

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2867

Community-led housing stock transfer delegation of Mayoral powers relating to applications made under the right to transfer from a local authority landlord

Executive summary:

The GLA is responsible for assessing tenant groups' applications to transfer local authority-owned homes in London to a new landlord; and deciding whether an application should be approved. Where government funding support for debt write-off is required, the GLA makes an assessment alongside the Department for Levelling Up, Housing and Communities (DLUHC) and HM Treasury for recommendation to government ministers as to whether the application should be approved.

The criteria for assessment of the application are outlined in the Housing Transfer Manual, published by the then Department for Communities and Local Government (DCLG) in July 2014. Where, following assessment, the GLA does not approve a business case, this will not stop the transfer process for an application; but the statutory guidance notes that "it is unlikely the Secretary of State would consent to transfer if the GLA's approval has not been provided and, in practice, it is likely that it would lead to either the tenant group stopping the process or the local authority requesting a determination from the Secretary of State." The Secretary of State retains the discretion to determine applications throughout the transfer process.

Under MD2542 the Mayor established a delegation to specified GLA staff to decide whether an application should be approved (or, where support for debt write-off is required, make an assessment alongside the DLUHC and HM Treasury for recommendation to government ministers); publish the findings of assessments; and assess and approve formal consultation information in accordance with the above Regulations, statutory guidance in respect of the Regulations, and the Housing Transfer Manual. This Mayoral Decision supersedes MD2542. The Mayor's approval is sought for the delegation set out in paragraphs 1.11 to 1.13 of this report.

It is important to note that this Mayoral approval for delegation is only sought in relation to community-led housing stock transfers. This is a separate procedure to the local authority-led housing stock transfers that are covered by MD2866.

Decision:

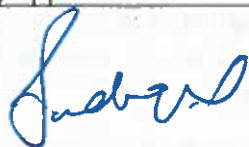
That the Mayor approves the delegation to the Executive Director of Housing and Land, in consultation with the Deputy Mayor for Housing and Residential Development (which supersedes MD2542) and (unless the decision is novel, contentious or repercussive, in which case it will be decided by the Mayor) to decide whether to approve each transfer application received, as specified in paragraph 1.12 of this report, (or, in respect of transfer applications requiring support for debt write-off, making an assessment alongside the DLUHC and HM Treasury for recommendation to government ministers as to whether the application should be approved); the delegation to the relevant GLA Housing and Land Head of Area, as specified in paragraph 1.13 of this report, to publish the findings of assessments; and assess and approve formal consultation information in accordance with the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, statutory guidance and the Housing Transfer Manual, as set out in paragraphs 1.11 to 1.13 of this report.

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:

18/11/21

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

Decision required – supporting report

1. Introduction and background

- 1.1. The GLA is responsible for assessing applications to transfer local authority-owned homes in London to a new landlord, made by tenant groups under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013; and deciding whether an application should be approved (or, where government funding support for debt write-off is required, making an assessment alongside the DLUHC and HM Treasury for recommendation to government ministers as to whether the application should be approved).
- 1.2. Applicants seeking to transfer local authority-owned homes in London must submit a transfer application to the GLA for approval. The Housing Transfer Manual, published by the DCLG in July 2014, advises applicants on the necessary requirements of their application for transfer. GLA officers can provide advice and guidance on making an application, and tenant groups may submit an application in draft form prior to formal submission. This engagement helps to ensure that applications are sufficiently developed and valid to go through assessment.
- 1.3. The assessment of the application by the GLA is undertaken in accordance with the relevant Regulations, statutory guidance in respect of the Regulations, and the guidance contained within the Housing Transfer Manual. The GLA's formal assessment includes an assessment of value for money, based on reliable evidence of how the proposal delivers Mayoral priorities and central government priorities. The Manual states that assessment should consider how the proposed transfer will deliver relevant housing and social policy objectives including:
 - estate regeneration
 - greater tenant and resident empowerment
 - the contribution to growth through additional homes
 - investment in the existing stock
 - local economic activity.
- 1.4. The assessment of value for money is captured in the evaluation of the full business case for the transfer, using the five dimensions detailed below:
 - strategic: present a strong case for transfer, including drivers for change
 - economic: deliver value for money, a positive benefit to cost position
 - commercial: are viable, covering indicative fundability of the transfer, asset management, delivery risks and landlord selection
 - financial: are affordable to government, covering specific public sector costs and benefits of the proposed transfer
 - management: can be delivered within an agreed timetable.
- 1.5. The GLA's assessment also considers whether the proposed transfer has the support of the tenants involved and provides them with the protection of a regulated landlord (specifically a 'private registered provider' of social housing). The GLA may contact the local authority directly as part of the assessment, for clarification or confirmation of facts.
- 1.6. Where, following assessment, the GLA does not approve a business case, this will not stop the transfer process for an application; but the statutory guidance notes that "it is unlikely the Secretary

of State would consent to transfer if the GLA's approval has not been provided and, in practice, it is likely that it would lead to either the tenant group stopping the process or the local authority requesting a determination from the Secretary of State." The Secretary of State retains the discretion to determine applications throughout the right-to-transfer process.

- 1.7. The Housing Transfer Manual states that where government funding support for debt write-off is sought, the government, as well as the GLA, will need to approve the business case. The Housing Transfer Manual clarifies that in such circumstances the GLA's assessment process will be undertaken alongside the DLUHC and HM Treasury; and, following the assessment process, a recommendation will be made to ministers who will approve the application (potentially subject to certain conditions) or reject the application, ending the transfer process.
- 1.8. If a tenant group's business case for transfer is approved, the relevant local authority is required to formally consult with tenants in the affected houses. Tenant information must be provided in a form compliant with the relevant Regulations governing transfer. The GLA is required to ensure that local authorities follow statutory guidance and good practice during the formal consultation, including assessing and approving tenant information provided in the formal consultation (the Offer Document).
- 1.9. In reviewing both the application and the tenant information, it is vital that consistency between the offer made to tenants and the evidenced business case for transfer is assured.
- 1.10. If, following consultation, a ballot of secure and introductory tenants indicates that a majority wish the proposal to proceed, and if the tenant group wishes to proceed, the relevant local authority is required to seek the Secretary of State's consent to the transfer under sections 32-34 and/or 43 of the Housing Act 1985. The GLA will produce a report and recommendation that will be submitted to the DLUHC in support of the local authority's request. The GLA's scrutiny throughout the process provides assurance to the DLUHC and the Secretary of State that the application has complied with the Regulations at all stages of the process. However, the Secretary of State retains the discretion throughout the entire process to determine applications themselves.

Community-led housing stock transfer delegation

- 1.11. Following consideration of any application by the GLA there will be four possible decisions as listed below at (a) to (d):
 - a) not to approve
 - b) to approve
 - c) (in respect of transfer applications requiring government funding support for debt write-off) the GLA's assessment, undertaken alongside the DLUHC and HM Treasury, is that the application does not meet all the required criteria of; or
 - d) (in respect of transfer applications requiring government funding support for debt write-off) the GLA's assessment, undertaken alongside the DLUHC and HM Treasury, that the application does meet all the required criteria of an application to transfer local authority-owned homes to a new landlord made under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013, assessed in accordance with any relevant statutory guidance and the Housing Transfer Manual published by the DCLG in July 2014 (as updated or replaced from time to time).
- 1.12. If any decision under (a) to (d) is deemed to be novel, contentious or repercussive (see further below) it will be made by the Mayor. Otherwise it will be made by the Executive Director of Housing and Land, in consultation with the Deputy Mayor for Housing and Residential Development.
- 1.13. Where a decision is made to approve an application pursuant to paragraphs 1.11 and 1.12, above (and subject to the government's approval of the transfer application where there is a requirement for debt write-off), authority is delegated to the relevant GLA Housing and Land Head of Area, to

approve the subsequent tenant information provided in the formal consultation required under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 and statutory guidance.

- 1.14. The following examples illustrate the type of proposed transfers that could be considered novel, contentious or repercussive. This is a non-exhaustive list. A proposed transfer could be considered:
- novel, where there is no precedent for the type of landlord that is intending to manage the stock
 - contentious, where a formally recognised group, separate to the applicant tenant's group but comprised of affected residents, is formally opposed to the transfer (this could include a tenants' association, a residents' association, or a tenants' and residents' association)
 - repercussive, where the transfer of affected homes would, if approved, materially impact the local authority's ability to deliver on existing and planned commitments against the Mayor's London Housing Strategy and any other relevant programmes administered by the GLA.

2. Objectives and expected outcomes

- 2.1. This delegation (which supersedes MD2542) will be incorporated into the "Mayoral Decision-Making in the GLA" document at the point it is next revised. This scheme of delegation will provide:
- certainty to tenants' groups about the way in which:
 - their applications will be assessed
 - the findings of assessments will be made available
 - certainty to Londoners that assessments and approvals for tenants' groups to pursue (via consultation and ballot with social housing tenants) a transfer of housing stock from a local authority to a new landlord will be handled effectively and accountably.
- 2.2. The expected outcome is that applications made under the Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 will be handled efficiently and with appropriate scrutiny from officers and the public.

3. Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities – of whom the Mayor is one – 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
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2. Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 3.3. There is a chronic shortage of affordable housing in London and those with protected characteristics are more likely to disproportionately suffer as a result of that shortage. A full equality impact assessment was conducted to inform the development of the Mayor's London Housing Strategy,

which defines the Mayor's priorities for housing, including enhanced tenant involvement in estate regeneration. The Mayor's London Housing Strategy impact assessment is published on the GLA website.

- 3.4. This scheme of delegation sets a framework for making decisions about proposals brought forward by tenants' groups to transfer from a local authority landlord to a new landlord. The proposed delegation prescribes that assessments of proposals will be made with reference to Mayoral priorities. It is likely that proposals will impact significantly on Black, Asian and Minority Ethnic (BAME) Londoners; while 13.5 per cent of London's households rent from a local authority, this rises to 17.7 per cent for households where the reference person (as defined in the 2011 Census) is a BAME Londoner.
- 3.5. In providing support to tenants' groups bringing forward applications under the right-to-transfer process, the GLA recognises that tenants with protected characteristics are more likely to face disadvantages that result in being less able to access professional support to prepare and submit transfer applications.
- 3.6. Through support in the development stage of an application, the GLA can promote diversity and inclusion principles. For example, it can support the group to consider whether the make-up of the Board of the proposed new landlord is representative of the local population in terms of protected characteristics such as ethnicity, race, gender, sexuality and age.
- 3.7. As this proposed decision concerns the delegation of decision-making powers, there are no material equality implications arising from the proposed decision.

4. Other considerations

Links to Mayoral strategies and priorities

- 4.1. The Mayor's London Housing Strategy has five priorities:
 - building homes for Londoners
 - delivering genuinely affordable homes
 - high-quality homes and inclusive neighbourhoods
 - a fairer deal for private renters and leaseholders
 - tackling homelessness and helping rough sleepers.
- 4.2. At paragraph 5.81 of the Mayor's London Housing Strategy, he states that he believes "it is essential that tenants, leaseholders, freeholders, and other residents and users of estates be reassured that, where regeneration is being considered, they will be fully involved in the process, and that councils, landlords and others will abide by a common minimum set of standards."
- 4.3. The Mayor's Good Practice Guide to Estate Regeneration, 'Better Homes for Local People', outlines that social housing residents must be at the heart of decisions about the ongoing management and future of their estates.
- 4.4. The London Plan 2021 states at Policy H8, 'Loss of existing housing and estate redevelopment', that:
 - before considering the demolition and replacement of affordable homes, boroughs, housing associations and their partners should always consider alternative options first

- demolition of affordable housing, including where it is part of an estate redevelopment programme, should not be permitted unless it is replaced by an equivalent amount of affordable housing floorspace.

Impact assessments and consultations

- 4.5. Under certain circumstances concerning proposed stock transfer, consultation with the Regulator of Social Housing will be necessary for the GLA to complete a proper assessment of a transfer application as executed in accordance with the proposed delegation set out this report.

Risks

- 4.6. There is a potential risk that without approving a clear decision-making process for dealing with the transfer applications, the GLA will not be able to perform its role to support tenants' groups and assess applications in a fair and transparent way. Furthermore, tenants' groups would potentially be disadvantaged in pursuing transfer applications if a clear GLA decision-making was not adopted. To mitigate this risk, this Decision specifies the delegation of Mayoral decision-making to officers of the GLA to make and publish assessments in the public domain. Publication of detailed assessment of applications will be subject to consideration as to whether any of the assessment contains commercially sensitive information provided by the tenant group or local authority, the publication of which would be likely to prejudice the commercial interests of the tenant group or local authority; and whether the public interest in withholding it outweighs the public interest in releasing it.
- 4.7. There are no conflicts of interest to note for any of the officers involved in the drafting or clearance of this decision form.

5. Financial comments

- 5.1 The process of assessing applications represents a demand on officer time, which currently is being met from within the Housing and Land Directorate. In certain circumstances, officers may require resources to commission external bodies to undertake technical aspects of assessments. At this stage these costs are expected to be minimal and will be met from within the Housing and Land Directorate. Any procurement will be undertaken in accordance with the GLA's contracts and funding code.

6. Legal comments

- 6.1. The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 (the 2013 Regulations) enable tenant groups to explore and apply for transfer of local authority-owned homes to a private registered provider of social housing. The Regulations set out the procedure to be followed by tenant groups and local authorities, together with the circumstances in which a determination might be made by the Secretary of State.
- 6.2. Regulation 3 of the 2013 Regulations provides that local authorities must have regard to any guidance given by the Secretary of State relating to these Regulations. Statutory guidance was issued by the Secretary of State in November 2013; and it is this guidance, together with the Housing Transfer Manual which set out those areas that require GLA assessment or approval.
- 6.3. The foregoing sections of this report indicate that the GLA's role pursuant to the above statutory guidance and the Housing Transfer Manual fall within the statutory powers of the Authority under sections 30 and 34 of the Greater London Authority Act 1999 to promote and/or to do anything that is facilitative of, or conducive or incidental to, the promotion of social development in Greater London; and in formulating the proposals in respect of which a decision is sought, officers have complied with the Authority's related statutory duties to:
- pay due regard to the principle that there should be equality of opportunity for all people

- consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom
- consult with appropriate bodies.

- 6.4. The Mayor may delegate the exercise of Mayoral powers to staff of the GLA generally or specifically, and subject to conditions under sections 38(1) and (2) of the GLA Act 1999.
- 6.5. The “Mayoral Decision Making in the GLA” document (MDM) sets out the default framework of delegations in exercise of those powers but the Mayor may by a Mayoral Decision form amend or give free-standing delegations outside that framework at any time.
- 6.6. In taking the decisions requested, the Mayor must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between persons who share a relevant protected characteristic (race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) 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 (section 149 of the Equality Act 2010). To this end, the Mayor should have particular regard to section 3 (above) of this report.
- 6.7. The intention is to incorporate this specific delegation into the MDM at the point it is next revised, which satisfies good local government practice in making publicly available the list of delegations made by the Mayor.

7. Planned delivery approach and next steps

- 7.1. To engage with relevant stakeholders and assess a business case as and when the GLA is approached for a Right to Transfer.

Appendices and supporting papers:

None.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

Part 1 – Deferral

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under the FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Charlotte Harrison has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Rickardo Hyatt has reviewed the request and is satisfied it is correct and consistent with the Mayor’s plans and priorities.

✓

Mayoral Adviser:

Tom Copley has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 11 October 2021

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date

D. Gove

12/11/21

CHIEF OF STAFF:

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

Signature

Date

D. Bellamy

17/11/21