

Committee: Overview & Scrutiny	Date: 3 rd February, 2015	Classification: Unrestricted	Report No. 5.1
Report of: Service Head, Democratic Services Originating Officer(s): David Knight, Committee Services Officer		Title: Cabinet Decision Called In: Rights of Light - City Pride Development & Island Point Development Wards: All	

1. SUMMARY

- 1.1 The attached report “6.2 Rights of Light - City Pride Development & Island Point Development” was considered by the Mayor in Cabinet on 7 January, 2015 and has been “Called In” in respect of the proposal that the Council intervenes in a commercial dispute between a developer and local residents by Councillors Candida Ronald; Shiria Khatun; Andrew Cregan, Marc Francis and Rachel Blake. This is in accordance with the provisions of rule 16 of the Overview and Scrutiny Procedure Rules in Part 4 of the Council’s Constitution.

2. RECOMMENDATION

- 2.1 That the OSC consider the contents of the attached report, review the Mayor in Cabinet’s decision (provisional, subject to Call In) arising; and
- 2.2 Decide whether to accept the decision or to refer the matter back to the Cabinet with proposals and reasons.

3. BACKGROUND

- 3.1 The request (received 16 January, 2015) to “call-in” the Mayor in Cabinet’s decision published on 9 January, 2015 was submitted under rule 16 of the Overview and Scrutiny (OSC) Procedure Rules. It was considered by the Interim Monitoring Officer who has delegated responsibility for calling in Cabinet and Mayoral decisions in accordance with agreed criteria.
- 3.2 The Call-In request fulfilled the required criteria and the decision is referred to OSC in order to consider whether or not to refer the matter back to the Cabinet for further consideration.
- 3.3 Implementation of the Cabinet decision is suspended whilst the “Call In” is considered.

4. THE MAYOR IN CABINET’S PROVISIONAL DECISION

- 4.1 The overall report, attached at Appendix 2, considered Rights of Light - City Pride Development & Island Point Development. The Call-In request was specifically about the Council proposing to intervene in a commercial dispute

between a developer and local residents, however for ease, all the Decisions agreed by the Mayor in Cabinet in relation to the report are listed below:-

“DECISION

- i. Note the risks identified in section 13;
- ii. Agree the principle of acquiring the developer’s land for planning purposes using S227 powers and disposing of that land to the developer using S233 powers in order to engage S237 powers to enable the development to be carried out;
- iii. Note the effect of S237 of the TCPA if the Council acquires land for planning purposes;
- iv. Note the circumstances in which an acquisition may be made for planning purposes;
- v. Note the consultation undertaken with affected neighbouring owners and land interests;
- vi. Note that the use of S237 powers is necessary and proportionate, and that the developer has shown to Council officers, that it has made adequate efforts to reach fair negotiated settlements with affected third parties, and that the developer will continue to do so during the implementation of powers;
- vii. Agree to enter into agreements with the affected land owners for compensation in respect of rights extinguished under S237 of the TCPA 1990;
- viii. Agree that the developer should be obliged to apply for consent to the non-material minor amendments summarised in paragraph 10.5 before the Council exercises its S237 powers;
- ix. Delegate to the Director of Development and Renewal after consultation with the Service Head – Legal Services the powers, to agree the terms of the acquisition and lease and lease back to the developer and to complete the necessary documentation to enable acquisition under S227 of the TCPA 1990 and subsequent disposal or lease back to the developer under S233 of the TCPA 1990, at no cost to the Council;
- x. Delegate to the Director of Development and Renewal after consultation with the Service Head - Legal Services the power to take all necessary procedural steps and execute the necessary documents to override all third party rights pursuant to S237 of the TCPA 1990 to facilitate the proposed developments on both the City Pride and Island Point sites.
- xi. Note that any transfer or lease back of the site to the developer will require the consent of the commissioners appointed by the Secretary of State as detailed in paragraph 15.9.

4.2 Reasons for Decisions

4.2.1 The appendix to the report set out the full reasons for the proposals and they can be seen in the attached appendix to the Cabinet report.

4.3 Alternative Options Considered

4.3.1 The appendix to the report set out any alternative options considered and they can be seen in the attached appendix to the Cabinet report.

5. REASONS AND ALTERNATIVE COURSE OF ACTION PROPOSED FOR THE 'CALL IN'

5.1 The Call-in requisition signed by the five Councillors listed above gives the following reason for the Call-in:

5.1.1 We hereby call-in the Mayor's decision in Cabinet (Wednesday 7th January) with regard to the Rights of Light.

5.1.2 A decision was taken at Cabinet to acquire from developers the land at City Pride on the Isle of Dogs in order to break the right to lights for neighbouring residents. After breaking the right to light the Council would then transfer the property rights back to the developer.

5.1.3 The Council is proposing to intervene in a commercial dispute between a developer and local residents - taking the side of the developer against the interests of its own residents - using legislation which was intended to be used in the development of major public infrastructure and not in residential developments. The existing legislation in such matters specifically provides for such disputes to be resolved at law, creating a "balance between development and protection, influenced by the particular factors of the situation favouring injunction or damages." [Law Commission report Rights to Light 2014]

5.1.4 The Council is not a disinterested party in this matter with the large amount of s106 planning gain at stake and has no business intervening in a purely commercial dispute.

5.1.5 This call-in will give the Mayor the opportunity to consider whether this intervention is appropriate and whether it could have further consequences by setting a precedent in relation to other development in the borough.

5.2 Alternative action proposed:

5.2.1 That the Mayor:

- That the Mayor fully consider and outline the impact of such a decision on future developments in the borough; and
- That the decision on rights of light be left to the courts.

6. CONSIDERATION OF THE “CALL IN”

- 6.1 Having met the “Call In” request criteria, the matter is referred to the OSC in order to determine the “Call In” and decide whether or not to refer the matter back to Cabinet for further consideration.
- 6.2 The following procedure is to be followed for consideration of the “Call In”:
- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions from members of OSC.
 - (b) Response from the Lead Member/officers followed by questions from members of OSC.
 - (c) General debate followed by OSC decision.

N.B. In accordance with the OSC Protocols and Guidance adopted by the Committee at its meeting on 4th June, 2013, any Member(s) who present(s) the “Call In” is (are) not eligible to participate in the general debate.

- 6.3 It is open to the OSC to either resolve to take no action (which would have the effect of endorsing the original Mayoral decision/s), or to refer the matter back to the Mayor for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The comments of the Chief Financial Officer are incorporated in the attached report

8. LEGAL COMMENTS

- 8.1 The Mayor in Cabinet’s decision has been called-in in accordance with the Overview and Scrutiny Procedure Rules set out in the Council’s Constitution. The alternatives presented in paragraph 2.2 of the recommendations in this report are options available to the Committee under the Overview and Scrutiny Procedure Rules.
- 8.2 Legal comments relevant to the Mayor’s decision and to the review by the Overview and Scrutiny Committee are set out in the report on which the decision was based.

9. APPENDICES

- 1. Appendix 1 - “Call In” Requisition
 - 2. Appendix 2 – Rights of Light - City Pride Development & Island Point Development
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Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

Brief description of “background papers”

Name and telephone number of holder and address where open to inspection.

None