

MAYOR & CABINET		
Report Title	New Bermondsey – Establishment of an independent inquiry	
Key Decision	Yes	Item No.
Ward	New Cross	
Contributors	Head of Law	
Class	Part 1	Date: February 22 2017

Reasons for Lateness and Urgency

This report was not available for the original dispatch because it has been drafted in part in relation to continuing allegations appearing in the press. The report is urgent and cannot wait until the next meeting of Mayor & Cabinet and Council because there is an urgent need for the Council to consider whether to establish an Inquiry to inspire public confidence as soon as possible.

Where a report is received less than 5 clear days before the date of the meeting at which the matter is being considered, then under the Local Government Act 1972 Section 100(b)(4) the Chair of the Committee can take the matter as a matter of urgency if he is satisfied that there are special circumstances requiring it to be treated as a matter of urgency. These special circumstances have to be specified in the minutes of the meeting.

Subject to urgency provisions, the Council's constitution requires that a key decision may only be taken if it has been included in the key decision plan. This matter has not been included in that plan. However, the urgency provisions state that if it is impracticable for a matter which is a key decision to be included in the key decision plan, the decision may be taken if:-

- (a) The proper officer has informed the Chair of the Business Panel in writing, by notice, of the matter in respect of which the decision is to be made; and
- (b) The proper officer has published that notice at the Council's offices and on the website; and
- (c) At least 5 clear days have elapsed since the proper officer complied with (a) and (b) above.

These urgency provisions have been complied with.

1. Purpose

- 1.1 This report seeks to establish the arrangements for an independent Inquiry to examine matters relating to a proposed Compulsory Purchase Order (CPO) of land at New Bermondsey/Surrey Canal. The Council wishes to ensure that its decisions and the actions of its members and officers are demonstrably of the highest standard. Concerns related to a proposed CPO of land at New

Bermondsey/Surrey Canal have been raised. This report recommends that an independent Inquiry into these matters be set up and proposes the arrangements for it. An inquiry conducted externally would inspire confidence in the public and all parties concerned that the conduct and outcome of the review are free from Council influence and are truly independent.

2. Recommendations

That following consideration by the Council earlier in the evening of February 22 of this same report, the Cabinet considers and ratifies the following recommendations:

- 2.1 That an independent Inquiry be established to investigate matters related to the Council's proposed compulsory purchase order of land at New Bermondsey/Surrey Canal.
- 2.2 To agree the terms of reference for the Inquiry as set out in paragraph 5.
- 2.3 To agree to approach the Chair of the Bar Council to appoint a QC who meets the criteria set out in paragraph 6 to conduct the Inquiry and, if he is unable to make such an appointment, to nominate an alternative intermediary with an equal level of probity and independence.
- 2.4 To agree expenditure of up to £500,000 for the conduct of this Inquiry.
- 2.5 To agree that the Executive Director for Children and Young People be the Council's officer lead in relation to the establishment and conduct of the Inquiry.
- 2.6 To establish a cross party New Bermondsey/Surrey Canal Inquiry Committee comprising four majority group members and the minority party member to receive the report of the Inquiry, to receive periodic reports on progress, expenditure incurred and to make recommendations to full Council and Mayor and Cabinet for any action arising from the Inquiry.
- 2.7 To agree that 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, they should investigate those matters and report on them to the Council.

3. Background

- 3.1 Following a decision in principle in 2012 to use CPO powers to assemble the land at New Bermondsey/Surrey Canal to facilitate its comprehensive development, the Council has been working with a developer, Renewal, in an attempt to achieve the redevelopment of the area. If the development were to proceed it would provide a new sports centre – Energize – which it is intended would be managed by a charitable organisation, The Surrey Canal Foundation Trust (SCFT). SCFT is already operational and the Mayor was,

until recently, a Director. Because of this he has recused himself from Council decisions affecting the proposed CPO of land at New Bermondsey/Surrey Canal.

- 3.2 In June 2014, the Council agreed to pledge the sum of £500,000 to SCFT subject to a funding agreement being put in place. The terms of that agreement were still to be negotiated and were subject to the formal approval of Mayor & Cabinet. The report on which the resolution to make the pledge was made included a reference to support from Sport England, also to pledge an amount of £2m.
- 3.3 On 19 and 20 January 2017 and on various other dates, articles appeared in the Guardian newspaper that suggest that Sport England do not support SCFT and that they would prefer SCFT not to make statements to that effect. As a result, both the Mayor and Chair of Overview and Scrutiny requested that there should be an independent Inquiry into these matters. Their requests are appended.
- 3.4 Since then, in addition, further statements have been made in the Guardian that assertions by Renewal/ SCFT that they have a funding pledge from other organisations are inaccurate, and that an application to the GLA for Housing Action Zone funds was also inaccurate.
- 3.5 The Council now needs to establish the accuracy or otherwise of the claims in the Guardian articles, and whether in relation to those claims SCFT, Renewal and/or Council officers, have misled the Council and if so, in what respect and whether there has been any breach of the Member and/or officer Code of Conduct.
- 3.6 In addition to the specific claims in the Guardian newspaper in relation to SCFT, there has been a further allegation that Renewal and/or their investors have not given the complete story to the Council in relation to their engagement of Lambert Smith Hampton in 2015.
- 3.7 The Council is recommended to commission an Inquiry and needs to decide:
 - The scope of the Inquiry
 - The type of Inquiry to be conducted
 - How to appoint the person to conduct the Inquiry
 - To whom the Inquiry report should be presented

4. Rationale for an Inquiry

- 4.1 There has been much public interest in proposals to issue a CPO in respect of land at New Bermondsey/Surrey Canal to facilitate a complete development of the area by a developer. Many have voiced opposition to the making of a CPO. Both within and beyond the Council there have been concerns expressed about a number of factors.

- 4.2 The allegations about SCFT are serious and the Council needs to establish whether they are true and if so, consider the implications for any redevelopment at New Bermondsey/Surrey Canal. It is therefore imperative that an independent Inquiry into the allegations in relation to SCFT should take place and that it should be conducted by someone with sufficient knowledge and expertise to conduct it robustly. Only in this way can the Council inspire public confidence in the integrity of the process and its outcome.

5. The scope of the Inquiry

- 5.1 In addition to the allegations relating to SCFT, concerns have been voiced about the actions of the developer, their investors and their agents, Lambert Smith Hampton. Concern has also been expressed that officers may not have carried out the necessary due diligence in relation to the proposed scheme. Additional concerns have been voiced as to whether the matter has been handled with propriety by all members and officers. Concerns have also been voiced about whether the bid for Housing Action Zone funds is accurate. Legal advice has been received that any Inquiry should primarily focus on the SCFT issues but not be so restrictive to impede the investigator in his/her enquiries. The Council is also legally advised that any Inquiry should not look at matters where a long time has elapsed since their occurrence. There needs to be a balance struck between the desire for a thorough Inquiry and the possibility that it may become unwieldy and prohibitively expensive. It is proposed that the appropriate starting point for the Inquiry should be the grant of planning permission (2011) and the resolution in principle to use the Council's CPO powers (2012).
- 5.2 To balance these imperatives, it is proposed that the scope of the Inquiry be as follows:-
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.
- 5.3 In paragraph 12, the documents specifically cited in these proposed terms of reference and links to them on the Council's website are listed. If an Inquiry is approved, the Council would make available any and all documents in its possession as requested by the person conducting it. There is copious documentation.

6. The type of Inquiry

- 6.1 It is proposed that investigation should be by way of independent Inquiry. The person leading it must therefore be sufficiently skilled to conduct a thorough Inquiry. Given the nature of the Inquiry and the circumstances giving rise to it, it will need to be led by an individual who is 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 will expect. Subject to the skills and background of the person appointed, they may need access to independent legal and financial advice as required.

7. How to appoint the person to lead an independent Inquiry

- 7.1 In order to fulfil the criteria set out in the previous paragraph, ensuring a suitably qualified, independent person leads the Inquiry, it is proposed to appoint a QC using the most clearly independent method of identification, namely asking the Chair of the Bar Council to choose a person who is suitable and available to conduct this Inquiry. This is a commonly used practice which is reflected in many commercial agreements as a method to resolve disputes. The appointment would be a matter solely for the Chair of the Bar Council.
- 7.2 If for any reason the Chair of the Bar Council is unable to appoint a suitable QC, he will be asked to nominate an alternative intermediary with an equal level of probity and independence. This intermediary would then be asked to appoint a suitably qualified person (for example a retired High Court judge).

8. To whom should the report be presented?

- 8.1 Clearly the report will be made to the Council. The Council is recommended to establish a Committee to receive the report initially and to oversee any report to Council for action arising from it. In the interests of transparency, it is recommended that the Committee includes the minority group councillor. It is therefore recommended that a New Bermondsey/Surrey Canal Independent Inquiry Committee is established comprising four majority group and one minority group member. The terms of reference of the Committee will be set at the Council's Annual General Meeting but will include responsibility for monitoring the progress of the Inquiry, receiving regular updates on its progress, monitoring the level of expenditure of the Inquiry and reporting to Council as well as Mayor and Cabinet on the final report, including any recommendations for action.

9. Timescales

- 9.1 If a decision were made in accordance with the recommendations in this report, an approach to the Bar Council would be made as soon as practicable. However, it is unlikely that a person to lead the Inquiry would be identified and ready to start work on the Inquiry before the beginning of April at the earliest. The length of time needed for an Inquiry such as that proposed is not likely to be less than 6 months and may be more. This is because there are numerous documents which may be pertinent to this Inquiry and the person conducting it may wish to hear from many parties. The Council needs to take care not to impose time limits which cannot be met if the person leading the Inquiry is to conduct a thorough investigation which inspires confidence in its robustness.
- 9.2 On the other hand the Council will need to monitor progress of the Inquiry and to be aware of the costs being incurred as it progresses. For this reason it is proposed that the person conducting the Inquiry be asked to report back to the New Bermondsey/Surrey Canal Independent Inquiry Committee periodically on progress.

10. Legal Implications

- 10.1 The Council has power to establish and commission an external investigation by virtue of Section 2 Localism Act 2011.
- 10.2 The establishment of the investigation by law is an executive function and so technically a decision for the Mayor and Cabinet to make. In the circumstances, it is prudent that the Mayor & Cabinet and full Council be involved in consideration of whether to establish an external review and if so, the arrangements for it. To facilitate this, meetings of the Council and Mayor and Cabinet are to be called contemporaneously to ensure that decisions are made in the appropriate legal forum with separate decisions to be taken and recorded.
- 10.3 Any Committee established to receive the Inquiry report would need to satisfy the political balance requirements set out in the Local Government and Housing Act 1989
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 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 Mayor, bearing in mind the issues of relevance and proportionality. The Mayor 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.
- 10.8 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>

10.9 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](#)

10.10 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>

11. Financial Implications

11.1 The cost of any approved Inquiry will very much depend on the scope and the approach taken and the number of days spent on it. The exact costs would need to be determined once the approach has been finalised. The Executive Director for Resources and Regeneration advises that there is a reserve of £500,000 set aside for legal matters which could be used to finance any Inquiry. Officers would monitor the costs as any review proceeds and in the event that the cost appears likely to exceed £500,000 this will need to be referred to members for further approval.

12. Documentation

12.1 The following documents are attached as an Appendix.

- 20.01.17 – email from the Mayor to the Chief Executive requesting external review of Surrey Canal Sports Foundation

- 20.01.17 – email from Chair of Overview & Scrutiny Committee to Barry Quirk with letter requesting independent investigation of Surrey Canal Sports Foundation
- 24.01.17 email from the Chief Executive to Mayor & Councillors re Mayor & Cllr Hall's requests for independent investigation of Surrey Canal Sports Foundation