

Grants Determination Sub-Committee 6 th February 2018	 TOWER HAMLETS
Report of: Ann Sutcliffe	Classification: Unrestricted
Brick Lane Regeneration Programme Phase 2 – Shopfront Enhancement Scheme – Grant Approval	

Lead Member	Councillor Joshua Peck, Cabinet Member for Work and Economic Growth
Originating Officer(s)	Rachel Jenman, Alex Hatt
Wards affected	Spitalfields & Banglatown
Key Decision?	No
Community Plan Theme	A great place to live

Executive Summary

This report seeks approval for grant payment for the Shopfront Improvement Programme contained within Brick Lane Phase 2 PID, the latter of which was approved at Cabinet on 19th December 2017. £270,000 has been identified within the Brick Lane Regeneration Programme Phase 2 PID for the Shopfront Improvement Programme, which is to be part funded (50%) by S106 contributions at £135,000, with the remaining 50% to be provided by shopkeepers.

Recommendations:

The Sub-Committee is recommended to:

1. Approve the grant payment for the Shopfront Improvement Programme contained within Brick Lane Phase 2 PID, the latter of which was approved at Cabinet on 19th December 2017.

1. REASONS FOR THE DECISIONS

- 1.1 £270,000 identified within the Brick Lane Regeneration Programme Phase 2 PID has been identified by Legal Services as requiring approval from the Grants Determination (Cabinet) Sub-Committee prior to any payments being made.

2. ALTERNATIVE OPTIONS

- 2.1 Given the timescales contained within the PID, there are no alternative options to secure funding for the Shopfront Improvement Scheme that do not put deliver at high risk; private / third party funding is limited and not guaranteed, and CIL is not available for this purpose.

3. DETAILS OF REPORT

- 3.1 The Brick Lane Regeneration project aims to deliver a holistic regeneration programme for the Brick Lane area, which is defined as from the bottom of Osborn Street (Whitechapel High Street) to the top of Brick Lane (Redchurch Street and Bethnal Green Road). The activity will include linking up Brick Lane with other major visitor attractions such as Spitalfields Market and Petticoat Lane. It will also look to develop cultural trails and activities that bring footfall into Brick Lane from cultural facilities such as Rich Mix and Whitechapel Gallery.
- 3.2 The key aim of the project is to improve Brick Lane – particularly the part south of the Truman Brewery – and return it to be:
- A vibrant and diverse local economic centre;
 - An important focus for local communities, particularly the Bengali community;
 - A major visitor and tourist destination; and
 - The home of a lively night-time economy.
- 3.3 As part of Phase 1 of the Programme, Jan Kattein Architects were appointed to lead on the design of shopfront enhancement for seven properties along Brick Lane, five of which will now be delivered. Construction work on these five properties will begin in February 2017. As part of the exercise, Jan Kattein produced a strategy document highlighting further potential shopfront improvement opportunities along Brick Lane, following which a sum of £270,000 was provided within the PID for Phase 2 of the programme to deliver a second phase of Shopfront Improvements, 50% (£135,000) is drawn from S106 contributions.
- 3.4 In drafting the PID, officers entered discussion with Legal Services as to whether S106 funding allocated to the shopfront improvement programme constituted a grant payment. Legal Services subsequently commented that:
- “It is noted that some of the contributions to be drawn from these agreements shall be used to fund 50% of the costs of improving shopfronts in the area. The terms of these agreements do not specify the individual organisations to which contributions can be paid and so such payments are considered to constitute grants. Therefore, as the Council is under no legal obligation or duty to provide this payment, it is discretionary and considered to be a grant.

As such, approval must first be sought from the Grants Determination (Cabinet) Sub-Committee before any payment is made.”

- 3.5 Approval is therefore sought through the Grants Determination (Cabinet) Sub-Committee to approve the use of S106 funding for the purposes of the shopfront improvement programme. The corresponding Phase 2 PID for the Brick Lane Regeneration Programme was approved at Cabinet on 19th December 2017.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 In accordance with the Council's Infrastructure Delivery Framework processes, on 19th December 2017 the Mayor in Cabinet approved the allocation of Section 106 resources totalling £1,143,405 to Phase 2 of the Brick Lane Regeneration scheme. A capital estimate was also adopted to incorporate the project into the Council's capital programme.
- 4.2 An element of the programme (totalling £270,000) relates to an initiative to improve shopfronts in Brick Lane. Although this is a Council led project, the works will be undertaken to privately owned assets, with the individual owners contributing 50% of the cost of the works. The remaining 50% will be funded by the Council from Section 106 resources and as a subsidy to private individuals or companies is effectively a grant which requires the approval of the Grants Determination Sub-Committee.
- 4.3 To protect the Council's resources, it is essential that legally enforceable arrangements are put in place before any works on individual shop units take place in order to ensure that the Council recovers the relevant private contributions towards the scheme.

5. LEGAL COMMENTS

- 5.1 Whilst there is no strict legal definition of grant, a grant is in the nature of a gift and is based in trust law. However, grants are often given for a purpose so it is sometimes unclear whether a grant has been made or the arrangement is a contract for services.
- 5.2 There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.
- 5.3 In this case, the Council is not under a legal duty to make the payments and as the payments are discretionary, they are therefore considered to be grants.
- 5.4 There is a need to ensure that the Council has the power to make the grants in question. In that regard, the proposed grants are supported by the

Council's general power of competence. Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes.

- 5.5 When considering whether or not to delegate the power to Corporate Director, Place to make these payments, consideration should be given to the arrangements in place to ensure that the power that is exercised is consistent with its best value arrangements. The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" (the Best Value Duty). This means that the Council will have to ensure that any grant is made under terms that enable monitoring to demonstrate that the money achieves the appropriate outcomes for which it was given.
- 5.6 When implementing the scheme, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from the grant or third parties indicates that the grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.
- 5.7 When making grants decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 There are no One Tower Hamlets considerations arising from this report.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 There are no Best Value (BV) implications arising from this report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no Sustainable Action for a Greener Environment implications arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are no Risk Management implications arising from this report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no Crime and Disorder Reduction implications arising from this report.

11. SAFEGUARDING IMPLICATIONS

11.1 There are no Safeguarding implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

<http://democracy.towerhamlets.gov.uk/documents/g7735/Printed%20minutes%2019th-Dec-2017%2017.30%20Cabinet.pdf?T=1>

Appendices

NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

NONE

Officer contact details for documents:

N/A