

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2765

Title: Holiday Inn, Kensington Forum Hotel, 97-109 Cromwell Road Public Inquiry

Executive Summary:

The Mayor, on 23 April 2019 under powers conferred by Article 7 of the Town & Country Planning (Mayor of London) Order 2008, directed the Royal Borough of Kensington and Chelsea that he was to act as local planning authority for the purpose of determining the planning application for the redevelopment of the Holiday Inn Kensington Forum Hotel.

A public Representation Hearing was held online on 22 October 2020. Following the Hearing, the Deputy Mayor resolved to grant planning permission for the scheme subject to the conclusion of a section 106 legal agreement.

On the 6 November 2020, the Secretary of State under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 directed not to grant permission on this application without specific authorisation.

On the 14 January 2021, the Secretary of State notified the Mayor that has decided to exercise his powers in section 77 of the Town and Country Planning Act 1990 and will determine this planning application by Public Inquiry.

Decision:

The Mayor approves:

Expenditure of up to £250,000 to cover the costs of defending the decision to allow the planning application.

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:

23/2/21

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

Decision required – supporting report

1. Introduction and background

- 1.1 A planning application submitted to the Royal Borough of Kensington and Chelsea sought full planning permission for the demolition of the existing buildings, and the redevelopment of the site for a mixed-use development comprising a 749-bedroom hotel, 340 serviced apartments and 46 residential units, including affordable housing, in addition to bar, restaurant, conferencing and dining areas ancillary to the hotel function, within a building of part 30, part 22 and part 7 storeys. A new publicly accessible garden square, commensurate in size to the existing open space on site was also proposed.
- 1.2 On 24 October 2018 Kensington & Chelsea advised the Mayor that it was minded to refuse planning permission for the redevelopment proposals. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, direct refusal under Article 6, or issue a direction to the Borough under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application. On 5 November 2018, having considered a report on the case, the Mayor notified Kensington & Chelsea that he would act as the local planning authority for the purposes of determining the planning application for the redevelopment of the Holiday Inn Kensington Forum Hotel. This decision was challenged by Kensington & Chelsea on the basis of inconsistencies in the report to the Mayor in relation to housing figures. The Mayor conceded this claim and on 23 April 2019, having considered a further report on the case, the Deputy Mayor notified Kensington & Chelsea that the Mayor would act as the local planning authority.
- 1.3 Following the decision to call in the application the applicant made amendments to the scheme. These amendments were:
 - an increase in the number of residential units from 46 to 62;
 - an increase in the height of the seven-storey element of the building containing the residential units by two storeys to nine storeys;
 - all the residential units now proposed as affordable;
 - internal and external reconfiguration of the residential element of the building;
 - other external alterations to the elevational design, including integration of wind mitigation measures; and
 - amendments to cycle and refuse storage at ground and basement level.
- 1.4 A Public Representation Hearing was held on 21 June 2019. Following the hearing the Mayor decided to grant permission for the application subject to planning conditions and conclusion of a section 106 legal agreement.
- 1.5 Following a High Court ruling, the Mayor's decision was quashed and the application had to be re-considered. A Public Representation Hearing was therefore held online on 22 October 2020. Following the Hearing, the Deputy Mayor resolved to grant planning permission for the scheme subject to the conclusion of a section 106 legal agreement.
- 1.6 On 6 November 2020, the Secretary of State under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 directed the Mayor not to grant permission on this application without specific authorisation.

- 1.7 On 14 January 2021, the Secretary of State notified the Mayor that he has decided to exercise his powers in section 77 of the 1990 Act and that he instead of the Mayor will determine this planning application following a Public Inquiry.
- 1.8 The GLA will be the principal party defending the Deputy Mayor's decision at the public inquiry. If the case for granting planning permission is not robustly presented there is a very real risk that the Deputy Mayor's decision to grant planning permission will effectively be overruled by the Secretary of State and that the London Plan will be undermined to the detriment of London's strategic planning interests. The Mayor could also incur very significant costs (in the event of a successful application for costs) should he be found to have acted unreasonably or unlawfully.
- 1.9 Defending the Mayor's decision will require the appointment of Counsel and potentially expert (external) witnesses in the areas of heritage and design. It is considered these costs could be up to £250,000. It will also require significant input from several GLA officers – these internal resources are covered by the GLA Planning team budget.

2. Objectives and expected outcomes

- 2.1 The principal objective is to put together an effective high-quality team of external consultants and GLA/TfL officers led by Planning Counsel capable of defending the decision to grant planning permission. The expected outcome is a robust and successful defence.

3. Equality comments

- 3.1 Under section 149 of the Equality Act 2010, in making these decisions "due regard" must be had to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only). In this instance the proposals are not expected to have any impacts on those with protected characteristics as distinct from anyone else.

4 Other considerations

Mayoral strategies and priorities

- 4.1 The Mayor's London Plan seeks to ensure that the city meets the challenges of economic and population growth whilst protecting heritage assets and ensuring a high quality of design. The Mayor's comments and decisions on referable planning applications is a key implementation tool of the London Plan.

Risk management issues

- 4.2 Regular monitoring of costs incurred will be necessary to ensure the costs are within the agreed scope.

Conflicts of interest

- 4.3 There are no conflicts of interest to note for any of those involved in the drafting or clearance of the decision.

5. Financial comments

- 5.1 Approval is sought for expenditure of up to a total of £250,000 on the engagement of Counsel and other expert external witnesses as necessary to defend the Mayor's position. The indicative fees can be broken down as follows:

Fees	Cost (£)
Counsel	100,000
Design/Architectural Advice	60,000
Heritage Consultant	50,000
Administrative and printing	25,000
Contingency	15,000
Total	250,000

- 5.2 There are some costs associated with this call in which fall outside of the estimated budget. Planning and any transport evidence for instance can be given by GLA and TfL officers and, as such, will not incur additional costs beyond the usual staff budget.
- 5.3 These estimates above may increase or decrease but the intention is to remain within the overall envelope of £250,000. Officers will endeavour to keep costs to a minimum and will only draw down funding as required. Although a contingency has been included, in the event the complexities of the case and the evidence of other parties necessitate additional resources beyond the £250,000 a further decision would be processed to increase the budget.
- 5.4 The costs of this public inquiry will span two financial years (2020-21 & 2021-22), with the majority of expenditure expected to take place in 2021-22. For costs that fall in 2020-21, these will be contained within the existing Planning budget. The costs that are to fall in 2021-22 will be funded from the Planning Smoothing Reserve that is to be topped up as part of the 2021-22 budget setting process.

6. Legal comments

- 6.1 The above paragraphs indicate the decision requested of the Mayor falls within his statutory powers under section 30 of the Greater London Authority Act 1999 (as amended) ("the Act"), acting on behalf of the Authority to do anything he considers that will promote the importance of the environment 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:
- a) Pay due regard the principles that there should be equality of opportunity for all people;
 - b) Consider how the proposals will affect:
 - the health of persons in Greater London;
 - the health inequalities between persons living in Greater London;
 - the achievement of sustainable development in the United Kingdom; and
 - climate change, and the consequences of climate change and consult with appropriate bodies.
- 6.2 The Mayor has a statutory role as strategic planning decision maker as part of the Act and the Town and Country Planning (Mayor of London) Order 2008. Rigorous defending of decisions to grant

planning permission are critically important to the successful implementation of policies in the London Plan.

- 6.3 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, and 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 regard to section 3 (above) of this report.
- 6.4 The officers are reminded that the expenditure, which is set out in decision section of this MD, must be made in accordance with the requirements of the Authority's Contracts and Funding Code.

7. Planned delivery approach and next steps

- 7.1 Note that as this is at an early stage of the process the timetable contains approximate timings and is subject to change.

Activity	Timeline
Engagement of Counsel and consultant / internal team	February 2021
Submission of Statement of Case	Mid-March 2021
Preparation of detailed case and evidence	Circa March/April 2021
Public Inquiry (estimated to last 12 days)	May 2021

Appendices and supporting papers:

None.

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

Until what date: (a date is required if deferring)

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under 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:

John Finlayson has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Lucinda Turner has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Jules Pipe 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 15 February 2021.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

D. Gane

Date

17 February 2021

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

17 February 2021