

Len Duvall AM

City Hall
The Queen's Walk
London
SE1 2AA
Web: www.london.gov.uk

Karl Havers
External Auditor

Our ref:
Your ref:
Date: 6 July 2018

Dear Karl

Garden Bridge

Thank you for taking the time to meet with me and Ed Williams to discuss Transport for London's (TfL's) participation in the Garden Bridge Project.

I am grateful for your assurance, given at the meeting, that you will be following up changes made by TfL which revise practices on letting of contracts. My understanding is that there now exists clarification on relationships between Mayoral Directions and TfL's board structures/decision making processes and that all are now reported to the Board. Can you please confirm to me that this is the case?

In this letter I set out further concerns about the lack of adherence to TfL's governance process and policies.

Amongst these is the matter of Mayoral Decisions where the (then) Mayor delegated to TfL the exercise of the Mayor's powers to help enable the Temple to South Bank footbridge project. I agree with you that more could have been done to inform TfL governance structures (boards and sub committees) of this new transport objective being proposed by the (then) Mayor. It is important to remember that this project appears to have by-passed all due diligence which would normally have been afforded to similar, TfL supported, projects.

Therefore, whilst recognising that Mayoral Directions are a 'decision' so in that sense they override the TfL decision making process, I would seek clarification that TfL officers working to Mayoral Directions do not see this as a blueprint to over-ride processes around implementation, e.g. procurement rules.

Whilst I accept that TfL need to operate with the best practices of commercial thinking, this should not detract from the fact that they are a public service body responsible for public monies. The public must have confidence that they are carrying out their financial responsibilities in the right way.

As this project progressed, it appears TfL officials lost objectivity regarding the deliverability of the Garden Bridge and the financial consequences for future TfL revenue budgets. This is reflected by the lack of independent analysis of the Garden Bridge Business Plan and the lack of appropriate risk assessments throughout the project's lifespan.

Perhaps the most stark example of where TfL officers may not have acted in accordance with due governance process relates to the way TfL sought agreement for a £7m payment from the Department for Transport (DfT) to the Garden Bridge Trust. In this instance there is evidence of senior TfL officers, who would have had intimate knowledge of the Garden Bridge Trust's financial position and its policy to deliver the Garden Bridge, failing to highlight the risks and, very possibly, mis-leading TfL chief officers and Government officials.

Such information has come to light following the recent release of Garden Bridge Trust board meeting minutes, most notably those of 9 December 2015 and 14 January 2016. It is clear from these minutes that TfL officers had a clear understanding of the Garden Bridge Trust's view that unless they received an injection of money the *project was in jeopardy*.

This should have raised immediate concerns about whether or not there a realistic opportunity for this project to continue to proceed without additional further financial support. At this time this project had still not secured its landing base on the southern side of the River Thames and was reporting that sponsors were pulling back from their initial commitment. It looked increasingly unlikely that further opportunities for sponsorship were coming forward.

It appears that this multitude of problems and obstacles were not properly reported back to TfL by its own officers. Instead, those TfL officers, all of whom had knowledge of the Trust's real financial situation, appeared to have spent their time both trying to revise the conditions set out in the Deed of Grant and to minimise potential risks (as outlined in the briefing note attached to this letter), with a view to making it easier to secure support from the Government for the sum of £7m.

This £7m payment almost certainly acted as a catalyst for further public expenditure later in the project's life. Had closer examination and risk assessments of the Trust's financial position been carried out at the appropriate time, this may not have happened. Therefore, it may be worth pursuing not just the issue of this £7m that has been lost to the public purse, but also the issue of whether further sums of public money subsequently flowed from the release of that £7m.

It is quite clear when you look at the detail that two of the conditions of the Deed of Grant were not met. Specifically:

1. One of the Conditions was that the Garden Bridge Trust had to demonstrate to TfL's satisfaction that ***it had secured, or was able to secure, all necessary consents needed to deliver the project***". Given that land on the southern landing point had not been secured (from Coin Street Community Builders) and planning permission from the local authority (Lambeth) was dependent on the Mayoral guarantee being signed off (it hadn't at this stage and in fact, never was), I would argue that this condition was not met; and
2. Another condition was that the Garden Bridge Trust had to demonstrate to TfL's satisfaction that ***it had secured a satisfactory level of funding to operate and maintain the Garden Bridge once it is built and for at least the first five years***. The only 'evidence' produced to satisfy this condition was a draft Operations and Maintenance Plan, which did not demonstrate 'secured funding'.

There was a cap on pre-construction costs (Schedule 2 of the Deed of Grant) and this TfL officer had repeatedly referred to this condition and acknowledged that more costs could not be called down until the construction contract was signed.

His email to Rupert Furness, Deputy Director, DfT, dated 29 January 2016 says:

"Rupert – the contract allows the Trust to call down on funds once the main construction contract has been signed (and subject to other conditions being met). We are now at that point and TfL is satisfied these conditions have been met so we will be authorising the payment to proceed in accordance with the signed Deed of Grant".

Not only had the contract referred to not been signed, it would not be for a further 12 days after the officer's email was sent – thus the release of the £7m breaks the cap.

TfL officers did not feedback the frailty of this project. A £7m that should not have been paid was in fact paid.

It is interesting to also note that, after the two Board Meetings mentioned above (held on 9 December 2015 and attended by Andy Brown (TfL Officer) and 14 January 2016 and attended by Richard De Cani)), Paul Morrell (Vice Chair, Garden Bridge Trust) wrote to TfL to say that the Garden Bridge Trust had raised £145m. However, the minutes of the meeting show a different story.

- The minutes of the meeting held 9 December 2015 (page 107) claim that the Garden Bridge Trust had raised £135m.

- The minutes of the meeting held 14 January 2016 say, “it was noted that the capital cost of the Garden Bridge had increased to £185m and that a funding gap of £54m existed”.

If the minutes of 14 January 2016 are correct, this would mean that £131m had been raised at that point, an apparent decline of £4m and £14m less than Paul Morrell claimed had been raised in his letter to TfL following the meetings. Yet another set of minutes, from the Board meeting held in February 2016, claim that £130m had been raised (page 126).

Clearly the Garden Bridge Trust had overstated its financial health to TfL. It is hard to believe that TfL was not aware, in detail, of the actual situation given that it had senior officers in attendance at all board meetings of the Trust. Information presented at those board meetings was different to that presented to the DfT and TfL.

If one looks closely at the briefing note provided to Mike Brown, TfL Commissioner, (attached), it refers to the DfT pre-construction cap. It implies the pre-construction cap is only an issue for the DfT – in fact the Mayoral Decision that authorised this expenditure placed a cap on DfT *and* TfL pre-contract expenditure. Given the senior TfL officers briefing Mike Brown would be well versed in the detail of this project, I find this deeply concerning.

Whilst these exchanges were taking place surely the least one could expect is that any senior officer(s) would acknowledge that there were potentially serious financial problems looming and would have sought to pause for a review before any further monies were released.

Fortunately, Departmental Officials at the DfT did pick it up and updated the Minister; they advised (with the backing of the Accounting Officer) that the Department should refuse to increase its exposure. They reasoned that any additional expenditure should be at TfL’s risk until there was greater certainty that the project would go ahead. Unfortunately, the officials’ advice was not followed. This was also picked up in the National Audit Office report into the project.

Yours sincerely



Len Duvall AM
Leader of the London Assembly Labour Group
Assembly Member for Greenwich & Lewisham

Cc – Ed Williams

Attachments:

Minutes of Garden Trust Board Meeting held 9 December 2015

Minutes of Garden Trust Board Meeting held 14 January 2016

Minutes of Garden Trust Board Meeting held 17 February 2016

Email exchange and briefing note from Richard de Cani to Andrew Pooley dated 12 February 2016