH's instruction.
- LSH have confirmed that during the course of the instruction, they produced the LSH Brochure, but that they had not been instructed by IHL or the Renewal Group or any individual in the Group to prepare it, nor was the LSH Brochure seen or approved by IHL or Renewal.

- LSH further advise that the LSH Brochure was not publicised or made available to others.
- IHL/Renewal have also confirmed that they had not seen the LSH brochure until a copy was provided by the Guardian newspaper.
- As part of the investigation into the LSH Brochure further documentation prepared by LSH (of unknown date), and described by LSH as 'marketing material', has also come to light. This sets out factual information about the project, and makes no reference at all to IHL's intentions in terms of project funding or whether it might wish to dispose of the whole or part of its interest in it.
- IHL/Renewal have confirmed that, as with the LSH Brochure, LSH were given no instructions to prepare this documentation, nor did IHL or Renewal see or approve it.
- Renewal have further confirmed that they were unaware until the LSH Brochure was produced in late September of the IHL instruction to LSH.

7.4 In the course of the investigation, IHL and Renewal have given their assurance they remain 100% committed to the project and its delivery in full and that there is no intention to sell.

7.5 PwC have indicated in their report that it is normal for developers at this stage of a development project not to have in place concluded arrangements for the funding of the project.

7.6 PwC have reviewed the documentation relating to the IHL instruction to LSH and stated that it is not unusual for investors or developers to dispose of their interests at any point in the development cycle or to seek indicative bids as a market testing exercise. They confirm that, having reviewed this material, the findings in their report remain unchanged.

8. Financial Implications:

8.1 There are no direct financial implications arising from this response.

9. Legal Implications:

9.1 Members' attention is drawn to the legal implications in the Report attached at Appendix 1 and should also note that the Constitutional position is referred to in the body of this report.

10. Crime and Disorder Implications:

10.1 There are no direct crime and disorder implications arising from this response.

11. Equalities Implications:

11.1 There are no direct equalities implications arising from this response.

12. Environmental Implications:

12.1 There are no environmental implications arising from this response.

13. Conclusion

13.1 In all the circumstances, having regard to the matters raised by Overview and Scrutiny Business Panel and the other matters addressed in this report, Officers remain of the view that there is a compelling case in the public interest for the compulsory acquisition of the remaining land interests to enable the scheme to proceed. Officers therefore recommend that the Cabinet agrees the recommendation in this report.

List of Appendices

Appendix 1: Mayor & Cabinet Report dated 7 September 2016 - "New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order"

Appendix 2: Chairman of Millwall FC Letter to Chair of Overview and Scrutiny Business Panel

Appendix 3: Correspondence between MFC and the Council from late 2012 through to late 2013

Appendix 4: LSH Brochure

BACKGROUND PAPERS

If you have any queries on this report, please contact Kplom Lotsu, SGM Capital Programme Delivery Ext: 49283